

Wade Morris
Litigation Counsel
Professional Corporation

1200 Bay Street, Suite 300
Toronto, Ontario
M5R 2A5

VIA EMAIL: jeanie.myers@brampton.ca

T: 416.614.3400
F: 647.277.1223
wmorris@litgac.com

24 March 2023

Jeanie Myers
Secretary-Treasurer, Committee of Adjustment
City of Brampton
2 Wellington Street West
Brampton, Ontario L6Y 4R2

Dear Ms. Myers:

**Re: Planning Application No. B-2022-0025 A 2022372/373
9893 Torbram Road, Brampton**

Please be advised that I am the lawyer for Shree Jagannath Temple Canada (“SJTC”) in connection with a property situated at 9893 Torbram Road, Brampton (the “Property”). It has recently come to our attention that there is a committee of adjustment hearing scheduled on March 28, 2022.

We would like to bring to your attention that ownership and title of the Property are currently in dispute between SJTC and the current registered title holder, Mr. Sradhananda Mishra. On December 13, 2021, SJTC commenced a lawsuit in the Superior Court of Justice against Mr. Mishra and an affiliated organization, Jagannath Temple Toronto (the “Mishra Defendants”), bearing court file number CV-21-00673659-0000 (the “Ownership Action”). In the Ownership Action, SJTC has claimed that it is the beneficial owner of the Property and is seeking a court order vesting ownership of the Property in SJTC. The Mishra Defendants have defended the lawsuit and deny that there is a legitimate dispute as to ownership of the Property. You will find enclosed the statement of claim, statement of defence and counterclaim, and reply and defence to counterclaim for the Ownership Action. The lawsuit is ongoing and the parties have not yet presented evidence in court. SJTC intends to seek an order allowing the registration of a Certificate of Pending Litigation on the Property.

Given that there is an ongoing legal proceeding to determine who is actually the owner of the Property, SJTC’s position is that Mr. Mishra’s application must be denied.

The powers of the committee arise from s. 45 of the *Planning Act*. The committee’s jurisdiction is engaged upon the “application of an owner”. According to paragraph 16 of the Schedule to O. Reg. 200/96 (Minor Variance Applications), the applicant must disclose in its application “The date the subject land was acquired by the current owner.” In consequence of these statutory provisions, SJTC submits that the committee cannot exercise its authority in a circumstance

where the ownership of the Property, and therefore the identity of the owner, is in dispute. This issue is currently before the Superior Court of Justice in the Ownership Action.

SJTC's position is that, in light of the ownership of the subject lands being a live issue in the Ownership Action, which is currently before the Superior Court of Justice, the committee is without jurisdiction to act, and cannot consider the application at this time.

**Yours truly,
Wade Morris
Litigation Counsel
Professional Corporation**


Wade Morris

Encl.:

- 1- Statement of Claim
 - 2- Statement of Defence and Counterclaim
 - 3- Reply and Defence to Counterclaim
- c. Client
- c. Allan McConnell, Lawyer for Sradhananda Mishra and Jagannath Temple Toronto
(via email: alan@mcconnelllaw.ca)
- c. Kiran Basra, Planner, City of Brampton (via email: kiran.basra@brampton.ca)



Electronically issued
Délivré par voie électronique : 13-Dec-2021
Toronto

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

SHREE JAGANNATH TEMPLE CANADA

Plaintiff

- and -

**SRADHANANDA MISHRA (a/k/a DAN MISHRA) and
JAGANNATH TEMPLE TORONTO**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date:

Issued by: electronically issued.

Address of
Court office: 330 University Ave.
8th Fl.
Toronto, Ontario
M5G 1E6

TO: SRADHANANDA MISHRA
(a/k/a DAN MISHRA)
Suite 2704, 85 Skymark Drive
Toronto, Ontario
M2H 3P2

AND TO: JAGANNATH TEMPLE TORONTO
9893 Torbram Road
Brampton, Ontario
L6S 6J1

CLAIM

1. The Plaintiff claims against the Defendants:

- a) A declaration that the Plaintiff is the beneficial owner of the property municipally known as 9893 Torbram Road, Brampton, Ontario.
- b) An order vesting the property municipally known as 9893 Torbram Road, Brampton, Ontario in the name of the Plaintiff.
- c) An order declaring a lease dated February 6, 2018 between the Plaintiff and the Defendant, Sradhananda Mishra (A/K/A Dan Mishra), is void or voidable, and is of no force or effect.
- d) An order requiring the Defendants to account for donations solicited purportedly on behalf of the Plaintiff but received by one or both of the Defendants.
- e) An order requiring the Defendants to account for any rents received in respect of the property municipally known as 9893 Torbram Road, Brampton, Ontario.
- f) An order requiring the Defendants to account for any funds obtained by way of charging or mortgaging the property municipally known as 9893 Torbram Road, Brampton, Ontario.
- g) An order requiring the Defendants to indemnify the Plaintiff in respect of any charges or mortgages registered on the property municipally known as 9893 Torbram Road, Brampton, Ontario.
- h) An order requiring the Defendants to pay occupational rent to the Plaintiff in respect of the property municipally known as 9893 Torbram Road, Brampton, Ontario.
- i) Pre-judgment interest on any amounts found owing to the Plaintiff interest in accordance with s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- j) Post-judgment interest in accordance with s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- k) Costs and applicable tax on costs; and
- l) Such further and other relief as this Honourable Court may deem just.

