

CANADA / JUDGMENT

Liu v. Hao

2025 ONCA 883

COURT

Court of Appeal for Ontario

DECIDED

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Judges

Paciocco, David M.; George, Jonathon C.; Monahan, Patrick J.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Liu v. Hao, 2025 ONCA 883

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Paciocco, George and Monahan JJ.A.

BETWEEN

Baochong Liu, Yueming Qiao (also known as Mike Qiao), Yali Wang, Yinghui Zhu, Yanhui Liang and Viktoriia Jin

Plaintiffs/Moving Parties (Respondents)

and

David Hao, David Hao Professional Corporation, Dongxia Zhao (also known as Helen Zhao), Suyun Lu, 2640353 Ontario Inc.*, Dunhua Yuan (also known as Donahue Yuan), Zijian Liu, Bao Ying Sun (also known as Baoying Sun)*, and Ping Yuan*

Defendants/Responding Parties (Appellants*)

Ran He, for the appellants

Jeffrey Wang and Yuliya Mykhaylychenko, for the respondents

Heard: December 5, 2025

On appeal from the orders of Justice Edward M. Morgan of the Superior Court of Justice, dated March 4, 2025, with reasons reported at 2025 ONSC 1395.

REASONS FOR DECISION

- [1] The respondent investors were defrauded of their combined investments of \$2.65 million that they made in a second mortgage on a property (the “Property”) they were told was being developed as a gas station by the appellant 2640353 Ontario Inc. (“264 Inc.”). The appellants Bao Ying Sun and Ping Yuan are directors and principals of 264 Inc.[1] They each guaranteed the second mortgage loan personally. Their appeal stands or falls with 264 Inc.’s appeal. For convenience, 264 Inc., Mr. Sun, and Ms. Yuan will be referred to collectively as the “appellants”.
- [2] The investment funds were obtained for the appellants by employees of a law firm, David Hao Professional Corporation (“DHPC”), which acted for 264 Inc. in connection with the first mortgage on the Property and provided mortgage brokerage services to 264 Inc. to secure the second mortgage funding. The respondents were persuaded to invest through misrepresentations and material non-disclosures made by DHPC’s office manager, Suyun Lu (“Lulu”) and in-house mortgage broker, Dongxia Zhao (“Helen”). The principal of DHPC, David Hao, is the solicitor and Lulu’s son. The arrangement was that all payments related to the investments were to be handled through DHPC using the firm’s trust account, including the collection of the investments, the disbursement of funds, and the receipt and payment of interest by 264 Inc. For convenience, DHPC, Lulu, Helen, and David Hoa will be referred to collectively as the “DHPC Defendants”. They are not parties to this appeal.
- [3] The respondents obtained summary judgment imposing joint and several liability for \$3,760,020 against the DHPC Defendants, the appellants, and the other directors/principals of 264 Inc.

- [4] It is not contested that 264 Inc. did not directly receive all the invested funds, but the motion judge found that it benefited from most of those funds. It is not contested that 264 Inc. defaulted on the second mortgage and therefore has not repaid the loan to the respondents.
- [5] The appellants concede on appeal that they received some, but not all the \$2,644,000 in total funds paid out of the DHPC trust account. They agreed before us that they benefited from \$1,080,534.53 that was used to pay down the first mortgage on the Property (\$678,867.50) and a collateral second mortgage they had taken out to finance the development (\$401,667.03). The motion judge also found that the appellants benefited from \$1,200,000 that was paid to Hillcrest Group Inc. ("Hillcrest"), the company retained to complete the construction work for the gas station on the Property, through two advances: (1) \$900,000 to Hillcrest's lawyer; and (2) \$300,000 directly to Hillcrest. Notably, Hillcrest is owned by Helen's son. The appellants concede that they benefitted from the second of these two payments (\$300,000) but contend that there was no evidence before the motion judge that the first payment of \$900,000 was actually paid to Hillcrest or used in the construction, a point we address below. Therefore, in total, the appellants concede that they received the benefit of \$1,380,534.53 of the total \$2,644,000 paid out of DHPC's trust account.
- [6] The appellants resisted all liability before the motion judge, claiming that they owed nothing because the respondents breached the loan agreement and the DHPC Defendants engaged in a conspiracy against the appellants as agents for the respondent investors. The motion judge rejected these submissions, finding that although acting in conflict – since the DHPC Defendants were agents of both the respondents and the appellants – the DHPC Defendants acted for the benefit of the appellants when making the payments.
- [7] The motion judge explained his decision to impose joint and several liability on all the defendants, including the appellants, as follows:
- [G]iven the conflict of interest, with DHPC acting in the interest of 264 and its principals and preferring those interests to the interests of the Plaintiffs, it is evident from the record that all of the Defendants were working together to deprive the Plaintiffs of their funds. 264 and its principals are therefore jointly and severally liable for all of the breaches of duty and negligence of Lulu, Helen, David Hao, and DHPC toward the Plaintiffs. [Emphasis added.]
- [8] The motion judge therefore awarded judgment against the appellants for \$3,660,020, being the entire amount lost by the investors including interest on those funds, plus \$100,000 in punitive damages, for a total damages award of \$3,760,020. He also awarded costs to the respondents on a substantial indemnity basis of \$319,000, noting that "the Defendants have all put the Plaintiffs through relatively extensive litigation in a case where their liability was patent on the face of their dealings".
- [9] The appellants raise several grounds of appeal and seek leave to appeal the substantial indemnity cost award. At the completion of the appellants' oral submissions, we dismissed the appeal with reasons to follow. These are our reasons.

