

dismissed the action as against the Builder because the Plaintiff failed to satisfy three costs awards made in the Builder's favour. Ms. Wang remains the only Defendant in this action.

- [4] By way of background, on January 28, 2017, the Plaintiff entered into an agreement of purchase and sale with the Builder for a newly constructed home at 7 Kristen Street in Richmond Hill ("the Qu/Builder APS"). The Plaintiff was to make three deposits. The original closing date was June 29, 2017.
- [5] In her defence, the Defendant asserts that the Plaintiff made fraudulent misrepresentations such that the contract was rescinded. She alleges that these misrepresentations include:
- a. that the Plaintiff had the right to assign the lease when he did not as the Builder's prior written consent was required;
 - b. that the Plaintiff had arranged for \$250,000 worth of upgrades when he had not;
 - c. and a fourth ensuite bathroom would be built when the Builder would not permit further changes as the house had already been framed and bricked and under the original APS, no further changes were permitted.
- [6] The Defendant further submits that the Plaintiff misappropriated her funds for his own use.
- [7] For the reasons that follow, I find for the Defendant, and I dismiss the Plaintiff's action.

II. Issues

- [8] The issues in this case are as follows:
- a. What was the agreement between the parties?
 - b. Did the Plaintiff have the right to assign the original APS?
 - c. Did the Plaintiff make a fraudulent misrepresentation?
 - d. Did the Defendant fulfill her obligations under the contract?

[9] To decide these issues, I will examine the applicable legal burden, the chronology and brief factual background, the evidence of the parties and their reliability and credibility. I then turn to each of the legal issues, the law that governs each and apply the facts of this case to the legal issues.

III. Analysis

A. *Legal Burden*

- [10] It is a fundamental principle of civil law that the Plaintiff must prove his case on a balance of probabilities. This means that the Plaintiff must prove that what he claims is more likely than not. See *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at paras. 40-45.

B. Factual Background

[11] I briefly address the chronology of events. These facts are drawn mainly from the documents tendered by the parties at trial.

(a) Agreement between the Plaintiff and Builder

[12] On January 28, 2017, the Plaintiff and the Builder entered into the Qu/Builder APS. They agreed upon the price of \$2,888,000 inclusive of HST. The agreement provided for a deposit of \$500,000 and a “first tentative closing date” of June 29, 2017. The agreement was irrevocable as of February 4, 2017.

[13] The colour charge and purchaser’s extras were noted to be \$0.00, and the agreement provides that the purchaser’s extras were included in the purchase price.

[14] An amendment to the Qu/Builder APS provides that the purchaser (the Plaintiff) shall not, among other things, assign the agreement without the Vendor’s written consent which may be arbitrarily withheld. The amendment also provided that the vendor (the Builder) agrees to an assignment such to the satisfaction of several conditions, including the payment of an assignment fee.

[15] The agreement required the Plaintiff to make three deposits: \$100,000 on January 28, 2017, \$200,000 on February 28, 2017, and \$200,000 on March 28, 2017.

[16] The agreement also provided that the house had been bricked and framed and that no change to the layout would be permitted.

[17] The Qu/Builder APS provides that the Plaintiff was entitled to \$20,000 as set out in the Colour Chart and Purchaser’s Extras and Amendments to the Purchase Price. The cost of this was noted to be zero.

(b) The Agreement between Plaintiff and Defendant

[18] On March 19, 2017, the Defendant saw an advertisement for the subject property on the social media platform WeChat and contacted Ms. Rebecca Fang, the Plaintiff’s agent, who also became the Defendant’s agent.

[19] Unbeknownst to the Defendant, the Plaintiff’s second deposit due on February 28, 2017 under the Qu/Builder APS was returned for insufficient funds.

[20] On March 21, 2017, the Plaintiff, Ms. Fang, and the Defendant met at a Tim Hortons and there they entered into an agreement of purchase and sale which the Plaintiff refers to as the assignment agreement (“the Qu/Wang Agreement”). The Plaintiff had printed off an agreement for the parties to sign, and the handwritten portions of the agreement were made at their meeting.