PARTIES

- 2. The Plaintiff, Shree Jagannath Temple Canada (“**Shree**”), is a corporation formed pursuant to the federal laws of Canada with its registered head office in Toronto. It is a not-for-profit corporation and a registered charity. It is an organization that operates a Hindu temple.
- 3. The Defendant, Sradhananda Mishra (a/k/a Dan Mishra) (“**Mishra**”), is an individual residing in Toronto.
- 4. The Defendant, Jagannath Temple Toronto (“**JTT**”), is a corporation formed pursuant to the federal laws of Canada. JTT’s registered head office is in Brampton.

FACTS

- 5. The property municipally known as 9893 Torbram Road, Brampton, Ontario (the “**Temple Property**”), is a property which was formerly used as a synagogue and, following its sale on February 6, 2018, has been used as a Hindu temple. It has a sizable house of worship situated on it and, in another part of the property, cell phone equipment which is leased to Bell Canada.
- 6. Shree came into existence in 2008. Its mandate is to operate a Hindu temple. For approximately ten years, it operated from a premises owned by another Hindu organization. After approximately seven years of operating from a premises owned by another Hindu organization, Shree’s members decided to seek a property which would be owned by Shree from which it would operate in the future.
- 7. After an extensive search, Shree identified the property at 9893 Torbram Road, Brampton (i.e. the Temple Property) as being suitable for its needs. The features which made the

Temple Property ideal for Shree included a large free parking space, nearby market, monthly income potential from leasing the land used by Bell Canada for its telephone tower and leading some of the parking lot for school bus parking. There is also a large Hindu population residing within the area of the Temple Property.

8. By June of 2017, the Temple Property had been on the market for some time. The Temple Property was, at the time, owned by the Har Tikvah Congregation of Brampton which had operated the property as a synagogue. The Temple Property had previously been designated by the City of Brampton as a Heritage Property. As a result, its potential uses were limited.
9. Prior to entering negotiations to purchase the Temple Property, Shree considered its resources and financial means. It decided to proceed with a purchase of the Temple Property.
10. On or about July 5, 2017, Shree and Har Tikvah Congregation of Brampton entered into an Agreement of Purchase and Sale. Shree paid a deposit of \$50,000 to be applied to the purchase price of \$2,000,000 on closing. The closing date was originally fixed for October 6, 2017.
11. Unfortunately, prior to the closing date, Shree was unable to gather sufficient funds from its members to close the purchase of the Temple Property. The Har Tikvah Congregation of Brampton agreed to extend the closing date of the sale to allow Shree additional time to arrange for further funding.
12. At the time that Shree was in the process of purchasing the Temple Property, and continuing to present, Mishra was a successful businessperson. Mishra was also a member of the same community as the members of Shree although Mishra was not involved with Shree in any way. The executive of Shree approached Mishra to ask if he would be willing to provide funding to Shree as donation to buy the Temple Property in the name of Shree. Mishra agreed to do so paying the money purely as donation. It was understood and agreed that the Temple Property was being purchased for Shree, and not for any other person. Likewise, Mishra represented to Shree that the funding would be provided as a donation to

Shree and not as a loan. Mishra reiterated that he had advanced the money as a donation for the benefit of Shree in many community forums and social media networks.

13. After Mishra agreed to provide funding to Shree to purchase the Temple Property, The Har Tikvah Congregation of Brampton and Mishra made a new Agreement of Purchase and Sale dated August 17, 2017 with a closing date of January 19, 2018. The purchase price for the Temple Property remained the same as before, being \$2,000,000.
14. Mishra retained his own lawyer to close the purchase of the Temple Property. On February 2, 2018, the sale of the Temple Property was completed. However, the Temple Property was titled in the name of Mishra and not Shree – which was a fact that was not discovered until later. A member of the executive of Shree was provided with a key on or about February 6, 2018.
15. Shortly after getting the key following the closing date on February 2, 2018, the members of Shree undertook extensive renovations of the Temple Property. The renovations included building out room for the priest, making kitchens, installing the water sprinkler system, installing fire safety equipment, constructing a bathroom, renovating the floor, renovating the furnace room, carpeting the building, building the altars, building SinGhAsans (which are decorative thrones with a canopy for Gods and Goddesses in the temple), laying the internal water pipe lines, painting the building, repairing the driveways on both sides and around the Temple building, installing permanent signs of Shree Jagannath Temple Canada in the premises with lighting arrangements, renovating the electrical and lighting systems both inside and outside the Temple building, installing the sound system inside the building, installing the video camera for monitoring the building and the premises, and installing appliances such as refrigerators and stoves. After the renovations, Shree incurred huge amount of moving expenses for moving the temple from the previous location in Toronto to the Temple Property in Brampton. The members of Shree also organized a consecration ceremony (known as a Pratistha Ceremony), having procured various other new Deities in addition to the existing Deities brought from the previous temple location. Shree undertook all of this work on the basis that the Temple Property belonged to it.

