

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

Wenjian Han

Plaintiff )

) Calvin Zhang, for the plaintiff

– and – )

Ruiqin Qi, Lijun Fang and Shapiro  
Real Estate & Business Lawyers

) Matthew Stroh and Angela Yu,  
) for the defendant Lijun Fang

Defendants

Heard: April 16, 2025, at Newmarket,  
by video conference

**S.T. Bale J.:-**

[1] The defendant Lijun Fang moves under rules 21.01(1)(b) and 25.11 of the *Rules of Civil Procedure* for an order dismissing this action as against him, on the grounds that the statement of claim discloses no reasonable cause of action, and is otherwise scandalous, frivolous and an abuse of the court’s process.

**The plaintiff’s claim**

[2] The plaintiff’s claim arises from the sale of a farm and disposition of the proceeds of sale. Although at the time of sale, title to the property was held in the name of the defendant Ruiqin Qi, the plaintiff pleads that as of August 2020, Qi and he each held a 50 per cent beneficial interest.

[3] The plaintiff pleads that in November 2020, Fang was employed as farm manager. He pleads that between November 2020 and January 2022, he paid his 50 per cent share of loan payments and business expenses but began to notice “issues” with the farm management and financial reporting.

[4] In January 2022, farm operations were terminated because of ongoing losses. In October 2022, Fang and Qi produced a summary of income and expenses which the plaintiff alleges is deficient. The summary shows expenses of \$765,995.94 and income of only \$71,500, during the period of Fang’s management. The plaintiff pleads that he requested a professional audit of the farm finances, but Qi and Fang refused to provide one.

[5] The farm was sold in March 2024. The sale was completed in July 2024. The plaintiff pleads that on closing, Qi instructed Shapiro Law to withhold his share of the proceeds, alleging that there were unpaid expenses and additional costs incurred post-closing.

[6] In these circumstances, the plaintiff claims:

- a declaration that the acts and omissions of Qi and Fang have effected a result that is oppressive, unfairly prejudicial to, and that unfairly disregards his interests, pursuant to s. 248 of the *Business Corporations Act*;
- an accounting of all financial transactions involving the farm; and
- damages for breach of fiduciary duty, breach of contract, and unjust enrichment; and
- punitive damages.

### **Analysis**

[7] The test for a motion under rule 21.01(1)(b) is summarized in Paul M. Perell and John W. Morden, *The Law of Civil Procedure in Ontario*, 5th ed. (Toronto: LexisNexis Canada Inc., 2024), at ¶6.198:

The court's power to decide an issue of law or strike a claim or a defence is exercised only in the clearest cases, and where the moving party submits that the responding party's pleading does not disclose a reasonable cause or action or a reasonable defence, to succeed in having the responding party's action dismissed or his or her defence struck, the moving party must show that it is plain, obvious and beyond doubt that the respondent could not succeed in the claim or defence.

[8] In paragraph 21 of the statement of claim, the plaintiff alleges improper conduct on the part of Fang and Qi. He says that they:

- failed to provide regular and accurate financial reports;
- commingled personal and farm expenses;
- failed to use a trust account for the farm operation as they had agreed to do; and
- refused to provide proper documentation and explanations for expenses.

[9] If, as pleaded, Fang was the farm manager, and he commingled personal and farm expenses, and refused to provide proper documentation and explanations for expenses which he paid from the farm account, the plaintiff, as a 50 per cent partner in the farm operations, has a cause of action against him.

[10] Fang argues that the plaintiff does not have standing to make this claim and that such a claim must be made by the partnership. I disagree. A partnership is not a legal entity and has no capacity to sue or be sued. Legal proceedings must be brought by or against all members of the partnership individually. Where, as here, only one of two partners wishes to sue a third party, the proper procedure is to name the other partner as a defendant, so that the results of the litigation will be binding on her. If the law were otherwise, a person in the plaintiff's position who has suffered personal losses as a result of an employee's misdeeds would have no avenue of recovery.

