



[6] Although it is possible to consider most default judgments in writing, I agree that the complexity of this one required counsel to attend and provide argument which was very helpful.

### **Decision**

[7] For the reasons that follow, I am granting the judgment as sought as against three of the defendants and adjourning the motion in respect of the fourth pending receipt of additional materials.

### **The Issues**

[8] The main issues are:

- Issue 1: Do the materials provide a basis for a finding of liability as against all defendants?
- Issue 2: What are the damages to which the plaintiff is entitled?

### **Analysis**

#### **Issue 1: Do the materials provide a basis for a finding of liability as against all defendants?**

##### **Privity of Contract**

[9] The main issue in terms of each of the defendants is whether the plaintiff has privity of contract with each of them in respect of the Loan, and/or if he does not, if there is another basis for liability.

[10] The difficulty with this case is that the documents appear to be written by these parties and do not appear to have been drafted by a lawyer. As well, they were originally drafted in Chinese and have been translated.

[11] In some instances, the translated language is imprecise. But, reading all of these documents, in context, demonstrates that the defendants Wenyi Wang (“Mr. Wang”), 2247697 Ontario Inc. (“2247697 Ontario”) and King Square Ltd. (“King Square”) were either parties to the Loan Agreement as principals in the first place, or subsequently entered into valid and binding agreements to be principally liable.

[12] The following is an analysis of the admissions from the Statement of Claim, as well as from the with evidence filed, which supports this conclusion.

##### **Privity of Contract between Mr. Wang and the plaintiff**

[13] The defendant Mr. Wang is the sole officer and director of 2247697 Ontario and its sole directing mind. He is also an officer and director and primary shareholder of the defendant King Square as well as its sole directing mind.

[14] The plaintiff advanced \$6.5 million to Mr. Wang pursuant to a written Loan Agreement dated September 5, 2013 (the “Loan Agreement”) which was stated to be between Mr. Wang and the plaintiff. The Loan had a fixed term of 18 months. The principal amount of the Loan was \$5 million and the remaining \$1.5 million was prepaid interest as part of the Loan.

[15] The purpose of the Loan was to provide partial financing for the construction and development of a residential development in Markham known as the King Square Project (the “Project”).

[16] Therefore, there is a clear and binding contract between the plaintiff and Mr. Wang which required Mr. Wang to repay amounts advanced pursuant to the Loan Agreement. There is no issue as to any element of contract formation being missing.

### **Privity of Contract between King Square and the plaintiff**

[17] On September 5, 2013, King Square executed a Pledge of Assets which pledged certain of its assets in the Project to the plaintiff.

[18] On September 6, 2013, King Square also signed a document titled “Lender’s clarification and demands relating to the matter of the Loan to King Square project of Canada” in respect of these matters (the “Clarification Letter”)

[19] The Clarification Letter was signed by Mr. Wang as Director of King Square:

[20] Paragraph 2 of the Clarification Letter set out that King Square provided the following relevant commitments:

Profit from the operation of the King Square project or return of the cash loan deposit shall firstly used to pay down the loan from the Lender. In the event that the King Square project runs into difficulty, after repayment of construction loan from the bank of \$72,000,000, the first priority shall be the repayment of the loan from the Lender.

In the event the Borrower (Wenyi Wang) breaches any terms and conditions of the Loan Agreement, Lender’s Agent Guoping Li may appoint any representative to get involved in the management of the King Square project in the capacity of an executive director in accordance with the terms.

[21] These documents show that King Square had given the plaintiff security which the plaintiff could have sought to realize upon.

[22] As will be seen, the Loan went into default.

[23] Afterwards, on December 5, 2016, Mr. Wang, on behalf of King Square, executed a Repayment Agreement proposal for the Loan whereby Mr. Wang and King Square would repay \$5 million in principal as well as interest of 20 per cent by March 4, 2017. I note that the document

attached as an exhibit to the plaintiff's affidavit in respect of this agreement is a series of handwritten notes and numbers with initials beside various notations dated December 5, 2016. It is not entirely clear from the documents alone what these documents mean, but the plaintiff's affiant has provided his evidence on what the document means which is set out above. This default judgment motion was served on all the defendants. If the defendants or any of them were of the view that the attached exhibit does not mean or support what the affiant says about the agreement on December 5, 2016, they could have sought to set aside the noting in default or filed materials. As they have not, I accept the statement in the plaintiff's affidavit on this issue.