- [21] Both parties used Ms. Fang as their real estate agent. The agreed upon purchase price was \$3,130,000. The Defendant asserts that the Plaintiff represented that the Builder would permit an assignment.
- [22] The agreement provides that the Defendant would deposit \$150,000 by cheque payable to the Builder which the Defendant did, as further described below.
- [23] The Qu/Wang Agreement was in Form 100 of the Ontario Real Estate Association Agreement of Purchase and Sale. It is poorly drafted. In addition to the sale price of \$3,130,000, the agreement provides for a completion date of July 28, 2017 and a number of upgrades including a Sub-Zero fridge and a Wolf Stove. The upgrades were to be set out in an attached file labelled "U".
- [24] Schedule "A" to the agreement between the parties provides as follows. The typographical errors were in the original:

THIS IS A ASSIGNMENT SALE.

ORIGINAL BUILDER IS TREASUREHILL, THE PURCHASE PRICE IS \$288,8800.00 PLUS UPGRADES, WHICH HAS BEEN DETAILED IN THE UPGRADES SHEET , ATTACHED FILE "U".

(SUB ZERO FRIDGE, WOLF STOVE, TOP GRADE CABINET.,)

TOTAL UPGRADES ABOUT \$250,000 PLUS HST)

THE PURCHASE PAY THE TOTAL PRICE IN FULL TOWARDS CLOSING SUM OF TOTAL \$3,130,000.00.

THE PURCHASER TAKE ALL RESPONSIBILITIES FROM THE BUILDER "TREASURE HILL"

THE THIRD DOWN PAYMENT TO TREASURE HISLL IS \$200,000 ON 28TH/MARCH 2017. THE REST AMOUNT OF \$2,938,800.00 AS BALANCE REMAINING ON CLOSING.

- [25] Handwritten terms were also included on Schedule "A". They were:
- a. Assignor is responsible to build "4 ensuite bathrooms" on second floor;
 - b. Assignor provides Tarion certificate/warrant upon the acceptance of the Assignment Contract;
 - c. Assignor provides survey upon closing date and that the Plaintiff would provide Tarion certificate/warrant upon the accidents of the assignment contract and upon the closing date, a survey.

- [26] Also on March 21, 2021, after the agreement was signed, the parties and the real estate agent, Ms. Fang, attended at the Builder's office, and the Defendant was told to give a cheque of \$150,000 directly to the Builder, rather than to the Plaintiff. The cheque was not a trust cheque.
- [27] The Defendant asserts that her deposit cheque went directly to the Builder to replace the Plaintiff's bounced cheque for the second installment of his required deposit as he was in default of his obligation under the Qu/Builder APS.
- [28] The Court received copies of the Defendant's certified cheque as cashed by the Builder. On the cheque, it was noted "Lot 2, Weitao Vito Qu NSF Replacement cheque". Also in evidence is a second cheque, in the amount of \$50,285.50 payable to the Builder. I am able to conclude that the Plaintiff used the Defendant's cheque, together with his \$50,282.50, to replace his \$200,000 NSF without the knowledge of the Defendant.
- [29] Later, after consulting with a lawyer, the Defendant learned that she had no agreement with the Builder.
- [30] The Defendant made no further payments to the Plaintiff or the Builder. The Plaintiff states that he paid \$350,000 to the Builder in total.

