

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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|---|---|--|
| <b>BETWEEN:</b>                         | ) |  |
|   | ) |  |
| YAN FANG                                | ) | Dr. Ran He, for the Plaintiff/Defendant to |
|   | ) | the Counterclaim                           |
| Plaintiff/Defendant to the Counterclaim | ) |  |
|   | ) |  |
| <b>– and –</b>                          | ) |  |
|   | ) |  |
| HUI JUN YIN                             | ) | Robert S. Choi and Ryan Smith, for the     |
|   | ) | Defendant/Plaintiff by Counterclaim        |
| Defendant/Plaintiff by Counterclaim     | ) |  |
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|   | ) | <b>HEARD:</b> July 12, 2023                |

2024 ONSC 985 (CanLII)

**PAPAGEORGIU J.**

Amended Reasons for Decision

**Overview**

- [1] The Plaintiff, Yan Fang, has been treated in a very poor and unfair manner by the defendant Hui Jun Yin.
- [2] Ms. Fang entered into a partnership agreement with Mr. Yin to acquire and develop certain real estate located at 2652 Victoria Park Avenue (the “Property”). The parties’ intention was to renovate the Property and rent out rooms to students although the Property was purchased solely in Mr. Yin’s name.
- [3] Mr. Yin is a general contractor with extensive experience in residential property development. At the time, Ms. Fang was a recent immigrant, student, and friends with Mr. Yin’s sister.

[4] As agreed, Ms. Fang contributed 50 percent to the purchase price and development costs. However, after using Ms. Fang's money to purchase and renovate the Property, Mr. Yin unilaterally sought to remove her from the Property, claiming that she was a tenant who failed to pay rent. He made complaints to the Landlord and Tenant Board.

[5] He also took steps to intimidate her into leaving and assaulted her on several occasions.

[6] There have been numerous interventions where Mr. Yin asserted that Ms. Fang has been making false complaints to intimidate him.

[7] After this litigation was commenced, she also learned that he placed unauthorized mortgages on the Property.

[8] Ms. Fang is seeking summary judgment on her claim.

### **Decision**

[9] For the reasons that follow, I am declaring that: i) Mr. Yin and Ms. Fang entered into a partnership agreement whereby they would share the costs, expenses and revenues in respect of the Property, ii) Mr. Yin holds the Property in trust for the partnership; iii) as a result, Ms. Fang has a 50 percent beneficial interest in the Property; and iv) other ancillary orders.

[10] However, I am not making any award of damages. Even though I have found that Mr. Yin did place unauthorized mortgages on the Property, the quantum of the currently outstanding mortgage is not known. Further, the finding that the parties entered into a partnership does not end the ultimate inquiry in terms of which party may owe which party funds.

[11] There must be an accounting of revenues and expenses related to the Property taking into account the impact of the unauthorized mortgages.

### **Analysis**

[12] In arriving at my decision, I considered the following issues:

- Issue 1: Did the parties have a partnership agreement or was their arrangement one of debtor/creditor and/or was Ms. Fang a tenant?
- Issue 2: Does Mr. Yin hold the Property in trust for the partnership, such that Ms. Fang has a 50 percent beneficial interest?
- Issue 3: Did Mr. Yin breach their partnership agreement, his fiduciary duties, and duties as a trustee through his conduct which includes placing unauthorized mortgages on the Property?
- Issue 4: What should the accounting entail?

- Issue 5: Should a permanent injunction be ordered restraining Mr. Yin from interfering with Ms. Fang’s use and enjoyment of the Property?
- Issue 6: Can the Court grant summary judgment given that Ms. Fang has not also requested a formal order in her Notice of Motion that the counterclaim be dismissed. Are there any bars to this proceeding based upon the Notice of Motion inadequately giving notice of the relief requested.

### **The Summary Judgment Test**

[13] Before addressing the issues, it is important to set out a brief recitation of the summary judgment test as follows.

[14] In accordance with r. 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules*”), the court shall grant summary judgment if:

(a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[15] In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and a judge may exercise any of the following powers under r. 20.04(2.1): (1) weighing the evidence; (2) evaluating the credibility of a deponent; and (3) drawing any reasonable inference from the evidence.

[16] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49, explained:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process: (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[17] In order to defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party cannot rest solely on allegations in a pleading. Each side must “put their best foot forward” with respect to the existence or non-existence of material issues to be tried: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9. Furthermore, “a summary judgment motion cannot be defeated by vague references as to what may be adduced if the matter is allowed to proceed to trial”: *Diao v. Zhao*, 2017 ONSC 5511, at para. 18.

### **Credibility**

[18] In *Faryna v. Chorny*, [1952] 2 D.L.R. 354 (B.C.C.A.), at p. 357, the B.C. Court of Appeal provided the following guidance on evaluating credibility:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. **The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions.** In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

See also: *R. v. Kiss*, 2018 ONCA 184, at para. 30.

[19] For reasons which will become apparent, I have found Mr. Yin's and his other witnesses' evidence with respect to the partnership issues not credible or believable, primarily because their evidence consists largely of bald statements. As well, their evidence is inconsistent with the documentary record including contemporaneous communications that they had with Ms. Fang.

[20] Ms. Fang's evidence is consistent with the contemporaneous records and there were no material inconsistencies. I do not have any credibility concerns about Ms. Fang's evidence.

[21] While there may be some credibility issues in this matter with respect to the partnership issues, they exist only because of bald, unsupported statements in Mr. Yin's and his affiants' evidence which are not even consistent with what these individuals did and said during the relevant time. There are no genuine issues that require a trial and any manufactured credibility issues are easily resolvable on this paper record.

[22] With respect to the allegations of violence and abuse alleged by Ms. Fang, I held a mini trial. Based upon the record before me and the mini trial where both parties testified, I find on a balance of probabilities that Mr. Yin did assault Ms. Fang and that he has been intimidating and harassing her to force her out of the Property so that he can solely reap the benefits of the increase in the Property's value, contrary to their partnership agreement. I found Ms. Fang's evidence supported, consistent, and believable while Mr. Yin's was not.

**Issue 1: Did the parties have a partnership agreement or was their arrangement one of debtor/creditor and/or was Ms. Fang a tenant?**

### **The Legal Requirements for a Partnership**

[23] Section 2 of the *Partnerships Act*, R.S.O. 1990, c. P. 5, defines "partnership" as "the relation that subsists between persons carrying on a business in common with a view to a profit."

[24] In *Continental Bank of Canada v. R.*, [1998] 2 S.C.R. 298 at para 23, Bastarache J. stated that the existence of a partnership is determined by the true intention of the parties and is dependent on “the facts and circumstances of each particular case.”

[25] Justice Bastarache further observed, at para. 24, that the Court should look for certain indicia of a partnership which include:

the contribution by the parties of money, property, effort, knowledge, skill or other assets to a common undertaking, a joint property interest in the subject-matter of the adventure, the sharing of profits and losses, a mutual right of control or management of the enterprise, the filing of income tax returns as a partnership and joint bank accounts. [Citations omitted.]

[26] However, the Court in *Backman v. R.*, [2001] 1 S.C.R. 367, at para. 26, confirms that there should be a practical approach in determining the existence of a partnership rather than “mechanically applying a checklist or test.”

[27] In *Partners in Psychiatry Inc. v. Canadian Psychiatric Assn.*, 2011 ONCA 109, at para. 3, the Court of Appeal, in considering whether a partnership was formed, inquired as to whether the objective, documentary evidence and the surrounding circumstances, including what the parties did, were consistent with a subjective intention to carry on business in common with a view to profit.

### **Do the facts and circumstances satisfy the test for a partnership?**

[28] I have determined that the documentary evidence, surrounding circumstances and what the parties did shows on an objective basis that the parties carried on a business, in common, with a view to a profit.

### **The First Written Agreement**

[29] In or around May 2018, Ms. Fang, and Mr. Yin, along with two others, Siyue Liang (“Ms. Liang”) and Mr. Yin’s sister (“Ms. Yin”), entered into a written agreement to purchase and develop the Property. Ms. Fang says that they agreed that only Mr. Yin would be on title for convenience.

[30] For this initial joint investment, Ms. Fang, Ms. Liang, and Mr. Yin negotiated and signed a four-party property purchase partnership agreement on May 1, 2018 (the “First Agreement”).

[31] The First Agreement specified that it was a partnership agreement. The material terms of the First Agreement were as follows:

- a. The purchase price was \$1,050,000.
- b. The investment ratio was Mr. Yin 23.33 percent, Ms. Yin 10 percent, Ms. Fang 33.33 percent and Ms. Liang 33.33 percent.

- c. The parties would contribute \$550,000 of the purchase price based upon their investment ratio.
- d. The balance of the purchase price in the amount of \$500,000 would be financed by a mortgage.
- e. The estimated building costs were \$800,000.
- f. The parties would share the rebuilding costs according to their investment ratio.
- g. The parties would share other costs including land transfer tax, lawyer's fees, land survey fees, and property rebuilding design fees according to the parties' investment ratio.
- h. The Property would not be sold for five years.
- i. Any profits and returns generated from the Property would be distributed to the partners according to their investment ratio.

[32] Mr. Yin admitted on cross examination that he signed his sister Ms. Yin's name without her authorization or consent and that this was a binding agreement.

[33] The purchase of the Property closed on August 30, 2018.

[34] The total cost for the purchase, inclusive of land transfer tax, lawyer's fees, land survey fees, and property rebuilding design fees was \$1,113,116.

[35] Shortly after the closing of the purchase of the Property, and while construction was in progress, Ms. Liang advised that she wished to quit the partnership. The parties agreed that she would be released.

[36] Ms. Liang's actual contribution towards the purchase price was \$204,458. Accordingly, Mr. Yin signed a promissory note dated October 3, 2018, to reimburse her the amount of \$204,458. The promissory note, however, did not reflect any ownership interest on the part of Ms. Liang. Rather, it referenced her having loaned various amounts totaling \$204,458 between May 1, 2018, and July 9, 2018.