[24] Therefore, the December 5, 2016 agreement constituted a valid contract between King Square and the plaintiff in respect of the Loan. At that time the Loan was in default and the plaintiff could have exercised its powers in the Pledge Agreement as against King Square. Thus, the consideration which flowed to King Square was a delay in possible enforcement proceedings. King Square agreed to be principally liable on the Loan in addition to Mr. Wang because it was vulnerable to steps which the plaintiff could take on its security.

#### **Privity of Contract between 2247696 and the plaintiff**

[25] As noted, the Loan was not repaid when it became due.

[26] On March 27, 2015, 2247697 Ontario signed a Loan Delay Agreement which stated as follows:

**The loan borrowed from your company, signed with Mr. Guoping Li, by our company on September 5<sup>th</sup>, 2013, was due on March 5, 2015.** The construction was postponed due to the extreme cold weather this year in Toronto, and accordingly the construction loan approved by the bank was delayed. Therefore, our repayment plan should be consequently delayed. [Bolding added for emphasis]

Regarding this, all the shareholders of our company agreed to propose to your company the request to delay the repayment as follows:

1. Our company shall repay in 2 months after the original due date. The last payment due date shall be changed to May 4<sup>th</sup>, 2015.
2. Our company agreed that the total repayment shall be CAD 6.6666 million dollars on or before the due date.
3. Our company agreed to deposit the payment into the account of Canadian lawyer Jiahua Sun, who shall pay to you upon the articles in this application.
4. All the expenses incurred during this period shall be covered by our company.

[27] This Loan Delay Agreement provides direct evidence from 2247697 Ontario that the Loan Agreement was entered into by Mr. Wang as agent for 2247697 Ontario.

[28] On August 30, 2020, Mr. Wang executed a second Repayment Agreement whereby Mr. Wang and 2247697 Ontario would repay \$5 million by September 25, 2020. This also provides direct evidence that 2247697 Ontario was the principal behind the Loan and establishes privity of contract between the plaintiff and 2247697 Ontario.

[29] The full amount of the Loan and interest has never been repaid. Therefore these defendants are liable for breach of contract.

**The basis for liability against Markland Residential: Unjust enrichment**

[30] The Statement of Claim pleads that on or about May 13, 2014, King Square fraudulently transferred a portion of the Project to a new but related corporation, King Square Hotel Corporation, which later changed its name to Markland Residential Corporation, (“Markland Residential”). Mr. Wang is also an officer and director of Markland Residential as well as its directing mind.

[31] Section 2 of the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F.29 states that every conveyance made with the intent to hinder or defeat or defraud creditors are void. Section 3 states that that s. 2 does not apply where an interest is conveyed upon good consideration and in good faith.

[32] Therefore, by failing to defend this proceeding, Markland Residential is deemed to admit that the conveyance to it was made with intent to defeat or hinder creditors and there is no evidence that the conveyance was made with consideration or in good faith so as to save it from the consequences of the *Fraudulent Conveyances Act*.

[33] Even though he has requested that the conveyance be set aside in the Statement of Claim, the plaintiff does not seek this relief on this motion because there is no value left in the Project. Instead, he seeks a judgment in respect of the Loans and interest which he advanced to the other defendants which he says also benefited Markland Residential because of the fraudulent conveyance to it.

[34] He asserts that Markland Residential has been unjustly enriched pursuant to the well-established principles set out in *Pettkus v. Becker*, [1980] 2 S.C.R. 834, at p. 848.

