

committed errors of law and violated procedural fairness. For the reasons that follow I would dismiss the appeal.

Relevant Factual Background

- [4] The motion that resulted in the order under appeal was brought in the context of an action where the pleadings disclose that the following issues were in dispute:
- (a) Who was the owner of the Property? Cach alleged that it was the legal and beneficial owner of the Property; Canada One and Ms. Zhu pled that she, along with four other people (including Mr. Lam), founded Cach for the purpose of holding the Property in trust for Canada One.
 - (b) Which lease agreement governed the relationship between the parties? Cach alleged that the five-year lease agreement dated March 26, 2022 was the governing agreement. The Appellants pled that a lease-purchase agreement that was signed on the same day was the governing agreement. Mr. Lam, who is in his eighties, stated that he was essentially duped by Ms. Zhu into signing the latter agreement.
 - (c) Who controlled Cach and who was authorized to control its bank account? Mr. Lam alleged that he was the sole director and officer of Cach and the only one entitled to control its bank account. Ms. Zhu alleged that she was the majority shareholder of Cach, a director of Cach and the only one entitled to control its bank account.
- [5] Cach commenced its motion to gain possession of the Property because it alleged that Canada One had failed to pay rent on the Property and had failed to provide proof of insurance and a key to the Property as required by the five-year lease between the parties. When Cach took possession of the property for failure to pay rent, Canada One re-entered the Property and changed the locks. Ms. Zhu also advised the Royal Bank that she was Cach's owner and had the sole authority to operate Cach's bank account. As a result, the bank froze that account. This, according to the Respondent, put Cach in the position where it was not able to pay its bills.
- [6] Cach scheduled an attendance at Civil Practice Court to request an urgent motion to seek relief under Part III of the *Commercial Tenancies Act*, R.S.O. 1990, c. L7, to have the lease declared terminated and to order that Canada One vacate the property. It also sought relief with respect to the bank account.
- [7] The attendance at Civil Practice Court occurred on May 24, 2024. On that day the lawyer for the Appellants advised the court that he intended to remove himself from the record. Koehnen J. set a timetable for the delivery of material and cross-examinations, and ordered that the motion be heard on August 23, 2024. His endorsement states that the motion was "urgent". It also advised Ms. Zhu of the urgent need for her to retain new counsel, and that the inability to retain new counsel would not constitute grounds for an adjournment.
- [8] On June 14, 2024, Koehnen J. granted the order that counsel for Canada One and Ms. Zhu was no longer their lawyer and granted Ms. Zhu permission to act for Canada One.

[9] The motion judge noted the following about the material that was before him:

[3] The plaintiff in support of its motion filed two affidavits from the sole officer, director and shareholder of the plaintiff, Mr. Lam. There was no affidavit evidence filed by the defendants in response. While material was uploaded to Case Center from the defendants, and it was described as consisting of “affidavits” from Ms. Zhu, none of it was sworn or affirmed.

[10] The motion judge then went on to make it clear why he found that the only admissible evidence before him was the evidence from Cach.

[16] The defendants filed no affidavit evidence with the court to oppose the plaintiff’s motion. Material was uploaded to Case Center, but nothing was part of an affidavit. The material uploaded were more like submissions or arguments than evidence and the submissions made by Ms. Zhu, during argument on the motion were for the most part incomprehensible. During the course of her submissions, she, among other things asked the court to contact witnesses on its own, referred to materials that while uploaded to Case Center had never been provided to counsel for the plaintiff, held up documents to the camera telling the court to read them and that they somehow supported her position and then pulled them away from the camera. She refused to or was unable to refer to documents to support any of her submissions. While there is no obligation to provide admissible evidence on a motion there is a risk in failing to do so.

[17] The only admissible evidence was from the plaintiff. It supported its position. There was no admissible evidence from the defendants in support of their position.

[11] The motion judge summarized the evidence before him in the following paragraphs:

[14] Mr. Lam was the sole signatory to the RBC Master Client Agreement when the RBC account was created on March 18, 2015. The plaintiff is the mortgagor of the mortgage used to purchase the property. Mr. Lam is the sole guarantor of this mortgage. The plaintiff’s bank statements are sent to Mr. Lam’s house. His address is on the bank statements. Mr. Lam signed on behalf of the plaintiff on the RBC business credit card agreement. Mr. Lam and the plaintiff are the only signatories to the RBC Business Banking Loan Agreements and are both liable to RBC for the loan both at its inception in 2015 and its renewal in 2017, 2019, and 2021. All necessary real estate documents executed for the purchase of the property were signed by Mr. Lam on behalf of the plaintiff. Ms. Zhu

has provided no evidence that she owns the plaintiff, that she is a shareholder or that she is an officer or director of the plaintiff, or that she has any authority to act on behalf of the plaintiff.

[15] I am satisfied on Mr. Lam's affidavit evidence that Ms. Zhu filed false and unauthorized Annual Returns with Corporations Canada on behalf of the plaintiff naming herself as the authorized signing person for the plaintiff, along with forms making her the sole director of the plaintiff and provided them to RBC. Mr. Lam has been able to correct this with Corporations Canada, but RBC still requires a court order before it is prepared to unfreeze the plaintiff's bank account.