[37] Mr. Yin relies upon this document as supporting his position that Ms. Fang was also a lender. However, I am not persuaded that this one document is material to whether Ms. Fang and Mr. Yin had a partnership agreement with respect to the Property. Ms. Fang was not a party to this promissory note between Mr. Yin and Ms. Liang.

[38] These parties were not sophisticated, nor were they proficient in the English language. The promissory note would make sense to an unsophisticated person because it reflected the amount that would have to be reimbursed to Ms. Liang.

[39] More importantly, as will be further shown, after this promissory note was signed, Mr. Yin and Ms. Fang entered into a subsequent written agreement and then continued to conduct their affairs in accordance with the provisions set out in that agreement.

**The Joint Purchase Agreement**

[40] On or about January 4, 2019, Mr. Yin and Ms. Fang signed an agreement entitled “Agreement for Joint Purchase of [the Property]” (the “Joint Purchase Agreement”). At this time, Mr. Yin already held 100 percent of the legal title to the Property.

[41] The Joint Purchase Agreement has slightly different wording from the First Agreement.

[42] For example, the Preambles of the two agreements, while having the same general meaning, are not identical:

| First Agreement  | Joint Purchase Agreement   |
|--|--|
| <p>The partners, in the principles of fairness, equality and mutual benefit, have entered into the following partnership agreement: Party A, Party B, Party C and Party D will voluntarily purchase [the Property]. The total investment and details are described as follows. All the amounts and debts listed below are paid and borne by the four partners according to the investment ratio.</p> | <p>The partners have entered the joint purchase agreement as follows on the basis of fairness, equality, and mutual benefits. Partner A, Partner B, and Partner C will voluntarily purchase in partnership [the Property] at the total investment amount and with the content listed below. The total amount of expenditure and debts listed below are to be borne and paid by the three partners in proportion to their respective investment amount.</p> |

[43] Nevertheless, despite some different wording, the material terms of the First Agreement and the Joint Purchase Agreement are substantially the same, except that the investment ratios reflect the fact that Ms. Liang was no longer a party: Mr. Yin held 40 percent, Ms. Yin held 10 percent and Ms. Fang held 50 percent. The Joint Purchase Agreement still referred to this as a partnership, it set out that: the purchase price was still \$1,050,000; the down payment was still \$550,000; the parties would still share the down payment according to their respective shares; Mr. Yin would apply for a mortgage for the balance in the amount of \$500,000; the partners would rebuild the Property with building costs to be borne in proportion to the parties’ respective investment amounts; the partners would be entitled to the proceeds of any re-sale of the Property in accordance with their respective proportions; and all profits and yields generated by the Property would be distributed to the partners according to their respective share.

[44] Article IX of the Joint Purchase Agreement provides that “This Agreement shall become effective on the date of signature or seal of the partners.”

[45] Mr. Yin’s sister, Ms. Yin, never signed the Joint Purchase Agreement. Mr. Yin takes the position that this is fatal to Ms. Fang’s case. As well, Ms. Yin has filed an affidavit where she disavows the existence of any partnership agreement with respect to the Property.

[46] None of this is fatal to Ms. Fang’s claim.

[47] The First Agreement was signed by Mr. Yin on behalf of his sister. Ms. Fang assumed that when he signed the Joint Purchase Agreement, his signature likewise represented both his and his sister’s agreement. While perhaps not strictly correct in legal terms, it is understandable that she would have assumed Mr. Yin’s signature to similarly be in respect of his sister.

[48] In any event, even if the Joint Purchase Agreement is technically unenforceable as a written agreement, a written agreement is not required in order to create any contract, or a partnership.

[49] Mr. Yin and Ms. Fang’s conduct throughout, on an objective basis, demonstrates that they had an intention to form a partnership, and an intention to carry on a business in common with a view to a profit with respect to the Property. They acted upon their agreement and governed their affairs pursuant to it, until Mr. Yin unilaterally took the position that Ms. Fang was only a tenant and/or creditor.

[50] As will be seen, the terms of the agreement between them, objectively, were in line with the Joint Purchase Agreement whereby Ms. Fang obtained a 50 percent interest, whereby the mortgage on the Property was agreed to be \$500,000 and whereby the parties would share the building cost, and revenues and expenses based on Ms. Fang having a 50 percent interest. Even if Ms. Yin did not have any interest in this partnership, it is immaterial to the determination of whether Ms. Fang and Mr. Yin were partners.

[51] If Ms. Yin disavows the partnership, then it implicitly means that the partnership was between Ms. Fang and Mr. Yin, each having a 50 percent interest.

### **Communications which support the existence of a partnership**

[52] There are multiple WeChat communications where Mr. Yin and Ms. Fang talk about her contribution to both the down payment, other closing costs, and ongoing construction costs. These are in the record and support the conclusion that the parties were carrying on business with a view to a profit.

[53] There are also written communications where the parties specifically reference Ms. Fang’s 50 percent interest, all of which postdate the Joint Purchase Agreement that Mr. Yin says did not come into force:

WeChat Messages on February 5, 2019:



Ms. Fang: Anyways, you're always right. Is it wrong for a partner to ask to view the bills?  
Mr. Yin: ... It is normal for you to view the bills. Why are you so upset?  
Ms. Fang: I'm not upset.  
Mr. Yin: Which bill did I show you?

WeChat Messages on March 11, 2019:

Mr. Yin: With Old Wang [Liang] not buying the property, **don't you have half of the ownership** of [the Property] [Emphasis added]  
Ms. Fang: Not on the property ownership certificate.  
Mr. Yin: **There is the agreement. That'll be the same.** Ask a lawyer. [Emphasis added.]  
Ms. Fang: I'll split with you through a lawsuit  
Mr. Yin: Fuck. Why do you wanna file a lawsuit against me?  
Ms. Fang: You are not adding my name. Should some accident happen to you and the successor to your assets refuse to acknowledge it...  
Mr. Yin: Fangfang [Mr. Yin's sister who was Ms. Fang's friend] is the successor  
Ms. Fang: Then what if an accident happens to me?  
Mr. Yin: Make a will not.

[54] Ms. Yin has provided a two-page bald supportive affidavit for her brother, Mr. Yin, where she says that her relationship with Mr. Yin was a debtor/creditor arrangement as was Ms. Fang's. She also alleges that this was for immigration purposes and that no property interest was created. I do not find her evidence credible because it is inconsistent with some of her other communications.

[55] Ms. Yin left a voice message to Ms. Fang on December 17, 2020, where she said, "Although you suspect him [Mr. Yin] of wanting to take the entire house, that is impossible. We [Mr. Yin and Ms. Yin] have never, neither him [Mr. Yin], nor I [Ms. Yin], ever thought of claiming that the entire house belongs to us. We never denied that you paid partially of the house." Ms. Yin also suggested that "As in how to buy *your share*, you guys can negotiate a price." This message has been transcribed, is in the record, and the transcription has not been challenged with any alternate transcription. This undermines Ms. Yin's credibility.

### **Contributions by Ms. Fang consistent with the existence of a partnership**

#### **The down payment**

[56] In this section, I address both the fact that the payment of the down payment is behaviour consistent with a partnership and I also analyze the quantum paid by Ms. Fang for the down payment.

[57] Ms. Fang contributed to the down payment in a way that was consistent with a partnership whereby Ms. Fang obtained a 50 percent interest, and which was inconsistent with the debtor/creditor relationship or tenancy relationship alleged by Mr. Yin.

[58] Pursuant to the First Agreement as well as the Joint Purchase Agreement, the mortgage was \$500,000 and the balance of \$550,000 had to be paid by way of down payment. Ms. Fang, who had a 50 percent interest, would have to pay \$275,000 plus closing costs. There are WeChat communications that confirm that the parties discussed Ms. Fang's contribution to the down payment.

[59] Ms. Fang says that she and Mr. Yin arranged for her contributions to the purchase price and building costs to be made through TD Canada Trust Accounts (the "TD Accounts") which she opened for this purpose.

[60] Ms. Fang has also produced a Power of Attorney which she provided Mr. Yin to allow him to withdraw funds directly from her TD accounts for her required contributions. This is also consistent with the arrangement being a partnership where they trusted one another. There is no good explanation as to why Ms. Fang would give Mr. Yin a power of attorney over her bank account if she was only a tenant or a creditor.

[61] She has produced TD Account statements where she has noted amounts which she says were withdrawn by Mr. Yin totaling \$210,427 for the down payment as well as the permit application. When cross examined, she said that she was able to identify the withdrawals made by Mr. Yin based upon their WeChat communications that confirmed Mr. Yin's withdrawals. As well, she never withdrew any significant amounts and, as such, could identify the large withdrawals made by Mr. Yin. She has produced WeChat communications that document \$202,360 of these withdrawals where she confirms a withdrawal and he does not contradict her, or he confirms it:

| Date       | Amount  | Method of Payment              | WeChat communication                            |
|------------|---------|--------------------------------|---|
| 05-16-2018 | \$9,600 |                                | Documents that he took out 1200 on 8 occasions. |
| 05/23/2018 | 20,000  | TD Withdrawal                  | Yes   |
| 06/06/2018 | 50,000  | RMB Conversion via Huifang Yin | Yes   |
| 06/13/2018 | 960     | TD Withdrawal                  | Yes   |
| 06/19/2018 | 120,000 | TD Draft                       | Yes   |
| 07/10/2018 | 1,800   | TD Withdrawal                  | Yes   |

[62] She also paid Mr. Yin \$50,000 towards the payment required to buy out Ms. Liang's interest. This is supported by a Debit transfer memo from Ms. Fang. Although it does not specifically show that the payment was made to Mr. Yin, I accept her evidence about this because of the credibility concerns I have expressed about Mr. Yin which will become more apparent as well as my finding that she is credible.

[63] The total amount Ms. Fang says she contributed to the down payment is \$260,527 which is very close to the \$275,000 plus closing costs required by their agreement.

[64] There are no contemporaneous communications in the record from Mr. Yin questioning the amount she paid in respect of the purchase price or requesting any additional amounts for the down payment, even though the parties continued to communicate regularly about the ongoing construction costs and Ms. Fang's share of these.

