

CANADA / JUDGMENT

Lu v. Wang

2025 ONCA 702

COURT

Court of Appeal for Ontario

DECIDED

15 October 2025

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Lu v. Wang Collection Decisions of the Court of Appeal Date 2025-10-15 Neutral citation 2025 ONCA 702 Docket numbers COA-25-CV-0310 Judges Tulloch, Michael H.; Roberts, Lois B.; George, Jonathon C. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Lu v. Wang, 2025 ONCA 702 DATE: 20251015 DOCKET: COA-25-CV-0310 Tulloch C.J.O., Roberts and George JJ.A. BETWEEN Jingye Lu Plaintiff (Respondent) and Changchen Wang Defendant (Appellant) Li He, Tsz Tsun (Jason) Fu and Yin Fung (Louis) Liu, for the appellant Chris Belsito, for the respondent Heard and released orally: October 3, 2025 On appeal from the judgment of Justice Janet Leiper of the Superior Court of Justice, dated February 10, 2025. REASONS FOR DECISION

- [1] The appellant raises a narrow issue on appeal. He argues that the motion judge erred in her assessment of damages by requiring him to pay half of a gross negligence HST penalty in accordance with a supplementary investment agreement he reached with the respondent. Specifically, he says that the gross negligence HST penalty did not form part of the HST assessment and that in any event it arose solely as a result of the respondent's alleged failure to discharge his fiduciary duties.
- [2] These are new arguments that were not raised before the motion judge. At the motions hearing, the parties treated the HST gross negligence penalty as part of the HST liability. This is also reflected in the CRA notice of HST assessment that lists both the HST and the penalty as part of the same assessment.
- [3] The test for this court to entertain new issues on appeal is stringent. As this court instructed in *R. v. Reid*, 2016 ONCA 524, 132 O.R. (3d) 26, at para. 43, the evidentiary record must be sufficient to permit an appellate court to fully, effectively, and fairly determine the new issues raised on appeal. Moreover the failure to raise the issues at trial must not be due to tactical reasons. And the court must be satisfied that no miscarriage of justice will result from the refusal to entertain the new issues on appeal.

- [4] We are not persuaded that the appellant has met these criteria. Importantly, the evidentiary record is insufficient to permit us to determine these issues. Nor are we satisfied that any miscarriage of justice will result. These issues could have been raised before the motion judge, and the appellant does not seek to introduce fresh evidence that would explain why he did not.
- [5] The appeal is dismissed.
- [6] Costs are payable by the appellant to the respondent in the agreed upon all-inclusive amount of \$5,000.00. “M. Tulloch C.J.O.” “L.B. Roberts J.A.” “J. George J.A.”

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