

[3] Cash Flow’s motion for summary judgment is dismissed. This is not a case in which I can fairly and justly adjudicate the dispute on the record before me. There are genuine issues requiring a trial.

Summary Judgment Principles

[4] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 provides that a court shall grant summary judgment if the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence. There is no genuine issue that requires a trial if the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process allows the judge to make the necessary findings of fact, allows the judge to apply the law to the facts, and is a proportionate, more expeditious, and less expensive means to achieve a just result: *Hryniak v. Mauldin*, 2014 SCC 7, at para. 49.

[5] The court is entitled to assume that the record on a summary judgment motion contains all the evidence that the parties would present if the matter proceeded to trial: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at paras. 26-7, aff’d 2014 ONCA 878, leave to appeal dismissed, 2015 CanLII 39803 (SCC). It is a “well-established rule” that both parties on a summary judgment motion have an obligation to put their “best foot forward”: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9.

[6] In *RNC Corp. v. Johnstone* (2020), 153 O.R. (3d) 503 (S.C.J.), at para. 9, F.L. Myers J. set out the most common and significant *indicia* of when a summary process may be fair and just and where the comparison to the litigation as a whole supports summary resolution:

- (a) Where the issue on the motion and the evidence relied upon is narrow, neat, and distinct from the issues and evidence on the underlying merits. See: *Griva v. Griva*, 2016 ONSC 1820.
- (b) Where the process is attenuated with little delay and little additional cost. See *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, at paras. 30, 31.
- (c) Where there is little or no additional evidence available to lead at a trial on the issue(s).
- (d) Where credibility is not in issue or, if it is, it is a near slam dunk. If credibility findings rely on adverse inferences, burden of proof or the “best foot forward” rule, then the chances of a judge finding the comfort required by *Hryniak* is greatly decreased.

[7] No one criterion is determinative. Whether any individual case can be fairly and justly resolved summarily is a judgment call on all the relevant facts: *RNC Corp.*, at para. 10.

[8] Regarding issues of credibility, “[t]he more important credibility disputes are to determining key issues, the harder it will be to fairly adjudicate those issues solely on a paper record”: *Cook v. Joyce*, 2017 ONCA 49, at para. 92; *Trotter Estate*, 2014 ONCA 841, at para. 55. Credibility issues can be more readily resolved in cases where a strong documentary record “belies

or overwhelms” a party’s subjective evidence and claims, or witnesses’ testimony defies common sense: *RNC Corp.*, at para. 17.

The Facts and Issues

[9] I will review the evidence in the record to the extent necessary to show why Cash Flow has not met its burden under r. 20.04(1) to establish that there is no genuine issue requiring a trial.

(i) The Alleged Breach of Contract

[10] Cash Flow asserts that it is “undisputed” that Jason and Anastasia entered into an agreement with Tackaberry to supply them with construction materials for the Latimer Drive property. The materials included those typically used for septic tile bed installations, construction of a driveway, and backfilling around a new construction. Tackaberry invoiced Jason on various dates in July, August and September, 2023. Between July 28 and September 25, 2023, Jason and Anastasia paid a total of \$16,569.08 to Tackaberry.

[11] No additional payments were made to Tackaberry by either Jason or Anastasia after September 25, 2023. Cash Flow maintains that despite this, Jason continued to request and receive construction materials from Tackaberry. Tackaberry issued further invoices to Jason and, when those invoices remained unpaid, Tackaberry issued an invoice for finance charges on the unpaid invoices. Cash Flow alleges the total of the unpaid invoices is \$54,627.15, with interest accruing at 26.82 per cent per annum as provided on the invoices.

[12] The defendants deny they entered into an agreement with Tackaberry of the nature described. Jason first contacted Tackaberry in July 2023 to discuss materials required for the installation of a septic system at the Latimer Drive property. Jason’s account with Tackaberry was cash on delivery, so no commercial credit application required. A Tackaberry employee confirmed that there was no credit application on record. Jason maintains that the septic tank was installed on September 21, 2023 and all payments for the materials required for the installation were made in advance. Jason provided Anastasia’s contact number for her to remit payment prior to delivery.