[65] Therefore, I accept Ms. Fang's evidence.

[66] I add that given that most of the payments made by Ms. Fang were done pursuant to cash withdrawals by Mr. Yin using his power of attorney, which she then marked on her TD Bank statement, if Ms. Fang wanted to lie about her contributions, it would have been very easy for her to simply check off additional transactions on her TD Bank statement to show that she contributed the full \$275,000 plus closing costs towards the down payment. The fact that she did not do this also demonstrates that she is being honest.

[67] There is also a basis to conclude that Ms. Fang overpaid her share of the down payment.

[68] Although the written Joint Purchase Agreement signed by Mr. Yin as well as multiple communications support the fact that the parties had agreed that the mortgage would be \$500,000, Mr. Yin placed an \$800,000 mortgage on the property followed by an even greater mortgage on the Property at a later date.

[69] If the mortgage was \$800,000 and each of them had a 50 percent interest, then the total down payment would have been \$1,050,000 (the purchase price) – \$800,000 (the unauthorized mortgage that was placed on the Property by Mr. Yin) which equals \$250,000. Therefore, each of Mr. Yin and Ms. Fang's share would have been \$125,000. Therefore, Ms. Fang has overpaid her share of the down payment.

[70] In essence, because of the unauthorized mortgage and Ms. Fang's contribution of \$260,527 to the down payment, Mr. Yin did not have to pay anything towards the down payment. Instead, he used the increased HSBC mortgage to fund his share. This was not contemplated by the Joint Purchase Agreement, or any of the communications or dealings between Mr. Yin and Ms. Fang.

[71] There is no good explanation as to why Ms. Fang paid anything towards the down payment if she and Mr. Yin were not conducting a business in common with a view to a profit.

[72] As discussed below, I will be directing an accounting and the difference between Ms. Fang's required down payment and what she actually paid will be taken into account in this accounting.

### **Construction costs**

[73] Although building costs were estimated to be approximately \$800,000 in the Joint Purchase Agreement, the costs ended up being higher. There are WeChat messages between Ms. Fang and Mr. Yin which reference total construction costs being approximately \$860,000 as well as a WeChat message from Mr. Yin where he confirms that the building costs to be paid by Ms. Fang were to be \$430,000 or half of the new \$860,000 figure.<sup>1</sup>

[74] Although the bulk of these records show only cash withdrawals or transfers without specifying who made the withdrawal or transfer, again, Ms. Fang has produced considerable corroborative WeChat messages from Mr. Yin confirming that she transferred the amounts to him, or he withdrew the amounts himself.

[75] Ms. Fang has produced TD Account statements where she has noted cash withdrawals made by Mr. Yin in the amount of \$391,000.

[76] Ms. Fang has also produced bank records and communications which corroborate her affidavit evidence that she transferred additional funds in the amount of \$40,000 pursuant to Mr. Yin's request. This transfer was made in Chinese currency, which was then converted to \$40,000 CAD.

[77] All of these total \$431,000, which is slightly more than half of the \$860,000 building costs which Mr. Yin referenced in his WeChat communications to Ms. Fang.

[78] There are also ongoing, regular, and considerable contemporaneous WeChat messages from Mr. Yin where he confirms that he will withdraw funds for building purposes or that he has already done so, or where Ms. Fang confirms such transactions. These occurred on an ongoing basis as these transactions occurred.

[79] I need not set out all of these communications in the body of these reasons or analyze them because there are WeChat communications where Mr. Yin confirms past withdrawals.

[80] On December 15, 2018, Mr. Yin writes:

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<sup>1</sup> See Wechat communication from Mr. Lin dated October 26, 2018, November 7, 2018 which reference total building costs of \$860,000 and Wechat communication dated March 20, 2022 where Mr. Lin advises that Ms. Fang's share is \$430,000.

Withdrew 60,000 from your account today.

As of today, you've paid a total of 12 + 1 + 1 + 6 for building costs

[81] Note that he does not say that she has “loaned” him further funds, rather she “paid” for “building costs”.

[82] Based upon the way this is written, and the reference at the end to “6” which reasonably references the \$60,000 he withdrew that day, I am inferring that in this text Mr. Yin has omitted the zeros from the latter part of numbers and that this confirmatory text means that as of that time, Ms. Fang had paid a total of \$120,000 + \$10,000 + \$10,000 + \$60,000 for a total of \$200,000 toward building costs.

[83] Finally, on March 4, 2019, Ms. Fang wrote to Mr. Yin and asked him to confirm that she had given him “\$430,000 for building the property”. His only response was that there was still “\$15,000 that [he] had not taken” but that he “withdrew \$5,000 today”. He does not question what she says other than to say there was \$15,000 remaining.

[84] Ms. Fang then shows three withdrawals on her TD account after this date, on March 6, March 11, and March 12, 2019, of \$5,000 each. The timing here and the relationship of these withdrawals to the amount that he said remained to be paid, supports the conclusion that Mr. Yin made these withdrawals.

[85] As well, in all the many communications which I reviewed, at no time did Mr. Yin advise Ms. Fang that she had not paid her share of construction costs, or does he say that construction costs were higher than the \$860,000 he referenced.

[86] Indeed, throughout, Ms. Fang was asking for proof of the construction costs and Mr. Yin never provided it. There are multiple WeChat messages that show her asking for this information as well as their ongoing discussion about construction costs and issues.

[87] Therefore, based upon Ms. Fang’s evidence, corroborative bank records, and Mr. Yin’s own communications, I am satisfied Ms. Fang provided \$430,000 to Mr. Yin in respect of building costs in accordance with their agreement.

[88] There is no good explanation as to why she would be paying these costs, on an ongoing basis if the parties were not conducting a business in common with a view to a profit.

[89] I am also satisfied that she is responsible for no more than the amount she has already paid in respect of building costs even though Mr. Yin now takes the position that building costs were in excess of this amount. During the relevant period, he never made this assertion. During the relevant period, the communications between the parties indicated that the total costs would be \$860,000. Finally, as noted, Mr. Yin has provided no evidence whatsoever of his building costs apart from his bald statement and he never even particularized the building costs in response to many WeChat messages from Ms. Fang.

[90] He was facing a motion for summary judgment. If it was his position that she was not entitled to her interest because she had not contributed her share of building costs, then he should have put his best foot forward with respect to the building costs he incurred. Instead, he provided no evidence at all, not even any evidence substantiating the \$860,000 in building costs.

### **Other Conduct consistent with a partnership**

[91] Ms. Fang says that after the construction was completed, they agreed that they would divide each of the two floors of the house equally so they could rent them out.

[92] Consistent with this, Mr. Yin and Ms. Fang signed an agreement for the promotion of the rental of the Property where Ms. Fang signed as “landlord”.

[93] Ms. Landy Xie worked for Mr. Yin. She prepared and sent a drawing of the Property to Mr. Yin and Ms. Fang in August 2020, which showed that all the areas and the rooms of the Property were divided between Mr. Yin and Ms. Fang. Ms. Fang produced the drawings, and this evidence is uncontradicted.

[94] If Ms. Xie had improperly sent these drawings dividing up these rooms, one would expect Mr. Yin to have written asking why if Ms. Fang was only a tenant or a creditor; however, there are no such messages.

[95] There are also WeChat messages between Ms. Fang and Ms. Xie related to the management of the Property, where she communicates with Ms. Fang on Mr. Yin’s instructions: i) seeking Ms. Fang’s consent for things like a deck; ii) requesting Ms. Fang’s choice as to which rooms she may want on one of the floors; iii) dividing the parking spaces equally between Mr. Yin and Ms. Fang; iv) referring to Ms. Fang’s “own tenant”; v) asking about the management and lease of the Property; vi) referring to the Property as “your house”; vii) saying about the Property, “It’s your property. What do you think? How do you wanna do it?” and iix) offering to help Ms. Fang rent out her assigned rooms once she had finished helping Mr. Yin rent out his.

[96] Again, at no time did Mr. Yin object and question why these communications were occurring which one would have expected if Ms. Fang was nothing more than a tenant or creditor.

[97] There is no persuasive explanation for why these communications would have taken place if the parties had not agreed to carry on a business in common with a view to a profit.

[98] Further, when the construction was completed, Mr. Yin proposed that the parties open a travel agency named Dakmu Consulting Inc. Dakmu is a corporation incorporated by Mr. Yin. The parties initially planned to operate this business together with Ms. Xie as the manager.

[99] However, in March 2020, Ms. Xie told Ms. Fang that Mr. Yin had asked her to “make fake invoice, fake itinerary and fake contract.” This is supported by a WeChat communication from Ms. Xie to Ms. Fang. Shortly thereafter, Ms. Fang’s involvement in Dakmu was terminated. Ms.

Fang was owed \$22,013 as a result of her contributions to Dakmu, and Ms. Fang was provided an IOU in respect of this on May 1, 2020, as I will further outline below.

[100] As well, Dakmu was operating in the part of the Property which the parties agreed would be allocated to Ms. Fang.

[101] Thus, on or about May 1, 2020, Dakmu and Ms. Fang entered into a lease agreement prepared by Ms. Xie whereby Ms. Fang leased her portion of the first floor to Dakmu, for \$1,000 per month. The lease agreement lists Ms. Fang as the landlord. Notably it is not a sublease, but a lease.

[102] There would be no basis for Ms. Fang to lease these premises to anyone if they had not agreed to carry on a business in common with a view to a profit.

[103] After Ms. Fang produced the lease prepared by Ms. Xie in this litigation, Mr. Yin also produced an identical lease agreement but with himself as the landlord, and the lease payment increased to \$2,000 monthly. There are no analyses of signatures. I have examined the signatures, and Mr. Yin's signature for Dakmu as tenant on the lease produced by Ms. Fang appears the same as Mr. Yin's signature as landlord on Mr. Yin's lease. This latter signature must be his because he is the only titled owner. Indeed, he does not even deny that both signatures are his.