(c) Events After the Signing of the Agreement

- [31] On March 29, 2017, the Defendant's lawyer wrote to Nautical Lakes seeking a return of her March 21, 2017 \$150,000 cheque. The letter outlined that the Plaintiff had represented that the Builder would permit an assignment, and it was on this basis that she provided her cheque directly to the Builder. The letter further provided that the Defendant had requested that both the Plaintiff and the Builder provide her with the Assignment Agreement, but none had been provided. The Defendant demanded a return of her deposit.
- [32] The Defendant also began to demand that she be provided with Schedule "U" to the Qu/Wang Agreement which purportedly set out the \$250,000 in upgrades. This was never provided to the Defendant despite repeated requests.
- [33] On April 6, 2017, the Plaintiff personally wrote to the Defendant's lawyer, copying his own. In his email, he stated, among other things, that he had paid \$150,000 to the basic contract price and \$250,000 for upgrades, and it was the Defendant's obligation to pay the final payment of \$200,000. He asserted that under contract law, the assignor and the assignee must follow the original contract from the vendor.
- [34] The Defendant learned that the house at 7 Kirsten Street had already been framed such that the addition of a fourth ensuite bathroom, as set out in the Qu/Wang Agreement, was not possible as the Qu/Builder APS did not permit alterations as the house was framed and bricked.
- [35] On May 2, 2017, the Defendant's lawyer wrote to the Plaintiff's lawyer stating that she would agree to accept an assignment of the agreement with an end of June closing date on

terms. One of the terms was a confirmation from the Builder of the \$250,000 in upgrades and a reduction in price based on the failure to install the fourth bathroom.

- [36] The Builder was willing to contemplate an assignment on terms, but this would require payment of an assignment fee.
- [37] On July 11, 2017, the Defendant's lawyer wrote to the Plaintiff's lawyer stating that if they did not receive evidence by July 28, 2017 that the Plaintiff owned the property, they would treat the Qu/Wang Agreement at an end and commence an action for the return of her deposit.
- [38] On July 11, 2017, Robert Leck, the Defendant's lawyer, wrote to the Plaintiff's lawyer stating that a title search revealed that the Plaintiff was not the owner of the subject property. He asked for evidence that he was the owner of the subject property and that he had closed his transaction with Treasure Hill as evidence that he would be able to transfer title to the Plaintiff. He threatened action for the return of the Defendant's \$150,000 deposit. The Plaintiff argues that the Defendant's lawyer made a mistake because the closing date was July 28, 2017.
- [39] On July 13, 2017, the Builder's lawyers wrote to counsel for the Plaintiff enclosing an assignment agreement for the Plaintiff and the Defendant to execute ("the Builder's Assignment Agreement"). The Builder set a deadline of July 21, 2017 for the execution of their assignment agreement and required \$22,600 in assignment fees. The Builder's consent to the assignment expired July 21, 2017.
- [40] On July 18, 2017, a new lawyer for the Defendant wrote to the counsel for the Plaintiff and the Builder. He identified concerns about misrepresentation regarding upgrades and that there was an attempt to foist new terms upon the Defendant. He asked to be provided with the new proposal.
- [41] The Plaintiff's counsel responded that the Defendant must close the purchase as an assignment and sign the Builder's Assignment Agreement as the Builder's consent to an assignment expired July 21, 2017.
- [42] On July 24, 2017, the Defendant's lawyer wrote to the Plaintiff's lawyer advising that the Qu/Wang Agreement did not contractually bind the Defendant to the Builder and that nothing in the Qu/Wang Agreement would permit its terms to be substituted with terms between the Builder and the Plaintiff. Counsel noted the significant differences between the agreements, identifying material misrepresentations (i.e. about the fourth bathroom, the \$250,000 in upgrades) such that the contract was voidable.
- [43] The letter argued that the Plaintiff has not fulfilled his obligations under the original Qu/Builder APS. In short, the Defendant took the position that there had been no assignment.
- [44] The letter identified breaches of the *Real Estate and Business Brokers Act, 2002*, S.O. 2002, c. 30, Schedule C, and the regulations thereunder including that the deposit cheque be held

in a trust account, that he knowingly made false representations and other breaches. The letter concluded by advising that the Defendant was electing to terminate the agreement for fraudulent misrepresentations and demanded a return of the deposit.

[45] The letter advised the Plaintiff that if he disagreed, he show his ability to close the transaction in a manner that fully complies with terms of the Qu/Wang Agreement.