- [10] We do not accept that the motion judge erred in granting summary judgment by failing to properly apply or engage the framework set out in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 in any meaningful way. The motion judge did not explicitly mention the two-step approach described in *Hryniak*, at paras. 66-67, to determine: (1) whether there is a genuine issue requiring a trial, and (2) whether, if there appears to be a genuine issue requiring a trial, the need for a trial can be avoided by exercising the enhanced fact-finding powers in r. 20 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194. However, the motion judge found that the record of the misdirected payments was “uncontroverted” and that the appellants’ “liability was patent on the face of their dealings”. A motion judge need not recite the test verbatim, so long as their reasons demonstrate that they complied with it: *Royal Bank of Canada v. 1643937 Ontario Inc.*, 2021 ONCA 98, 154 O.R. (3d) 561, at para. 29. Those factual findings made by the motion judge – uncontroverted facts and patent liability – necessarily imply his conclusion that there was no genuine issue requiring a trial, and did not require resorting to the use of the fact-finding powers. “[S]ummary judgment must be granted if there is no genuine issue requiring a trial”: *Hryniak*, at para. 68 (emphasis in original).
- [11] The appellants dispute the underlying factual conclusions that reflect the motion judge’s consideration of the *Hryniak* framework. They also rely on these alleged errors to challenge liability findings the motion judge made. We see no palpable and overriding errors in these factual conclusions, and they were arrived at without legal error.
- [12] First, the appellants argue that there was no evidence that the DHPC Defendants were 264 Inc.’s agents when the payments were made. They argue that although the DHPC Defendants were acting for 264 Inc. in connection with the first mortgage, there is evidence that 264 Inc. retained new counsel for the second mortgage. Since the date of that retainer is unclear, the motion judge had no basis to find the agency relationship with the DHPC Defendants continued. With respect to the \$900,000 payment, the appellants argue that there was no evidence that anyone associated with 264 Inc. knew about or authorized this payment, undermining an agency finding relating to these funds.
- [13] We reject both arguments. With respect to the termination of the first mortgage retainer, the appellants’ evidence was that it took three months for the second mortgage to be finalized after the mortgage commitment was executed on February 16, 2022, and that it was during this period that they replaced DHPC as counsel. Ms. Yuan’s affidavit confirms that the replacement lawyer was hired to register the second mortgage, which did not close until May 17, 2022. Meanwhile, the material payments which benefited the appellants were all made by March 29, 2022, well before the three-month formalization period expired, and long before the second mortgage was registered. The appellants, who know the date they retained new counsel, did not see fit to present this evidence during the summary judgment motion. They did not put their best foot forward at their own peril. The evidence as it is, supports a reasonable inference that on a balance of probabilities DHPC was still acting for the appellants concerning the first mortgage when the material funds were dispersed.

- [14] More importantly, Ms. Yuan's affidavit makes clear that Helen acted as mortgage broker for 264 Inc. in arranging the second mortgage. The uncontested evidence before the motion judge was that 264 Inc. required more money than the first mortgage provided, and Helen found the additional funds for 264 Inc. through the respondent investors. Given that Helen was acting as mortgage broker for 264 Inc., found the money for them, and transacted it through DHPC's trust account, it is untenable to argue that the DHPC Defendants were not 264 Inc.'s agents when making payments for 264 Inc.'s benefit out of the trust account.
- [15] Relatedly, in her affidavit Ms. Yuan confirmed that 264 Inc. approved the "\$400,000" payment, which retired the collateral second mortgage. This payment was made on March 29, 2022, and was the last of the material payments benefiting 264 Inc. This is clear evidence that DHPC was still administering the loans on behalf of 264 Inc. when each of the material payments was made.
- [16] This uncontradicted evidence therefore confirms the agency relationship.
- [17] The appellants' alternative submission is somewhat more complicated. They argue that there was no agency relationship relating to the \$900,000 payment because there was no evidence that the payment was authorized by the appellants or even received by Hillcrest. They also argue that Ms. Yuan's evidence was that the principals of 264 Inc. did not have knowledge of or authorize this payment, making it inappropriate for the motion judge to resolve these contested issues surrounding the \$900,000 on a summary judgment motion.
- [18] First, this dispute is immaterial to the outcome. As indicated, the motion judge imposed joint and several liability. He did so after finding that "all of the Defendants [including the appellants] were working together to deprive the Plaintiffs of their funds". Whether the appellants benefited from the \$900,000 or not, unless the finding of joint and several liability gets set aside, the outcome of the appeal remains the same. We explain below why we reject the appeal of the joint and several liability finding.
- [19] In any event, we see no basis for interfering with the motion judge's finding that the appellants benefited from the \$900,000 payment and that this payment was authorized.
- [20] We begin with the authorization issue, on which there can be no doubt. Ms. Yuan acknowledges in her affidavit that the second mortgage loan was obtained to develop a gas station on the Property. The uncontested arrangement was that payments in and payments out relating to the loan would be transacted through the DHPC Defendants as agents. It is also uncontested that Hillcrest was undertaking the construction. Even if there had been no express authorization, the appellants clearly provided ostensible authority by acquiescing to payments being made to Hillcrest. It is obvious the appellants knew that Hillcrest must be receiving the required construction funds from the mortgage fund given that: (1) Hillcrest was working actively on the Property; (2) the partially built structure was substantial; and (3) as acknowledged by the appellants, they had not used any of their own money in the construction. The failure by the appellants to object is, at the very least, acquiescence in payments being made to Hillcrest to fund the construction they were undertaking.