[104] Mr. Yin's explanation for the lease agreement dated May 1, 2020, which shows Ms. Fang as landlord is not believable. He says that sometime in May 2020, Ms. Fang, who had been a partner of Dakmu, demanded that her advances to the business be repaid in the amount of \$22,013.92. He says that Dakmu's office manager, Ms. Xie, then hastily drafted the lease showing Ms. Fang as a landlord, as a means of documenting a "Payment Plan" to Ms. Fang for the repayment of these advances, pursuant to which Ms. Fang would be paid \$1,000 per month.

[105] Ms. Xie provided a two-page supportive affidavit in this respect. Ms. Xie says that listing Ms. Fang as a landlord was a misnomer.

[106] It would be very odd to enter into a "Payment Plan" that is clearly stated to be a lease, which provides for monthly lease payments of \$1,000 per month and identifies Ms. Fang as a landlord. If the intention was to document a debt owed to Ms. Fang and provide for a payment plan in respect of her Dakmu contributions, it would surely have been simpler to write up a promissory note of some sort.

[107] Indeed, that is exactly what Mr. Yin did with respect to the separation of their interests in Dakmu. As noted, there is an IOU signed by Mr. Yin also dated May 1, 2020—the same date as the lease showing Ms. Fang as a landlord. It states that it is acknowledged that Ms. Fang invested a total of \$22,013 in Dakmu, that she was withdrawing her shares, that Mr. Yin was now the sole owner of Dakmu.

[108] In other words, what the IOU shows is that the parties did deal with a debt owed to Ms. Fang by Dakmu in a separate document, on the very same day as the lease that Mr. Yin and Ms.

Xie say was a “Payment Plan”; thus, there was no need to hastily craft a “Payment Plan” disguised as a lease agreement. They could have just referenced this alleged “Payment Plan” in the IOU that they drafted on the exact same day.

[109] I add that the IOU referenced above also supports the conclusion that the parties were partners with respect to the Property, if not pursuant to the written agreement, then pursuant to their implicit understanding; the IOU specifically notes that Ms. Fang’s share of the mortgage and other expenses from the Property would be withdrawn from the money Mr. Yin owed her in respect of Dakmu.

[110] There is no good explanation as to why the parties were discussing Ms. Fang’s share of the mortgage and other expenses for the Property if they had not entered into an agreement to carry on business in common with a view to a profit.

[111] Furthermore, after Mr. Yin and Ms. Xie provided the above evidence, Ms. Fang produced yet another agreement which Dakmu entered into with her as landlord dated April 25, 2020, regarding the leasing of other rooms at the Property to potential students. It is noteworthy that throughout this document there is a reference to the “landlords” of the Property in plural. The signature on this document on behalf of Dakmu looks the same as the signature that appears on the lease that Mr. Yin submitted which he says he signed.

[112] Indeed, Mr. Yin does not even deny that this was his signature.

[113] There is also a WeChat message dated April 30, 2020, whereby this agreement was sent to Ms. Fang. There is no good explanation as to why this agreement would have been sent to Ms. Fang if the parties had not agreed to carry on business in common with a view to a profit.

[114] Therefore, I do not find Mr. Yin’s or Ms. Xie’s evidence on the issue of this lease, truthful or believable. Their evidence is inconsistent internally and with contemporaneous documents which Mr. Yin does not deny signing and which Ms. Xie admits preparing.

**Mr. Yin’s position that Ms. Fang was merely a lender.**

[115] Mr. Yin asserts that in the face of all of the above communications, Ms. Fang only loaned him money, and he doesn’t even say how much.

[116] He says that the reason why Ms. Fang drafted the Joint Purchase Agreement was for immigration purposes so that she could characterize her advances as investments.

[117] I find his position unpersuasive and not believable for the following reasons.

[118] There is no loan agreement, and no evidence at all about what the alleged interest rate or repayment terms were. Mr. Yin says that at all times, any and all funds advanced by Ms. Fang were pursuant to “loan repayment terms [which were] to be determined later once the Property



began to generate profits.” This is unsupported by any contemporaneous documents or communications.

[119] The idea that Ms. Fang, a recent immigrant, would advance such significant funds to Mr. Yin with no written loan agreement, repayment terms or even interest rate stretches credulity, particularly when she went to the trouble of negotiating at least five specific written agreements with Mr. Yin as follows:

- i) the First Agreement dated May 1, 2018,
- ii) the Joint Purchase Agreement dated January 4, 2019,
- iii) the repayment IOU dated May 1, 2020,
- iv) the agreement between Dakmu and the landlords of the Property dated April 25, 2020, and
- v) the lease agreement in respect of the Property dated May 1, 2020, which shows Ms. Fang to be a landlord.

[120] As well, Ms. Fang is not in the business of lending money and there have been no repayments to Ms. Fang or any contemporaneous discussions about repayment.

[121] The way in which the moneys were advanced, in various amounts ranging from \$1,500 at one time to \$120,000 over the period from May 1, 2018, to March 12, 2019 (49 transfers or withdrawals in total), is not consistent with a loan. However, it is consistent with a partnership where building expenses were incurred on an ongoing basis and as such, amounts were contributed by one partner on an ongoing basis over time as expenses were incurred.

[122] Further, while there are multiple communications set out above referencing Ms. Fang’s contribution to building expenses as well as her being an owner, there is no reference in any contemporaneous communication or documents stating that such contributions were loans. Rather, they were referred to as payments or like terms.

[123] There is only one contemporaneous document which Mr. Yin relies on, a WeChat discussion dated January 21, 2019. This is the full exchange:

Ms. Fang: You previously agreed to write me an IOU (I Owe You)

Mr. Yin: What IOU

Ms. Fang: That’s the money to do business and build a house.

Mr. Yin: What’s the meaning?  
Isn’t there an agreement?

Ms. Fang: I also lent you money  
Isn't it that I can re-write the agreement  
Can also  
Liang, Siyue can quit, why can't I?

Mr. Yin: I'll come over at noon.

[124] Ms. Fang appears to be trying to get out of the deal in the same way that Ms. Liang did when she no longer wanted to be involved in this partnership. Mr. Yin's response is far more important on this issue. He seems surprised and says "What's the meaning? Isn't there an agreement?"

[125] Then, after this exchange, the parties simply continue on in the same way as before, with payments being made by Ms. Fang for construction costs.

[126] Even if she wanted to get out of the deal, and be paid out in January 2019, there are no contemporaneous communications showing that this was ever agreed to as there are with Ms. Liang. Furthermore, as set out above, there is a WeChat communication after January 21, 2019, on March 11, 2019, in which Mr. Yin confirms Ms. Fang's 50 percent ownership interest. His sister's voicemail message confirming this was also sent after January 21, 2019.

[127] So while she may have wanted to be paid out, which is the highest this WeChat message shows, it never happened.

[128] This single WeChat communication is insufficient to establish a debtor/creditor relationship or to undermine the impact of the overwhelming multiple other contemporaneous documents and communications which support Ms. Fang's position, the bulk of which occurred after the January 21, 2019, WeChat message that Mr. Yin relies upon.

**Mr. Yin's position that Ms. Fang was a tenant.**

[129] The evidence that Ms. Fang was a tenant is unpersuasive.

[130] Mr. Yin references Ms. Fang's 2019 income tax return where she indicates that she paid rent in the amount of \$8,000 that year. He argues that this shows she was paying rent at the Property. Mr. Yin appears to have obtained a copy of her income tax statement by opening her mail.

[131] It is uncontradicted that Ms. Fang did not move into the Property until June 2019. It is uncontradicted that she lived at 15 Brian Drive for the first half of 2019 before the reconstruction of the Property and paid rent there. This is what is referenced on her 2019 income tax return. She explained that she put the address for her principal residence to be the Property because at the time she prepared her tax return, the Property was her principal residence.

[132] I add that Mr. Yin produced no evidence that Ms. Fang paid him this rent in 2019 in respect of the Property. In fact, his complaint in this proceeding is that she never paid rent and should have.

[133] Ms. Fang's 2020 tax return does not show that she paid any rent; rather, it showed that she collected rent. This is consistent with Ms. Fang's affidavit evidence.

[134] Furthermore, there is no lease agreement between Mr. Yin as landlord and Ms. Fang as a tenant or any communications asking her to sign such lease. Given all the communications and at least five signed agreements which the parties have entered into, which agreements include lease agreements, I find it not believable that Ms. Fang would have been able to move into the Property as a tenant without any lease agreement.

[135] There are not even communications sending her a lease and asking her to sign it as a tenant.

### **Carrying Costs of the Property**

[136] Mr. Yin has argued that there was no partnership agreement because Ms. Fang did not in fact pay any of the ongoing carrying costs associated with the Property such as mortgage payments, utilities, etc. I reject this argument for a number of reasons.

[137] Pursuant to the First Agreement, as well as the Joint Purchase Agreement, the balance of the purchase price was to be financed by way of a mortgage in the amount of \$500,000. There is a text from Mr. Yin to Ms. Fang dated August 23, 2018, confirming this mortgage as well as the monthly payment of \$2275. The text reads as follows:

Mr. Yin: Five-year interest rate 2.64 %

Ms. Fang: What's the monthly payment? How much money should I give you?

Mr. Yin: Mortgage of 500,000. Payment of \$2275 per month. Split 50-50

Ms. Fang: Got it.

[138] There is no explanation as to why Mr. Yin would advise Ms. Fang of the mortgage details and tell her that she would be responsible for 50 percent if she were merely a tenant or a creditor.

[139] And she made efforts to pay both the mortgage and ongoing carrying costs.

[140] In a WeChat message, Ms. Fang asked that her share of carrying costs be funded from the \$22,013 owed to her in respect of Dakmu as well as the \$1,000 rent that Dakmu was required to pay her pursuant to the lease dated May 1, 2020.

In consideration of the various expenses incurred in the operation of 2652 Victoria Park, to guarantee the uninterrupted operation of the whole property, please disclose the various

accounts including those of water, electricity, gas, insurance, mortgage, and property tax as soon as possible.

