

[3] The applicant has filed and relies on two factums. The factums total thirty-one substantive pages. As set out in the Consolidated Practice Direction for the Central South Region (“Central South Practice Direction”), except with leave of the court, factums on long motions and applications are limited to twenty pages. Leave to file two factums exceeding the page limits was not sought and is not granted.

[4] As set out in the Central South Practice Direction a “[c]ompendium containing excerpted portions of the court filed documents and evidence that are essential to the hearing of the motion or application shall be filed and uploaded by each party for all long motions and applications.” A compendium is also required pursuant rule 4.05.3 of the Rules of Civil Procedure and the Consolidated Civil Provincial Practice Direction (“Provincial Practice Direction”). The compendium is to include only those materials that will be referred to in argument and must have a table of contents hyperlinked to the sections within it and hyperlinks to authorities cited. A compendium is not optional.

[5] Neither party has prepared or uploaded a compendium. A compendium is required, especially where the materials are as voluminous as they are here and where there many issues for determination.

[6] According to the last confirmation form filed by the applicant a month ago, the applicant requires only 90 minutes for submissions and the entire application is said to require three hours. It should be self-evident that this estimate is inappropriate given the number and nature of the issues, the volume of material, and the requirement for the parties to bring to the attention of the court all relevant material facts and the authorities that establish the legal propositions relied upon for all heads of relief sought as required by the Provincial Practice Direction at paras. 22-24. Only a few of the issues raised by the applicant were heard at this appearance and it required almost the entire time allotted for the entire application.

[7] This application is a trial in a box. It is an attempt to pass on to the hearing judge the responsibility for sifting through the mountain of documentation for the admissible evidence, legal issues, principles, and authorities to decide the various issues at play. The hearing judge becomes a prospector sifting for gold, and counsel and the parties, the patrons who await and collect the treasures.

[8] There are other problems with this application proceeding on a paper record.

[9] Among the fourteen substantive heads of relief sought are claims for general, punitive and exemplary damages. Such damages are not available on an application. Numerous cases have cited this principle. A good starting point for counsel is the Divisional Court decision in *Hefford v. Charpentier*, 2009 CanLII 21761 (ON SCDC), at paras. 24-26. When this was pointed out to counsel for the applicant, counsel conceded that the applicant would not proceed with this relief on a paper record. It therefore requires a trial.

[10] Central to the relief sought by the applicant is a declaration that the respondent, Ms. Berwick, holds all the issued and outstanding shares of Catback Productions Incorporated (“Catback”) in trust for the applicant. However, there is no written trust agreement.

[11] The parties’ evidence is at idem that Ms. Berwick incorporated Catback, that 100 common shares were issued to Ms. Berwick and 100 preferred shares were issued to the applicant, and that Ms. Berwick was made the sole director and officer of Catback. The parties also agreed that the applicant’s earnings would be deposited into Catback, his expenses would be paid through Catback, and the applicant would be employed by Catback.

[12] The parties differ on their intentions and position as to the ownership of Catback. Their positions rely on an alleged verbal agreement.

[13] The applicant says that they agreed that Ms. Berwick would incorporate Catback for his benefit, would issue shares to Ms. Berwick which she would hold in trust for him, and the profits would be paid to him over time. Mr. Berwick says that they agreed that she would be the sole beneficial owner of Catback which would own and manage the applicant’s brand and social media accounts. The applicant denies that Ms. Berwick did any managing of his brand and social media accounts.

[14] There is a significant credibility issue to be determined with respect to the central issue of ownership and the alleged verbal agreement. There have been no cross-examinations. The affidavits disclose credibility issues on both sides. The applicant submits that the court can draw adverse inferences against Ms. Berwick’s credibility. In my view, it is not appropriate to do so on this record. In this context it is extremely difficult to determine credibility, and it cannot be resolved on this paper record.

