

CANADA / JUDGMENT

Fang v. Yin

2025 ONCA 682

COURT

Court of Appeal for Ontario

DECIDED

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Judges

Gillese, Eileen E.; Favreau, Lise G.; Rahman, Moiz

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Fang v. Yin, 2025 ONCA 682

DATE: 20251002

DOCKET: COA-24-CV-0264

Gillese, Favreau and Rahman JJ.A.

BETWEEN

Yan Fang

Plaintiff/Defendant to the Counterclaim

(Respondent)

and

Hui Jun Yin

Defendant/Plaintiff by Counterclaim

(Appellant)

Adam Asgarali and Kanru Gu, for the appellant

Ran He, for the respondent

Heard: September 24, 2025

On appeal from the judgment of Justice Eugenia Papageorgiou of the Superior Court of Justice, dated February 14, 2024, with reasons reported at 2024 ONSC 985.

REASONS FOR DECISION

A. Overview [1] This is an appeal of the motion judge's order granting summary judgment in favour of the respondent and dismissing the appellant's counterclaim.

[2] The appellant and respondent entered into an agreement to acquire a property in Scarborough to renovate and ultimately rent to students. Their dispute is focused on whether they had a partnership agreement or whether the respondent only agreed to lend the appellant money to buy the property. They both contributed towards the purchase price of the property, and to the costs of renovating the property. However, only the appellant's name was on title. While the parties had agreed that a \$500,000 mortgage would be placed on the property, the appellant initially obtained a mortgage for \$800,000, and later a mortgage for over \$1 million. The most recent mortgage from the Royal Bank remains undischarged.

[3] The respondent moved into the property with her son after the construction work was substantially completed. The appellant later tried to have the respondent evicted from the property, alleging that she was a tenant without any ownership interest. The respondent also alleged that the appellant harassed and assaulted her in an attempt to get her to leave the property.

- [4] The respondent brought an action seeking various declarations including to recognize the partnership agreement, establish her ownership interest in the property, and make the appellant solely responsible for the undischarged mortgage he had placed on the property without her consent. The respondent also sought a permanent injunction to prevent the appellant from harassing her and interfering with her enjoyment of the property. Finally, the respondent sought damages for her financial losses.
- [5] The appellant's counterclaim was, as described by the motion judge, a "mirror image" of the respondent's action. He sought declarations that the respondent had only loaned him money and was merely a tenant at the property, along with damages for slander of title. He alleged that the written agreement between himself and the respondent was not valid because the third partner – his sister – had not signed it. He denied assaulting the respondent and claimed it was the respondent who made false police complaints against him as a way of badgering and intimidating him.
- [6] The motion judge determined that there were no genuine issues requiring a trial regarding the business arrangements between the parties, and found that they had entered into a valid partnership agreement. In deciding that a trial was unnecessary on this issue, the motion judge reasoned that any credibility issues regarding the existence of a partnership between the parties were easily resolvable on the written record. The motion judge found that the appellant's assertion that the respondent had only loaned him money without expecting an interest in the property was not credible and was undermined by the record, including the appellant's own text messages with the respondent. Further, the record clearly established that all the necessary elements for a valid partnership agreement between the parties were met. The motion judge concluded that the appellant had breached this partnership agreement, including by mortgaging the property for amounts that exceeded the parties' agreement.
- [7] The motion judge found that the respondent's assault and harassment allegations could not be determined solely based on the written record. Accordingly, she held a mini-trial within the summary judgment motion pursuant to r. 20.04 (2.2) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. After hearing the testimony of both parties, the motion judge found that the respondent's allegations that the appellant engaged in harassing and abusive behaviour, including physical assaults, were made out.
- [8] In the result, the motion judge granted the declaratory relief the respondent sought, including declaring that she had a 50 percent interest in the property by way of a resulting trust. The motion judge also granted the respondent's request for an injunction preventing the appellant from interfering with her use and enjoyment of the property.
- [9] Regarding the respondent's damages claim, the motion judge directed that an associate judge hold a reference to determine the quantum of damages resulting from the appellant's unauthorized mortgaging of the property. The motion judge did so because she was unable to determine the parties' respective shares of the profits and carrying costs of their joint

enterprise from the written record. This was in large part because the appellant had not filed any evidence on these issues. In particular, there was no evidence as to the current balance owing on the Royal Bank mortgage.