Is the rent for the two offices on the first floor (1000 CAD per month for the travel company and 1500 CAD for the office), to which I am entitled, plus 22013.92 CAD that the travel company owes me, enough to cover the property cost and expenses that I am supposed to bear? If not, please immediately make a list of the accounts and let me know ASAP. I will bear the cost and expenses accordingly.

[141] There are no WeChat messages from Mr. Yin questioning why she is talking about paying the ongoing expenses or saying that these amounts will be insufficient to pay her share.

[142] As well, Ms. Fang repeatedly asked Mr. Yin for monthly statements for the HSBC mortgage so she could pay her share, but he refused. As such, she has never had access to these documents, or the information required to pay any additional amounts.

[143] Furthermore, after Ms. Fang moved into the Property, Mr. Yin began taking the position that she had no ownership interest. There is no evidence that he ever showed her any of the ongoing bills associated with the Property or requested additional payments above the amounts that were already designated to be her contribution. He was the titled owner, and all of these bills would have gone to him. Ms. Fang, who was not the titled owner, had no legal right to request copies of such bills from the providers.

[144] In the circumstances, Ms. Fang cannot be faulted for having failed to make any additional payments on an ongoing basis if they were required. In any event, these issues relate mostly to the issue of the relative partnership accounts as opposed to whether or not a partnership existed at all.

### **Conclusion re partnership and proceeding by way of summary judgment.**

#### **Summary judgment**

[145] I am entitled to assume that this record contains all the evidence that would be available at trial in respect of whether the parties had a partnership agreement, the terms of that agreement and contributions made by Ms. Fang.

[146] Using the paper record, I have been able to make the necessary findings of fact. Proceeding by way of summary judgment is a proportionate and more expeditious means to achieve a just result.

[147] Mr. Yin's, Ms. Xie's and Ms. Yin's evidence is not credible or believable in the face of this record. Their evidence is inconsistent with the contemporaneous documents and their contemporaneous communications with Ms. Fang which support Ms. Fang's evidence.

[148] Mr. Yin's overall position—that Ms. Fang merely lent him money and was ultimately a mere tenant of the Property—lacks support in the contemporaneous documents and is inconsistent with the parties' conduct and interactions. These are bald allegations.

[149] In summary, Mr. Yin's position that Ms. Fang was a creditor or tenant is not believable for a number of reasons, including:

- Ms. Fang and Mr. Yin signed a lease with a third-party tenant in respect of one room in the property as landlords after the renovation was completed.
- there is no loan agreement, but there is a written partnership agreement signed by Mr. Yin and Ms. Fang, even if Ms. Yin did not sign it.
- Mr. Yin gives no evidence that he ever repaid any allegedly loaned amounts back to Ms. Fang and there are no demands for payment from her, nor are there any documents or communications in respect of any alleged interest rate or way in which these alleged loan advances would be repaid.
- Ms. Fang moved into the Property in or around June 2019 and has been living there ever since, without any lease agreement or any communication asking her to sign a lease.
- There were documents whereby the parties agreed to divide the rooms to rent on their own which is inconsistent with either a loan or a tenancy.

[150] In contrast, the documentary evidence (including signed agreements, WeChat messages, and other records) overwhelmingly supports Ms. Fang's narrative and assertion that she and Mr. Yin entered into a partnership agreement with respect to the Property, whether this was a written agreement or an implicit one that arose as a result of their conduct. Even if the Joint Purchase Agreement is not enforceable as a written agreement because it included Ms. Yin who did not sign, their subsequent conduct shows that after January 4, 2019, they continued to conduct their affairs on the basis that they were 50 percent partners with respect to the Property, as they had after the First Agreement.

[151] Any credibility issues that arise from Mr. Yin's and his affiants' bald affidavits are easily resolved on the paper record. The only thing that would be gained from a credibility perspective of sending this matter to trial would be the additional demeanor evidence of the parties. A good demeanor by the defendant's affiants could not undermine the contemporaneous documents and communications that overwhelmingly support Ms. Fang's case. A poor demeanor from Ms. Fang would not change the contemporaneous documents and communications which support her narrative. And the parties have already conducted cross examinations; so, they had an ability to challenge evidence and obtain admissions or conflicting evidence if they could. All of this evidence has been before me.

## **Partnership**

[152] A partnership is just another form of contract with certain additional legal obligations. It is trite that a contract can be partly oral, partly written and even implicit.

[153] The evidence shows many indicia of a partnership including contribution of money and effort to a common undertaking (Ms. Fang's contributions), an intention to hold property jointly (the First Agreement and the Joint Purchase Agreement as well as communications regarding this), an intention to share profits and losses (set out in the written agreements signed and the communications), together with a mutual control of the enterprise (division of the rooms).

[154] The contemporaneous documents, communications and conduct show on an objective basis that the parties intended to and did carry on business in common with a view to a profit on the basis that each would have a 50 percent interest, be responsible for 50 percent of the costs, share revenues on a 50 percent basis and that the mortgage would be \$500,000. That is, this is what they did until Mr. Yin unilaterally took the position that Ms. Fang was merely a creditor and/or tenant and took a variety of steps to try to intimidate her into leaving.

[155] There is sufficient evidence before me to conclude that there was a meeting of the minds, as well as all requirements for a valid contract including implicit, if not express, offer, acceptance, consideration, and certainty of material terms. That is, an objective reasonable bystander would conclude, in all the circumstances, that the parties intended to contract. *UBS Securities Canada Inc. v. Sands Brothers Canada Ltd.*, 2009 ONCA 328 at para 47.

[156] In any event, case law has held that partnership agreements:

“...can exist with a lesser degree of precision because the *Partnership Act* provides some default terms for a partnership agreement. Therefore, a partnership agreement may come into existence even if the partners have not turned their mind to certain key issues, so long as the missing terms are those that the *Partnership Act* provides on a default basis.”

*Milroy v. Klapstein*, 2003 ABQB 871 (CanLII) at para 24.

[157] With the exception of the parties' agreement that the Property would be mortgaged in the amount of \$500,000, which is amply supported in the record, every other material term of the partnership alleged by Ms. Fang is the default term in the *Partnership Act* in section 24 (1) which provides that all partners are to share equally in the capital and profits of the business and must contribute equally. These other terms are also well supported in the contemporaneous documents and communications.

[158] Thus, even if the written Joint Purchase Agreement cannot technically be enforced because Ms. Yin did not execute it, I find that in any event there was an implicit partnership between the parties based upon their conduct, with the same terms as the Joint Purchase Agreement, such that they agreed to share equally between them the purchase price and development costs of the Property as well as revenues and expenses.

[159] With respect to when this partnership arose, even though the Joint Purchase Agreement is dated January 4, 2019, I find that Mr. Yin and Ms. Fang's partnership began on August 30, 2018, when the closing occurred. Most of Ms. Fang's financial contributions occurred before the Joint Purchase Agreement in the context of the First Agreement. The fact that they had to prepare another agreement to reflect Ms. Liang's withdrawal from the partnership does not mean that they were not partners before January 4, 2019. Indeed, their conduct shows that they were carrying on a business in common with a view to a profit before that time commencing when the purchase of the Property closed on August 30, 2018.

[160] Beginning the partnership as of August 30, 2018, is something that benefits Mr. Yin because it means that Ms. Fang will have a longer period during which she must contribute to ongoing carrying costs and mortgage payments.

[161] With respect to the amount contributed by Ms. Fang, I also find that her evidence is well supported on the record before me even though most of these were cash withdrawals. Mr. Yin's own WeChat messages support most of these.

[162] These advances are also supported by what Mr. Yin did not say in any of the contemporaneous documents at the time. The parties knew what the arrangement was. They knew that the down payment by the parties was to be \$275,000 each. There are no WeChat messages where Mr. Yin takes the position at the relevant time that Ms. Fang did not make her contribution to the down payment. She has in fact been honest enough to provide evidence that what she provided was slightly less than \$275,000 and this will be taken into account in the accounting I am ordering. I make the same point for the construction costs. The record shows that Ms. Fang's share was \$430,000 and yet there is not one WeChat message from Mr. Yin at the relevant time saying she had not contributed her share.

[163] If Mr. Yin had wanted to challenge the quantum of funds that Ms. Fang says he withdrew or transferred from her TD Bank account over which he had a power of attorney, he could have produced his own bank records as well as evidence of his construction costs and evidence that he financed those himself. Having failed to do so, he has not credibly or believably challenged Ms. Fang's evidence.

[164] I add that the cases cited by Mr. Yin are simply inapplicable. The facts are different and the evidence before the court was different than the evidence before me: *Tucci Construction Ltd. v. Lockwood*, 2002 CarswellOnt 3032, aff'd CarswellOnt 438 (ONCA); *Jermak v. Metropolitan*, 2019 ONSC 1810.

[165] This is not a case where there is "decontextualized affidavit and transcript evidence" that could interfere with a fair and just outcome: *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450 at para 44. It is a case where the evidence is compelling.

[166] As well, while Mr. Yin claims that there have been issues with the interpretation during the cross examinations, reviewing the transcript shows that the parties and their counsel, who also

speak mandarin, raised issues during the cross examination with the translation in some places. The fact that they were able to do this and follow up until the appropriate translation was provided, defeats this argument. If Mr. Yin wanted to prove that there is any problem with the transcription that his counsel did not notice, they could have had someone review the transcripts and provide a report on where that was. They have not identified any mistranslation of any pertinent evidence that I have referenced in these reasons.

[167] Mr. Yin also raised issues about four of the translations of the WeChat messages provided by Ms. Fang and obtained his own re-translations. This is in the context of hundreds of messages. The four mistranslations noted have not been material or relevant to the determinations that I have made. If there were issues with the others, upon which I have based this decision, he should have also provided evidence that these were mistranslated and re-translations of these.

**Issue 2: Does Mr. Yin hold the Property in trust for the partnership, such that Ms. Fang has a 50 per cent beneficial interest?**

[168] Section 21(1) of the *Partnership Act* provides that all property and rights brought into a partnership are partnership property and must be held and applied by the partners exclusively for the purposes of the partnership in accordance with the partnership agreement. Partnership property is owned by partners in the form of co-ownership where each partner holds a share that is proportionate to that partner's share of the partnership: *Bell Canada v. Plan Group Inc.*, 2012 ONSC 42 at para 32; *Molson Brewery B.C. Ltd. v. Canada*, 2001 CanLII 22132 (FC) at para 12.