16. On or about May 15, 2018, the President of Shree, Harihar Behera, discovered that the Temple Property had been deeded in the name of Mishra and not Shree. Mr. Behera approached Mishra about this. Mishra assured Mr. Behera that he would arrange for the Temple Property to be titled in the name of Shree. Later on, in response to the insistence of the members of Shree, Mishra provided a pledge letter confirming his intention to re-title the Temple Property in the name of Shree.
17. Despite Mishra's representation to Mr. Behera and to the members that the Temple Property would be titled in the name of Shree, Mishra did not do so.
18. In fact, instead of arranging for title to the Temple Property to be transferred into the name of Shree, Mishra took advantage of the manner which the Temple Property was titled for his own benefit and the benefit of an organization incorporated as Jagannath Temple Toronto (JTT).
19. Mishra induced Shree to sign a lease agreement dated February 6, 2018 with him so that he would not be required to pay realty taxes to the City of Brampton while the Temple Property remained titled in his name. Mishra represented that Shree would not actually be required to pay the \$10,000 per month rent set out in the lease, however, the existence of the lease would provide an exemption from paying realty tax on the basis that the putative tenant (i.e. Shree) was a registered charity.
20. Thereafter, Mishra engaged in passing off JTT as the operative religious organization at the Temple Property to worshipers who would attend the Temple Property for the purpose of collecting donations for the benefit of himself and JTT. It is also believed that Mishra and/or JTT took control of the lease with Bell Canada for the purpose of receiving rental revenue which ought to have been turned over to Shree.
21. Shree objected to Mishra's passing off JTT as the operative religious organization at the Temple Property, since the operative religious organization at the Temple Property was always Shree. In response to Shree's demands that Mishra cease the collection of money for JTT at the Temple Property, Mishra engaged a lawyer to prepare a statement purporting to show that Shree was indebted for hundreds of thousands of dollars on account of rent

not paid under the lease. Mishra also threatened members of Shree who vocally disagreed with what he and JTT were doing.

22. To date, Mishra and JTT refuse to acknowledge the rights of Shree. Mishra has refused to respond to further demands that the Temple Property be titled in the name of Shree. He and JTT have continued to use the Temple Property for their own uses and have never accounted to Shree for the monies collected from worshipers and others. It is believed that Mishra has charged or mortgaged the Temple Property for the benefit of himself and JTT, without the consent of Shree.

Breach of Fiduciary Duty and Ancillary Relief

23. Prior to Mishra's involvement in any of the facts aforesaid, Shree had searched, located, and then paid a \$50,000 deposit to the credit of the purchase price of the Temple Property. Mishra became involved as a donor for the purchase of the Temple Property. All of the parties understood and agreed that Mishra would facilitate the purchase of the Temple Property for the benefit of Shree. As stated above, shortly after closing, Shree obtained a copy of the key and undertook substantial renovations at the Temple Property. Mishra had agreed to transfer title into Shree's name but then did not do so.
24. Mishra holds the Trustee Property for the benefit of Shree. He is a trustee and is subject to the fiduciary obligations of a trustee.
25. Mishra has breached his fiduciary duty to Shree in that:
- a) He has failed to act in the best interests of Shree;
 - b) He has used the Temple Property for his own benefit, and the benefit of JTT;
 - c) He and JTT have elicited money from worshipers and others, despite the objections of Shree;

- d) He induced Shree to enter a lease which was improvident for Shree but beneficial for himself;
 - e) He has refused to transfer title of the Temple Property into Shree's name, despite requests that he do so; and
 - f) Such further and other breaches of fiduciary duty as may be discovered.
26. Mishra has failed to act as a reasonable trustee and, in fact, he has acted in plain dereliction of his duties as a trustee. There is no legal or equitable basis to allow Mishra to continue to act as a trustee.
27. As a result of Mishra's misconduct, Shree requests that:
- a) The Temple Property be vested in the name of Shree;
 - b) The lease entered into between Shree and Mishra be declared void, voidable, and of no force or effect on the basis that there was no consideration provided for the lease and that Mishra's inducement of Shree to enter the lease was another instance of Mishra breaching his fiduciary duty to Shree. Shree pleads and relies on s. 4 of the *Religious Organizations' Lands Act* and s. 10(1)(f) of the *Trustee Act*; and
 - c) Mishra and JTT be required to indemnify Shree in respect of any charges or mortgages which Mishra has used for the benefit of himself or JTT.

Accounting and Indemnification

28. Mishra, as a trustee, is obligated to account to Shree. As well, Mishra used JTT as a conduit to elicit money from worshipers by passing it off as the religious organization operating at the Temple Property. It is believed that Mishra further used JTT to receive rent from Bell Canada and possibly others. JTT's close affiliation with Mishra renders it in knowing receipt of funds which should have

been turned over to Shree. Accordingly, Shree seeks an accounting of all monies received by Mishra and JTT.

