

Facts

- [2] The Defendants, Tasteco Supermarket Inc. (“Tasteco”) and 10609820 Canada Inc, o/a Famijoy Supermarket (“Famijoy”) were two large Asian supermarkets located in Scarborough and Oakville respectively.
- [3] The Plaintiff alleges that in July 2017, he was approached by the Defendant Zhonggui Lin (“Gordon”) about a potential investment in the Tasteco Supermarket.
- [4] The Plaintiff alleges that Gordon guaranteed that he would receive the following annual returns on his investment of \$500,000:
- Year one: 14.5 percent or \$72,500
 - Year two: 17.5 percent or \$87,500
 - Year three: “around” 20 percent or \$100,000
- [5] The Plaintiff also alleges that in November 2017, Gordon advised him that Tasteco had a value of \$2.2 million, and his investment would be used to expand Tasteco, thereby increasing the value of his shares. Gordon’s representations with regard to the return rate are set out in a text message exchange between the Plaintiff and Gordon. The Plaintiff alleges that his investment was based upon Gordon’s representations.
- [6] The Plaintiff entered into a written Agreement with Gordon and the Defendant Lan Lin (“Leona”) on January 25, 2018, where the Plaintiff agreed to purchase 500,000 shares – 22.7 percent of the shares of Tasteco – for \$500,000. At the time, the Plaintiff and the Defendants Gordon, and Leona were the only three shareholders and directors of Tasteco.
- [7] The Plaintiff made his payment of \$500,000 by cheque in trust to Tasteco’s lawyer.
- [8] The Plaintiff alleges that since signing the Agreement he has been provided with “virtually zero” financial disclosure. The first time he received financial statements or minute books from Tasteco was when it delivered its Affidavit of Documents in February 2024.
- [9] The Plaintiff has not received any dividends since 2018. At the end of each fiscal year, he was advised by Gordon that the corporation did not generate any profits and no dividends could be paid. Gordon explained that any profits were used for the construction and opening of a second supermarket.
- [10] In 2019, Gordon, Leona and third party shareholders commenced the development of a second supermarket, Famijoy.
- [11] On February 4, 2020, the Plaintiff entered into a Shareholder agreement with 2449167 Ontario Inc. (Gordon’s holding company), Aizhi Yang and 2740859 Ontario Inc., whereby Aizhi Yang and 2740859 Ontario Inc. received 980 and 1,960 Tasteco Class A shares. The Plaintiff alleges that Gordon later admitted to him that Aizhi Yang made no contribution

as consideration for her shares but received them in exchange for waiving a debt that Gordon owed Aizhi Yang personally.

- [12] In August 2021, the Plaintiff alleges that he was advised by Famijoy's accountant that Famijoy received a loan installment from the Bank of Montreal for renovation in the amount of \$317,327.00. The Plaintiff alleges that the accountant advised the Plaintiff that the amount was rapidly depleted by the Defendants within 2 weeks of receipt, and large sums were paid to the Defendants personally, including the Defendant Corporation Wonder-Lam International Trading Corporation ("Wonder-Lam").
- [13] The Plaintiff alleges that Wonder-Lam was formerly owned and controlled by Gordon. However, in 2015, Gordon appointed his wife, the Defendant Lin Lin Wang, as the sole director of Wonder-Lam. Lin Lin Wang is the sole director and owner of Wonder-Lam.
- [14] Wonder-Lam is engaged in the business of importing dry food supplies from China and reselling them to various supermarkets in Ontario. Wonder-Lam was one of the food suppliers for Tasteco and Famijoy.
- [15] On April 22, 2022, the day after the Plaintiff made another request for financial disclosure from Gordon and Leona, the Plaintiff discovered that Gordon and Leona had placed a notice on the front door of Famijoy "suspending" the Plaintiff from "all positions". On December 13, 2022, when the Plaintiff returned to Famijoy's premises, Leona called the police and accused the Plaintiff of trespass.
- [16] In November 2024, the Plaintiff's counsel wrote to the Defendants' corporate counsel to allow the Plaintiff to review financial statements. The Defendants' corporate counsel agreed, but despite repeated requests, neither Gordon nor Leona allowed the Plaintiff access to the financial records.
- [17] The Plaintiff then commenced this litigation for oppression against the Defendants.
- [18] The Plaintiff alleges that the Defendants transferred over \$1.6 million in cheques to Wonder-Lam. He alleges that there are large unexplained payments out of the company in the form of email transfers, bank drafts, cash withdrawals and debt memos. The Plaintiff alleges that the Defendants' explanations for these unexplained transfers are contradictory.
- [19] The Defendant Lin Lin Wang explains that these cheques related to purchases made by Tasteco and Famijoy from Wonder-Lam. In addition, Famijoy rented warehouse space from Wonder-Lam and some of the cheques related to rental payments. Lin Lin Wang also states that Wonder-Lam lent money to Gordon when the supermarkets had cash flow problems.
- [20] On February 29, 2024, the Defendants' litigation counsel, Helena Shao, who was also acting as corporate counsel, notified the Plaintiff that a shareholder meeting was going to be called to vote on the sale of Tasteco.

