CITATION: Sunrise Sunset Wellness Ltd. v. Ye, 2026 ONSC 14
COURT FILE NO.: CV-19-70172
DATE: 2026-01-09

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
SUNRISE SUNSET WELLNESS LTD.	)	Thomas Benstead and Jean-Alexandre De Bousquet, for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
YUANHUI YE	)	Ran He and Yanan Li, for the Defendant
	)	
Defendant	)	
	)	
	)	
	)	
	)	**HEARD:** December 1, 2, 3, and 4, 2025.

REASONS FOR DECISION

M. BORDIN J.

Overview

[1] The plaintiff corporation, Sunrise Sunset Wellness Ltd., purchased the defendant, Yanghui Ye's ("Ye") business, SALA Wellness and SPA Centre (the "Business"), located at 2861 Sherwood Heights Dr., Unit #30, Oakville, Ontario (the "Premises"). Six weeks later, the plaintiff shut down the Business in response to orders from the Town of Oakville (the "Town") for operating as an unlicensed Body-Rub Establishment. The plaintiff seeks rescission of the contract, or the return of the money paid to purchase the Business, and out-of-pocket expenses incurred as damages.

[2] The plaintiff's witnesses were the sole officer and director of the plaintiff, Yusha Yang ("Yang"), and her husband, Yang Hu ("Hu"). The defendant, Ye, testified and called Municipal Officer, Andrew Eldridge, to testify. The parties filed a joint chronology which contained agreed

facts and a joint document brief, together with an agreement regarding the use of the documents in the joint brief.

[3] Hu acted as agent for Yang and the plaintiff. Hu responded to Ye's advertisement to sell the Business. Hu spoke with Ye and then met with Ye on March 1, 2019, paid a $4,500 deposit and received a receipt. Hu and Yang communicated with Ye and attended the Premises together during March 2019. Draft agreements were exchanged.

[4] On March 18, 2019, the plaintiff and Ye signed a standard form agreement of purchase and sale containing a Schedule A (the "APS"). The stated purchase price in the APS was $10,000. The actual purchase price was $85,000. The APS contained the following clause in Schedule A:

> The Seller represents that the Business is being carried on in compliance with zoning, governmental regulations and any applicable restrictive covenants.
>
> (the "APS Representation").

[5] On March 22 and 24, 2019, the parties entered into sublease agreements for the Premises. The plaintiff delivered a further $75,000 in cash to the defendant on April 1, 2019, the closing date. Both parties were represented by lawyers on the transaction. Additional funds were delivered through the lawyers for the balance of the purchase price and rent payments.

[6] The Town inspected the Business on May 9, 2019, and issued four citations totaling $1,200 for violations of s. 434.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25. The Town advised the plaintiff that failure to comply may result in legal action and further fines. The plaintiff closed the Business. The fines were later reduced to $500.

[7] The plaintiff alleges that the defendant was not carrying on the Business in compliance with zoning and governmental regulations, contrary to the APS Representation. The plaintiff also alleges that the defendant made the following actionable negligent misrepresentations during the negotiation and pre-closing discussions:

a. The Business had been in operation for 10 years (the "10-year Representation"); and

b. Only an osteopath licence was required to legally operate the Business (the "Osteopath Representation").

[8] Ye asserts that the plaintiff has failed to establish that when she owned and operated the Business, it was in violation of zoning or governmental regulations. She denies breaching the APS or making any misrepresentations. In the alternative, she submits the misrepresentations are not actionable, that some of the misrepresentations were not pleaded, that they are barred by the entire agreement clause, or that the plaintiff has failed to establish the tort of negligent misrepresentation. Ye argues that if there was a misrepresentation or breach of the APS there is no causal link to the plaintiff's damages, the plaintiff is contributorily at fault, and the plaintiff failed to mitigate its damages.

[9] For the reasons that follow, I find the defendant breached the contract, entitling the plaintiff to $35,000 in damages.

Credibility of the Witnesses

[10] It is trite law that I may accept some, none, or all of a witness's evidence. Each party asserts that the evidence of the other was not credible and should not be accepted. Except for Officer Eldridge, there were issues with the evidence of all the witnesses. I did not find the evidence of Yang, Hu, or Ye credible in many respects.

[11] At times, Hu and Yang's evidence was vague. They made allegations without details. At certain points, Hu was clearly not testifying to what he knew, but what he thought had occurred.

[12] Hu and Yang do not recall important details such as who instructed their lawyer with respect to the APS and what inquiries their lawyer made on their behalf. The licences were important to the Business. Hu and Yang said they made inquiries of Ye regarding licences and that

they recall seeing licences on the walls in the Business. Despite this, they did not bother to look at the licences closely.

[13] The Town's inspection was an important and central event, leading to the closing of the Business. Despite its importance, Hu could not remember if Yang attended at the Business after the inspection by the Town on May 9, 2025. Yang, on the other hand, said that Hu called her, and she attended the Business.

[14] Hu and Yang's evidence was inconsistent about whether Hu was working at the time leading up to and after closing. Their evidence that Yang was operating the Business and Hu was just running errands and buying things was not credible in light of Hu's evidence that he was unemployed at the time and Yang's evidence that she worked full time in Toronto during the week. Notably, it was Hu and not Yang who arrived while Officer Eldridge was at the Premises.

[15] Ye often refused to answer straightforward questions. She attempted to create confusion in the questions where there was none. She repeatedly said she did not understand the meaning of words, even words she had expressed. She was evasive. She tried to explain away evidence which was not helpful to her. Some of her answers made no sense, others were not responsive to the questions. At times, she answered questions definitively, but it later became clear that she did not have personal knowledge of the events.