Occupation Rent

29. Mishra and JTT – which has been predominantly controlled by Mishra – have occupied the Temple Property without the consent of Shree. Despite Shree’s request that the Temple Property be titled in the name of Shree, so as to enable Shree to obtain exclusive possession of the Temple Property, Mishra has refused to do so. As stated earlier, Mishra and JTT have used the Temple Property to collect monies which ought to have been turned over to Shree. It is just and equitable in the circumstances that Mishra and JTT pay occupation rent to Shree, for the period commencing on or about October 1, 2019, representing the initial request that the Temple Property be titled in the name of Shree.
30. The Plaintiff proposes that this action be tried in the city of Toronto, Ontario.

Date:

WADE MORRIS
Litigation Counsel
Professional Corporation
1200 Bay Street, Suite 300
Toronto, Ontario M5R 2A5
LSO #53788K

Tel.: 416.614.3400 / Fax: 647.277.1223
wmorris@litgac.com

Lawyer for the Plaintiff

SHREE JAGANNATH TEMPLE CANADA
Plaintiff

- and -

MISHRA et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

WADE MORRIS
Litigation Counsel
Professional Corporation
1200 Bay Street, Suite 300
Toronto, Ontario M5R 2A5

LSO #53788K

Tel.: 416.614.3400
Fax: 647.277.1223
wmorris@litgac.com

Lawyer for the Plaintiff

Court file no. CV-21-00673653-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

SHREE JAGANNATH TEMPLE CANADA

Plaintiff

- and -

SRADHANANDA MISHRA (a/k/a DAN MISHRA) and
JAGANNATH TEMPLE TORONTO

Defendants

**STATEMENT OF DEFENCE
AND COUNTERCLAIM**

1. The defendants admit the allegations contained in paragraphs 3, 4, and 30 of the statement of claim.
2. Except as expressly admitted hereinafter, the defendants deny the allegations contained in paragraphs 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of the statement of claim and puts the plaintiff to the strict proof thereof.

THE PARTIES

3. The defendant Sradhananda Mishra (a/k/a Dan Mishra (“Mishra”) is a resident of Ontario. Mishra is a business person and philanthropist.
4. The defendant Jagannath Temple Toronto (JTT) is a federally incorporated not-for-profit corporation incorporated pursuant to the *Canada Not-for Profit Corporations Act*, S.C. 2009, c.23 (“NFP Act”).
5. The plaintiff Shree Jagannath Temple Canada (“Shree”) is a not-for-profit corporation incorporated pursuant to the NFP Act.

THE PROPERTY PURCHASE

6. On or about July 5, 2017, Shree entered into an Agreement of Purchase and Sale (the “Agreement”) to purchase 9893 Torbram Road, Brampton (the “Property”). The purchase price was \$2,000,000.00 with a deposit of \$50,000.00. The transaction was scheduled to close on October 16, 2017.

7. The Agreement was conditional until August 22, 2017 on Shree deciding to proceed with the transaction.

8. In or about the summer of 2017, Mishra was approached by Harihar Behera (“Behera”), the then President of Shree. Behera sought Mishra’s help to obtain financing for the purchase. Mishra was not a member of Shree at that time, but Behera knew he was a successful Hindu businessman and well-known philanthropist. Behera explained to Mishra how the Property had been used as a Jewish synagogue and it was Shree’s intention to convert it into a Hindu temple.

9. Mishra agreed to try and find financing for Shree’s purchase of the Property. However, Mishra was unable to arrange satisfactory financing because Shree did not have sufficient assets, income or credit history.

10. Behera then suggested to Mishra that he purchase the Property in his own name, allow Shree to relocate its temple to the Property, and then donate the land to Shree at a later date.

11. Mishra considered Behera’s proposal. As a Hindu, he wanted to support his community. However, the purchase price of \$2,000,000 was considerable and he had concerns about the character and ethics of Behera and his associates. Mishra was particularly worried about the ability and willingness of Behera to manage the temple and its finances for the sole benefit of its members and its objectives without personal gain for him.

12. Because of these concerns, Mishra only agreed to purchase the Property in his personal name and then later transfer title to Shree on certain conditions. First, Mishra would only transfer the Property to Shree when it was able to support itself and was operating on a sound financial, legal, and business footing. Secondly, Mishra's agreement to purchase and transfer the Property was further conditional on him being made permanent Chairperson of Shree's Board of Directors (the "Board") and Chief Executive Office with total veto power over all major decisions, with this being recorded in the articles, constitution and by-laws of Shree.

13. These conditions were to provide comfort to Mishra that his financial commitment would not be abused through incompetence or malfeasance on the part of Behera or others.

14. Behera and Shree were in a difficult position. If they refused Mishra's terms and conditions, Shree would not have the money to close the transaction. Shree would default on the Agreement, lose its deposit, and possibly be sued by the vendor for damages.

15. On behalf of Shree, Behera accepted Mishra's terms and conditions for both the purchase of the Property with his own money and in his own name, and then the subsequent transfer at a later date.