- [21] The meeting proceeded on March 11, 2024. The parties agreed for Tasteco to provide financial disclosure before another meeting was called to discuss the sale of Tasteco. However, the anticipated disclosure was never delivered and on April 24, 2024, the Plaintiff instead received news from Helena Shao that Tasteco was in the final stages of being sold. The Plaintiff alleges that the sale of Tasteco was in direct contravention to the Shareholder Resolution reached on March 11, 2024. Both Gordon and Leona were directly involved in the sale of Tasteco, but the Plaintiff was not notified until its completion.
- [22] Currently, the only information that the Plaintiff received was that Tasteco was sold for less than \$250,000.00. The Plaintiff alleges that Tasteco's tangible capital assets were \$810,545.00 according to its tax returns.
- [23] After Tasteco was sold, the Plaintiff received another notice from Gordon that Famijoy was also being sold. Gordon and Leona claimed that Famijoy was forced to shut down due to being heavily in debt. The Plaintiff alleges that this claim is contradicted by Famijoy's tax returns showing a tangible capital asset of \$3,526,401, in 2022.
- [24] In response to this and other proposed sales, the Plaintiff brought this summary judgment motion on an urgent basis. The motion was originally scheduled for September 27, 2024. Gordon and Lin Lin swore affidavits in response to the motion but refused to produce themselves for cross-examination because they required an interpreter.
- [25] On September 27, 2024, McKelvey J. adjourned the motion to allow the Defendants to attend cross-examination, but, given that the Defendants were in the process of selling Famijoy, ordered the following:
- a. The defendants will not sell the Famijoy business without complying with the shareholders agreement and the provisions of the Ontario *Business Corporations Act* (OBCA) and the *Canada Business Corporations Act* as they may relate to this transaction;
 - b. The funds received from the sale of the Famijoy business will be held in trust by the lawyer acting for the defendants on the sale except for payments to the landlord;
 - c. That Zhonggui Lin and Lin Lin Wang attend for cross-examinations on their affidavits on or before December 30, 2024
 - d. That the corporate defendants retain counsel on or before December 2, 2024
- [26] The Defendants did not comply with any of these Orders.
- [27] The Defendants were asked to provide their availability for cross-examination, but refused to cooperate.

- [28] The Defendants sold Famijoy in direct violation of McKelvey J.'s Order, without notice to the Plaintiff.
- [29] Shortly after the motion was heard, the Defendants attempted to sell Famijoy to Pacific Fresh Food Markert. However, that sale failed after the lawyer for the purchaser was advised by the counsel for the Plaintiff that the Defendants did not conduct the sale in accordance with the Shareholder Agreement as required by the Order.
- [30] Subsequently, the Defendants sold Famijoy to a third party without notifying the Plaintiff. The Plaintiff alleges that he only found out about the fact that Famijoy was sold when he visited the location of Famijoy on December 13, 2024 and discovered that a branch of the United Supermarket now operates in its place.
- [31] The Defendants did not retain new corporate counsel as required by McKelvey J., and Shao Law remained as lawyers of record when the summary judgment motion came before me for argument on April 30, 2025. Shao Law advised the Court that they had brought a motion to get off the record because the conduct of Gordon and Lin Lin put them in a conflict of interest position and they could not continue to represent the corporations. They declined to make any submissions when the motion was argued.

Analysis

Is This Case Appropriate for a Summary Judgment Motion?

- [32] Rule 20.04(2)(a) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 provides: “The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.”
- [33] Rule 20.04(2.1) sets out the court’s powers on a motion for summary judgment:

In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

- [34] These powers were extensively reviewed by the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, where it laid out a two-part roadmap for summary judgment motions, at para. 66:

On a motion for summary judgment under Rule 20.04, the judge should first determine if there is a genuine issue requiring trial based only on the evidence before her, without using the new fact-finding powers. There will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure, under Rule 20.04(2)(a). If there appears to be a genuine issue requiring a trial, she should then determine if the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2). She may, at her discretion, use those powers, provided that their use is not against the interest of justice. Their use will not be against the interest of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

- [35] Even with these extended powers, a motion for summary judgment is appropriate only if the material provided on the motion “gives the judge confidence that she can find the necessary facts and apply the relevant legal principles so as to resolve the dispute” (*Hryniak*, at para. 50).
- [36] In *Hryniak*, the Supreme Court held (at para. 49) that there will be no genuine issue for trial when the summary judgment 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.”
- [37] 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 may not rest on mere allegations or denials of the party’s pleadings, but must set out—in affidavit material or other evidence—specific facts establishing a genuine issue requiring a trial. The parties may not rely on the prospect that additional evidence may be tendered at trial: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200 (Ont. S.C.J.), at para. 26, aff’d 2014 ONCA 878 (Ont. C.A.), leave to appeal to SCC refused, [2015] S.C.C.A. No. 97 (S.C.C.)
- [38] It is well settled that “both parties on a summary judgment motion have an obligation to put their best foot forward” (see *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9). Given the onus placed on the moving party to provide supporting affidavit or other evidence under Rule 20.01, “it is not just the responding party who has an obligation to ‘lead trump or risk losing’” (see *Ipex Inc. v. Lubrizol Advanced Materials Canada*, 2015 ONSC 6580, at para. 28).
- [39] If the moving party meets the evidentiary burden of producing evidence on which the court could conclude that there is no genuine issue of material fact requiring a trial, the responding party must either refute or counter the moving party’s evidence or risk a summary judgment.