[13] The defendants deny ordering or receiving the materials covered by the invoices alleged by Cash Flow to be outstanding. There are no order forms or purchase orders in the record. This is despite the fact that Tackaberry’s controller confirmed the “typical process” followed when a customer calls in with an order: an internal telephone order is generated, with the date of the order, the particulars of the materials ordered and the quantity, and the address for delivery.

[14] The delivery tickets that have been produced are not signed by any of the defendants or anyone on their behalf. The invoices alleged to be unpaid are addressed to “Jason Yanick” at an address in London, Ontario. Tackaberry’s “final notice” of February 26, 2024 regarding the outstanding account was delivered to the same London address. Cash Flow proffers no explanation for this London address. For their part, Jason and Anastasia deny receiving these invoices. Anastasia says that the calls she received from Tackaberry were in respect of payments to be made in advance of delivery of materials.

[15] Whether a contractual agreement existed between Tackaberry for the supply of construction materials to Jason and Anastasia at the Latimer Drive property from late September through December, 2023 is a genuine issue requiring a trial. If there was a contract, who were the parties to that agreement? Jason was invoiced (albeit at a wrong address), and both Jason and Anastasia deny receipt of the construction materials at issue and the associated invoices. Anastasia maintains the payments she did make – payments in advance from a joint household account – do not make her a party to any contract with Tackaberry. According to the defendants, Jason was the sole customer and his only dealings with Tackaberry were on a cash on delivery basis. If there was a contract of the nature alleged by Cash Flow, whether Anastasia was a party to that contract is a genuine issue requiring a trial.

[16] Credibility is very much an issue in this case. I do not have the benefit of cross-examinations.

[17] Cash Flow asks me to infer an agreement based on invoices and delivery tickets that itemize the materials delivered, the quantity of materials, and the date of delivery. But the defendants deny ordering these materials and no purchase orders have been produced. The defendants dispute delivery and the delivery slips are unsigned. This is not a case where a strong documentary record belies the defendants' subjective evidence.

[18] These issues and the evidence relied on are not distinct from the issues and evidence on the underlying merits of the action. They are genuine issues that require a trial.

(ii) *The Alleged Fraudulent Conveyance*

[19] On this motion, Cash Flow seeks to set aside the February 2, 2024 transfer of 3437 Latimer Drive from Anastasia to Tatiana as a fraudulent conveyance. The transfer document registered on title records no consideration was paid by Tatiana for the property because it was a gift to her from her daughter, Anastasia.

[20] The same day as the transfer, February 2, 2024, a \$650,000 mortgage from Tatiana to a financial institution was registered against the property.

[21] Section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 reads:

Every conveyance of real property or personal property and every bond, suit, judgment and execution heretofore or hereafter made with intent to defeat, hinder, delay or defraud creditors or others of their just and lawful actions, suits, debts, accounts, damages, penalties or forfeitures are void as against such persons and their assigns.

[22] The test for whether a transfer of property is rendered void under s. 2 of the *Fraudulent Conveyances Act* is one of intent; that is, was the transfer done in order to defeat creditors: *Anisman v. Drabinsky*, 2020 ONSC 1197, at para. 64, aff'd 2021 ONCA 120.

[23] Cash Flow's arguments on the fraudulent conveyance issue are predicated on Tackaberry being a creditor of Anastasia at the time of the transfer. Anastasia was the sole owner of 3437

Latimer Drive when she transferred the property to Tatiana. I have already concluded that whether Anastasia was a party to any agreement with Tackaberry for the supply of construction materials is a genuine issue requiring a trial.