[16] Both parties assert the evidence of the other about the receipt for the deposit is not credible and should reflect negatively on their credibility.

[17] Following earlier discussions between Hu and Ye, on March 1, 2019, Hu met with Ye to provide a $4,500 cash deposit for the purchase of the Business. A handwritten receipt was provided which states:

> I have received $4500 [initials] deposit and will start the assignment procedure of the spa. (The deposit) will be fully refunded if (the assignment cannot be completed) due to the failure of completion of the landlord-related procedure or if there are major issues the government has with the spa. (The deposit) will not be refunded if (you)

> change your mind due to other reasons. [Translated by the plaintiff's expert, Cheng Yan (Anne) Zeng, accredited court interpreter.]

[18] Hu's affidavit evidence is that Ye signed the receipt in front of him and then gave it to him. He did not write anything on the receipt. His evidence at trial was similar.

[19] It is evident from the receipt that the amount of the deposit was changed from $5,000 to $4,500. Ye initialed the change. Ye's evidence that she did not write anything after her initials other than the date and her signature, and that she initialed the receipt to ensure no one wrote anything after the amount of the deposit, is not credible. Ye says she signed and dated the receipt "casually" but gave no reason for allegedly leaving about 10 blank lines between what she says she wrote and the date and her signature. At discoveries, over three years ago, she testified that she did not recall whether the receipt had all the writing on it after her initials or just the first sentence.

[20] I note that the original receipt does not appear to be written in two different hands. Ye could have prevented anything from being written by signing it immediately under the first sentence rather than, as she alleges, 10 lines further down. Further, on March 4, Hu asked Ye when an agreement could be drafted. Shortly thereafter, Ye sent Hu a draft agreement she prepared titled "Sale and Purchase Agreement" dated March 4, 2019. In part, the brief document provided that the deposit would be returned if the landlord was not willing to assign the lease. This is consistent with the receipt. Finally, the APS Representation that the Business was being carried on in compliance with zoning and governmental regulations is consistent with the statement in the receipt that the deposit would be refunded if there were major issues the government has with the spa.

[21] Each side alleges that the other suggested a cash transaction and that this reflects negatively on their credibility. The plaintiff asserts Ye's evidence in this regard was inconsistent with Ye's text message referring to cash transactions. That text message was in response to Hu's message that he could send an e-transfer. Ye asserts that she raised the requirement to pay HST with Hu because another potential buyer had required her to pay the HST. She says that Hu suggested a

cash payment to avoid the HST. While Ye told Hu there was another potential buyer, I am not persuaded that there was another potential buyer.

[22] In any event, both parties agreed to a largely cash transaction. Both signed an Election Concerning the Acquisition of a Business or Part of a Business, jointly electing for GST/HST not to apply to the supply of the Business. Both stood to gain from a cash transaction because no- one would be required to pay HST. This, together with the inaccurate purchase price in the APS and other evidence discussed below indicates that both sides were prepared to conduct business without regard to certain legal requirements. It undermines the credibility of both sides.

[23] Officer Eldridge is a municipal officer with 15 years' experience with the Town. He is currently the supervisor of enforcement services. His evidence was not challenged or undermined. I accept Officer Eldridge's evidence.

Negligent Misrepresentation

[24] The evidence of the plaintiff is that Ye made several misrepresentations. These include the 10-year Representation, the Osteopath Representation, that the Business was a legitimate legal massage business, that it complied with government requirements, and that the Business was profitable and had a regular customer base. The latter representation was not advanced by the plaintiff at trial.

[25] Liability for tort may be limited, excluded, or negated by a term of the contract: *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87, at p. 112. The plaintiff, correctly in my view, conceded that, except for the alleged 10-year Representation and the Osteopath Representation, the remaining representations were subsumed in the APS Representation and were not independently actionable in tort.

[26] For reasons I will explain, the plaintiff failed to establish that Ye made the Osteopath Representation. I also find that although Ye negligently made the 10-Year Representation, there was no reliance and therefore no liability.

[27] The elements of a claim for negligent misrepresentation are well known and are set out in *Cognos*, at p. 110:

a. there must be a duty of care based on a "special relationship" between the representor and the representee;

b. the representation in question must be untrue, inaccurate, or misleading;

c. the representor must have acted negligently in making said misrepresentation;

d. the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and

e. the reliance must have been detrimental to the representee in the sense that damages resulted.

[28] Ye did not argue that she did not owe a duty of care to the plaintiff. Ye chose to engage in discussions with Yang and Hu regarding the Business. She could have remained silent but did not. As a result, there was a special relationship giving rise to a duty of care during negotiations: see *Krawchuk v. Scherbak*, 2011 ONCA 352, 332 D.L.R. (4th) 310, at paras. 69-75.

[29] Ye understood that Hu would take over the Business and continue operating it. Hu and Yang state that Ye assured them that operating the Business in the same manner would not be a problem. This makes sense as they were buying an active business. It is also consistent with Ye's evidence, although Ye asserts that she told them they needed a Registered Massage Therapist ("RMT") licence to operate the Business.

[30] Yang, Hu, and Ye all knew and understood that some kind of licence was required to operate the Business.

[31] Yang and Hu assert that the defendant never advised them that they would need an RMT licence or a licensed RMT to operate the Business. Both say that Ye confirmed that none of the masseuses employed at the Business had an RMT licence. Both Hu and Yang deny knowing that

an RMT was involved in the Business when operated by Ye. Hu also testified that Ye told him that none of the people in the shop had a licence, while at the same time, Hu and Yang state that the defendant told them that an osteopath licence was required to operate the Business.