C. Evidence of the Parties

(i) Reliability and Credibility of the Plaintiff

[46] Credibility is about the honesty or veracity of a witness' testimony. Reliability has to do with the accuracy of a witness' testimony which is often assessed by the witness's ability to observe, recall and recount the events at issue: *R. v. Sanichar*, 2012 ONCA 117, at paras. 69 – 70 per Laskin J.A, as adopted by the Supreme Court of Canada (2013 SCC 4).

[47] As set out in *R. v. Kruk*, 2024 SCC 7, 489 D.L.R. (4th) 385, at para. 81, when assessing credibility and reliability of the evidence of witnesses, I must remain grounded in the totality of the evidence. At the same time, I must evaluate the testimony of each witness and make determinations that are entirely personal and particular to that individual.

[48] Mr. Qu testified in chief and described himself as an engineer and a real estate broker.

[49] Mr. Qu was neither a credible nor reliable witness. He could not answer a question directly and evaded answering questions directly.

[50] Mr. Qu failed to acknowledge facts that should easily have been acknowledged. For example, he was asked if he prepared the agreement of purchase and sale. He first disagreed, stating that it was the agent who prepared the agreement at their meeting at Tim Hortons. Then, when he was directed to the printed aspects of the agreement, for example the provisions relating to the deposit, he agreed that he did indeed put those provisions in the agreement.

[51] He disagreed that the Court dismissed his action against Nautical for failure to pay costs, even when his attention was specifically drawn to the Court's decision of January 4, 2021.

[52] He disagreed that he had been disciplined by the Real Estate Council of Ontario (RECO) in respect of this transaction, even when RECO's 2022 decision was put to him. He stated that he had written to the lawyer member of the panel, outlining the mistakes in their decision, and was awaiting a response.

[53] Mr. Qu stated he had the consent of the Builder to assign the APS because they accepted the money directly from the Defendant. He says that it is commonsense that they consented because when Ms. Wang provided her cheque to the Builder, the Builder knew exactly from whom the money came.

- [54] Mr. Qu states that he had proof in writing of the Builder's consent to the assignment, but no proof was provided to the Court.
- [55] I find that Mr. Qu is neither credible nor reliable.
- [56] In contrast, Ms. Wang presented as both credible and reliable. She answered questions directly. She appeared to accurately and completely recount the important details. Ms. Wang is a Registered Massage Therapist and had been disciplined by the College of Massage Therapists of Ontario. She entered into a plea agreement and admitted her wrongdoing which included signing receipts bearing her name for services performed by estheticians and other misconduct. Ms. Wang acknowledged that wrongdoing before me, that she had been disciplined and that her licence was suspended for six months. She told me that she is ashamed of what she did and that her license is now in good standing.
- [57] This past behaviour impacts her credibility. However, her evidence before me was supported by documentary evidence. Her evidence was not otherwise undermined in cross-examination and I accept it.

D. Findings

- [58] I find that the Plaintiff failed to demonstrate that he made an assignment of the original APS with the Builder. The original APS obliged the Plaintiff to have the written consent of the Builder. The Plaintiff did not have this consent, and therefore, there was nothing that he could legally assign.
- [59] I do not accept that the Builder's acceptance of Ms. Wang's cheque is evidence of prior written consent. It is true that the APS provides the right to assign, however, the APS provides that written consent must be obtained.
- [60] I also find that while the Plaintiff asserts that the Qu/Wang Agreement was an assignment agreement and includes language of an assignment, the terms of the Qu/Builder Agreement and the Qu/Wang Agreement are different such that the Qu/Wang Agreement cannot properly be considered an assignment.
- [61] The Plaintiff advanced this case as an assignment and claims a breach on that basis. His claim of a breach of an assignment agreement fails.
- [62] I note that while the Builder was prepared to enter into an assignment agreement in July 2017, this would have imposed additional, more onerous terms upon the Defendant for a property that was not what she had bargained for.
- [63] The Defendant did not, as the Plaintiff asserts, assume his obligations to the Builder by their agreement. This is not what the Qu/Wang Agreement provides. Rather, the Qu/Wang Agreement between the parties required the Plaintiff to sell 7 Kirsten Street with a fourth bathroom and \$250,000 in upgrades to the Defendant.
- [64] The Plaintiff was never in a position to do that.

