

by 214 to receive the product. Upon delivery, a warehouseman at the third-party warehouse would sign a receipt for the product, and an invoice would be sent to 214. Then, 214, in due course, paid the invoice. This process continued for several years.

- [4] 214 alleges that it did not order any product from Toppits after approximately May 2023. However, there are eight unpaid invoices that were rendered by Toppits to 214 between May 15, 2023 and December 7, 2023, totalling \$94,721.50.
- [5] It is Toppits' position that the food products listed in the eight invoices were ordered by Ms. Li on behalf of 214, that the food products were delivered to the third-party warehouse, that the invoices for the products were delivered to Ms. Li by email, and that no payment has been received on any of the invoices.
- [6] It is the position of 214 that 214 chose to stop buying products from Toppits in May 2023, that 214 did not enter into a contract to purchase any of the food products listed in the eight invoices, and that 214 is not liable for payment of the invoices.

THE EVIDENCE

- [7] BDO relies upon the affidavit of Brad Zhang ("Zhang"), the CFO of Toppits. Zhang did not have any direct dealing with Ms. Li, but he is aware of Ms. Li as Ms. Li wrote the cheques to Toppits. Zhang acknowledged that Ms. Li primarily dealt with Toppits' sales representative, Yip.
- [8] The balance of BDO's evidence consists of the Toppits' business records. Those records, which were introduced for proof of the contents, establish that 214 and Toppits had a buyer/seller relationship starting in 2021, that invoices were regularly sent by email to Ms. Li on behalf of 214, and that those invoices in due course were paid up until May 2023.
- [9] Regarding the eight unpaid invoices, the Toppits records include the eight invoices that were sent by email to the usual email address used by Ms. Li, the warehouse receipts that confirm delivery of the products to the third-party warehouse, and the customer statements listing the unpaid invoices that were emailed to Ms. Li commencing in June 2023 and continuing to April 2024.
- [10] 214's evidence is the affidavit evidence of Ms. Li. Ms. Li deposed that the only person with whom she communicated at Toppits was Yip. I find that this is not entirely accurate, as there is at least one email exchange between Ms. Li and Alfred Sit ("Sit") who was an accounts receivable officer for Toppits. However, for the purposes of this motion, I accept Ms. Li's evidence that any contract for the purchase and sale of Toppits' product was made

verbally between Ms. Li and Yip, and that any communication between them about the product was by telephone, text, or in person.

- [11] Ms. Li deposed that she never placed an order to purchase any product after May 2023. She swore that there had been a previous problem with the quality of the product and that she chose not to place any further orders.
- [12] Ms. Li acknowledged receiving copies of the customer statements and the invoices after May 2023, but she deposed that she spoke with Yip personally about the statements/invoices and told him that 214 had not ordered the products and would not be paying the invoices.
- [13] I note that, on her cross-examination, Ms. Li acknowledged receiving an email request for payment from Sit in June 2023, and that she responded by asking for copies of the invoices. After she received the June 2023 invoice, she noted an incorrect charge for one of the products, brought it to the attention of Sit and Yip, and was granted a credit for the error.
- [14] For the purposes of this motion, I find that the invoices and customer statements referenced by the plaintiff were received by email by Ms. Li, that the warehouse receipts confirm delivery of the products to the third-party warehouse, and that the eight invoices remain unpaid.

THE LAW

- [15] Rule 20.04(2) mandates that I grant summary judgment if there is no genuine issue requiring a trial. In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 49, the court sets out the test for determining whether or not there is a genuine issue requiring a trial, as follows:

There will be no genuine issue requiring a trial when 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 (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

- [16] Further, at para. 66 of *Hryniak*, the court sets out a two-step approach. First, the motions judge should determine if there is a genuine issue requiring a trial based on the evidence before the court without using the fact-finding powers under rule 20.04. Second, if there appears to be a genuine issue requiring a trial, the court should determine if the need for a trial can be avoided by using those fact-finding powers.

- [17] Considering the evidence aforementioned, it is clear that there is a genuine issue for trial. In simple terms, the issue in this action is whether there is a contract, or a series of contracts, between Toppits and 214 with respect to the purchase and sale of the food products set out in the eight unpaid invoices. If there is such a contract, the evidence establishes that the product was delivered and the invoices are unpaid, and accordingly judgment should be granted. If there is no contract, the plaintiff will not succeed.
- [18] At the second step, I must determine if a trial can be avoided by using the fact-finding powers set out in the rules. In that respect, as discussed in *Hryniak*, I must decide if I can make the necessary findings of fact and apply the law to the facts. Further, I must decide if the determination of this motion is a proportionate, more expeditious, and less expensive means to achieve a just result.