[32] Ye deposed that:

a. She inquired if Hu had any relevant professional licences as required by the landlord because an RMT licence was mandatory to operate a massage business in the Town and that Hu responded that he did not possess an RMT licence, but had been informed by others that he could potentially operate the Business under an osteopath or holistic therapy licence;

b. Hu asked Ye if she knew another osteopath so he could compare the costs;

c. She explicitly told Hu that her business followed legal and professional standards, and no fake receipts or unlicensed services were ever permitted; and

d. She informed Hu that all massages must be performed by a licensed RMT and that the RMT currently working for her would leave after the sale.

[33] Ye's evidence is that Mr. Zhao, an RMT, worked at the Business. Mr. Zhao's licence and 61 pages of his treatment notes for approximately two-dozen patients, which Ye submits are for services Mr. Zhao provided for the Business, were tendered at trial. Late January 2019 is the latest date in the Zhao notes. No other record of work done by an RMT was tendered.

[34] There is no evidence that Ye had an osteopath licence. Ye testified that Mr. Zhao's RMT licence and her acupuncture licence were hanging on the wall at the Business and that when she met with Hu, she pointed him to the licences. Yang recalls seeing licences on the wall of the Business when they attended before closing. She testified that she did not look at them closely. Hu gave similar evidence. He says there was one licence on the wall, but he did not look at it. Both testified that that Ye told them the licence on the wall was an osteopath licence.

[35] The parties' evidence is in agreement that Ye provided Hu with the contact information of an individual or an osteopath that could assist Yang with obtaining a license and that at some point during the negotiations between Hu and Ye, there was a discussion about Hu hiring an osteopath or obtaining an osteopath licence. Hu did, in fact, contact at least one person to assist in obtaining an osteopath designation for Yang.

[36] Yang returned from a trip to China in early March 2019. By March 11, 2019, without any training, Yang obtained what the plaintiff calls an osteopath licence. When she was asked if she had received training, Yang said she did not know much about the "licence". She obtained it by registering and paying a fee.

[37] In their evidence, Yang and Hu did not specify the date that the Osteopath Representation was made. However, Hu had applied for, and Yang obtained the osteopath "licence" by March 11, 2019. In text messages on March 17, 2019, Hu inquired of a non-party how to use the "licence" to file insurance claims. Any alleged discussion between the parties about needing an osteopath licence took place before the APS was signed on March 18, 2019.

[38] How Yang could become an osteopath in less than 10 days was never explained. It appears from the text messages filed by the parties that at least some classes were required for some purpose. There is no evidence that Yang attended any classes before obtaining the "licence".

[39] The parties each tendered a copy of Yang's "licence" (Tabs 13 and 19 of Exhibit 3). I have examined both documents. They are not the same document. Their appearance is entirely different. One has two signatures, the other has only one. The membership number is on opposite sides in the documents. The expiration date is found at different places: the left side on one and the bottom on the other. The "licence" at Tab 13 certifies that Yang "is a professional member of our Association and entitles [*sic*] to all rights and obligations of membership as prescribed by the board of directors." The document at Tab 19 contains different language. It states that Yang "is a professional member as an Osteopathic Manual Practitioner and entitled to all rights and obligations prescribed by the board of directors of the Association." (Differences underlined.) The typo does not appear in the version at Tab 19.

[40] I am not persuaded that the "licence" or either copy thereof is a legitimate document or that Yang ever became an osteopath. While not directly relevant to the Osteopath Representation, this is another example of attempting to circumvent legal requirements and undermines Yang and Hu's credibility.

[41] Mr. Zhao, Ye's previous employee, had an RMT licence. Ye did not have an osteopath licence. Ye says she told Yang and Hu that they needed an RMT licence. Yang and Hu pursued an osteopath licence instead. They say that was because Ye told them they needed one. While I am not persuaded by Ye's evidence, I also do not accept Yang and Hu's evidence and find that they chose to obtain an osteopath "licence" and were not told to do so by Ye.

[42] I find that the plaintiff has failed to establish on a balance of probabilities that Ye made the Osteopath Representation.

[43] The defendant asserts that the 10-year Representation was not adequately pleaded because it is not specifically alleged in the statement of claim. The defendant relies on r. 25.06(8) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, which provides, in part, that where misrepresentation is alleged, the pleading shall contain full particulars. The claim does not plead the 10-year Representation. The misrepresentation alleged in the claim relates to the legality of the Business and the licences and permits required to operate the Business.

[44] The purpose of the statement of claim is to set out the basis of the claim advanced so that Ye can know the case she must answer. A defendant should not have to speculate about the particulars of the claim. The case that a plaintiff may pursue at trial is framed by its own pleadings. A pleading of misrepresentation must set out the particulars of the alleged misrepresentations.

[45] The statement of claim fails to include the 10-year Representation as an alleged misrepresentation. However, in this case, the parties proceeded by way of a simplified trial with affidavits exchanged well in advance of trial. Both Yang and Hu raised the 10-year Representation in their affidavits of January 2024. The defendant has known for almost 22 months that the plaintiff was relying on the 10-year Representation as set out in Yang and Hu's affidavits. The defendant

was not taken by surprise. She had time to address the allegation. The issue came up in the cross-examination of Yang and Ye. No objection was taken by the defendant, although she objected to questions about other alleged misrepresentations. In the unique circumstances of this case, I do not find it appropriate to exclude the 10-year Representation.