E. Did the Plaintiff make a fraudulent misrepresentation?

- [65] The Plaintiff has pleaded his case as a breach of an assignment agreement. I have found that there was no lawful assignment given the lack of written consent as required by the Qu/Builder Agreement and the different contractual terms between the two agreements.
- [66] I also address the Defendant's argument and find that the contract was voidable based on fraudulent misrepresentations made by the Plaintiff.
- [67] The Court of Appeal for Ontario confirmed the test for fraudulent misrepresentation in *1000425140 Ontario Inc. v. 1000176653 Ontario Inc.*, 2024 ONCA 610, at para. 24. To establish fraudulent misrepresentation the Defendant must prove:
- a. The Plaintiff made a false representation/statement of fact;
 - b. The Plaintiff knew the statement was false or was reckless as to its truth;
 - c. The Plaintiff made the representation with the intention that it would be acted upon;
 - d. The representation was relied upon the Defendant, and
 - e. The Defendant suffered damages as a result.
- [68] Each of these are met here.
- [69] The Plaintiff made several false statements:
- a. He represented that he could assign the agreement when he did not have written consent to do so;
 - b. He represented that he had paid \$250,000 in upgrades when he did not. The evidence demonstrates that he forged a copy of the Colour Chart from the Qu/Builder Agreement to make it look like he paid \$250,000 in upgrades by adding "\$250+K", when the original Colour Chart showed \$0.00; and
 - c. He represented that he would add a fourth ensuite bathroom when the original agreement shows that no alterations could be made after the house was framed and that date has passed when the Qu/Wang Agreement was signed.
- [70] I find that Mr. Qu knew that these representations were false because of the terms of the Qu/Builder Agreement he signed. I find based on his desire to assign the agreement, he made the representations so the Defendant would agree to his terms. He therefore knew they would be acted upon.
- [71] As a result of relying on these representations, the Defendant lost \$150,000.
- [72] The Defendant has shown that the Plaintiff made fraudulent misrepresentations causing a loss to her.

[73] Given the Plaintiff's conduct, that he has been disciplined for his conduct, it is shocking that he would maintain his position that the Defendant is responsible for his losses.

IV. Conclusion

[74] The Plaintiff did not have the right to assign the Qu/Builder Agreement without the Builder's written consent which he did not have. As a result, he has not proven his claim on a balance of probabilities.

[75] The Defendant did not fail to close the Qu/Wang Agreement. Rather, the Plaintiff did not close his agreement with the Builder and, consequently, was not in a position to transfer the property to the Defendant. Even if he were able to do so, the Qu/Wang Agreement is voidable because of the fraudulent misrepresentations made by the Plaintiff.

[76] The action is dismissed.

V. Costs

[77] The Defendant is the successful party and is presumptively entitled to her costs. She has advised that she wishes to receive her costs.

[78] I will decide the costs by way of written submissions. The Defendant shall provide written costs submissions limited to two double-spaced pages exclusive of any offers and supporting material by March 30, 2026. The Plaintiff may respond in writing, subject to the same limits by April 13, 2026. There shall be no reply without leave. They shall be filed through the portal, uploaded to Case Center, and a copy sent to my Judicial Assistant Robyn Pope at Robyn.Pope@ontario.ca.

Justice S.E. Fraser

Released: March 20, 2026

CITATION: Qu v. Wang, 2026 ONSC 1715

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

WEITAO QU

Plaintiff

– and –

HONG WANG

Defendant

REASONS FOR DECISION

Justice S.E. Fraser

Released: March 20, 2026

2026 ONSC 1715 (CanLII)