[15] After considering these issues, the applicant requested that the court determine only the request for an accounting and production of information, the removal of Ms. Berwick as director and officer of the corporations, and the entitlement to a declaration of a purchase money resulting trust, with the balance of the relief sought to be adjourned to another day.

[16] The respondent sought an adjournment of all issues for six months to give her time to retain a lawyer and raise funds. A six month adjournment in these circumstances is not appropriate. The respondent also sought to vary the order of Gibson J. which froze her financial accounts but has not brought a motion to do so.

[17] The request for an accounting and production of information must be addressed for this proceeding to move forward in an organized fashion and can be addressed on the materials already before the court. The court agreed to hear submissions on the narrowed list of relief sought by the applicant. The respondent is required to bring a motion if she seeks to vary an order of the court.

[18] The applicant seeks an order that Ms. Berwick account for her time as power of attorney for property for the applicant between March 1, 2017, and October 2024. Ms. Berwick acknowledges that she acted pursuant to the power of attorney during this time. She submits there is not much to account for. On the evidence before me, Ms. Berwick is required to provide an accounting.

[19] Ms. Berwick is ordered to pass her accounts for the period during which she acted as the applicant's attorney for property in accordance with section 42 of the *Substitute Decisions Act*, 1992, SO 1992, c 30, as amended. This order does not require Ms. Berwick to account for her administering of the financial accounts or assets of Catback or 14238761 Canada Inc ("HoldCo"), regardless of the source of the funds or assets in Catback or Holdco's accounts or holdings.

[20] The applicant seeks an order requiring Ms. Berwick to produce all the books and records of the respondent corporations which are in her possession, control or power, including bank statements, back up documentation and receipts. Ms. Berwick did not object to producing the documents, but submitted that it was difficult to do so, that it would take time, and that some documents were missing. The requested records are necessary for the proper adjudication of the issues and should be produced. Ms. Berwick is ordered to produce all the books and records of the respondent corporations which are in her possession, control or power, including bank statements, back up documentation and receipts.

[21] However, the evidence is that at a certain point in time, the applicant changed the status quo of directing funds into the accounts of Catback and excluded Ms. Berwick from access to bank accounts and records of Catback and perhaps Holdco. Given the nature of the central dispute – ownership of Catback and Holdco, or their assets – production of all the books and records of the respondent corporations which are in the applicant's possession, control or power, including bank

statements, back up documentation and receipts is also necessary for the proper adjudication of the issues.

[22] The applicant is therefore ordered to produce all the books and records of the respondent corporations which are in his possession, control or power, including bank statements, back up documentation and receipts. The applicant is also ordered to produce such documentation on a going forward basis, at least monthly, until the determination of the issues in the application.

[23] The documents ordered to be produced by the applicant and Ms. Berwick shall be produced in the form of an affidavit of documents in accordance with the Ontario *Rules of Civil Procedure*, [R.S.O. 1990, Reg 194](#). The parties shall do so within 60 days. If the parties are unable to produce documents, they are to provide an affidavit setting out what is missing and why the documents cannot be produced. With respect to the ongoing disclosure obligation on the applicant, the applicant is not required to produce monthly affidavits of documents, but shall, prior to the hearing of the issues on their merits, compile into a supplementary affidavit of documents all documents produced monthly by him.

[24] The applicant seeks an order removing Ms. Berwick as an officer and director of the corporate respondents. He submits that she should be removed because of her admitted sale of Catback's van and personal use of the assets of the corporation. The evidence is that there are no further funds flowing through Catback from the applicant. The van has been sold. There is an order in place freezing the proceeds from the sale of the van and freezing all the accounts of all the respondents. There is a CPL registered on the property held by Holdco. There is little to nothing to be gained at this stage in removing Ms. Berwick as a director and replacing her with the applicant. I decline to do so.

