CITATION: Wong v. 10658987 Canada Inc, et al. 2024 ONSC 2795
COURT FILE NO.: CV-19-81726
DATE: 2024 05 15

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: CHASE WONG, Plaintiff

AND:

10658987 CANADA INC., GUO JIE MA aka SAM MA AND MIN ZHOU aka ANN ZHOU, Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: Joshua Nutt, for the Plaintiff

Ryan Flewelling, for the Defendants

HEARD: January 15 – 19 and written submissions January 26 – February 5, 2024

DECISION AND REASONS

Introduction and Summary of Issues

[1] This matter came on for trial on the dates shown above. The proceeding was originally an Application under *Rule* 14.05 for oppression remedies under the *Canada Business Corporations Act* ("*CBCA*") but it was converted to a Summary Trial by Court Order.[1]

[2] The central question at the trial was whether or not there was an agreement between the parties entitling the Plaintiff to a 50% interest in the Defendant corporation ("106"). In the event the Plaintiff is so entitled, he seeks various forms of relief. In the event he is not, he seeks an accounting and compensation for work he did to benefit the Defendants.

[3] Because this was originally an Application to be decided on a written record, the evidence in-chief consisted of the Application Record and some Supplementary Affidavits. The trial consisted largely of *viva voce* cross-examination but earlier cross-examinations conducted out of court were to be treated as discovery transcripts. In addition, there was a Request to Admit and a Response to Request to Admit as well as a Joint Book of Documents admitted as to authenticity.

[1] A copy of the order defining the issues for trial is attached as Appendix A

Some of those documents were written in Chinese characters and were accompanied by certified translations into English.

[4] I heard oral evidence over five days with the occasional assistance of a Mandarin interpreter. Finally, there were submissions in writing and a follow up videoconference.

[5] For the reasons that follow, I find that the Plaintiff cannot establish there was a binding agreement to make him a 50% owner of the holding corporation. He is entitled to a refund of his investment and to reimbursement for the services he provided. Some of those amounts have been paid and the Plaintiff must also account for rent he collected from tenants.

[6] As set out in the Order for trial, the parties are entitled to a reference to quantify the amount owing if they are unable to resolve that question.

Background and Chronology Leading up to Acquisition of Real Estate

[7] The issues in dispute focus primarily on events between February of 2018 and March of 2019. During that time, the parties were involved in setting up the numbered company and in financing acquiring and renovating three rental properties.

[8] The idea was to acquire investment properties and use them for short term rentals such as Airbnb. There is no question the parties agreed to work together to attain these objectives but the question of what legal obligations existed between them and what binding agreements were made is the subject of dispute.

[9] There is a detailed outline of the chronology and the allegations in an earlier decision of the Court dealing with a Motion for injunctive relief.[2] Much of the chronology is also contained in the Agreed Statement of Facts. In summary, however, the context of the dispute is as follows.

[10] The plaintiff, Wang Cheng ("Chase Wong") was born in China and immigrated to Canada in 2001. Between 2006 and 2015 he was back in China. When he returned to Ontario in 2015, he obtained his real estate licence. At all relevant times, when dealing with the Defendants, he was a licenced real estate agent in Ontario.

[11] The Defendants Minn Zhou ("Anna") and Guo Jie Ma ("Sam") are also Chinese Canadians and are married to each other. They are both trained pharmacists but at the time when these events transpired, Anna was working as a travel agent and Sam was running a pharmacy. Sam and Anna also owned real property in Ottawa and Toronto and were owners of a Thai food franchise restaurant. They had previous experience in property ownership, business operation and as shareholders and directors of corporations.

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[2] See *Wong v. 10658987 Canada Inc.*, 2020 ONSC 246 & 2020 ONSC 6885. The parties acknowledge that Justice Corthorn accurately described the chronology, the issues and the allegations in her reasons.

[12] The Plaintiff also had experience in carrying on business in Ontario. As the evidence disclosed, in addition to being a licenced real estate agent, he was the owner of one or more corporations and owned a building renovation business.

[13] The parties knew each other before they formed a business relationship. Anna's brother knew Chase's brother in China. Sam and Anna had dinner with Chase and his wife on at least one occasion. At some point, Anna ran across Chase's advertisement for his services on an online Chinese language platform called "comefromchina.com". She formed the impression that Chase was a "full service real estate agent" who could offer a variety of property services and could also be a money lender or investment partner.