- [40] While Rule 20.04 provides the court hearing a summary judgment motion with “enhanced forensic tools” to deal with conflicting evidence on factual matters, the court should employ these tools and decide a motion for summary judgment only where it leads to “a fair process and just adjudication”: *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44; *Eastwood Square Kitchener Inc. v. Value Village Stores, Inc.*, 2017 ONSC 832, at paras. 3-6 (and cases cited therein).
- [41] The Plaintiff’s motion record in this case is comprised of the 30 page affidavit of the Plaintiff, Tianyu Li, and 26 exhibits totalling almost 1,000 pages, including various agreements, bank records and financial statements.
- [42] The Responding motion record includes the affidavits of the Defendants Gordon Lin, Lin Lin Wang and Lan Lin, and, with the exhibits, totals more than 1,000 pages.
- [43] There are significant factual disputes regarding the parties’ interactions and the various financial transactions that are impugned by the Plaintiff. There are significant factual disputes regarding the respective roles of the three individual defendants. In a nutshell, the Defendants allege that the Supermarkets were not profitable, and that neither Tasteco nor Famijoy distributed dividends to any of their shareholders.
- [44] Neither party has filed an expert affidavit from, for example, a forensic accountant or business evaluator who could review the financial records objectively.
- [45] The Pleadings include the Statement of Claim, six Statements of Defence, and a Counterclaim brought by the Corporate Defendants.
- [46] The Plaintiff has brought a motion to strike the affidavits of two of the Defendants, Zhonggui Lin and Lin Lin Wang, on the basis of their failure to attend for cross-examination as ordered by McKelvey J.
- [47] If those two affidavits are struck, the Defendants still have the affidavit evidence of the Defendant Lan Lin to support their position on this motion for summary judgment. Her affidavit disputes many of the specific allegations contained in the Plaintiff’s affidavit, and specifically denies misappropriating any funds or conducting any fraudulent transfers and disputes the Plaintiff’s allegation that he did not have access to the corporation’s financial records.
- [48] In *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764, the Court of Appeal stated, at para. 51:
- In cases that call for multiple findings of fact on the basis of conflicting evidence emanating from a number of witnesses and found in a voluminous record, a summary judgment motion cannot serve as an adequate substitute for the trial process.
- [49] In my view, that is precisely the situation presented by this summary judgment motion. Given the voluminous record presented by the parties and the lack of expert evidence,

combined with the very real factual disputes regarding numerous allegations spanning a 6 year business relationship, I do not believe that the summary judgment process will lead to “a fair process and just adjudication”, nor am I confident that, based on the existing record, even with the enhanced powers set out in Rule 20.04, I “can find the necessary facts and apply the relevant legal principles so as to resolve the dispute”.

- [50] While I understand the Plaintiff’s position that two of Defendants’ affidavits should be struck out for failing to attend cross-examination as required by McKelvey J.’s Order, I am not comfortable resolving a \$760,000 claim by striking out two of the three Defendants’ affidavits. Even if I did, that would still leave one affidavit and numerous factual disputes that I am not confident can be fairly resolved on the basis of the present record. I would also remain uncertain regarding the respective liabilities of each of the various defendants.
- [51] Given my conclusion that this matter raises genuine issues requiring a trial, there is also no purpose to striking out the two affidavits at this point. There may well be costs or other consequences for the Defendants’ failure to comply with the Order of McKelvey J, but that will have to wait until the trial.

Conclusion

- [52] For the foregoing reasons, the Plaintiff’s summary judgment motion is dismissed. The Plaintiff’s action and Defendants’ counterclaim will have to proceed to trial.
- [53] The parties’ costs on this motion are reserved to the trial judge. In my view, costs in the cause are appropriate because a considerable portion of the costs associated with this motion will benefit the parties in terms of the overall proceedings.

Justice R.E. Charney

Released: June 24, 2025

CITATION: Li v. Lin, 2025 ONSC 3759

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

TIANYU LI

Plaintiff

– and –

ZHONGGUI LIN, also known as GORDON LIN, LAN LIN, also known as LEONA LIN, LIN LIN WANG, 2848013 ONTARIO LTD., 2449167 ONTARIO INC., TASTEKO SUPERMARKET INC., 10609820 CANADA INC., o/a FAMIJOY SUPERMARKET and WONDER-LAM INTERNATIONAL TRADING CORP.

Defendants

REASONS FOR DECISION

Justice R.E. Charney

Released: June 24, 2025