- [21] Ms. Yuan's evidence that the appellants did not know about the \$900,000 payment does not undermine the validity of the payment, or the agency. If a payment from the mortgage fund in the agent's hands is ultimately used for an authorized purpose, the payment is authorized regardless of whether the principal is alerted beforehand to the specifics of the particular payment. Ms. Yuan's attestation that they were not told about the \$900,000 payment is not evidence to the contrary relating to whether this payment was within the scope of the agency. We therefore see no error in the motion judge proceeding on the basis that the payment of money to Hillcrest for construction was authorized.
- [22] The motion judge was also entitled to find that the \$900,000 payment benefited the appellants by funding construction. It is not contested that the \$900,000 was paid to Hillcrest's lawyer, who was not otherwise connected to the construction project. It is also clear that Hillcrest had obtained the funds it needed for the significant construction it had accomplished from the second mortgage fund, and that the only other payment that came its way from the second mortgage fund was the \$300,000 payment. On these facts and given the purpose of the loan and the construction that was accomplished, the motion judge was entitled in the absence of evidence to the contrary to infer that this money was ultimately applied for the appellants' benefit, as construction funding.
- [23] We are also not persuaded that the motion judge erred in imposing joint and several liability on the appellants. The motion judge was entitled to conclude that "it is evident from the record that all of the Defendants were working together to deprive the Plaintiffs of their funds". The record the motion judge was referring to included uncontroverted evidence that 264 Inc. received most of the benefit of the investment money (or slightly more than half of the investment money if the \$900,000 payment was to be excluded), and that it accepted funds to pay down its prior financing on what was supposed to be a loan from the respondents to build a gas station. This was a finding available to the motion judge through summary judgment on the uncontested evidence, and it is a finding that supports the punitive damages award against all the defendants, including the appellants. There was therefore no error in imposing joint and several liability or awarding punitive damages against the appellants.
- [24] The motion judge also did not err by double counting interest payments. In his damage calculation he explicitly deducted interest of \$253,100 that the respondents did receive.
- [25] Finally, we decline to grant leave to appeal the costs order. Leave to appeal a costs order is only granted in obvious cases where the party seeking leave demonstrates "strong grounds upon which the appellate court could find that the judge erred in exercising his discretion": *Brad-Jay Investments Limited v. Village Developments Limited* (2006), 218 O.A.C. 315 (C.A.), at para. 21, leave to appeal refused, [2007] S.C.C.A. No. 92. The motion judge was entitled to find that substantial indemnity costs were appropriate given the circumstances of the case and the way it was litigated. The defendants, including the appellants, turned a case where liability was patent into a complicated case requiring relatively extensive litigation. The appellants did so by resisting repayment at the summary judgment motion, even concerning

the benefits they obviously received from the investment money, and by initiating a counterclaim after trying to cast themselves as the victims of the respondents' agents. Moreover, the appellants have not provided a sufficient foundation to find the award was disproportionate. Significant deference is owed on appeal to cost awards made by first instance judges: *Barry v. Anantharajah*, 2025 ONCA 603, at para. 28. Leave is therefore denied.

[26] For these reasons the appeal was dismissed.

[27] Costs of \$20,000 are payable by the appellants to the respondents, inclusive of applicable taxes and disbursements.

“David M. Paciocco J.A.”

“J. George J.A.”

“P.J. Monahan J.A.”

[1] There were several other defendants in the action below who are directors and/or principals of 264 Inc., but the only individual appellants in this appeal are Bao Ying Sun and Ping Yuan.

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