[46] I find that the duty of care with respect to the 10-year Representation is not co-extensive with the APS Representation, which relates only to zoning and governmental requirements. Although the 10-year Representation may tend to support the veracity of the APS Representation, it is distinct from the issue of compliance with zoning and governmental requirements as it goes to other issues, such as the success and profitability of the Business, in addition to its legality. Further, it was not incorporated into a contractual representation: see *Cognos*, at p. 113-114.

[47] Ye's unchallenged evidence is that the landlord's agent told her that the Business was operating for 10 years. Ye's advertisement for the sale of the Business stated that it was a "10-year-old spa" in the plaintiff's translation, or a "10-year established business" in the defendant's translation. This representation was made to the world at large before there was a special relationship between the parties.

[48] Hu deposes that on February 25, 2019, Ye told him the Business had been in operation for 10 years. Ye does not deny this in her affidavit. Hu's evidence makes sense since that is what Ye's advertisement indicates. I accept Hu's evidence on this point.

[49] Ye has not owned or operated the business for the past ten years. When Ye opened the Business in July 2018, she hired all new staff. Ye's evidence was inconsistent about whether the Business was already in operation when she opened in July 2018. At discoveries, Ye stated that when she started the Business it had been "closed for a while". At trial, she repeatedly refused to say what she meant by "for a while". She eventually admitted that she did not acquire an operating business in 2018. In re-examination she said her recollection was that it was closed for about a month. I find that the previous business was closed for at least a month and that Ye leased the Premises and started a new business with new employees with some overlap in services. It was not the continuation of the prior business.

[50] I find that Ye's representation to Hu that the Business had been in operation for 10 years was misleading and inaccurate. Ye did not have personal knowledge that the Business had been in operation for 10 years. She also knew that the Business had been closed for a time before she took over, that she hired all new employees, and that she did not provide all the services offered by the prior business. Ye was negligent in representing that the Business had been in operation for 10 years.

[51] However, I conclude that Yang and Hu, and therefore the plaintiff, did not reasonably rely on the 10-year Representation. Reasonable reliance is fundamental to the tort of negligent misrepresentation: *Soboczynski v. Beauchamp*, 2015 ONCA 282, 125 O.R. (3d) 241, at para. 72.

[52] I find that Ye made the 10-year Representation to entice purchasers, but that it was made to persuade them that the Business was legitimate, operating legally, and was profitable. This is reinforced by Ye's advertisement for the sale of the Business which, in the plaintiff's translation, referred to it being a "legitimate business", and in Ye's translation, referred to it being "[r]elatively regular".

[53] The plaintiff did not lead evidence that it was the 10-year Representation alone that induced it to enter into the APS. Yang and Hu's affidavit evidence is that the 10-year history, together with the legality and profitability of the Business, were factors in their decision to purchase the Business. Representations as to profitability have not been pursued by the plaintiff. Yang and Hu's evidence was focused primarily on the basis for their understanding that the Business could be carried on legally and of the requirements to do so. The APS Representation is directed toward the legality of the Business. There is nothing in the statement of claim, issued just a few months after the closing, which references the 10-year Representation.

[54] I find that the legality of the Business and its profitability, rather than its longevity or the fact that it had never ceased operating, induced Yang and Hu to enter into the APS. I do not accept that the simple fact that the Business was said to have been in operation for years, on its own, caused the plaintiff to enter into the APS. I find there was no reliance on the 10-year Representation, and therefore this claim for negligent misrepresentation fails.

[55] Ye also argues that claims based on alleged misrepresentations, other than the APS Representation, are barred by the entire agreement clause in the APS. Clause 17 of the standard form APS provides in relevant part, "There is no representation, warranty, collateral agreement or condition affecting this Agreement other than as expressed herein" (the "Entire Agreement Clause").

[56] In arguing that the Entire Agreement Clause should not preclude these claims, the plaintiff submits that the Entire Agreement Clause is part of the OREA standard form agreement and that the parties were unsophisticated. While the Entire Agreement Clause is part of the standard form language of the APS, the APS was drafted by the plaintiff's lawyer, not Ye's lawyer, and introduced by the plaintiff. Ye had used a different form of agreement which did not contain an entire agreement clause, or anything similar, and was superseded by the APS.

[57] In support of its position that the Entire Agreement Clause does not preclude claims for negligent misrepresentation, the plaintiff asserts that there were things not included in the APS, such as the full amount of the purchase price. This is not a representation, warranty, collateral agreement or condition and, in any event, was done with the agreement of the parties not to have their contractual documentation reflect the reality of the transaction.

[58] Any alleged representations upon which the plaintiff intended to rely could have been included in the APS which was drafted by its lawyer. Indeed, the plaintiff included the APS Representation in Schedule A. The plaintiff chose not to include any other representation in the APS.

[59] The Entire Agreement Clause operates retrospectively and applies to any representation, warranty, collateral agreement or condition made prior to or during the negotiations leading up to the signing of the APS: *Soboczynski*, at para. 41. The Entire Agreement Clause is clear and unambiguous. I find that a claim in negligent misrepresentation for any representation made before the date of the APS and not incorporated into the APS is excluded by the Entire Agreement Clause.

Breach of contract

[60] I turn now to consider whether there was a breach of the APS.

[61] The parties did not make submissions as to the meaning of the APS Representation. Nevertheless, I must determine its meaning. I repeat the APS Representation for ease of reference:

> The Seller represents that the Business is being carried on in compliance with zoning, governmental regulations and any applicable restrictive covenants.

[62] The APS was for the purchase of an active, operating business. Both parties were aware that Hu, Yang, and the plaintiff were to carry on the Business. Hu, Yang, and Ye all knew that massage and physical treatments similar to massage were an essential and predominant part of the Business. As set out in Ye's affidavit, Yang attended the Business for a massage. They all knew that some kind of licence was required and that the nature of the Business was such that it was regulated by the municipality or by the province.