16. The Agreement was amended so that Mishra replaced Shree as buyer with a new closing date set for January 19, 2018. The transaction eventually closed on February 6, 2018 with Mishra paying for the Property and taking title in his own name.

17. The defendants categorically deny the plaintiff's allegations in the Statement of Claim that it was unaware until May 15, 2018 that title to the Property was taken in Mishra's name. The plaintiff was aware for a considerable period of time before closing that title would be taken by Mishra personally. In fact, the plaintiff had agreed to Mishra taking title in his name

when the Agreement was amended to reflect Mishra as buyer.

THE LEASE

18. On closing of the Property purchase, February 6, 2018, Shree and Mishra entered into a lease of the Property with Shree as tenant and Mishra as landlord (the “Lease”). Rent under the Lease was \$10,000 per month. The term of the Lease was for five years ending February 6, 2023.

19. The lease was prepared for Mishra as a form of “insurance” for him in case Shree failed to comply with his purchase conditions. The defendants deny that the purpose of the lease was to obtain an exemption for property taxes on the Property. Mishra paid the Property’s municipal realty taxes.

TEMPLE DISPUTE

20. Shortly after closing, Shree commenced a series of renovations at the Property which were funded, at least in part, by Mishra. Board members, including Mishra, soon became concerned about how the renovations were being carried out under Behera’s direction, including with respect to Behera’s expense claims and financial record keeping which were sloppy or non-existent. These concerns were expressed to Behera. In addition, Board members believed the renovations were being carried out in an unsafe and illegal manner, with some work threatening the structure of buildings on the Property.

21. The problems with the renovations only heightened Mishra’s concerns about the character and competence of Behera and his associates at Shree.

22. Following Shree’s agreement with his purchase conditions, Mishra had become Shree’s Chairperson of the Board and Chief Executive Officer with veto power over all major decisions.

However, Mishra was continually frustrated by Behera in his attempts to make the necessary changes to Shree's articles, by-laws and constitution to reflect his positions.

23. The tension between Mishra and Behera over the renovations deepened throughout 2018 as Mishra pressed for the necessary changes to the Shree constitution to reflect his positions.

24. Mishra also continued to raise concerns about Behera's fundraising, handling of money, record keeping and general mismanagement.

25. In response to Mishra's legitimate attempts to implement the agreed upon changes and professionalize Shree's operations, Behera spread false rumours among the membership that Mishra was refusing to donate the Property to Shree.

26. In late November 2018 Mishra sought to dispel these rumours by issuing a Pledge letter confirming that it was his intention to transfer the Property to Shree at a future date. The Pledge letter in no way amended, replaced, or cancelled the conditions agreed upon between Shree and Mishra for transfer of the Property.

27. The tension between Mishra and Behera continued into 2019 with the Board becoming increasingly concerned about how Behera handled donations, expenses and financial matters.

28. Behera persistently refused to provide Mishra and the Board with copies of Shree's constitution. In early 2019, a former Board member provided Mishra and the Board with a document entitled "Shri Jagannath Temple Canada". This constitution revealed that on the dissolution of Shree, its assets would be transferred to "Bharat Sevashram Sangha and Lord Jagannath Temple and Charitable Tust, Kulti, West Bengal". These temples were owned or controlled by Behera.

29. The revelation that Shree's assets would end up in organizations owned or controlled

by Behera on dissolution alarmed Mishra and other Board members. As a result, two respected members of the Hindu community were brought onto the Board on June 9, 2019.

30. During the late Spring and Summer of 2019 Behera began a membership recruitment drive that was objected to by Mishra and the Board for not following proper procedures.

31. As a result of his actions, the Board removed Behera as President of Shree by a unanimous vote on August 13, 2019. The Minutes of the Board meeting recorded the decision as follows:

The governance issue of the temple was discussed in detail and a resolution was passed unanimously to remove Harihar Behera from his office of the president of the temple with immediate effect, for breach of confidence, abusive behaviour, spreading false rumours, doing works without proper authorization by the board, non-cooperation with the board etc.

32. Out of an abundance of caution in response to Behera's actions, a member of the Shree Board incorporated the defendant JTT on September 1, 2019.

33. On or about November 23, 2019, while Mishra and another Board member were travelling outside of Canada, Behera and his associates engineered a sham Annual General Meeting of Shree members. At this sham meeting the entire Board and executive of Shree, including Mishra, were removed from their positions. A new sham Board and executive were elected made up of friends and associates of Behera.

34. At this time, the alleged new Board withdrew all funds held in the Shree bank account.

35. On December 21, 2019, the alleged new Board notified Mishra as "property owner" that Shree would be vacating the Property as of March 15, 2020 and moving its assets to its former temple location.

36. The defendants state, and it is a fact, that the removal of Mishra and the other directors

and officers of Shree on November 23, 2019, and the election of a new Board and executive, were illegal acts not carried out in conformity with Shree's constitution, articles, and by-laws, or the NFP Act.

37. The defendants state that the true, legal Board and executive of Shree remains unchanged by the sham Board meeting of November 23rd, 2019. Mishra remains today the true and legal Chairperson and Chief Executive Office of Shree.