[14] Various options for investment and cooperation were described by Chase on "comefromchina.com". One of the options was described as "Real Estate Development and Operation" and mentions using a limited company to purchase real estate with Chase providing capital injection and property management services and the other party to provide capital injection and financing capacity. There were various other models of business cooperation listed by Chase on the website.

[15] The first time the parties discussed doing business together was in 2017. At that time, Anna and Sam had purchased a new home. They were considering whether to sell their existing home or to keep it as an investment and to rent it out. They understood that the plaintiff was experienced in short term rentals such as Airbnb and consulted him about that possibility.

[16] In early 2018, Sam and Anna began a discussion with Chase about purchasing properties for the short term rental market. Various options were discussed for how to finance and structure this investment. Chase promoted his services as a real estate agent and property manager but was also prepared to contribute capital. Chase proposed that the properties be purchased through a numbered corporation. At least one of the options included Chase becoming a co-owner of the corporation.

[17] Discussions took place by email, by text message, in face to face discussions and by telephone.[3] The most detailed written proposal was sent on February 19, 2018. In that proposal, the Plaintiff proposed that Anna and Sam (described as Party A) set up a corporation and get a bank loan, that Chase (described as Party B) find a house and make an offer, that Party B be in charge of renovations and rental management, that Party B would not take a salary and would refund all real estate commissions. Chase also proposed that Party B would have a right to buy 50% of the numbered company in five years or would purchase 100% if Sam and Anna wanted out at that time. Although this proposal was in writing, it was not what was agreed upon.

[18] By March 1, 2018 the parties had reached some kind of understanding about doing business together. On that date, the plaintiff incorporated 106 online showing Sam and Anna as the first

[3] The text messages were in Chinese characters. Certified English translations are included in the trial documents and in addition, the parties included their own understanding of what the texts meant in English in their English language affidavits.

directors. Also on that date, the parties submitted an offer in the name of 106 to buy the first of what would ultimately become the three properties now owned by the corporation.

[19] The Defendants state that this was all done in a rush and no final agreement was reached. In their version of events, the Plaintiff was content to act as the real estate agent and the property manager and to provide other services as required. They then continued to negotiate towards the possibility of joint ownership.

[20] The Plaintiff testified that the agreement was finalized in a series of telephone conversations. There are cell phone records which show that conversations took place but no documentation of the contents.

[21] According to the Plaintiff, the specific agreement was as follows:

a. The parties would purchase properties together through a corporation which the Plaintiff would incorporate through the Corporations Canada website.

b. Sam and Anna would be the first directors of the corporation. The number of shares would be limited and the working capital would be injected through bank loans, shareholder loans or other loans to the corporation.

c. The Plaintiff would contribute one half of the down payments, renovation costs, furniture and other expenses and Sam & Anna would contribute the other 50%.

d. Sam and Anna but not Chase would use their credit to obtain mortgage financing for the properties to be purchased.

e. Chase would be the real estate agent and would reimburse the corporation for the amount of the real estate commission.[4]

f. Chase would coordinate and pay for the renovations through his company, OTWA or by making cash payments.

g. Chase would set up an Airbnb account and would be responsible for renting the properties.

h. Chase would be responsible for cleaning of the properties through his company, OTWA.

i. Chase would provide the property management services.

j. Sam and Anna would be responsible for financial and book keeping matters.

[4] Since the purchaser does not pay commission directly and the commission paid by the vendor is divided between the brokerages and the agents, the phrase "reimburse the commission" is somewhat ambiguous. At a minimum it appears Chase intended to invest the share of the commission he would earn as the purchaser's agent.

k. All investment decisions and other significant business decisions would require joint approval of Chase, Sam and Anna.

l. After acquiring a number of properties, Chase was to be provided with 50% of the shares of the corporation and the parties would enter into a unanimous shareholder agreement.

m. Sam, Anna and Chase would not receive salaries.

[22] Nowhere was this detailed agreement reduced to writing. The Defendants state that various options were discussed and there were ongoing discussions but no final decision on ownership. It was Anna's evidence that they had discussed making the Plaintiff a co-owner of the corporation only if they wanted to keep doing business together and were getting along. It was, according to her, an option they were exploring but it was never finalized.