ANALYSIS

- [19] I have several concerns about deciding this case on a summary judgment motion. My first concern is that there is no direct evidence of a contract between Toppits and 214 after May 2023. BDO's position is that there was an oral contract, or series of oral contracts, made between Ms. Li and Yip, that Toppits fulfilled its obligations under the contract, and that 214 failed to pay the amounts due.
- [20] The challenge for BDO is proving the existence of a contract or a series of contracts. Counsel for BDO submitted that the business records prove the contract. In my view, neither the invoices, the warehouse receipts, nor the customer statements constitute direct evidence of a contract. Rather, those records constitute circumstantial evidence from which a court may infer that there is a contractual relationship, and that Toppits fulfilled its obligations.
- [21] I recognize that a party may prove the existence of a contract by way of circumstantial evidence, but before inferring that the circumstantial evidence proves a contract the court must consider all other reasonable inferences that may be drawn from the evidence. In this case, Ms. Li offers another explanation for the evidence, namely that there was no contract and that Toppits simply sent unsolicited products to the warehouse. I acknowledge that it is possible that BDO may be able to prove a contract through this circumstantial evidence, but it is more difficult to do so in the absence of direct evidence on the point.
- [22] My second concern is that I do not have any evidence from Yip. BDO's case is based upon contracts that were entered into by Ms. Li and Yip on behalf of their respective corporations. Thus, Yip's evidence is important to the issue of whether a contract exists. In essence, the plaintiff relies on a contract it submits was made between two parties, Ms. Li and Yip, but evidence has been tendered from only one of those parties, Ms. Li, and she

deposed that there was no contract. In these circumstances, it is difficult to make a fair and just determination of the key issue.

- [23] The final concern I have on this motion is with respect to Ms. Li's credibility. BDO submits that Ms. Li's evidence is a blanket denial of the existence of a contract. BDO further submits that Ms. Li is being untruthful, and that she is fabricating, in hindsight, an excuse for not paying the invoices. Therefore, BDO asks that I use my rule 20.04 fact-finding power to make a determination that Ms. Li is not credible and to reject her evidence.
- [24] I agree that Ms. Li's credibility is a significant issue. I also agree that rule 20.04 permits me to decide credibility issues if I am able to do so in a fair and just manner.
- [25] However, I do not agree with the submission that Ms. Li's evidence is simply a blanket denial. It is correct that Ms. Li deposed that she did not place the orders in question with Yip or with anyone at the company, but she also said that she stayed in contact with Yip, who was her contact at Toppits. When she was asked to pay these invoices, she contacted Yip and said that she would not be paying for products that she had not ordered. She further testified that when she was contacted by Sit for payment, she responded to him and copied Yip with her response.
- [26] Further, counsel for BDO is critical of the defendant for not producing any business records. However, I note that it is very difficult to prove a negative. That is, the defendant cannot be criticized for not having a business record that there was no contract.
- [27] I acknowledge that there are a few pieces of evidence that might undermine Ms. Li's credibility, such as Ms. Li's request for a price correction in June 2023, but I find that her credibility is not undermined to the extent that I would reject her evidence entirely as BDO suggests. In my opinion, a complete and thorough analysis of Ms. Li's credibility in this case should be conducted by a trial judge who will have the benefit of hearing *viva voce* evidence.
- [28] For all of these reasons, I find that it would not be fair and just to determine this matter on a summary judgment motion. Therefore, the plaintiff's motion for summary judgment is dismissed.
- [29] With respect to the trial, I will not remain seized of this case because of the scheduling difficulties that might arise, although I am prepared to conduct the trial if that can be arranged through the trial co-ordinator.
- [30] If either party wishes to make submissions as to costs, I direct that the party seeking relief shall serve and file written submissions, no longer than five pages within 20 days of the

release of this decision, with responding submissions to be delivered within 10 days thereafter. If no submissions are received within this time frame, the parties will be deemed

to have settled all of the costs issues as between themselves. A copy of any such submissions, once filed with the court, shall also be emailed to the Judicial Assistants at: St.Catharines.SCJJA@ontario.ca.

J. R. Henderson J.

Released: February 12, 2026

CITATION: Toppits Foods Limited Estate v. 2141354 Ontario Ltd., 2026 ONSC 821
COURT FILE NO.: CV-24-00088109-0000
DATE: 2026-02-12

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

BDO Canada Ltd. in its capacity as trustee in
bankruptcy of the Estate of Toppits Foods Limited

Plaintiff

– and –

2141354 Ontario Ltd. o/a Heng Sing and Yan Na Li

Defendants

**DECISION ON MOTION FOR SUMMARY
JUDGMENT**

J. R. Henderson J.

Released: February 12, 2026