38. The action herein has been commenced without proper authorization of Shree, its legal Board or executive, and as a result should be dismissed.

39. In response to the actions of Behera and his associates, and the fact that the Shree had failed to pay rent under the Lease in the sum of \$312,504.97, Mishra, as landlord under the Lease, levied distress against the goods and chattels of Shree located at the Property. The proper Notice of Distress was served on February 27, 2020.

40. Shree's assets at the Property were subsequently sold to JTT on or about May 12, 2020 in accordance with the procedures and requirements of the *Commercial Tenancies Act* RSO, 1990, c. L. 7.

41. On February 25, 2020, Mishra issued a Statement of Claim against Shree in the Superior Court of Justice at Toronto for \$312,504.97 in unpaid rent under the Lease. The Statement of Claim has not been served on Shree as of the date herein.

NEW TEMPLE AT PROPERTY

42. Commencing in 2020 after Shree abandoned the Property and breached the Lease, JTT began operating a successful Hindu temple at the Property and continues to do so today.

43. The defendant JTT's operation of its temple on the Property is entirely legal. JTT is

entitled to all monies raised in the name of the temple operating at the Property.

44. Since 2020 the plaintiff purports to have operated a Hindu temple headquartered at a different location than the Property, which is denied by the defendants.

45. Furthermore, the plaintiff has raised funds in the Hindu community falsely claiming that it operates a temple out of the Property, which is patently false. All monies raised by the plaintiff since 2020 on the basis that it operates a Temple out of the Property properly belong to JTT.

NO LEGAL AUTHORITY FOR ACTION

46. Mishra denies that Shree has the proper legal authority to commence and maintain this action, as it is currently controlled and operated by individuals who are not the legal Directors or Officers of Shree.

SHREE'S BREACH OF MISHRA'S CONDITIONS

47. Mishra is under no obligation to transfer the Property to Shree or anyone else as the agreed upon terms and conditions were never satisfied by Shree: Shree is unable to support itself; does not operate on a sound financial, legal, or business footing; and Mishra was not made permanent chairperson of Shree's Board with veto power over all major decisions which was to be properly recorded in Shree's articles, constitution and by-laws.

48. Mishra was induced into agreeing to purchase the Property on the false representations of Shree and Behera that they would comply with his terms and conditions.

49. Shree and Behera failed to comply with their representations to Mishra.

50. The defendants state that Behera, and others unknown at the present time, by their actions sought to defraud Mishra of his money and property.

51. As a result of the foregoing, the defendants plead that the Property belongs to Mishra

both at law and in equity.

52. The defendants deny that they have violated any duties allegedly owed to Shree, whether of a fiduciary nature or otherwise.

53. The defendants do not owe any “occupation rent” to Shree. The plaintiff stated its intention to vacate the Property as of March 15, 2020 and did so. Furthermore, the plaintiff was in breach of said lease entitling Mishra to terminate same.

54. The defendants deny that the plaintiff has suffered any damages and puts the plaintiff to the strict proof thereof. In the alternative, the defendants state that the plaintiff has failed to take reasonable steps to mitigate its damages. In the further alternative, the defendants state that to the extent that the plaintiff has mitigated its damages, they are entitled to a set off of the amounts the plaintiff has earned in mitigation of its damages against those damages claimed. In the further alternative, the defendants state that the damages claimed are excessive and remote.

55. The defendants plead and rely upon the *Canada Not-for Profit Corporations Act*, S.C. 2009, c.23 and *Commercial Tenancies Act* RSO, 1990, c. L. 7.

56. The defendants therefore submit that the plaintiff’s claims be dismissed against them with costs, on a substantial indemnity scale.

COUNTERCLAIM

57. The defendant, plaintiff by counterclaim, Mishra claims against the plaintiff, defendant by counterclaim:

- (a) The sum of \$312,504.97 in unpaid rent and taxes under the Lease as at February 2020; and

- (b) The sum of \$360,000.00 being the balance of rent owed for the remainder of the term of the Lease until February 2023.

58. The defendant, plaintiff by counterclaim, JTT claims against the plaintiff, defendant by counterclaim:

- (a) An order requiring Shree to account for donations solicited purportedly on the basis that it operated a Hindu temple at the Property after February 2020; and
- (b) An order that the donations referred to in (a) properly belong to JTT.

59. The defendants, plaintiffs by counterclaim:

- (a) Prejudgment and post-judgment interest on the amounts claimed in paragraphs 50 and 51 in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43; and
 - (b) costs of this action on a full indemnity basis, together with applicable HST thereon in accordance with the Excise Tax Act, R.S.C. 1985, c. E-15, as amended; and
 - (c) such further and other relief as this Honourable Court may deem just.
- (c) The defendants, plaintiffs by counterclaim, rely upon the facts as plead above and below.
- (d) Mishra is an individual residing in Toronto, and was at all material times the owner and landlord of Property.
- (e) Shree is a company incorporated pursuant to the laws of Canada, and was a tenant of Mishra at the Property from March 1, 2018 to February 2020.
- (f) Shree was a tenant at the Property pursuant to the Lease dated February 6, 2018 providing among other things, that the tenant shall pay:

- a) To Mishra, rent of \$10,000.00 per month, commencing March 1, 2018;
- b) All realty taxes on the Property, either by paying same directly to the municipality or by reimbursing Mishra for any such taxes he may have paid;
- c) The cost of all utilities supplied to the building;
- d) all perils and liability insurance, naming Mishra as a named insured, and reimburse Mishra for the cost of any other insurance he may place on the Property.

