CITATION: Isak v. Isak, 2026 ONSC 2110
DIVISIONAL COURT FILE NO.: 295/25 and 313/25
DATE: 20260401

SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT

RE: Natalia Isak and Michael Monize, Appellants

AND:

Fiktoria Isak and ADS on Route Inc., Respondents

BEFORE: Justice O'Brien

COUNSEL: *Natalia Isak and Michael Monize,* Self-Represented Appellants

Fiktoria Isak and ADS on Route Inc, Self-Represented Respondents

HEARD: March 30, 2026

ENDORSEMENT

[1] The appellants appeal from the order of Deputy Judge Huberman dated March 7, 2025. The deputy judge made a single order addressing the plaintiffs'/appellants' claims and responding to the defendant/respondent, Fiktoria Isak's, claims. He dismissed the claims brought by each of the appellants and partially allowed the respondent's claims in each matter, ultimately ordering that each of the appellants pay $17,500 to the respondent as damages for breach of contract.

[2] The parties had dealings related to a business called ADS on Route Inc. The business purchased a truck financed through a loan. The respondent and her father provided personal guarantees required by the bank for the loan to be approved. As a condition of financing, the bank required that they be listed on the corporate share register.

[3] The appellants alleged that the parties verbally entered into a partnership agreement and that the respondent breached fiduciary duties and was unjustly enriched because, among other things, when the parties' relationship broke down, she kept the truck.

[4] The respondent alleged that the appellants could not obtain financing for the business venture and approached her for assistance. She said she was a lender but that there was no partnership.

[5] The deputy judge agreed with the respondent. He found the two appellants were partners but that the respondent was not a partner in the business venture. He concluded the respondent was a lender and director who exercised her duty of care and loyalty and exercised appropriate business

judgment. According to the deputy judge, the test for unjust enrichment was not met since there was a juristic reason for the benefit the respondent received from the business.

[6] With respect to the respondent's claims against the appellants, the deputy judge found the appellants were liable to pay the respondent for the monies lent as damages for breach of contract. He dismissed other claims by the respondent against the appellants, including for various fees, pain and suffering, and defamation, on the basis of insufficient evidence.

[7] In this court, the appellants raised numerous arguments. I address them below but overall agree with the position of the respondent that the appellant is asking the court to reweigh the evidence. The appellants have not identified any error warranting appellate interference. In addition, the appellants are attempting to rely on new documents that do not meet the test in *R. v. Palmer*, [1980] 1 S.C.R. 759.

Fresh Evidence

[8] Starting with the request to admit fresh evidence, the appellants have attempted to introduce new evidence or seek an order for further disclosure. First, they seek to admit the final version of the parties' business plan, which was submitted to the bank. They say the respondent relied only on a draft version at trial. The final business plan could have been obtained prior to trial. The appellants admit they had access to the relevant e-mail account from which it was sent and that they ultimately located it in storage. They have not adequately explained why the could not have recovered it from storage before trial. In any event, the final business plan would not have been conclusive of an issue at trial. It shows the respondent as an owner and involved in the business. Other evidence before the deputy judge also showed the respondent as the business owner. The deputy judge ultimately accepted the version of events that the respondent was presented as an owner for the purpose of obtaining the loan but that there was no partnership.

[9] The appellants also ask for the full version of an audio recording presented by the respondent at trial. They say the version she provided was redacted in a misleading manner. This request is dismissed. The appellants received the audio recording before trial and could have asked for the full version but did not. They also expressly stated at trial that they did not object to the introduction of the recording in evidence. They cannot seek this new evidence now.

[10] Similarly, the appellants request a court order for bank records they say would supplement their case. Again, any request for a bank record should have occurred before trial. Those records cannot be sought now after the trial has concluded.

Issues On Appeal

[11] Turning to the issues the appellants have raised on appeal, there was no error in the deputy judge's finding that the respondent was not in a partnership with the appellants. I realize that the appellants vehemently disagree with the deputy judge's conclusion that there was no partnership. But the test on appeal for this type of factual finding is whether there was a palpable and overriding error. This means an error that is "readily or plainly seen" and would affect the outcome: *Housen v. Nikolaisen* 2002 SCC 33. Appeal judges will defer to the factual findings of a trial judge, absent

palpable and overriding error, in part because the trial judge, having heard the evidence, is in better position to make factual determinations. As the Supreme Court of Canada emphasized in *Housen*, quoting from R.D. Gibbens in "Appellate Review of Findings of Fact" (1991-92), 13 Advocates' Q 445: "The trial judge has sat through the entire case and his ultimate judgment reflects this total familiarity with the evidence."

[12] Here, there was evidence before the trial judge supporting the respondent's version of events about the arrangement between the parties. First, there was no written partnership agreement between the parties. Second, there were e-mails and other evidence that the respondent became involved because the appellants could not obtain a loan on their own. Third, there was evidence that the bank required the respondent and her father to be listed as owners on the shareholder register. On the evidence, it was open to the trial judge to find the respondent was not a partner.

[13] The appellants repeatedly allege the respondent misrepresented the nature of the dealings between the parties. But the trial judge considered the credibility of the parties. He was well aware of the personal difficulties between them but ultimately accepted the respondent's version of events. He expressly dismissed the allegation that the respondent had acted in a dishonest manner. Other than baldly alleging the respondent made misrepresentations, the appellants have not provided the court with a basis to interfere with the trial judge's conclusions on credibility.

[14] The appellants also submit the deputy judge erred by finding the appellants were aware the respondent personally guaranteed the loan. According to the appellants, the government loan they had sought only required a 25% repayment on default. They say they did not agree to a 100% personal guarantee. There is no palpable and overriding error in the deputy judge's finding on this point. There was evidence, for example in the e-mail from counsel dated August 29, 2016, that the respondent and her father were required to and made a personal guarantee of the entire loan to the bank and that the appellants were aware of this. The appellants may disagree with this finding, but it was open to the trial judge.

[15] Given the deputy judge's conclusion on the arrangements between the parties, there was no error in his unjust enrichment analysis. That is, there was no error in his conclusion that the respondent was not unjustly enriched since her position as lender provided a juristic reason for the payments she received and her attempt to recoup her loan.

[16] The appellants specifically submit the trial judge erred by not considering that the respondent was unjustly enriched by retaining the truck and obtaining a settlement from the seller of the truck. The trial judge did not deal with this allegation in detail since, although raised peripherally at trial, it was not emphasized as a separate issue that required a distinct ruling. But it is implicit in his breach of contract analysis that the respondent was entitled to recoup her losses for the loan. The respondent initially claimed damages of $119,991.35 in each action but reduced her claim to $35,000 to fall within the jurisdiction of the Small Claims Court. The full amount she claimed included items for which the deputy judge ruled she was not entitled to recover, but the loan payments and demand settlement loan totaled well over the $35,000 the trial judge ordered.

The appellants have not persuaded me the deputy judge erred by not expressly considering any additional amount the respondent may have recovered from the truck seller.

Disposition

[17] The appeal is dismissed. The respondent was self-represented and does not seek any costs of the appeal. None are ordered.

O'Brien J.

Released: April 1, 2026