[25] The applicant also seeks a purchase money resulting trust in his favour over the real property held by Holdco. He relies on the principles of a purchase money resulting trust set out in *Nishi v. Rascal Trucking Ltd.*, 2013 SCC 33, *Andrade v. Andrade*, 2016 ONCA 368, *Kerr v. Baranov*, 2011 SCC 10, and *Pecore v. Pecore*, 2007 SCC 17 which he summarizes as follows:

- a. A purchase money resulting trust occurs where a person advances a contribution to the purchase price of property without taking legal title and can arise when a party contributes directly to the purchase price or to the mortgage.
- b. the presumption of the resulting trust is in favour of the person who contributed financially to the property and the onus is placed on the grantee (the person who gratuitously receives title to the property) to rebut this presumption.

[26] *Nishi*, at para. 21, states that a purchase money resulting trust is a species of gratuitous transfer resulting trust.

[27] The applicant submits that all the money put into Catback came from the applicant's activities, Ms. Berwick did not contribute any funds to Catback, and that money from Catback was used to purchase the property held by Holdco and pay its expenses.

[28] There is evidence from Ms. Berwick that she contributed funds to Catback. For example, that she paid for household expenses and bought household supplies and furnishings from her own funds. She says that she contributed over \$20,000 to Catback from funds she received from her divorce settlement. The applicant disputes this and says there is no back-up documentation provided by Ms. Berwick to support her assertions that she contributed to Catback. He points to the opening balance sheet for Catback as of July 31, 2020, which indicates the only asset is a prepaid expense of \$1,000 and a corresponding liability of \$800 due to shareholder.

[29] The applicant ignores the subsequent balance sheets of Catback. The balance sheet for Catback as of July 31, 2021, shows \$59,135 as due to shareholders. The balance sheet for Catback for July 31, 2022, indicates that there was \$45,745 owing to shareholders. It is conceded that all the applicant's revenues to a certain point in time went into an account managed by Ms. Berwick and then, when Catback was incorporated, into Catback's account and that this money is accounted for as revenue in Catback's tax returns. Therefore, the money that is due to shareholders, came from somewhere else. Where it came from is not yet clear from the evidence.

[30] Further, as I understand the position of the currently self-represented respondent, she says she owns the common shares of Catback, in part for past services rendered for the applicant, and in part for the services she provided to him and to Catback after its incorporation. The applicant of course disputes all this. But this is a central issue that remains to be determined on this application. As noted, it cannot be determined on the paper record before me. Finally, if Ms. Berwick is successful, the deposit of funds into the Catback account would not be gratuitous as required for a purchase money resulting trust.

[31] As a result, I make no declaration of a purchase money resulting trust at this time. That issue is best left for determination on a full record.

[32] As requested, the balance of the relief sought is adjourned without a return date.

[33] I note that as early as April 24, 2025, Standryk J. raised a concern with the applicant that the issues raised may not be suited to an application and might be better addressed by way of action. In my view, a trial is required to determine the remaining issues. As I am not seized of this matter, the applicant is to bring this conclusion to the attention of any subsequent judge who is to hear the remainder of the issues.

[34] There has been divided success on the hearing. If the parties cannot agree on costs of the day, the parties may exchange a bill of costs and written submissions consisting of not more than two double-spaced pages, together with excerpts of any legal authorities and any relevant offers to settle. All submissions are to be filed with the court and uploaded to Case Centre. If no submissions or written consent to a reasonable extension are received by the court by December 8, 2025, the matter of costs will be deemed to have been settled.

M. Bordin, J.

Released: November 17, 2025

CITATION: Berwick v. Berwick et al., 2025 ONSC 6392
COURT FILE NO.: CV-25-543
DATE: 2025-11-17

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

RICHARD BERWICK

Applicant

-and-

ROSANNE BERWICK, CATBACK PRODUCTIONS
INCORPORATED and 14238761 CANADA INC.

Respondents

REASONS FOR DECISION

Justice Bordin

Released: November 17, 2025