[23] One thing is clear. In most of the options proposed by Chase, he was not to become a shareholder until after the properties were purchased. As he testified, he knew that under the code of conduct governing real estate agents, he would be obliged to disclose an ownership interest if he was acting as a real estate agent. As he put it in his testimony, "if they knew I was an owner, they would not have sold to us". The other reason to defer ownership of the corporation was in relation to the bank. Sam and Anna were to guarantee the mortgages given to 106. Chase did not want to be "on the mortgages".

Incorporation and Purchase of Properties

[24] On March 1, 2018 the Plaintiff proposed to Sam and Anna the purchase of property at 448 Kent St. (the Kent St. property). On the same day he incorporated the Defendant 106 showing Min Zhou and Guo Jie Ma (Sam and Anna) as the incorporators and first directors. Later that day, the Defendants submitted an offer to purchase on behalf of the new numbered company ("106") showing Chase Wong and Your Choice Realty Corp. (the brokerage to which he was attached) as the buyer's agent. That offer was accepted on March 2. 2018 and closed on April 30, 2018.

[25] On April 10, 2018 the parties submitted a similar offer for 347 Main St. (the Main St. property). That offer was accepted on April 11, 2018 and closed on July 3, 2018.

[26] On April 12, 2018 the parties submitted an offer to purchase 99 Adeline St. (the Adeline St. property). That offer was accepted on April 13, 2018 and closed on July 3, 2018.

[27] Between March 1 and July 3, 2018, 106 purchased three properties. The total purchase price for all three properties was $1,595,000.00. All of those purchases were financed by mortgages in the name of the numbered company and guaranteed by Sam and Anna. In each case, Chase was shown as the buyer's agent.

[28] For the Main St. property, the corporation obtained a mortgage of $468,450.00. To close the transaction net of adjustments and inclusive of down payment, legal fees and land transfer tax, the buyers had to contribute $166,233.92 in addition to the $5,000.00 deposit already paid.

[29] On the Adeline property, the mortgage was $284,700.00 and the cash necessary to close was $96,806.97 in addition to the $5,000 deposit. I do not have the precise figures for the Kent St. property because there is an error in Anna's Affidavit purporting to attach the closing report. Nevertheless, it is common ground that the purchase price and closing costs were funded by means of a mortgage with the balance in cash. The cash amount paid to the lawyer was $124,161.23.

[30] All the cash for the closings and for the purchase costs other than the mortgage advances was provided by Anna and Sam. On April 26, 2018, however, just prior to the closing of the Main St. property, the Plaintiff provided a cheque for $70,000 payable to Anna from his company, OTWA Development Inc. According to Anna's Affidavit, she believed this was to assist with cash flow and would have to be returned if they did not go into partnership. She denies that this was intended to be half of the down payment and denies that there was an agreement to be co-owners at that time. The cash required to close on the Main St. property was actually $171,233.92 inclusive of down payment, land transfer tax, closing costs and legal fees.

[31] The Plaintiff testified that in addition to paying the $70,000, he also funded renovations at each of the properties. This is not denied by the Defendants although they are not certain exactly how much the Plaintiff contributed by way of supplies and labour. For purposes of the trial, all parties accept that the Plaintiff invested at least $100,000 in renovation costs. The Defendants state that they asked for bills and receipts on an ongoing basis but were told by the Plaintiff that he was too busy to compile those records at that time.

[32] In addition to completing renovations, the Plaintiff also made the arrangements to list the properties on Airbnb.

[33] The Plaintiff attests that the $70,000 he paid to Anna was intended to be his half of the downpayment on the Kent St. property. He states that he would have contributed 50% of the downpayments on the Main St. and Adeline St. properties but he was unable to get figures from Anna. He was not too concerned as he had spent a considerable amount on renovations and was leaving for a trip to China. Renovations funded by the Plaintiff continued at the properties while he was overseas. He assumed that they would balance the books in due course.

[34] Whatever the arrangement was supposed to be, there is no dispute that the Plaintiff invested at least $170,000 in cash and in renovation services.

Discussions about Joint Ownership

[35] In July and August of 2018, following the purchase of the three properties in the name of 106, the parties were actively discussing how to structure joint ownership of 106. Anna asked her accountant for advice and then consulted a lawyer named Todd Ji.