[35] In my view Markland Residential has been unjustly enriched because the plaintiff’s loan funds were used to build the Project in question, a portion of which was then fraudulently conveyed to Markland Residential. Therefore, there has been a benefit to Markland Residential, a detriment to the plaintiff and an absence of a juristic reason for the benefit. I add that unjust enrichment is an equitable remedy. The conduct here by Markland Residential in receiving a fraudulent conveyance without consideration falls within the mischief which this tort is designed to address.

[36] The fact that the plaintiff has another remedy which he does not wish to pursue, of setting aside the transfer, does not mean that he is not entitled to pursue other remedies.

[37] Nevertheless, it is not possible to quantify the benefit to Markland Residential and the detriment to the plaintiff because the Loan was in respect of the entire Project and only a portion of the Project was fraudulently transferred to Markland Residential.

[38] There is insufficient evidence on the value of the portion of the Project which was conveyed to Markland Residential so as to understand the value of the enrichment and the deprivation. For example, if the portion conveyed only had a value of \$2,000,000, then Markland Residential could not have been unjustly enriched for the full value of the Loan advances.

[39] I am adjourning this portion of the default judgment motion. If the plaintiff wishes to pursue this, he may provide further information to support the loss as against Markland Residential. If the plaintiff determines that it will proceed with this, then I expect that it will provide legal authorities for how this loss should be quantified.

**Issue 2: What are the damages to which the plaintiff is entitled?**

[40] The plaintiff provided a breakdown of the damages calculation which is based upon:

- the acknowledgement in the Loan Delay Agreement as of May 4, 2015, that the amount outstanding pursuant to the Loan Agreement was \$6.6666 million;
- evidence from the plaintiff that the agreed-upon interest rate in consideration of the Loan Delay Agreement was 20 per cent. This is also confirmed by reverse engineering the amount agreed to pay for principal and interest in the Loan Delay Agreement;
- acknowledgement that the plaintiff was repaid \$856,780.56 on July 8, 2015, and \$1,713,561.12 on March 31, 2017; and
- confirmation that all interest calculations are only applied to the outstanding principal of \$5 million which has never been repaid.

[41] Mr. Wang, King Square and 2247697 Ontario are all bound by the terms of the written agreements which impose a 20 % interest rate.

[42] I am satisfied that the application of the 20 per cent interest rate to the outstanding principal, taking into account repayment of interest, results in an outstanding balance of \$12,394,307.42 as of the date of this decision.

**Costs**

[43] The plaintiff has requested costs in the amount of \$37,440.38. I have reviewed the rates and hours spent which are reasonable. This matter was also somewhat complex because of the multiple different documents, all of which had to be translated and considered. I am satisfied that this cost claim is fair and reasonable and within the reasonable contemplation of the defendants and I am awarding them.

### **Post judgment Interest**

[44] Section 130(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 gives the court the discretion to allow an interest rate that is higher or lower than the rate set out in ss. 128 or 129.

[45] Section 130(2)(b) provides that in exercising this discretion, the court shall take into account the circumstances of the case.

[46] In *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43, [2002] 2 S.C.R. 601, at para 49 the Supreme Court stressed that absent exceptional circumstances, the post-judgment interest should generally be calculated at the contract rate which had governed the loan prior to the breach. It stated that “[t]he application of a lower rate would be unjust to the lender.”

[47] Therefore, the contract rate of 20 per cent should apply to the defendants Mr. Wang, 2247697 Ontario and King Square as post-judgment interest.

[48] I am adjourning the motion for default judgment in respect of Markland Residential.

[49] The plaintiff shall file supplementary motion materials on this issue within 14 days failing which the motion for default judgment against Markland Residential shall be dismissed.

**Released:** September 26, 2023

---

Papageorgiou J.

**CITATION:** Li v. Wang et al., 2023 ONSC 5414  
**COURT FILE NO.:** 21-00654468  
**DATE:** 20230926

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

GUOPING LI

Plaintiff

– and –

WENYI WANG, 2247697 ONTARIO INC., KING  
SQUARE LTD. and MARKLAND RESIDENTIAL  
CORPORATION

Defendant

---

**REASONS FOR JUDGMENT**

---

Papageorgiou J.

**Released:** September 26, 2023