[169] Where one partner holds title to partnership property, that party is holding the partnership property in trust for the other partners such that the partners have a beneficial interest: *Cohen v. Brin*, 2013 ONSC 1302 at paras 36-37; *Agro Estate v. CIBC Trust Corp.*, [1999] OJ No. 1714 at paras 37-38.

[170] The cases Mr. Yin cites in opposition to these principles are simply not on point and do not stand for the propositions that he cites.

[171] In the case *Robert Porter & Sons Ltd. v. Armstrong*, 1926 Carswell BC 105, the issue was whether the parties had constituted a contract in all the circumstances and the court found that they had not. What the Supreme Court said with respect to the issue of joint ownership is that “the real question is whether, from the evidence before us, one ought to infer an agreement in the juridical sense that the property these two persons intended dealing with was to be held jointly as partnership property and sold as such.” In this case, the evidence amply supports this conclusion.

[172] *A.E. LePage Ltd. v. Kamex Developments ltd.*, 1997 CanLII 44 (ONCA) at para 10, aff'd 1979 CanLII 35 (SCC) involved a situation where a creditor was seeking to sue parties on the basis that they were partners. The court found that there was no partnership based upon the parties' intention; as such, the creditor could not claim against the partnership, only against the party who incurred the debt.



[173] *General Motors Acceptance Corp of Canada Ltd. v. McClintock*, 1999 CarswellOnt 2229 (ONSC) at para 9, aff'd 2000 CanLII 27017 (ONCA) similarly involved an attempt by a third party to garnish a bank account in the name of a partnership in respect of one of the partner's debts, which debt had not been incurred by the partnership. The court said that the bank account belonged to the partnership and could not be garnished to pay one partner's debts because partners cannot deal with their share in a partnership account as separate property.

[174] What *A.E. LePage Ltd* and *General Motors* are saying is that a third party who has a claim against one partner in their personal capacity, cannot access partnership property. In that sense, a partnership agreement does not create a form of co-ownership that is divisible. However, as between each other, the partners' interests are a form of co-ownership: *Bell Canada* at para 32; *Molson Brewery* at para 12.

[175] Therefore, Mr. Yin holds the Property in trust for the partnership, and thus in trust for Ms. Fang as to her 50 % beneficial interest: *Bell Canada v. Plan Group Inc.*, at para 32; *Molson Brewery B.C.* at para 12; *Agro* at paras 37-38.

**Issue 3: Did Mr. Yin breach their partnership agreement, his fiduciary duties, and duties as a trustee through his conduct which includes placing unauthorized mortgages on the Property?**

[176] The short answer is that he did.

[177] Partners owe each other fiduciary duties: *Nguyen v. Adas*, 2022 ONSC 2541 at para 48. As a trustee, Mr. Yin's role was also "of utmost loyalty" to Ms. Fang: *Valard Construction Ltd. v. Bird Construction Co*, 2018 SCC 8 at paras 17-18; *Gilani v. BMO Investments Inc.*, 2021 ONSC 3589 at paras 92-95.

[178] Mr. Yin's conduct throughout, in obtaining her advances and then denying the existence of the partnership is a breach of his fiduciary duty and a breach of trust.

[179] Mr. Yin also placed additional mortgages on the Property not contemplated by their agreement, which he has benefited from, and which have impacted the equity which Ms. Fang has in the Property.

[180] Their agreement called for a \$500,000 mortgage (the "HSBC Mortgage").

[181] Without Ms. Fang's consent, Mr. Yin registered the following additional mortgages:

A \$550,000 mortgage in favour of 2348793 Ontario Inc on April 9, 2019 (the "Numbered Company Mortgage"); and

A \$1,413,750 mortgage in favour of the Royal Bank of Canada on April 27, 2020, which replaced the Numbered Company Mortgage and the HSBC Mortgage (the "Royal Bank Mortgage").

[182] Mr. Yin offered no evidence whatsoever to contradict Ms. Fang's evidence that she did not consent to these additional mortgages.

[183] The parcel register shows that both the Numbered Company Mortgage and the HSBC Mortgage were discharged.

[184] Although Mr. Yin claims that he incurred construction costs greater than expected and that this mortgage was required for this, as set out above he provided no evidence of construction costs even though he was required to put his best foot forward on this motion.

[185] Therefore, I conclude on a balance of probabilities that Ms. Fang did not obtain any benefit from the additional funds acquired by Mr. Yin pursuant to the Royal Bank Mortgage, except to the extent that the Royal Bank Mortgage was used to pay out the \$500,000 HSBC Mortgage which she had agreed to either in the Joint Purchase Agreement or pursuant to an agreement reached in accordance with their discussions. As such, Mr. Yin breached their agreement to share in all costs and profits equally.

[186] The measure of damages in contract is calculated by determining the lost bargain. In this case, Mr. Yin's actions resulted in a decrease in Ms. Fang's expected equity in the Property as he received the entire benefit of the mortgage funds in excess of the agreed upon \$500,000. Ms. Fang's damages would be calculated by subtracting the expected mortgage on the Property in the amount of \$500,000 from the balance of the Royal Bank Mortgage.

[187] However, it is not possible to calculate these damages for the following reason. While the materials before me do show the face value of the Royal Bank Mortgage in the amount of \$1,413,750, they do not set out the current balance owing on said mortgage.

[188] Therefore, this issue will be part of the accounting which I am ordering below.

[189] Although I have found a breach of trust and breach of fiduciary duty, Ms. Fang does not seek any specific damages for these breaches apart from the damages remedy related to the additional mortgages. Instead, she seeks a declaration that any additional mortgages above \$500,000 is Mr. Yin's sole responsibility. This is an appropriate remedy for this breach of trust and fiduciary duty.

#### **Issue 4: What should the accounting entail?**

[190] As set out above, there are many issues relating to the final partnership accounts, which include the carrying costs of the Property such as utilities and mortgage payments as well as rental income.

[191] It is not possible to determine the parties' respective shares of ongoing profits and carrying costs because even though Mr. Yin takes the position that Ms. Fang did not contribute to ongoing expenses, he provided no evidence of what they were and what he has paid.

[192] Therefore, an accounting is required pursuant to rr. 54 and 55.

[193] The Associate Judge shall determine:

- The total mortgage payments which should have been paid based upon a \$500,000 mortgage commencing from the closing on August 30, 2018,
- Other carrying costs incurred since the Property was purchased, and
- Any rental income received by either Mr. Fang or Mr. Yin.

[194] The Associate Judge shall also take into account the \$22,013.92 provided for in the IOU, which amount was supposed to be applied to Ms. Fang's share of the expenses. The Associate Judge shall also take into account the \$1,000 per month that Ms. Fang was supposed to be pay for her leasing one of her rooms to Dakmu, which she was never paid.

[195] However, the Associate Judge shall not take into account any accounting claim by Mr. Yin to any construction costs. The record before me is clear on a balance of probabilities that the construction costs were agreed to be \$860,000 to be shared by the parties. This is the only amount that Mr. Yin referenced during the relevant time. During the relevant time he never said that construction costs were higher. It is only in response to Ms. Fang's action and motion that he now says construction costs were much higher. If that was the case, he should have provided evidence of this fact and not merely bald assertions.

[196] The Associate Judge shall also take into account the fact that pursuant to the parties' arrangement, each of them was supposed to pay \$275,000 and their share of closing costs towards the down payment, taking into account the amount set out in these reasons paid by Ms. Fang towards the down payment, which amount I have calculated to be \$260,527.

[197] Finally, the Associate Judge shall determine the outstanding amount owing on the Royal Bank Mortgage and deduct half of the agreed upon mortgage amount of \$500,000, which would be Ms. Fang's share of the agreed upon mortgage. The balance of this calculation ( $\frac{x}{2}$ ) will be the damages that Mr. Yin owes Ms. Fang in respect of the breach of contract claim because the additional mortgage amount that he placed on the Property has reduced her equity in it.

[198] The Associate Judge shall then calculate the overall amount owed to Ms. Fang or Mr. Yin taking into account her damage claim and adjusting it either up or down based upon the reconciliation of partnership accounts with respect to the expenses and down payment that each party was required to pay.

[199] The Associate Judge shall also take into account the time value of money.

[200] The accounting shall commence as of August 30, 2018, when the purchase of the Property closed.

**Issue 5: Should a permanent injunction be ordered restraining Mr. Yin from interfering with Ms. Fang's use and enjoyment of the Property?**

[201] Mr. Yin has taken Ms. Fang's money for the purchase price and construction costs of the Property, conducted his affairs with her entirely in line with their having a partnership with respect to the Property, and then not only asserted she had no interest in the Property, but engaged in significant harassment and abusive behaviour to try to force her to walk away from the Property and her investment.

[202] He has even physically assaulted her.

[203] Ms. Fang does not seek any damages for the assaults, but rather has led this evidence to obtain a permanent injunction as a remedy for the assaults, breach of fiduciary duty, breach of trust and breach of the partnership agreement.

[204] I held a mini trial in this matter to assess credibility specifically with respect to Ms. Fang's allegation that Mr. Yin assaulted her and his allegation that Ms. Fang has made false complaints to the police reporting assault as a means of badgering and intimidating him into giving into her demands.

[205] Both parties testified with a mandarin interpreter.

[206] I conclude on a balance of probabilities, taking into account the record before me, as well as the parties' oral evidence that Mr. Yin assaulted Ms. Fang.

[207] Ms. Fang's testimony is corroborated with photographs of her injuries, and even video evidence of some of these assaults in progress. The video evidence also shows Mr. Yin to have conducted himself in an aggressive and threatening manner. This is how he was prepared to conduct himself while being videotaped and causes concerns about the way he would behave when there is no camera recording him.

[208] Further, Ms. Fang's testimony was consistent and believable whereas some of Mr. Yin's testimony made little sense and was also inconsistent with his affidavit evidence.