[36] In September, October and November 2018, at Anna's request, Todd Ji prepared drafts of a unanimous shareholder agreement. One of the drafts included Anna and Sam (25% each) and Chase (50%) as equal shareholders. Another proposed Sam (50%) and Chase (50%) as equal shareholders. There were also drafts of property management agreements. None of these were executed.

[37] From the documents and the evidence, there is no doubt the parties were discussing having the Plaintiff jointly own 106 and no doubt they had asked Mr. Ji to draft at least two versions of the proposed shareholder agreement. The agreement was never signed and shares were never actually issued to the Plaintiff.

[38] As discussed earlier in these reasons, both parties owned other corporations. They may not have had a sophisticated knowledge about corporate legal structures but they were not neophytes. Chase had at least one other corporation for his OTWA business and had previously had an agreement with another client to use a holding company to purchase property. Sam and Anna held other property through corporations and they had a corporation for their Thai Express franchise.

[39] It appears that at the time the parties were discussing these proposals in 2018, the 106 corporation had been incorporated but never organized. At the time there was no minute book, no organizing resolutions and no shareholder ledger. In reality no shares had been issued although the articles provided for "an unlimited number of common shares". There was no resolution of the board of directors authorizing shares, no subscription for shares, no shareholder ledger and no share certificates.

[40] There was one document which came to light just prior to trial. That is what purports to be a directors resolution provided to the TD Bank when it was approving the mortgage financing. It was signed only by Sam and not by Anna. There is no record of this resolution in the corporate records. It was not signed by the two first directors. It appears to simply be a *pro forma* document submitted to the bank.

[41] After this litigation commenced, the Articles of 106 were amended by Sam and Anna to create eight classes of shares. Sam and Anna were issued "Class A common shares" in place of "common shares" they were said to have been issued in March of 2018. At the time of the reorganization, the corporation also passed a general organizing by-law and a banking by-law as well as the normal resolutions. All of these documents were backdated to March 1, 2018 but it seems clear they were only prepared in November of 2019 when the Defendants consulted a corporate solicitor to do this work.[5] Although dated March of 2018, these documents did not exist prior to the start of this litigation. They do not assist in determining what the parties had agreed to at the time the properties were purchased or if they ever reached agreement.

[42] It is clear that during 2018 the parties were cooperating, were doing business together and were actively considering draft shareholder agreements that would have given the Plaintiff a half interest in the corporation. As events transpired, however, their business relationship broke down before any formal documents were signed between them.

[5] This was technically in breach of an agreement and undertaking incorporated into an order of Master Kaufman (as he then was) on May 13, 2019.

The Breakdown in the Relationship

[43] The relationship ran into some difficulty in late 2018. There was an incident at one of the properties listed on the Airbnb account. Apparently there was a large party at which a young party goer was injured in what was reportedly a stabbing. It is possible the organizers of the party broke into the property but in any event this event and complaints by neighbours resulted in a decision by Airbnb to ban the Plaintiff from the Airbnb platform.

[44] While there were other booking platforms available such as Booking.com or Vrbo.com, the City of Ottawa was also taking steps to regulate the use of properties for short term rentals. A short term rental by-law required licencing and imposed certain restrictions. This created difficulty for the business model. A decision was taken to rent out some of the units in the three properties to conventional long term tenants.

[45] By early 2019 the parties were negotiating various ways of changing their relationship. There were discussions about the Plaintiff assuming joint responsibility for the mortgages. Sam and Anna were considering whether they wished to continue owning these properties at all. There were discussions about the Plaintiff buying out the interests of the Defendants and taking sole ownership. It appears that Sam and Anna no longer wished to continue in business with Chase although they ultimately decided that they wished to retain ownership of the three houses.

[46] In addition to the Airbnb issues, it is Anna's evidence there were issues about the quality of the renovations, concerns that complete accounts were not being maintained for the work and concerns that the Plaintiff had collected rent and not remitted it to the corporation or to Anna. At some point, the Plaintiff paid another $10,000 to Anna but the parties disagree what the basis was for that payment. The Plaintiff says it was another deposit towards the downpayments for the properties whereas Anna characterizes it as part of the rent that had been collected by Chase and not remitted to the corporation.

[47] On March 15, 2019 the Plaintiff, having concluded that the Defendants wished to keep the three houses and "kick me out without reasonable compensation" issued a demand by email. First, he demanded his "money back". Secondly, he demanded they negotiate reasonable compensation for "what I did for the number company". Chase subsequently sent various emails with proposals about how the parties could unwind their relationship and deal with the properties.