[63] The APS Representation uses the present tense "is being carried on". This can be contrasted with other clauses in the APS. For example, Schedule A also contains the following clause:

> The Seller warrants that all equipment and chattels (listed herein as Schedule "C" and also form part of this APS) are included in the purchase price and owned by the Seller and that they will be in normal working order on the closing date and are free of any encumbrances whatsoever. [Emphasis added]

[64] The use of language such as that in the chattel warranty above strongly suggests that the absence of similar language in the APS Representation reflects the parties' intention to limit its operation to the state of affairs at signing: see *Beatty v. Wei*, 2018 ONCA 479, 429 D.L.R. (4th) 63, at paras. 48-50.

[65] The cardinal presumption is that the parties intended what they have said in their written agreement. Reading the text of the APS as a whole and giving the words used their ordinary and grammatical meaning, and considering the surrounding circumstances known by the parties or

which reasonably ought to have been known by the parties at the time of contract formation, the meaning of the APS Representation is clear and unambiguous: the Business, as operated by Ye, was being carried on by Ye at the time of signing in compliance with zoning and governmental regulations: see *Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53, [2014] 2 S.C.R. 633; *Weyerhaeuser Company Limited v. Ontario (Attorney General)*, 2017 ONCA 1007, 77 B.L.R. (5th) 175, at para. 65. The APS Representation is not a warranty that the Business could be carried on into the future in compliance with zoning and governmental regulations.

[66] The APS Representation is a term of the contract. It was important to the plaintiff as the parties understood that the plaintiff would continue to operate the Business as the defendant did. Treating the APS Representation as anything other than a term of the contract would ignore the language of the Entire Agreement Clause: *Beatty*, at paras. 34-35.

[67] Given the APS Representation, I must determine whether the Business was being carried on by Ye in compliance with zoning and governmental regulations at the date of signing.

[68] There is no dispute between the parties that the zoning and municipal requirements for the Business are set out in the Business Licensing By-law of the Town of Oakville, By-law 2015-075(November 16, 2015) (the "By-law"). Section 2 of Schedule 1 of the By-law defines a body-rub to include:

> the kneading, manipulating, rubbing, massaging, touching, or stimulating, by any means, of a person's body or part thereof but does not include medical or therapeutic treatment given by a person duly qualified, licensed or registered to do so under the laws of the Province of Ontario
>
> ("Body-Rub")

The definition is very broad and encompasses many forms of touching of a person's body.

[69] The definition of a body-rub establishment in section 2 of Schedule 1 of the By-law includes the following:

> … any premises or part thereof where a body-rub is performed, offered or solicited in pursuance of a trade, calling, business or occupation, but does not include any premises or part thereof where the body-rubs performed are for the purpose of medical or therapeutic treatment and are performed or offered by persons duly qualified, licensed or registered to do so under the laws of the Province of Ontario
>
> ("Body-Rub Establishment")

[70] The By-law provides that no person shall carry on, permit a person to carry on, or hold themselves out as being licensed to carry on a Body-Rub Establishment without a licence to do so: s. 2(1); *By-law*, Schedule 1. s. 1.7. Further, no owner, operator or body-rubber may perform, offer, or solicit Body-Rubs without a licence under the By-law, and no owner or operator shall permit Body-Rubs to be performed, offered, or solicited at a Body-Rub Establishment by any person other than a licensed body-rubber or other person licensed or authorized by the By-law to do so: Schedule 7, ss. 4(1) and 4(3).

[71] The plaintiff does not dispute that an RMT is a duly licensed or qualified person under the By-law. Officer Eldridge testified that RMTs are not required to be located within a specific area in the Town and that if the persons giving massages were licensed by the Province as RMTs, they could give massages at the Premises. He said it is the lack of licensed RMTs giving massages which makes a business a Body-Rub Establishment.

[72] Based on the By-law and Officer Eldridge's evidence, only duly licensed or qualified persons can give Body-Rubs without a municipal licence being required. Therefore, if Body-Rubs are given by anyone other than a duly licensed or qualified practitioner, the business becomes a Body-Rub Establishment.

[73] In her affidavit, Ye states that she "opened the Business in July 2018 and practiced massage and body care at the Business". At trial, Ye repeatedly referenced "body care".

[74] Schedule C to the APS contains a list of chattels and fixtures including 5 massage beds, 5 towel racks, 5 oil boxes, and 5 office chairs. Ye's advertisement to sell the Business indicated there

were seven rooms. Officer Eldridge's notes, which were admitted into evidence for the truth of their contents, state that there were 5 massage rooms on May 9, 2019. At closing, Ye provided the plaintiff with a list of 6 employees. The evidence leads me to conclude that there were five massage rooms on the Premises and that providing massages or physical contact with clients' bodies was the mainstay of Ye's business as at the date of signing.

[75] Ye testified that the holistic practitioners who worked for her were all licensed. She did not specify what licences they had. Nor did she tender any licences supporting this assertion. At trial, Ye asserted that all licences were transferred to the plaintiff and stolen by Hu. She alleged that the employees could not testify because they were threatened by Yang. Ye went on to make other fantastical allegations about alleged illegal conduct she either attributed to or insinuated was undertaken by Yang and Hu following closing. Her evidence was vague, relied on statements made by others out of court for the truth of their contents, lacked details of names of employees, and was unsubstantiated. This evidence was not in her affidavit or referenced in her Second Fresh as Amended Statement of Defence which was amended at the commencement of trial. I do not accept Ye's evidence. I find that none of the employees of the Business operated by Ye, other than Mr. Zhao, were licensed.

