# COURT OF APPEAL FOR ONTARIO

CITATION: Jiang v. 12280451 Canada Inc., 2025 ONCA 891
DATE: 20251219
DOCKET: COA-25-CV-0159

Simmons, Miller and Wilson JJ.A.

BETWEEN

Hongji Jiang and Ryan Ke

Plaintiffs
(Appellants)

and

12280451 Canada Inc., Jiabo Fan, and Genrong Sun

Defendants
(Respondents)

Micah Ryu and Jonathan Ku, for the appellants

Anthony Di Battista, for the respondents

Heard: December 11, 2025

On appeal from the judgment of Justice Suzan Fraser of the Superior Court of Justice, dated December 12, 2024, with reasons reported at 2024 ONSC 6973.

## REASONS FOR DECISION

[1] At the conclusion of the appeal hearing we set aside paragraph 3 of the motion judge's judgment dated December 12, 2024, and awarded partial indemnity

costs of the appeal to the appellants, fixed in the amount of $10,000 inclusive of disbursements and HST, for reasons to follow. These are our reasons.

[2] On a summary judgment motion, the motion judge granted judgment to the appellants against the corporate respondent, 12280451 Canada Inc. (the "Company"), for $111,279.80, being the total owing on promissory notes given to the appellants by the Company. In paragraph 3 of the judgment, the motion judge dismissed the appellants' action against the personal respondents. The appellants appealed from that order, asked that paragraph 3 be set aside and that summary judgment against the personal respondents be granted in their favour.

[3] The promissory notes at issue were executed in May 2022 by the respondent, Mr. Fan, in his capacity as a director of the Company. Mr. Fan's mother, the respondent, Ms. Sun, became the sole director of the Company in March 2023. However, Mr. Fan acknowledged on discovery that he continued to run the Company's business until it was sold in July 2023.

[4] Among other claims, the appellants assert that they were entitled to judgment against the personal respondents under the oppression provisions set out in s. 241 of the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 (the "CBCA") and other provisions of that act.

[5] In their statement of claim, the appellants pleaded that, in August 2020, they discussed purchasing a business (the Utopia Dream Café, the "Business") with Mr.

Fan. They claimed that Mr. Fan purchased the Business in trust on August 13, 2020 for $90,000, that the Company was incorporated on August 19, 2020, and that they contributed capital to the Company for various expenses, including, but not limited to, the Company purchase, renovations, equipment, and rent payments.[1] The appellants also pleaded that Mr. Fan issued the promissory notes to them on behalf of the Company to repay their contributions; that in August 2023 Mr. Fan told them he sold the assets of the Business; that the personal respondents improperly distributed the Company's assets, rendering it insolvent; and that these actions were unfairly prejudicial to, and unfairly disregarded, their interests as creditors of the Company.

[6] Although the appellants' pleadings lacked detail and were less than clear on various points, it was common ground on the motion that the Company operated the Business, that the Business was sold in or around July 2023 and that payments were no longer being made on the appellants' promissory notes.[2] On his examination for discovery, Mr. Fan claimed that the proceeds of sale of the Business were used to pay a commercial loan and shareholders' loans in priority to the promissory notes. Although Mr. Fan provided undertakings, or took

[1] In his affidavit filed in support of the summary judgment motion, Mr. Jiang clarified that the agreement of purchase and sale for the purchase of the Business was dated August 13, 2020. The version of that agreement attached as an exhibit to Mr. Jiang's affidavit reveals a completion date for the purchase of the Business of August 31, 2020. Mr. Fan claimed on his examination for discovery that the exhibit attached to Mr. Jiang's affidavit was not the final version of the agreement of purchase and sale but never produced the final version.

[2] Mr. Fan acknowledged on his examination for discovery that the Company was incorporated to hold and operate the Business and that the Business was sold in or around July 2023.

questions under advisement, concerning production of documents to support his assertions, and also took the issue of providing the details of the sale under advisement, he did not answer his undertakings or confirm his position on the matters taken under advisement. Under rule 31.07 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, he was therefore deemed to have failed to answer those questions.



[7] In her reasons for dismissing their claims against the personal respondents, the motion judge held that the appellants had not demonstrated that "the sale of the Corporation was oppressive or unfairly prejudicial to [their interests] as creditors" and observed that the "Corporation remain[ed] liable for the debt." The motion judge also concluded that the appellants were attempting to pierce the corporate veil when their case met "none of the established categories for doing so."

[8] As the motion judge referred to the "sale of the Corporation", it may not be clear that she appreciated, or remained mindful, of the distinction between a sale of corporate assets and a share sale. However, her finding that the appellants were attempting to pierce the corporate veil when their case met "none of the established categories for doing so" makes it clear that she failed to appreciate the breadth and flexibility of the remedies provided under s. 241 of the CBCA, which does not confine issues concerning the personal liability of corporate directors or other corporate actors to common law principles: see for example, *Wilson v.*

*Alhayeri*, 2017 SCC 39, [2017] 1 S.C.R. 1037, at paras. 38-39. In the result, the motion judge's order dismissing the appellants' action against the personal respondents cannot stand.

[9] However, whether the appellants can establish their claim under s. 241 of the CBCA, or on any other basis, remains to be seen. The appellants assert that they advanced funds to the Company to assist with the purchase of the Business and for various operating costs and that they participated in the Business for some period of time.[3] Nevertheless, they filed bare bones affidavits that do not reveal any knowledge they may have of other corporate creditors and any security such creditors may hold. Further, they took no meaningful steps to compel Mr. Fan to answer his undertakings and provide proper documentary disclosure or to obtain evidence from other parties who may have relevant information. The result was an evidentiary vacuum concerning relevant issues, one example of which is the sale price obtained by the Company, or which could have been obtained by the Company, for the Business.

[10] The appellants relied in their submissions on a claim of reasonable expectations that the promissory notes would be paid as supporting their entitlement to a remedy under s. 241 of the CBCA. They also asserted that adverse inferences should be drawn because of Mr. Fan's failure to answer undertakings

[3] In his affidavit, Mr. Jiang asserted that he and Mr. Ke contributed capital for the purchase and subsequent operation of the Business. However, the parties' business relationship was never documented. Mr. Fan issued promissory notes to repay the appellants for their contributions after the relationship between the parties broke down.

and make documentary disclosure concerning the quantum of the proceeds of sale, and to whom and on what basis the proceeds of sale of the Business were distributed.

[11] We did not accept these submissions. Determination of an oppression claim under s. 241 of the OBCA requires a fact specific inquiry: see, for example, *Wilson*, at para. 56; and *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, [2008] 3 S.C.R. 560, at para. 62. The appellants' request that various specific adverse inferences be drawn was made in the absence of specific pleadings concerning the basis for their entitlement to a remedy under s. 241 of the CBCA and in the context of an evidentiary vacuum. The record before the motion judge did not support an order in favour of the appellants for summary judgment against the personal respondents.

[12] Based on the foregoing reasons, we set aside paragraph 3 of the judgment under appeal dismissing the appellants' claims against the personal respondents and awarded costs of the appeal to the appellants.

"Janet Simmons J.A."
"B. W. Miller J.A."
"D.A. Wilson J.A."