[48] On March 16, 2019 the Defendants unilaterally deposited $170,000 into the Plaintiff's bank account. An email stated that this was a return of his $70,000 paid to Anna in April of 2018 and $100,000.000 paid towards the costs of renovations but acknowledging that more might be owing once Chase submitted receipts.

[49] The email also purported to withhold the $10,000 he had paid in early 2019 because the Plaintiff had allegedly collected $17,400 in rent and not remitted it to Anna or to 106. In response, the Plaintiff made it clear that payment and deposit of the $170,000 did not constitute agreement to abandon his ownership claim but stated the parties should continue negotiating.

[50] On March 19, 2019 the Defendants retained counsel and had a lawyer's letter sent to the Plaintiff. On March 28, 2019 the Plaintiff also retained counsel. His lawyer wrote to the Court requesting a date for an urgent injunction and advising an Application would be launched for an oppression remedy.

[51] The Application was not launched until October of 2019 and the Injunction Motion was ultimately argued before my colleague Justice Corthorn on December 12, 2019. In reasons released on April 21, 2020 (referred to above), Corthorn, J. declined to grant injunctive relief but continued the undertaking that had been given before Master Kaufman in May of 2019.[6]

Analysis & Decision

a) Was there an agreement to make Chase a joint owner?

[52] Bearing in mind that the Plaintiff has the burden of proving the agreement, I am unable to conclude that there was a binding agreement to make the Plaintiff a 50% owner of 106. There is no doubt that various options for cooperation were discussed including several that would have included Chase becoming a joint owner.

[53] In support of his position, the Plaintiff points to the various options listed on "comefromchina.com", the email and text exchanges, the length of time he and Sam were on the telephone before putting in the offer on the Main St. property and the way the parties behaved after closing. This includes the fact that he paid $70,000 to Anna, began to renovate the houses at his own expense and the fact that the parties behaved as if they were in business together in a joint venture. He also points to an ambiguity in the Chinese text messages. A particular character set which had been translated by the interpreter as cooperation could also mean partnership.[7]

[54] While the Defendants agree that they spoke about multiple options, and agree the plaintiff advanced a significant amount of money, they deny there was ever a partnership or a formal commitment to share ownership. It is their evidence that the plaintiff was open to simply acting as the real estate agent and property manager and managing the Airbnb rentals as well as providing renovation, repairs and cleaning on request. They state that they had discussed going into partnership if everything worked out well in which case, Chase had agreed to pay 50% of all of the costs. They deny that this was ever finalized and they deny they had agreed to joint ownership before the relationship broke down. In any event, the Plaintiff did not pay 50% of the costs and he did withhold rental funds. The Defendants point out that there were numerous rolling proposals and ideas. It was the Defendants' evidence that, had they reached a final agreement, they would have had the agreement documented by a lawyer.

[55] In Canada, the law of contract and personal obligations, is for the most part governed by provincial law. While some aspects of that law are set out in statutes, the basic law of contract

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[6] The fact that the undertaking had been breached by amendment of the articles and issuing of new shares was evidently not disclosed.

[7] At trial the mandarin interpreter agreed with Chase that the character set in question could bear that interpretation but all parties, including Chase, agreed that the certified translation using the word "cooperation" was also correct.

formation in this case is to be determined under the common law of Ontario (largely identical in all provinces outside of Quebec).

[56] The fundamental basis of the law of contract is agreement. The party seeking to enforce a contract must demonstrate that the parties reached a legally enforceable agreement to do or refrain from doing specific things. To be enforceable, the parties must have been *ad idem*, which is to say that they must have clearly identified the expected terms to be performed by each of them and agreed that they would do them.

[57] Even if the Plaintiff thought there was an agreement, and began to act in anticipation of becoming a shareholder, the evidence does not persuade me the parties were ever *ad idem* about issuing shares to the Plaintiff. Indeed, the myriad proposals and the various drafts show an ongoing set of negotiations concerning when and on what terms, shares would be issued.