[209] There are three assaults alleged.

**June 2020**

[210] Ms. Fang alleged that Mr. Yin threw his phone at her when she went to talk to him about renting the rooms.

[211] There are no corroborative pictures, and she did not call the police on this occasion. Mr. Yin denies this completely with his main point being that it would make no sense for him to have thrown his phone as this could have damaged his phone. Despite the absence of photographs of

injuries, I believe Ms. Fang taking into account her overall evidence and my findings that she is credible.

**November 15, 2020**

[212] Ms. Fang gave evidence that on this occasion, Mr. Yin had gathered several people to gamble in one of his rooms. This was during COVID when a lockdown order had been made. She said the noise was too great and she felt he was violating the COVID lockdown rules because there were more than 10 people in his room. She sent him a WeChat message at 8:00 pm, but he did not respond. It was a Sunday and her son (who was 10 at the time) was attending school the next day. At approximately 10:00 pm, she went downstairs to remind Mr. Yin about COVID restrictions and to talk about the noise. He would not listen, so she tried to talk to the people in the room, at which point he assaulted her by repeatedly pushing her to the floor.

[213] She called 911.

[214] There are photographs of the gambling table that Mr. Yin had set up with poker chips on it consistent with her evidence.

[215] There is a photograph which shows a scratch on Ms. Fang's nose that she sustained because of this altercation. There is also a photograph of a large scratch on her lower leg and significant bruising above her knee.

[216] There is also a police report. Ms. Fang's evidence in court is consistent with what she told the police when they arrived.

[217] She says that when the police arrived, they spoke to Mr. Yin who told them that she was only a tenant who had defaulted on her rent. This was the first time she had ever heard that Mr. Yin was taking this position. The police asked her if she wanted them to arrest him. She was aware that it was a serious crime; if he was arrested, they could put him in jail. She told the police she did not want that. The police report confirms that she "advised that she would not like to proceed with charges."

[218] She also said that she regretted that decision because her failure to have Mr. Yin charged lead to further assaults.

[219] She was also asked about how the injury to her leg occurred and she said that Mr. Yin pushed her, she pushed back, and then she hit her shin on the table. She also said that she tried to stand up and that he repeatedly pushed her down.

[220] When she was cross examined, she was asked whether any of the people there corroborated what she said to the police. She initially agreed that they did not, although it was not clear that she understood the question potentially because of the use of the legal term "corroborate" in the question. When Mr. Yin's counsel continued to ask questions about this, Ms. Fang clarified that when the police came, they interviewed the parties separately and she did not know what they said

to the police. This makes logical sense. As well, by the time the police came, she said there were only two or three of his guests in the room. This is also consistent with the police report that notes two witnesses; the police report has blacked out these witnesses' names and evidence in accordance with the usual police practice to do so for parties other than those who request a copy of the report.

[221] I note that the police report does not say that the other guests did not corroborate what Ms. Yin said occurred. The fact that the police report indicates that Mr. Yin was cautioned by the officers about unwanted contact and assault and that they put a safety plan in place does not support the police hearing from multiple witnesses that no assault took place. If Mr. Yin had wanted the others present to testify that no assault occurred, he could have obtained their evidence.

[222] She was also cross examined about the fact that the COVID restrictions only came into effect the next day, on November 16, 2020, although to be fair to her, there was no evidence that this was the case. Even if it was the case that the restrictions came into effect the following day, it was her understanding from the news that the restrictions were in effect. Again, I see nothing about this evidence that undermines her credibility. English is not her first language so she may not have understood the complete news about the COVID restrictions.

[223] Mr. Yin's explanation about this incident is that he had invited students over to look at the rooms so he could rent them and earn income. They began arriving at 8:00 pm. They asked him if there was any form of entertainment at the Property. He showed them his TV and mini bar and told them to treat it like home. Some students then began to play cards and some watched TV. Ms. Fang knocked on the door, and he opened it but then proceeded to close it while she was still outside. Then, when she was outside the room, she fell because she was trying to open the door, missed and then fell. Then, when he looked outside the room, she rushed in, the floor was slippery, and she fell by herself.

[224] When cross examined, he was asked whether he knew any of these students who came over. He said he only knew one of them and stated that they were not his friends. When it was pointed out to him that in one of his affidavits, he said that he had friends over playing poker, he explained that that was just his way of speaking and that "everybody I invited, they were all my friends."

[225] His answer made little sense and I note as well that his testimony about these students coming over to look at the rooms who asked about what entertainment there was, and who just happened to start playing cards, is also inconsistent with his affidavit where he said that he had friends over playing poker. The table in the photographs in that room looked like a professional poker gambling table, with poker chips, not some casual table where people happened to start playing cards.

[226] Even though the partnership issues were not part of the mini trial, Mr. Yin could not help but spontaneously make statements that supported the existence of the partnership and their

agreement to divide up the rooms. He said things like “she was not permitted to come to my area,” and that this was his room.

**January 11, 2021**

[227] Ms. Fang alleges that Mr. Yin attempted to forcibly change the locks on certain rooms in the Property which had been used by Ms. Fang and her tenants. The tenant had left, and Ms. Fang was using the rooms. Mr. Yin rushed into the room, and she tried to block him.

[228] Ms. Fang’s son, who was there, videotaped this encounter. The encounter does indeed show Mr. Yin attempting to forcibly change the locks and he admitted this. The video shows that he also forcibly went in and began dragging things out of the room in an aggressive manner. At one point, he moves by her and knocks into her and then yells at her in English “Don’t touch me” when it is clear that he moved through the door and thus bumped into her. It is not clear what the items were from the video, but Ms. Fang testified that these were an induction stove and a bag of flour.

[229] What these videos also show is that the doors to the rooms all had a passcode. So, for Ms. Fang to have been using these rooms in the first place and renting them out, she must have been given the passcodes for the doors which also supports her evidence that the parties were partners and agreed to divide the rooms; otherwise, how would she ever have rented the rooms out?

[230] There is a police report related to this matter although the report stated that they could not determine what occurred based upon competing allegations. No charges were laid.

[231] When Mr. Yin testified, he said that the reason he went to the room was that Ms. Fang had been using an electrical stove in her room upstairs and that fire marshals had come because of this. Ms. Fang denied that she was using an induction oven in the upstairs room although she admitted that the fire marshal did come about something she had been doing in the basement.

[232] Even if Ms. Fang had been using an induction oven in the upstairs room, which she denies in any event, it was not a reason for Mr. Yin to conduct himself in the aggressive way that he did.

[233] Later that day, Ms. Fang went to the kitchen to cook noodles for her son who said he was hungry. Ms. Fang testified that while she was cooking over a large pot of water where she was boiling noodles, Mr. Yin attempted to interfere to stop her. Ms. Fang called her son who videotaped this encounter which does indeed show Mr. Yin aggressively attempting to stop her from cooking the noodles which are in a very large boiling wok, and he yells at her.

[234] Throughout the video, Mr. Yin repeats that Ms. Fang’s allotted time to cook ended at 6:30 pm and he behaves aggressively and in a threatening manner. Ms. Fang explained that they had a clear division about cooking time, parking and about the rooms. She did concede that her cooking time was between 4:30 pm and 6:30 pm and that she was somewhat late because of their previous altercation that day that had upset her, so she had not cooked dinner for her son during her allotted time and she thought cooking noodles would be fast. The time stamp on the video shows that it was at approximately 6:40 pm so it was not even that far outside her assigned time.

[235] When Ms. Fang was cross examined, she was asked why she made a squealing noise at one point in the video as Mr. Yin was taking steps to stop her from cooking. She said that it was because Mr. Yin pushed her. Counsel sought to argue that the video did not show any push, but I have reviewed it several times and there is a part of the video where Mr. Yin was to her left and then shoved by her as she was over a very large wok which was boiling. The video is an amateur video which moves quite a bit, but it also appears as if he sought to grab the pot of boiling water from her left side and knocked into her at which point she squeals.

[236] There is also a photograph of Ms. Fang's arm which she says was from that day. Her arm appears red and inflamed which her affidavit says was caused on that day. It looks like a burn. I conclude that the way Mr. Yin moved past her in the video caused some splashing from the pot of boiling water and her squeal indeed was at the point when he did this and was very close to her.

[237] Taking into account all the evidence including the way in which the parties testified at the mini trial, I believe Ms. Fang's testimony as to the assaults she alleges. These are sufficiently supported taking into account the parties' testimony, credibility findings, the photographs, and the videotaped evidence.

#### **Additional problems between the parties**

[238] Ms. Fang cites additional conduct to force her out of the Property, including:

- turning off internet service and electricity to her bedroom,
- changing the locks to the electrical panel,
- interfering with her ability to rent her rooms to tenants (Mr. Yin admits that he did this),
- blocking the driveway so her tenant could not go to work (there is a photograph in support of this),
- sending an eviction notice to her tenant (the notice is produced and there are also videos of Mr. Yin behaving in a very aggressive manner seeking to evict one of Ms. Fang's tenants; although he is speaking mandarin and I cannot tell what he was saying, the sound of his voice was aggressive and threatening),
- restricting her use of the kitchen,
- threatening to take steps to separate her from her son if she did not move out (she produced an email in support of this which tells her to leave failing which **“you will be taken away for investigation if eviction fails and the kid(s) will be put in charge of a relevant agency”**); this is extremely disturbing,
- interfering with her attempts to lease some rooms on the second floor (which he admits),



- installing multiple cameras throughout the second floor where she resides but not sharing the footage with her (there are indeed videos that show he has done this),
- setting the volume of his television on the first floor to its maximum volume since early 2021, and
- sending her an eviction notice.

[239] Mr. Yin also cites Ms. Fang’s conduct which he has video-taped including:

- attempting to remove locks that he installed on an electrical utility room (this is corroborated, but he was keeping Ms. Yin out of common areas in the Property; Mr. Yin’s own affidavit says that he had turned off the utilities to the “vacant rooms” which were hers),
- hiring a locksmith to change locks in the utility room, but I make the same point as above,
- interfering with a contractor he hired to fix and replace a thermostat, and
- refusing to allow a housekeeper to clean.