B. Issues on appeal [10] In oral argument, the appellant's counsel focused their submissions on the following three issues:

- The appellant was denied procedural fairness and natural justice because the motion judge stated at the outset of her reasons that the appellant had assaulted the respondent.
- The motion judge improperly interpreted text messages between the parties.
- The motion judge erred in using the summary judgment process because the "entire evidentiary record was in dispute."

[11] After hearing the appellant's oral submissions, we did not find it necessary to hear from the respondent's counsel. We dismissed the appeal with reasons to follow. These are those reasons.

C. The appellant was not denied procedural fairness [12] First, the appellant claims a lack of fairness because the motion judge found that the appellant had committed what he describes as a "criminal offence" when she found that he assaulted the respondent. The appellant points to the fact that this finding is set out at the beginning of the motion judge's reasons and argues that it therefore tainted her credibility findings. This submission is baseless.

[13] The respondent's statement of claim pleaded that the appellant had assaulted her. It was an issue that was squarely before the motion judge and one she needed to address in deciding whether to grant the injunctive relief requested by the respondent. Because she could not decide this allegation based on the written record, the motion judge held a mini-trial and heard viva voce evidence from both parties. After a thorough review of the evidence, she found that the appellant did assault the respondent and that injunctive relief was appropriate. This was a finding she was entitled to make. The fact that she chose to mention it in the overview of her judgment does not support a finding that she prejudged the matter or otherwise treated the appellant unfairly.

D. The motion judge's interpretation of text messages discloses no error [14] Second, the appellant alleges that the motion judge improperly interpreted certain text messages that had been translated from Mandarin to English. The appellant says that the motion judge improperly inserted and omitted words when she referred to the messages in her judgment. We do not accept this submission.

[15] The appellant's submission ignores this court's role and the deferential standard of review that we must apply. The motion judge was entitled to draw the inferences that she did from the translation of the text messages. Her insertion of names or words using square brackets was part of her reading of the text messages in the context of the entire record. The appellant has not shown any palpable and overriding errors. To the extent that the appellant

takes issue with the translation of the text messages, it was open to him to have filed alternate translations at the motion hearing. He chose not to. The appellant has shown no basis for this court to interfere.

E. Summary judgment was appropriate [16] Third, the appellant alleges that summary judgment was inappropriate in this case because the “entire evidentiary record was in dispute.” He contends that the court should have heard from translators who could have testified about ambiguities in the meaning of certain relevant documents in Mandarin, including the text messages. This submission is also meritless.

[17] The motion judge turned her mind to the appropriateness of the summary judgment process. She determined that she could resolve any credibility issues about the parties’ business arrangements using the written record. The motion judge explained why she decided the appellant’s version of events was not credible. In particular, she concluded that his evidence was inconsistent with his own text message exchanges with the respondent. Those findings were open to her on the evidence. As the motion judge explained, hearing from the parties would not have added anything to her credibility determinations, given that the credibility contest between the parties was largely illusory and the result of bald allegations made by the appellant. We see no reviewable error in her approach.

F. Other issues raised on appeal [18] Finally, although not pursued in oral argument, we briefly address three other issues raised in the appellant’s factum – the permanent injunction, the decision to order a reference, and the dismissal of the appellant’s counterclaim. We reject each of the appellant’s submissions on these issues.

[19] We see no error in the motion judge’s decision to order a permanent injunction. Given her findings about the appellant’s aggressive and harassing behaviour towards the respondent, including physically assaulting her while trying to evict her from the property, we see no basis for appellate intervention in this case.

[20] We also see no error in the motion judge’s decision to order a reference to determine the amount of damages and we reject the appellant’s argument that the respondent had to claim an accounting for the motion judge to have jurisdiction to order a reference. Pursuant to r. 20.04(3), the motion judge may, among other things, “grant judgment with a reference to determine the amount” where “the court is satisfied that the only genuine issue is the amount to which the moving party is entitled.” It is difficult to understand the appellant’s complaint that, had he known the motion judge was considering ordering a reference, he would have provided additional evidence. The motion judge ordered the reference because it was not possible for her to determine “the parties’ respective shares of ongoing profits and carrying costs”, and she did not know the current balance owing on the Royal Bank mortgage. The appellant was required to put his best foot forward on the motion, yet he did not provide evidence of his expenses. There is nothing unfair about the motion judge’s use of a reference here.

[21] Finally, the motion judge committed no reviewable error in dismissing the counterclaim. This is evident from the factual findings that she made in the respondent's favour.

G. Disposition [22] The appeal is dismissed with costs to the respondent in the amount of \$10,000 all-inclusive.

"E.E. Gillese J.A."

"L. Favreau J.A."

"M. Rahman J.A."

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