[58] It is true that acceptance of an offer may be implied. For example, if one party makes a detailed proposal and the other party then takes the steps contemplated by that proposal while acting as if the contract is in force, that may demonstrate agreement with the proposal and an intent to be bound by it. A party may also be bound to a contract if, knowing that the other party believes they have a deal, they stand silent while the first party acts on the promise.[8]

[59] It is more complicated if there are multiple proposals and particularly if, as here, some of those proposals are in writing and some are said to have been oral. If the terms of the offer are not clear then there cannot be implied acceptance just because the parties get ahead of themselves and start spending money before the terms have been finalized.

[60] It is frequently the case that parties who are involved in negotiations discuss a term which seems attractive at one stage in the negotiation but which seems less attractive later on. As Professor Waddams says in his text on contract law, the question then is "whether the change of mind comes just in time or just too late".[9] Consequently, it is not enough for the parties to have had a plan to issue shares, to have made necessary preparations or even to have had a fixed intention to do so at some point in the relationship. The question is whether they had bound themselves to do so.

[61] In this case the Defendants testified that they felt rushed by the Plaintiff. He told them they had to act immediately to avoid losing the property. He incorporated the company for them and told them how to proceed. He delivered a cheque to Anna without a clear understanding of what the funds were for. He began renovations with little discussion and with no clear understanding as to how his company, OTWA was to track expenses or charge for services. The Defendants were not naïve and they were aware of what the Plaintiff was doing. They also understood that the Plaintiff wanted to become a joint owner and they were actively considering it.

[62] I accept the evidence of the Defendants that they never unequivocally and irrevocably agreed to make Chase a joint owner. Amongst other things, the share ownership was always

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[8] See *Vollmer v. Jones*, 2007 CarswellOnt 1524, [2007] OJ. No. 956, 36 RFL (6th) 340 (SCJ) @ paras 48 - 49
[9] Waddams, *The Law of Contracts, 7th Edition*, Thomson Reuters, 2017 @ p. 21

something to happen in the future and it was always conditional. The Plaintiff understood he could not have an ownership interest in the purchaser corporation at the outset, at least not without disclosing it to the vendor and the other agents and brokers. He also understood that if he was an owner at the time of the purchase, that would have to be disclosed to the bank and he would probably be asked to guarantee the mortgages. Unless he was involved in a fraud, the Plaintiff did not have a vested ownership interest at the time the buildings were purchased.

[63] What the Plaintiff believed he had was the right to acquire shares once the properties were all in place by contributing 50% of the cost. He anticipated he would pay half the downpayments, the renovation costs and that he would contribute the commissions he earned on the purchases. He did pay $70,000 and he did fund the renovations through his own company. He never contributed the full 50% because he says he was never given the figures and because matters broke down before there was a complete accounting.

[64] It was Anna's evidence that there was a plan to make Chase a joint owner if things went well and they wanted to keep doing business together. I find that to be an accurate description. The parties were actively discussing joint ownership and how it would function. They were reviewing draft shareholder agreements but they were also reviewing property management agreements. None of these were finalized.

b) Can the Plaintiff rely on the oppression remedy for an ownership interest?

[65] The lack of offer and acceptance is not necessarily the end of the analysis. Even if there was no meeting of the minds and no binding contract, the Plaintiff could be entitled to relief if he had a reasonable expectation to be treated fairly and was not. In cases where the corporate structure is used to abuse the rights of creditors or minority shareholders, it is possible for the Court to have recourse to the statutory equitable remedies.

[66] This case was originally brought as an Application for an oppression remedy under s. 241 of the *CBCA*. The legislation creates an equitable remedy for "Oppression". The remedies are available to "complainants" in circumstances where the Court finds that the corporation or its directors have conducted themselves in a manner that is "oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer". S. 241 (3) then provides the Court with sweeping remedial powers.

[67] The definition of complainant is as follows:

> ***complainant*** means
>
> **(a)** a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
>
> **(b)** a director or an officer or a former director or officer of a corporation or any of its affiliates,
>
> **(c)** the Director, or
>
> **(d)** any other person who, in the discretion of a court, is a proper person to make an application under this Part.