[76] On all the evidence, I find that the services offered by Ye included massages and Body-Rubs as defined in the By-law which Ye referred to as "body care". These services were provided by Ye's other employees, not just Mr. Zhao. Ye's own evidence is that when persons other than the RMT performed body care services, they did so under Mr. Zhao's instruction. Again, per Officer Eldridge and the By-law, for massages and Body-Rubs to be performed at the Premises in compliance with the By-law, they had to be performed by a person licensed to do so.

[77] I find that at the time of the APS Representation, Body-Rubs were performed at the Business or offered by persons not duly qualified, licensed, or registered to do so. Therefore, a licence for a Body-Rub Establishment was required. Ye does not purport to have had a licence for a Body-Rub Establishment, and I find she did not have one. The Business by Ye at the time the

APS was signed was therefore an unlicensed Body-Rub Establishment in violation of the By-law and in breach of the APS.

[78] The By-law designated certain zones for licensed Body-Rub Establishments. I accept Officer Eldridge's evidence that a Body-Rub Establishment could not be licensed at the Premises as it was not allowed in that location. This was also a breach of the APS Representation.

[79] Yang alleges that Ye provided sexual services at the Business. There is no evidence from any employees that this occurred. There are gaps in the evidence as to which employees remained with the Business after closing and for how long. The plaintiff sought to tender out of court statements, attributed to unknown persons, to support the plaintiff's assertion. The evidence is hearsay and inadmissible for that purpose.

[80] I acknowledge that Yang deposes that she told all employees that the performance of sexual acts in exchange for compensation was strictly prohibited and that during the first week of April 2019, the plaintiff posted spa rules at the Business which reinforced this, although the spa rules do not explicitly refer to sexual acts. This represents an effort by the plaintiff to carry on business lawfully but does not prove the plaintiff's assertion. There is no cogent admissible evidence that Ye provided sexual services as part of the Business, and I make no such finding.

[81] The plaintiff asserts that the Business was not in compliance with the Town's zoning because it was zoned only for a beauty salon and a zoning change would be required to operate with RMTs. The only evidence tendered by the plaintiff in support of this proposition is inadmissible hearsay evidence. In support of this position, Yang relayed what she was told by unnamed people at the Town. Hu did the same, although he remembered speaking to "Matt" about it. This evidence also conflicts with Officer Eldridge's evidence that the Premises would not require special zoning for an RMT to provide massages. I find no breach of the APS with respect to the Business not being zoned to provide massages by RMTs.

[82] The plaintiff asserts that Ye breached the APS Representation because an occupancy permit was required by the Town. Officer Eldridge testified that RMTs must have a certificate of

occupancy. There was no such certificate for the Business operated by the plaintiff. The plaintiff did not tender cogent evidence that the plaintiff did not have such a certificate. I decline to make a finding that Ye did not have a certificate of occupancy and that this was a breach of the APS Representation.

Damages

[83] I turn to the issue of the damages caused by the breach of contract. The plaintiff bears the onus of establishing its damages.

[84] The plaintiff does not seek lost profits from the failed Business. Nor does the plaintiff seek the costs of making the Business comply with zoning and governmental regulations. The statement of claim seeks rescission of the APS and "consequential damages" for costs incurred in preparation for the transaction and for operating the Business. In submissions, in the alternative to rescission, the plaintiff asserts it is to be put in the position it would have been in had the contract been performed as agreed and that this entitles it to the return of the full purchase price and its "consequential damages". Yang's uncontested evidence is that if she had known that the Business was not being operated in a legal manner, she would not have executed the APS or Sublease Agreement on behalf of the Plaintiff.

[85] Ye asserts that rescission is not available. She raises various defences to the claim for damages, including that there was a break in the chain of causation, contributory negligence, or lack of due diligence by the plaintiff, failure to mitigate, and remoteness. Several of these issues are intertwined.

[86] Ye submits that the plaintiff's failure to make inquiries of the Town regarding licences prior to closing and its failure to apply for a new licence from the Town broke the chain of causation and constitutes contributory negligence. Further, she submits that the chain of causation was broken because the plaintiff operated an entirely new business as it did not have an RMT and hired all new employees. Ye asserts that the plaintiff failed to mitigate its damages by not obtaining a rezoning from the Town, hiring RMTs, or selling the Business.

[87] The parties provided no legal authorities with respect to many of the legal issues with respect to their positions. I set out below the legal principles from appellate courts. I then draw conclusions based on the authorities and the evidence.

[88] No authority was provided that rescission is available for breach of contract in these circumstances. Rescission could be available for negligent misrepresentation. Even if negligent misrepresentation had been established, or if rescission was available for breach of contract of this nature, rescission is not possible as the parties cannot be put substantially back into the position they were in before the contract and it appears that third parties have acquired rights with respect to the Premises: *Kingu v. Walmar Ventures Ltd.* (1986), 10 B.C.L.R. (2d) 15, at para. 18. The Business has not existed for over six years. Counsel advised that the premises are leased to other parties. If so, other parties have an interest in the Premises. There is no Business to return to Ye.

[89] A breach of the APS Representation gives rise to the normal remedies for breach of contract: *Beatty*, at para. 34. The ordinary form of monetary relief for breach of contract is an award of damages measured according to the position which the plaintiff would have occupied had the contract been performed: *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19, [2020] 2 S.C.R. 420, at para. 50.