[240] He also took a video of Ms. Fang’s son running down the hall chasing him with a knife, which video is very disturbing. Ms. Fang was not home on that occasion and the police report says that her son said that Mr. Yin had gone upstairs and was throwing their things which precipitated this. He was upstairs studying, and the report says that her son “advised the officers that he was scared because of the noise, used knives to protect himself.” I am in no position to make any findings on this incident, but it is troubling that a child would take these kinds of steps and speaks to the incredibly difficult situation this has become.

[241] It is not possible to resolve all the conflicting evidence on some of these additional issues, but there is enough corroboration, and taking into account my credibility findings I conclude that Mr. Yin’s denial of the partnership agreement and steps to interfere with the agreement they arranged is what has led to many of these issues. And while he alleges that she has been trying to intimidate him, it is quite the opposite.

[242] Given the extensive lengths to which Mr. Yin has gone to deny their partnership and Ms. Fang’s beneficial interest in the Property, his aggressive and threatening conduct towards her as well as the assaults, which all appear designed to make her leave, I am satisfied that a permanent injunction should issue preventing Mr. Yin from interfering with Ms. Fang’s use and enjoyment of the Property.

[243] I am satisfied that the test for a permanent injunction as set out in *Foxgate Developments Inc. v. Jane Doe*, 2022 ONSC 7035 at para 67 is satisfied. That is, Ms. Fang has proven all the elements of the causes of actions she alleges, she has proven that the wrongs in relation to her use

and enjoyment of the Property are likely to occur again in the future and that it is appropriate for this court to exercise its equitable jurisdiction to grant an injunction, there is no other remedy at this stage that will reasonably protect her from the threat of continued wrongs, there are no equitable discretions affecting her prima facie entitlement to the injunction, and there is no concern about the scope of the injunction. If Mr. Yin does not interfere with her use and enjoyment of the rooms that they have already specifically divided and which they agreed were Ms. Fang's rooms, there will be no problems.

**Issue 6: Can the Court grant summary judgment given that Ms. Fang has not also requested a formal order in her Notice of Motion that the counterclaim be dismissed? Are there any bars to this proceeding based upon the Notice of Motion inadequately giving notice of the relief requested?**

[244] The fact that there was no cross motion to dismiss Mr. Yin's counterclaim is not a bar to awarding Ms. Fang judgment on her claim. All his claims relate to his position that she was only a tenant and/or creditor and that she has slandered his title. His counterclaim is the mirror image of her claim and claims a declaration that there was never any partnership, a declaration that Ms. Fang holds no property interest, damages in the amount of \$2,000,000 for slander of title, and damages reflecting rent which she has not paid or to which he is otherwise entitled.

[245] Thus, deciding Ms. Fang's claim implicitly addresses the issues raised in Mr. Yin's counterclaim and renders them res judicata even without a cross motion seeking summary judgment dismissing his claim.

[246] I also reject the argument that Ms. Fang's Notice of Motion was defective.

[247] Mr. Yin argues that the Notice of Motion only specifically claimed summary judgment in respect of the Joint Purchase Agreement. He argues that this prevents this court from finding that there was a partnership based on the parties' conduct if the Joint Purchase Agreement is not enforceable because Ms. Yin did not sign it.

[248] However, the Notice of Motion broadly claimed summary judgment in respect of the issues set out in the Statement of Claim. The Statement of Claim pleads that there was a partnership based on the common law and the *Partnership Act*, that Mr. Yin holds the Property in trust for Ms. Fang, that she has a 50 percent beneficial interest in the Property, not merely that a partnership was created based upon the Joint Purchase Agreement. Furthermore, the argument that a partnership was created in this way was set out specifically in Ms. Fang's factum which is dated June 2022. Mr. Yin had this position over a year before the motion was argued. There was no surprise.

[249] Furthermore, a court is obliged to read a pleading generously with a view to accommodating any inadequacies due to drafting deficiencies: *Healthy Lifestyle Medical Group Inc. v. Chand Morningside Plaza Inc.*, 2019 ONCA 6 at para 7.

[250] If there are any deficiencies a fair reading of the Statement of Claim and the Notice of Motion demonstrates that Mr. Yin was entirely aware of the case he had to meet.

[251] It is frankly astonishing in the face of the record before me that Mr. Yin pleads that there has been some or any unfairness towards him. These technical arguments are nothing more than his attempt to avoid the ultimate day of judgment.

### **Conclusion**

[252] This living situation is intolerable for both Ms. Fang and Mr. Yin.

[253] The Order that Ms. Fang seeks, which is primarily declaratory relief finding that a partnership exists, and that Mr. Yin holds the Property in trust for her as to her beneficial 50 percent interest, will not solve the immense problems that these two individuals are currently having living with each other.

[254] The reference on damages to address the partnership accounts will not solve the problems either.

[255] It is also impractical for Ms. Fang to immediately move out and then have her partnership claim converted to a claim for damages. Ms. Fang has invested her money into this home, needs a place to live with her son until she gets her equity out, and she also currently has tenants.

[256] The most practical solution for all would be for one party to buy the other out.

[257] After I release this decision, if one of these parties cannot buy the other out, then there may need to be some proceeding to partition and sell the Property.

[258] I am directing that when and if one of these parties wishes to bring such a proceeding, it be dealt with on an expedited basis.

[259] Therefore:

- a) I declare that Mr. Yin and Ms. Fang had a partnership agreement as of August 30, 2018, whereby each would contribute 50 percent of the land purchase costs and 50 percent of the building costs with respect to the Property and whereby the parties would share all revenues and expenses of the Property.
- b) I declare that the partnership agreement permitted Mr. Yin to only place a mortgage on the Property in the amount of \$500,000 and that he breached their agreement by placing unauthorized mortgages on the Property.
- c) I declare that Mr. Yin is solely responsible for any mortgage debt in excess of \$500,000.
- d) I declare that Ms. Fang has contributed 50 percent of building costs of the Property and no further amounts need be paid by her in respect of building costs.

- e) I declare that pursuant to the *Partnership Act*, the Property constitutes partnership property and that Mr. Yin, as the titled owner, holds the Property in trust for the partnership.
- f) I declare that Ms. Fang has a 50 percent beneficial interest in the Property as a partner.
- g) I grant a permanent injunction enjoining and prohibiting Mr. Yin and/or any person acting on his direction or on his behalf from encroaching upon or obstructing or in any way impeding access to or interfering with the use and enjoyment of the Property by Ms. Fang, her family, tenants, guest, or invitees.
- h) I am directing a reference to an Associate Judge pursuant to r. 54 and 55 to determine the partnership accounts:
- The accounting shall commence as of August 30, 2018.
  - The total acquisition costs was \$1,113,116.
  - The only permissible mortgage on the Property pursuant to the parties' agreement was \$500,000. The accounting shall determine the mortgage payments that should have been made by Ms. Fang and Mr. Yin on this mortgage, on the basis of Mr. Yin's communication that each would be responsible for ½ of \$2275. His communication advised that this was pursuant to a five-year mortgage. There is more than five years that have passed. The calculation of the amount that each should have paid for the years after the time when this mortgage would have to be renewed will be determined based upon the prevailing interest rate at the time of renewal, also based upon a five-year term.
  - The carrying costs of the Property paid by Mr. Yin since August 30, 2018.
  - The revenues earned by each of Mr. Yin and Ms. Fang since August 30, 2018.
  - The accounting shall also take into account the fact that Ms. Fang has contributed \$260,527 towards the down payment and shall be based upon Mr. Yin having to have paid a \$275,000 down payment.
  - The accounting shall also take into account other acquisition costs that the parties were to share.
  - The Associate Judge shall take into account the \$22,013.92 owed by Mr. Yin to Ms. Fang pursuant to the IOU referenced in this decision as well as the \$1,000 per month rent that Dakmu agreed to pay Ms. Fang, and which shall be applied against her share of carrying costs.

- The Associate Judge shall thus apportion the total expenses and revenues to each of Mr. Yin and Ms. Fang.
- The Associate Judge shall calculate the amount of the excess mortgage on the Property (~~x 1/2~~) which shall be the damages owed to Ms. Fang in respect of the unauthorized mortgages.
- The Associate Judge shall then calculate whether there is an amount owed to Mr. Yin or Ms. Fang taking into account the above and also taking into account the time value of money.

[260] Pending the completion of the accounting and any motion brought by either party for partition and sale, the certificate of pending litigation shall remain in place. Without the certificate of pending litigation there is a real risk that Mr. Yin could take steps to further compromise her beneficial interest and any claim to damages which will likely have to be taken out of the Property.

### Costs

[261] I strongly encourage the parties to settle costs. Ms. Fang provided a Bill of Costs as part of the requirement that parties do so when they argue a motion. Mr. Yin did not.

[262] Ms. Fang's costs claim is more than reasonable. Her partial indemnity costs for this entire proceeding are only \$29,642.16. Her substantial indemnity costs claim is \$49,403. Her disbursements claimed are \$6,772.20.

[263] I would have granted her partial indemnity costs as claimed given the reasonableness of the amount claimed, and since Mr. Yin did not even provide a Bill of Costs.

[264] However, in her notice of motion she seeks substantial indemnity costs.

[265] If the parties cannot resolve this they may make submissions as follows: Ms. Fang within 7 days and Mr. Yin within 7 days thereafter, each submission to be no longer than 4 pages.

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Papageorgiou J

**Released:** February 14, 2024

**Corrigendum**

1. The word “not” was inserted in paragraph 167 between the words “have” and “been” corrected February 16, 2024
2. The words (x ½) have been added to paragraphs 197 and 259(h) corrected February 15, 2024.

**CITATION:** Fang v. Yin, 2024 ONSC 985

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

YAN FANG

Plaintiff/Defendant to the Counterclaim

**– and –**

HUI JUN YIN

Defendant/Plaintiff by Counterclaim

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**REASONS FOR JUDGMENT**

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Papageorgiou J.

**Released:** February 14, 2024