[68] It is conceded that a person who claims he is entitled to shares or claims to be owed an accounting for funds paid to a corporation may fit within the definition of complainant and can be a proper person to make an application for an oppression remedy. As set out above, a beneficial owner of shares is entitled to make such an application as of right. Even if a person who claims he should have been entitled to shares is not a beneficial owner, such person will readily fit within the category of persons who in the discretion of the Court are proper persons to make an application.[10]

[69] Just because a litigant has standing to ask the Court for an oppression remedy, does not mean such a remedy should be granted.[11] It remains an extraordinary discretionary remedy. Courts have declined to recognize a person as a complainant or to grant an oppression remedy if there is another legal remedy available such as a breach of contract claim, an action for fraud or a simple action in debt.[12]

[70] The oppression remedy exists primarily to protect vulnerable shareholders, creditors and others with a stake in a corporation from corporate decisions that may leave them without a remedy or actions that are legal but unfair to the vulnerable complainant. The case for an oppression remedy is strongest when the plaintiff or applicant has a legitimate interest in how the corporation has been managed. Where decisions have been made in the governance or operations of the corporation which might be otherwise legal but which are unfair and disregard the interests of the complainant, the Court may exercise its discretion to grant a remedy. In addition, in appropriate cases, the remedies may be granted not just against the corporation but against officers and directors personally.[13]

[71] An example of a case in which a plaintiff was granted relief was the decision in *Larmon v. Synergy Hospitality Inc.,* cited by counsel.[14] That case is ostensibly similar to the case at bar because the plaintiff had been promised a 25% interest in a corporation but the parties had never been able to negotiate the terms of a shareholder agreement. In that case, however, the plaintiff had worked in the business for four years to make it a success. The Court found that while he was not a shareholder in fact, he was the "recipient of an oral promise that he has a 25% equity interest in the restaurant" and he relied upon the reasonable expectation that the promise would be fulfilled. Despite the fact the plaintiff had been repaid the $20,000 he had loaned to the corporation, he was found to have contributed his "sweat equity" on the basis of the promise. The Court granted an oppression remedy in the form of a compulsory buy-sell order.

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[10] See *Badr v. 2305136 Ontario Inc.,* 2016 ONSC 5039 (Div. Ct.), *Fedel v. Tan,* 2010 ONCA 473; 101 OR (3d) 125 (CA) and see *Re: People's Department Stores Ltd. (1992) Inc.,* 2004 SCC 68, [2004] 3 SCR 461 @ paras. 50 & 51

[11] *BCE Inc. v. 1976 Debentureholders,* [2008] 3 S.C.R. 560, 2008 SCC 69

[12] *Waiser v. Deahy Medical Assessments Inc.,* (2006) 14 BLR (4th) 317 (SCJ) @ para. 34

[13] 106 was incorporated under the *CBCA* and is a federal corporation. It should be noted that had 106 been incorporated provincially, the identical remedies are available under the *Ontario Business Corporations Act,* RSO 1990, c. B.16 as amended. s. 281 of the *OBCA* is virtually identical to s. 241 of the federal act.

[14]

[72] In the case now before the Court, I find that there was no specific promise because the ownership interest under discussion was always a future interest and was always conditional on the parties agreeing to proceed with it. In contrast to the *Larmon* case, 106 was barely operated at all during the time in question although it did acquire the three properties. The Plaintiff did advance funds to Anna and he did fund the renovations. Those contributions would have been valued had the parties agreed to proceed with a share purchase and the Plaintiff may well have anticipated they would demonstrate both his capacity and utility to the Defendants as well as his good faith. It is not clear that he took these steps with the reasonable expectation that he was already an owner or would be made an owner at any particular time.

[73] It was the evidence of the Plaintiff that he expected all of his contributions of capital would ultimately be treated as shareholder loans. He had a reasonably sophisticated understanding of corporate financing when he testified that the shares would be purchased for nominal value and all other investments by the shareholders would be loans. It is not at all clear that the other parties shared this understanding, nor if the contributions were to be loans, how it is inherently unfair that they now be repaid without making him a joint owner.

[74] I am not persuaded that the Plaintiff has been treated unfairly. The parties have agreed in the Order for Trial that if the Plaintiff is not entitled to shares, he will be entitled to a calculation of what is due to him. He is to be provided with a return of his capital and with reasonable compensation for the property management services. He will be entitled to keep the real estate commissions he earned.

[75] At this stage it is not necessary to compel the corporation to issue shares, divest itself of its assets or to wind up its affairs.

Summary and Conclusion

[76] In accordance with the Order for Trial, the Court finds that the Plaintiff is not an officer or director of 106 nor is he entitled to be made an officer or director or to call for a buy out of his interest.