[24] Cash Flow asserts that all the “badges of fraud” catalogued by the Court of Appeal for Ontario in *Ontario Securities Commission v. Camerlengo Holdings Inc.*, 2023 ONCA 93, at para. 12, are met in this case. The badges of fraud identified in the case law are:

- the debtor’s financial state at the time of the transaction was precarious, including deficiencies in income, assets, solvency, and an inability to pay debts;
- the existence of a family or close relationship between the parties to the transaction;
- the transfer effectively divested the debtor of a substantial portion or all of his or her assets;
- the transfer had the effect of defeating, hindering, delaying, or defrauding creditors;
- there was evidence of haste in making the transaction;
- there was evidence of secrecy, fabrication, falsehood, destruction or loss of documents, or suspicious circumstances in the making of the transaction;
- the transaction occurred near in time to notice of debts or claims against the debtor;
- the consideration for the transfer did not correspond to the value of the property;
- the absence of a business purpose or other justification for the transaction;
- the transferor retained possession or use of the property; and
- the transferor retained a benefit or an ownership interest in the property.

[25] While the parties to the transaction, Tatiana and Anastasia, are mother and daughter, on the record before me, I cannot make the necessary findings of fact to conclude there were other badges of fraud present.

[26] Several examples will suffice to illustrate my point. Assuming Anastasia was a debtor of Tackaberry, the record does not allow me to conclude that her financial state at the time of the transfer to her mother was “precarious.” I have no information regarding Anastasia’s income, assets, or solvency. Cash Flow asks me to infer there was an inability to pay her debts generally because Anastasia did not pay the debt to Tackaberry. I am not prepared to draw such an inference given that the contract itself and the parties to it are genuine issues that require a trial.

[27] For similar reasons, I cannot find that the transfer of the Latimer Drive property “effectively divested” Anastasia of a substantial portion or all of her assets.

[28] Cash Flow says the transaction occurred five business days following the first notice of outstanding debt sent January 29, 2024 and maintains that this is evidence of haste in making the transaction. Based on the record, there are issues with this allegation. Tackaberry's final notice of outstanding account was mailed on February 26, 2024 to the London address. This was after the transfer to Tatiana was registered and, in any event, Jason and Anastasia deny receiving the final notice. They acknowledge receiving Cash Flow's notice dated March 5, 2024.

[29] More importantly, Anastasia's sworn evidence is that she made inquiries with her lawyer in August 2023 (when she and Jason were paying Tackaberry for construction materials they acknowledge receiving) about transferring the Latimer Drive property to Tatiana. There is some evidence in the record that Anastasia followed up with her lawyer in November 2023 as to why the transfer had not yet occurred.

[30] A final example: Anastasia states that she transferred title to Tatiana because Tatiana had secured the construction mortgage for the Latimer Drive property. The merits of this business purpose may be open to question; however, on this motion, a justification for the transfer has been provided.

[31] In relation to the fraudulent conveyance claim, the issues on this motion are not distinct from the issues on the underlying merits. There may well be additional evidence available to lead at trial in relation to the so-called badges of fraud.

[32] Credibility is, again, a central issue; certainly, it is not a "slam dunk." Again, I do not have the benefit of cross-examinations. Cash Flow asks me to infer, based on the badges of fraud being found, that Anastasia intended to defeat or defraud Tackaberry. These are genuine issues that require a trial.

Conclusion

[33] For these reasons, the motion for summary judgment is dismissed.

[34] In the event the parties are unable to agree on costs of the motion, they may provide their submissions in writing. The defendants will provide their submissions by February 20, 2026. Cash Flow will provide its responding submissions by March 6, 2026. Costs submissions are not to exceed three pages. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs of the motion as amongst themselves.

Justice R. Ryan Bell

Released: February 6, 2026

CITATION: Cash Flow Recoveries Inc. v. Yonick, 2026 ONSC 740
COURT FILE NO.: CV-24-00000168
DATE: 20260206

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CASH FLOW RECOVERIES INC.

Plaintiff

– and –

JASON YONICK a.k.a. JASON M. YONICK a.k.a.
JAY YONICK, ANASTASIA YONICK and TATIANA
IVANOV a.k.a. TATIANA IVANOVA

Defendants

**REASONS FOR DECISION ON MOTION FOR
SUMMARY JUDGMENT**

Ryan Bell J.

Released: February 6, 2026