(g) Shree failed to pay its rent when it fell due on March 1, 2018 and has thereafter failed to pay rent or realty taxes. The balance owing in unpaid rent and taxes up to and including February 2020 was \$312,504.97.

(h) Shree breached the Lease in or about February or March 2020 when it vacated or abandoned the Property.

(i) Shree has failed to pay rent or taxes at the Property since March 2020 until the end of the term of the Lease and Mishra has suffered corresponding damages as a result of the breach.

(j) Shree has solicited funds in the Hindu community since February or March 2020 falsely claiming that it operates a Hindu temple out of the Property during that period, which is patently false. All monies raised by Shree since 2020 on the basis that it operates a temple out of the Property legally belong to JTT which operates the temple at the Property.

(k) The details of the damages suffered by the defendants, plaintiffs by counterclaim, for which the plaintiffs are liable, shall be provided at the trial of the action herein.

(l) The defendants, plaintiffs by counterclaim, claim the costs of this counterclaim on a substantial indemnity scale, together with HST thereon.

Date: March 14, 2022

Alan G. McConnell
Lawyer
466 Dupont Street
Toronto, Ontario
M5R 1W6

LSO#: 36808V

Tel.: (416) 537-0108
Fax: (416) 537-1604
Email: alan@mcconnellLAW.ca

Lawyer for the defendants

TO: WADE MORRIS
Litigation Counsel
Professional Corporation
1200 Bay Street, Suite 300
Toronto, Ontario
M5R 2A5

LSO #53788K

Tel. (416) 614-3400
Fax (647) 277-1223
Email: wmorris@litgac.com

SHREE JAGANNATH TEMPLE CANADA

PLAINTIFF

and

SRADHANANDA MISHRA et al.

DEFENDANTS

Court File No. CV-21-00673659-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceedings commenced at Toronto

**STATEMENT OF DEFENCE AND
COUNTERCLAIM**

Alan G. McConnell
Lawyer
466 Dupont St.
Toronto, Ontario
M5R 1W6

LSO No.: 36808V
alan@mcconnellLAW.ca

TEL: 416-537-0108 ext 2
FAX: 416-537-1604

Lawyer for the Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SHREE JAGANNATH TEMPLE CANADA

Plaintiff

- and -

**SRADHANANDA MISHRA (a/k/a DAN MISHRA) and
JAGANNATH TEMPLE TORONTO**

Defendants

REPLY and DEFENCE TO COUNTERCLAIM

1. The Plaintiff, Shree Jagannath Temple Canada (“**Shree**”), denies each and every allegation contained in the statement of defence and counterclaim of the Defendants, Sradhananda Mishra (a/k/a Dan Mishra) (“**Mishra**”) and Jagannath Temple Toronto (“**JTT**”), unless expressly admitted herein.
2. Shree denies that the Defendants are entitled to any relief.
3. Shree pleads, repeats, and relies on the facts pleaded in the statement of claim.

Response to Allegations made by Mishra

4. Shree did not make a request to Mishra for financing or for him to find financing for Shree. Shree had approached Mishra to donate money to enable Shree to purchase the Temple Property. Likewise, Shree reasonably expected that upon the acquisition of the Temple Property, the Temple Property would be titled in the name of Shree and not Mishra. Mishra’s arrangement to title the Temple Property in his name was done without the consent or knowledge of Shree.
5. During the discussions between Shree and Mishra, Mishra had requested the role of a

“Chairperson” which would grant him sweeping unilateral powers over the affairs of Shree. This proposal was not acceptable to Shree. Instead of having Mishra become the Chairperson, Shree and Mishra agreed that he and Mr. Harihar Behera would each occupy a role equivalent to the Chairperson, so as to ensure a fair allocation of power, subject to this structure being enacted as part of the by-laws for the temple. Mishra was satisfied with this compromise as the purchase proceeded with Mishra acting as the donor.

6. After Shree and Mishra reached an agreement to structure Shree with two Chairpersons (being Mishra and Mr. Behera), Mishra informed Shree that he would have his lawyer prepare an amendment to Shree’s by-laws. However, Mishra never provided the amendment to the by-laws and this power structure was not implemented. It is believed that instead of pursuing the amendment to the by-laws, Mishra decided that JTT – an organization controlled by Mishra – would establish itself at the Temple Property and displace Shree. The reason the amendment to the by-laws never occurred was by Mishra’s own design.
7. In or about the Summer of 2019, Mishra began to behave autocratically, ruthlessly, and make members feel unwelcome who disagreed with this conduct. Mishra was disregarding bills which Shree was obligated to pay. Mishra’s conduct alienated many members of Shree. Mishra’s conduct was in serious dereliction of his duties to Shree. In response to this problematic behaviour, the majority of members of Shree decided to hold a meeting of the general membership on November 23, 2019. The membership voted in favour of dissolving the existing board of directors and a new board was formed. The new board of directors took appropriate actions to pay outstanding bills and secure the management of funds which properly belonged to Shree. The election which occurred in November of 2019 was duly called and executed. The results were conclusive and are binding on Shree and Mishra.
8. Following the removal of Mishra and other directors, and the installation of a new board of directors on November 23, 2019, Shree had intended to relocate its Deities (Murtis) and assets to another location, not accessible to Mishra. Shree notified Mishra of its intentions on December 21, 2019, with a deadline for the Deities (Murtis) and assets to be turned over