[77] Also in accordance with the Order for Trial, the Plaintiff is entitled to be paid for expenses he incurred on behalf of the corporation and entitled to retain amounts he earned for real estate commissions.

[78] The Plaintiff has been repaid the sum of $170,000 but not the sum of $10,000. The latter will be treated as rent he collected and remitted. The Defendants are entitled to an accounting for any rent collected by the Plaintiff in excess of $10,000 if it was not paid to them.

[79] It is also clear from the evidence at trial that the Defendants believed the Plaintiff would be compensated for property management services and cleaning services. As the trial before me did not involve an examination of the "expenses" incurred on behalf of 106 by the Plaintiff in these categories, I do not know if fees for those services are already included.

[80] It seems reasonable that determination of the Plaintiff's entitlement to compensation for those services should be part of the accounting.

Costs

[81] I did not hear submissions on costs. Counsel may make an appointment to argue costs, to settle the form of the judgment and for further direction on the reference contemplated by the Order for Trial should that be necessary.

Mr. Justice C. MacLeod

Date: May 15, 2024

APPENDIX "A" – COPY OF ORDER FOR TRIAL

Court File No. CV-19-81726-0000

ONTARIO SUPERIOR COURT OF JUSTICE

JUSTICE	)	TUESDAY, THE 9TH DAY OF
CHARLES HACKLAND	)	NOVEMBER, 2021

B E T W E E N:

CHASE WONG

Applicant

and

10658987 CANADA INC., GUO JIE MA aka SAM MA and MIN ZHOU aka ANNA ZHOU

Respondents

APPLICATION UNDER SECTION 241 OF THE CANADA BUSINESS CORPORATIONS ACT, RSC, 1985, C C44.

ORDER

THIS APPLICATION made by the Applicant, Chase Wong, was heard this day at Ottawa, Ontario.

ON READING the materials filed by the parties, and

ON HEARING the submissions by counsel of the parties hereto and on consent of the parties,

1. THIS COURT ORDERS that the Application is hereby converted into an action and that it be heard by way of a summary trial.

2. THIS COURT ORDERS that the transcripts from the cross-examinations on affidavits that have already been completed shall serve as transcripts of examinations for discovery.

3. THIS COURT ORDERS that the following issues are to be decided at the summary trial:

a) Whether or not the Applicant is a shareholder and director in 10658987 Canada Inc. ("106");

b) In the event that the Applicant be found to be a shareholder and director in 106:

i. Subject to the court's discretion, the properties owned by 106 shall be sold, with the terms thereof to be agreed upon or decided by the Court, or the Applicant or the Respondents, Guo Jie Ma, aka Sam Ma, and Min Zhou, aka Anna Zhou (hereinafter collectively referred to as "Sam and Anna"), shall be provided with the option to buy out the other, with the terms thereof to be agreed to or to be decided by the Court;

ii. There shall be a reference for an accounting to determine what each of the parties are entitled to receive from the sale or buyout which would include the following:

1) The quantum Sam and Anna would be entitled to be paid as a result of the moneys that they put into 106;

2) The quantum the Applicant is to be paid for expenses that he may not have been re-imbursed;

3) The quantum 106 is owed by the Applicant for rent he has collected and has not remitted to 106; and

4) The quantum 106 is owed by the Applicant for the commissions.

c) In the event that the Applicant is not found to be a shareholder and director in 106, there shall be a reference for an accounting to determine the following:

i. The quantum the Applicant is to be paid for expenses that he may not have been re-imbursed;

ii. The quantum 106 is owed by the Applicant for rent he has collected and has not remitted to 106; and

iii. The quantum that the Applicant is entitled to keep for the commissions.

4. THIS COURT ORDERS that the costs to date in this matter will be costs in the cause.

CITATION: Wong v. 10658987 Canada Inc., et al. 2024 ONSC
COURT FILE NO.: CV-19-81726
DATE: 2024 05 15

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: CHASE WONG, Plaintiff

AND:

10658987 CANADA INC., GUO JIE MA AKA SAM MA AND MIN ZHOU AKA ANN ZHOU, Defendants

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Joshua Nutt, for the Plaintiff

Ryan Flewelling, for the Defendants

REASONS FOR DECISION

Regional Senior Justice C. MacLeod

Released: May 15, 2024