[11] Fang argues that the claim under s. 248 of the *Business Corporations Act* should be struck, because it applies only to business corporations and not to partnerships. This point has been conceded by the plaintiff. Accordingly, paragraph 1(a), the first two lines of paragraph 21 and paragraph 23 will be struck out, with leave to amend paragraph 21.

[12] Although in paragraph 1(c) a claim for breach of fiduciary duty is made against both Fang and Qi, in paragraph 24 (under the heading “Breach of Fiduciary Duty”), the existence of a fiduciary duty is pleaded with respect to Qi, but not the plaintiff. Similarly, in paragraph 25, the plaintiff pleads what he alleges to be Qi’s breaches of fiduciary duty, but does not refer to Fang. Plaintiff’s counsel requests leave to amend the statement of claim to plead the facts upon which the fiduciary duty claim is based. He may do so. It is not plain and obvious that a manager who manages money on behalf of a partnership cannot be said to have a fiduciary duty to the partners. Where a person is trusted with managing another person’s money, they must do so honestly and in good faith and avoid conflicts of interest.

[13] Although in paragraph 1(c) a claim for breach of contract is made against both Fang and Qi, in paragraph 27 (under the heading “Breach of Contract”), the only contract pleaded is the agreement between the plaintiff and Qi to share equally in the beneficial ownership of the farm and the proceeds of sale. Accordingly, the plaintiff must either amend paragraph 1(c) to eliminate the claim against Fang for breach of contract or plead a relevant contract to which Fang is a party (*e.g.* his employment contract) and particulars of the alleged breaches.

[14] In paragraph 1(c) of the statement of claim, the plaintiff makes a claim against both Fang and Qi in unjust enrichment. In paragraph 30, he alleges that “[b]y refusing to release [his] share of the proceeds from the sale of the Farm and by claiming unreasonable and unsubstantiated expenses, Qi and Fang have been unjustly enriched at [his] expense.” The difficulty with this paragraph is that it is Qi (and not Fang) who was in a position to, and did, instruct Shapiro Law to withhold the plaintiff’s share of the sale proceeds. It is also problematic because so long as the proceeds remain in Shapiro’s trust account, no one will have been enriched. Paragraph 30 will therefore be struck out, with leave to amend. Given the allegation that Fang was an employee of the partnership and a fiduciary, it is probably unnecessary for the plaintiff to plead unjust enrichment in relation to the alleged commingling of personal and farm expenses. At this point, however, in the absence of a statement of defence, the plaintiff does not know whether Fang will admit the contractual relationship he alleges.

[15] Fang argues that the plaintiff’s claim for punitive damages should be struck out. He says that there are no facts pleaded to support such a claim. I disagree. If the plaintiff is successful in proving that Fang has charged personal expenses to the farm account or otherwise mismanaged partnership funds, an award of punitive damages will not be out of the question.

[16] Fang argues that the statement of claim contains insufficient particulars. In response, the plaintiff argues that particulars of the improper charges to the farm account are within Fang’s knowledge. He argues that Fang’s refusal to provide a proper accounting is evidence from which it may be inferred that the farm account was not properly managed. While I agree that the plaintiff should provide such further particulars as may be available, I do not see why Fang is unable to plead a defence without them.

**Disposition**

[17] For the reasons given, an order will go as follows:

- the plaintiff will have up to 30 days from the date of these reasons to deliver an amended statement of claim in accordance with these reasons; and
- the defendant Fang will deliver a statement of defence within 30 days after service of the amended statement of claim.

“S.T. Bale J.”

Released: July 30, 2025

CITATION: Han v. Qi, 2025 ONSC 4423  
COURT FILE NO. CV-24-00004184-0000  
DATE: 20250730

*ONTARIO*  
SUPERIOR COURT OF JUSTICE

BETWEEN:

Wenjian Han

Plaintiff

– and –

Ruiqin Qi, Lijun Fang  
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Defendants

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REASONS FOR DECISION

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S.T. Bale J.

Released: July 30, 2025