to Shree by March 15, 2020. Despite this notification, Mishra did not respond to this intention and the Deities (Murtis) remained at the Temple Property. Mishra had no entitlement or colour of right to purchase the Deities (Murtis) or assets of Shree. Any such alleged transaction is void or voidable for reasons that include illegality.

9. Mishra's allegations about the payment of renovations at the Temple Property are not true. Mishra did not pay for the renovations. Mr. Behera paid for the great majority of the renovation expenses from his own resources.
10. Mishra's statement about how the lease came into existence is not correct. Long after Shree moved into the Temple Property, and following the consecration ceremony, the City of Brampton sent a property tax bill for the Temple Property. In response to the property tax bill, Mishra prepared the lease agreement with the help of one Nilmani Nayak (who was at the time a director of Shree) with the intention of obtaining an exemption from property tax. Mishra represented to Shree that the lease agreement was being made for the sole purpose of obtaining an exemption from property tax, and that Shree would not be required to pay anything. Shree relied on Mishra's representation regarding the effect of the lease, which was reasonable given the relationship between Shree and Mishra. It is inequitable for Mishra to now assert that the lease is a "true lease" such that Shree is indebted to Mishra. At a later time, Mr. Nayak, acting on Mishra's behalf, disclaimed the amount due under the written lease.
11. Mishra's allegations with respect to the character of Mr. Behera are not true. At all material times, Mishra knew Mr. Behera was a founding individual in the establishment of Shree who had been running the organization successfully. In fact, Mishra had come once to witness the Ratha Yatra (a festival involving a public procession) organized by Shree and at that time, Mishra had told Mr. Behera that he was very much impressed with the management of the organization. Mishra's disparagement of Mr. Behera is thus unfounded.

Defences

12. Shree states, and the fact is, that the parties had no intention to be bound by the written terms of the lease. The lease was, according to Mishra, made for the sole purpose of

avoiding realty tax. Following the making of the lease, the parties did not adhere to the terms of the lease.

13. Any funds that Shree collected at the Temple Property were collected properly and lawfully. In fact, it is JTT's collection of funds at the Temple Property which is improper and unlawful. Additionally, Shree has legal authority to commence and maintain this action.
14. Consistent with the parties' intention to not be bound by the terms of the lease, Shree did not make any payments under the lease. Mr. Nayak, on behalf of Mishra, disclaimed the amount chargeable under the lease. The effect of the parties' mutual intentions, demonstrated by their conduct, was to waive the terms of the lease. As a consequence, there are no amounts due under the lease.
15. Additionally, Shree – as the true and beneficial owner of the Temple Property – cannot lease a property from itself. On this basis alone, the lease is void or voidable.
16. In the alternative, Mishra is estopped from making a claim for rent based on the lease. At the outset, Mishra represented to Shree that the lease agreement was being made for the sole purpose of obtaining an exemption from property tax, and that Shree would not be required to pay anything. Mishra's representation was intended to be relied upon by Shree, and Shree did rely on it. It would be highly inequitable to permit Mishra to now assert the written terms of the lease to Shree's detriment. Shree states that Mishra is bound by his promise to not require Shree to pay anything under the lease. Shree therefore pleads and relies on the doctrine of promissory estoppel.
17. Shree requests that the counterclaim be dismissed with costs on a substantial-indemnity scale.

Date: 04 May 2022

WADE MORRIS
Litigation Counsel
Professional Corporation
1200 Bay Street, Suite 300
Toronto, Ontario M5R 2A5
LSO #53788K

Tel.: 416.614.3400 / Fax: 647.277.1223
wmorris@litgac.com

Lawyer for the Plaintiff

TO: Alan G. McConnell
Lawyer
466 Dupont Street
Toronto, Ontario M5R 1W6

Tel.: (416) 537-0108
Fax: (416) 537-1604
alan@mcconnellLAW.ca

Lawyer for the Defendants

SHREE JAGANNATH TEMPLE CANADA - and -
Plaintiff

MISHRA et al.
Defendants

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REPLY AND DEFENCE TO COUNTERCLAIM

WADE MORRIS
Litigation Counsel
Professional Corporation
1200 Bay Street, Suite 300
Toronto, Ontario M5R 2A5

LSO #53788K

Tel.: 416.614.3400
Fax: 647.277.1223
wmorris@litgac.com

Lawyer for the Plaintiff