[90] The governing principle for calculating compensatory damages is the expectancy principle, requiring compensation in an amount that will provide the financial equivalent of performance: Stephen M. Waddams, *The Law of Contracts*, 3rd ed. (Toronto: Canada Law Book, 1993), at p. 971. Another means of calculating damages is the reliance measure which awards the plaintiff damages for out-of-pocket expenses incurred in reliance on the contract. It is similar to the general principle for calculating damages in a tort claim: *Waddams*, at p. 972.

[91] Nominal damages may be given in all cases of breach of contract as a manner of affirming that there is an infraction of a legal right. These do not require proof of loss: *Atlantic Lottery*, at para. 105.

[92] The remedy for negligent misstatement is ordinarily to award damages to return the plaintiff to the position it would have been in had the misrepresentation not occurred: *Orr v. Metropolitan Toronto Condominium Corporation No. 1056*, 2014 ONCA 855, 327 O.A.C. 228, at para. 109, citing *BG Checo International Ltd. v. British Columbia Hydro & Power Authority*, 1993] 1 S.C.R. 12, at p. 37; *Soboczynski*, at para. 84, citing *Rainbow Industrial Caterers Ltd. v. Canadian National Railway Co.*, [1991] 3 S.C.R. 3at p. 14.

[93] There must be a causal connection between the breach of contract and the plaintiff's loss: *Persaud v. Telus Corporation*, 2017 ONCA 479, at para. 10. The burden rests on the plaintiff alleging breach of contract to prove on the balance of probabilities that the breach and not some intervening factor or factors caused loss to the plaintiff: *Eastwalsh Homes Ltd. v. Anatal Developments Ltd.*, 12 O.R. (3d) 675 (C.A.), at p. 26.

[94] Courts have cited with approval the following statement with respect to causation from Bruce MacDougall, *Introduction to Contracts*, (Markham, Ont: LexisNexis Canada, 2007), at p. 303:

> The breach of contract must lead to the damages claimed. It must, in other words, be the cause of the loss. It need not be the only cause of the loss as long as it was an "effective" cause. In some cases, the defendant might have triggered a chain of events, but the defendant will not be liable if a third party, a natural event, or the plaintiff himself causes an action that breaks the "chain of causation". [Citations omitted.]

See *Smith v. 663556 Ontario Limited*, 2011 ONSC 4496, at para. 23; *Murray v. The Toronto-Dominion Bank*, 2025 ONSC 4916, at para. 37.

[95] The Ontario Court of Appeal addressed contributory negligence in *Arcamm Electrical Services Ltd. v. Avison Young Real Estate Management Services LP*, 2024 ONCA 925. The court held at paras. 41-45 that damages in contract cases can be apportioned based on fault. At para. 43, the court noted that Ducharme J. in *Treaty Group Inc. v. Drake International Inc. (2005)*, 2005 CanLII 45406 (Ont. S.C.), aff'd on other grounds, 2007 ONCA 450, 86 O.R. (3d) 366, thoroughly

canvassed the caselaw and academic writing on the subject and agreed with Ducharme J.'s conclusion at para. 70 that damages in a contract action can be apportioned to recognize conduct on the part of the plaintiff that has increased damages and that, in appropriate cases, apportionment was "required by fairness, equity and justice". The cases summarized by Ducharme J. suggest that a person who is part author of his own injury should not receive full compensation from the other party.

[96] The defendant has the burden of proving both that the plaintiff has failed to make reasonable efforts to mitigate, and that mitigation was possible: *Southcott Estates Inc. v. Toronto Catholic District School Board*, 2012 SCC 51, [2012] 2 S.C.R. 675, at para. 24.

[97] Yang's evidence is that that between April 1, 2019, and May 9, 2019 (the last day of operation of the Business), she did not make any material changes to the Business or change the type of services that were offered. There is no evidence to the contrary. The plaintiff did hire new employees. However, the plaintiff carried on the Business using the same chattels that were used by Ye, notably, the five massage tables and massage rooms. The plaintiff did not have an RMT. Other than this, the evidence I accept establishes that the Business as carried on by the plaintiff was no different from the Business as operated by Ye. Even if the plaintiff had hired one RMT to do what Ye says Mr. Zhao did, the Business could not be carried on in compliance with the By-law.

[98] On May 9, 2019, Officer Eldridge told Hu that the Body-Rub Establishment was not licensed, that the By-law did not permit a Body-Rub Establishment at the Premises, that the Business had to close temporarily and could not continue as operated, and that if the Business did not close further fines could follow. Officer Eldridge issued citations for carrying on the business of a Body-Rub Establishment without a licence to do so contrary to s. 2(1)(a)(i) of the By-law and permitting an unlicensed operator to operate the establishment contrary to Schedule 7, s. 4(2) of the By-law.

[99] The plaintiff closed the Business and vacated the premises during the second week of May 2019. The Business was shut down because it was an unlicensed Body-Rub Establishment and because a licensed Body-Rub Establishment was not permitted at the Premises.

[100] The plaintiff sought to acquire a legal business and would not have bought a business that was not legal. Ye breached the APS as the APS Representation was not true. The Business was not being carried on by Ye in compliance with zoning and governmental regulations. Nor could it have been. The business was not, and could not be, lawfully carried on as a Body-Rub Establishment. It was reasonably foreseeable that if the APS Representation was not true, the plaintiff would suffer some damages. The damages in the reasonable contemplation of the parties included lost profits, the costs to bring the Business into compliance with zoning and governmental regulations, the devaluation of the Business, or the loss of the Business.

[101] If the APS Representation had been true, the plaintiff could have carried on the Business and perhaps earned profits. No evidence was tendered that the plaintiff would have earned any profits. The plaintiff's evidence is that it did not make money during the short time it carried on the Business. No evidence was led as to the cost to bring the business into compliance which would require all employees to be provincially licenced. The plaintiff led no evidence to establish the value of the Business it acquired and asserts that the Business was worth nothing.

[102] I find that the Business had some value even though it was not in compliance with the By-law. Chattels were included in the purchase price. The plaintiff did not tender any evidence about what was done with the chattels after the Business was closed. There is evidence that the Business had clients. Clients have value. No evidence was tendered as to the value of the chattels or client list.

[103] The defendant has not proven that the plaintiff could have rezoned the Premises. In any event, I find it was not reasonable for the plaintiff to try to do so. The Premises were leased. The plaintiff was not required to incur the cost of rezoning leased premises. The defendant also has not proven that the plaintiff could have hired a full staff of RMTs to make the Business legal. Ye had

not done so herself. Further, there is some evidence that the plaintiffs did attempt to hire an RMT but were not able to do so.

[104] Although the evidence leaves much to be desired, I must do my best to assess the damages suffered by the plaintiff on the available evidence even where difficulties in the quantification of damages render a precise mathematical calculation of the plaintiff's loss uncertain or impossible: *TMS Lighting Ltd. v. KJS Transport Inc.*, 2014 ONCA 1, 314 O.A.C. 133, at para. 61.

[105] I find the plaintiff contributorily at fault. The plaintiff, aware that there were zoning and governmental requirements that could apply, included the APS Representation. However, as noted, the APS Representation is retrospective, not prospective. It set out the represented state of affairs as of the date of the APS on March 18, 2019, leaving a gap in time between March 18 and April 1, 2019, the closing date.

[106] Notwithstanding this, neither Yang nor Hu know if their lawyer made any inquiries with the Town about what licences were required to run the Business. Both Yang and Hu testified that they did not make any inquiries themselves and did not inquire whether a new licence was required for a change of ownership. They say this was because the defendant told them multiple times that the Business was legitimate and in compliance with the rules and told them what licences were required. A reasonable person in the position of the plaintiff would have made inquiries or would have had their lawyer make inquiries given the importance of being able to legally carry on the Business at the Premises. I find that neither the plaintiff nor its representatives did so. Nor did the plaintiff apply for a new licence from the Town, as required.

[107] Had the plaintiff made inquiries or applied for a new licence prior to closing, the zoning and licensing issue would have been discovered. The plaintiff could have sought to avoid the contract, although doing so might have resulted in litigation. The plaintiff could possibly have negotiated termination of the contract, or a reduction of the purchase price. The problem with the Business would have been brought to light and dealt with in some way. The plaintiff would likely have avoided some portion of its damages. While I do not find that the plaintiff's contributory fault broke the chain of causation, apportionment is required by fairness and justice. Considering Ye

made the false APS Representation and considering the range of possible outcomes that could have occurred had the plaintiff made reasonable inquiries, I apportion the plaintiff's contributory fault at 50 percent.

[108] The plaintiff paid $85,000 to purchase the Business. At closing the plaintiff also paid the lease term rent deposit of $4,972 and April 2019 rent of $2,486.

[109] The plaintiff has tendered evidence that in addition to the purchase price, the following expenses were incurred in relation to the purchase and operation of the Business:

a. Travel expenses for gas of $952.14;

b. Store inventory for cleaning products, printing supplies, stationary and other items of $835.59;

c. Advertising costs of $808.04;

d. Rent for May and part of June of $3,486;

e. Utilities and telephone of $2,349.26; and

f. Other expenses as follows:

    i. Osteopath license of $1,100;

    ii. POS machine of $45.53;

    iii. Legal fees related to purchase of $2,550.50;

    iv. Penalty from the Town re violations of $500.00; and

    v. Floor plan costs of $406.50.

[110] In the plaintiff's 2019 T2 Corporation Income Tax Return (the "T2"), the plaintiff claimed the legal fees, advertising costs, utilities, vehicle expenses and rent against income. Yang testified

the Business earned about $10,000 in gross income in the first month and approximately $13,000 in total gross income between April 1 and May 9, 2019. The T2 reports total income as $13,050. The income should be set off against recoverable expenses.

[111] Although sparse, there is evidence that some of the items purchased for the Business remain in the possession of the plaintiff.

[112] The amounts claimed for utilities, telephone, advertising and materials for sales in the T2 are less than the amount claimed by the plaintiff. A number of the gas and vehicle receipts tendered and claimed are for dates after the close of the Business. The gas receipts also represent an extraordinary amount of gas for such a short period of time. The claim is significantly overstated. Based on my conclusions with respect to the osteopath licence, the cost for the licence is not recoverable.

[113] Considering the legal principles and the evidence, I assess the plaintiff's damages at $70,000 which is reduced to $35,000 for the plaintiff's contributory fault.

Disposition

[114] I conclude that the plaintiff is entitled to damages from the defendant in the amount of $35,000.

[115] If the parties cannot agree on costs, the parties may exchange a bill of costs and written submissions consisting of not more than four 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 January 21, 2026, the matter of costs will be deemed to have been settled.

M. Bordin J.

Released: January 9, 2026

CITATION: Sunrise Sunset Wellness Ltd. v. Ye, 2026 ONSC 14
COURT FILE NO.: CV-19-70172
DATE: 2026-01-09

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

SUNRISE SUNSET WELLNESS LTD.

Plaintiff

– and –

YUANHUI YE

Defendant

REASONS FOR DECISION

Justice Bordin

Released: January 9, 2026