[12] On the basis of the material before him the motion judge made the following order (the "Order"):

1. He declared that the lease between the parties was terminated effective January 18, 2024.
2. He ordered Canada One to vacate the Property.
3. He granted Cach possession of the Property.
4. He granted Cach leave to issue a writ of possession with respect to the Property.
5. He ordered Canada One to pay Cach \$2400 per month for overholding rent for the period from January 1, 2024 to the date Cach gains possession of the Property.
6. He declared that Ms. Zhu had no signing authority or control relating to Cach's Royal Bank account and that Mr. Lam had the sole signing authority and control regarding that account.

[13] When the Appellants sought to appeal the Order Cach took the position that the relief that had been granted was interlocutory and therefore leave to appeal was required. The issue was referred to Myers J. for a determination. On December 13, 2024 Myers J. determined that the Order was a final order and therefore, no leave was required. In dealing with the matter, Myers J. referred to the motion that led to the Order as an order granting partial summary judgement.

Fresh Evidence

[14] Cach brought a motion for leave to admit fresh evidence. The Appellants did not oppose the admission of the evidence in question. It discloses that since the date of the Order Cach regained possession of the Property and then sold the Property. Further, in accordance with the Order, the Royal Bank has removed Ms. Zhu's authority to control Cach's bank account.

Mootness

[15] Cach submits that as a result of these events the appeal is moot. The Appellants, in oral submissions, conceded (and I agree) that the sale of the Property rendered any issues directed at regaining possession of the Property moot. However, they submit that the appeal with respect to the other aspects of the Order is not moot. I agree.

Issues Raised

[16] This appeal raises the following issues:

- (i) Did the motion judge breach procedural fairness when he refused to consider the Appellants' unsworn evidence and did not grant them an adjournment to rectify the defects in their material?
- (ii) Did the motion judge commit an error in law in granting partial summary judgment?
- (iii) Were the motion judge's reasons inadequate?

Analysis

The motion judge did not breach procedural fairness

[17] According to the Appellants, the motion judge's decision to proceed with the motion without providing the Appellants with an opportunity to correct the defects in their material violated the Canada Judicial Council's 2006 *Statement of Principles on Self-Represented Litigants and Accused Persons* (the "Statement").

[18] As summarized by the Divisional Court in *Royal Bank of Canada v. Lendak*, 2024 ONSC 7044 (Div. Ct.) at para. 72:

The *Statement* also provides the following guidance to the Judiciary:

1. Judges have a responsibility to inquire whether self-represented persons are aware of their procedural options, and to direct them to available information if they are not. Depending on the circumstances and nature of the case, judges may explain the relevant law in the case and its implications, before the self-represented person makes critical choices.
2. In appropriate circumstances, judges should consider providing self-represented persons with information to assist them in understanding and asserting their rights, or to raise arguments before the court.

3. Judges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented litigants.

- [19] According to the Appellants, the motion judge should have adjourned the motion to allow them to rectify the defects in their material. The Appellants also assert that the motion judge did not adequately manage the case or the courtroom to allow their case to be heard.
- [20] The decision by a trial judge whether to grant an adjournment is a discretionary one. The judge must account for a wide range of considerations based on the individual circumstances of each case. As such, these decisions are owed considerable deference: *Dhatt v. Beer*, 2021 ONCA 137, 68 C.P.C. (8th) 128, at paras. 10-11; see also *Bryce v. Bryce*, 2015 ONCA 871, at para. 5.
- [21] The argument that the motion judge breached procedural fairness when he did not adjourn the case to allow the Appellants to remedy the defects in their material, has no merit. First, this matter had been scheduled as an urgent motion and the material supported its urgent nature. Second, the Appellants did not request an adjournment. Third, the Appellants had been advised by the court just under three months prior to the hearing of the motion that it was important that they retain new legal counsel and that their inability to find new counsel would not constitute grounds for seeking an adjournment. The Statement makes it clear that “[s]elf-represented persons are expected to familiarize themselves with the relevant legal practices and procedures governing their case” and that they “are expected to prepare their own case.” Thus, self-represented litigants have an obligation to familiarize themselves with the rules of the court and the rule that affidavits must be sworn is a basic one. The Appellants had almost three months to ensure that their material complied with this basic rule. It is also important to note that Ms. Zhu applied for and was granted permission to represent Canada One. Competence is one of the key factors to be considered when granting a non-lawyer leave to represent a corporation.
- [22] It is clear from the motion judge’s reasons that he allowed Ms. Zhu to make submissions on behalf of the Appellants in spite of their failure to file admissible material. He asked her to point to the documents that she was relying on to support her submissions, and she did not do so. Instead, Ms. Zhu made inappropriate requests such as demanding that the motion judge contact witnesses on his own. Thus, the motion judge did take steps to try and ensure that the Appellants’ case could be considered. These steps failed because of the conduct of Ms. Zhu.
- [23] For these reasons I do not accept that there was any breach of procedural fairness by the motion judge.

Even if the Order granted Partial Summary Judgment the motion judge made no error when he granted the relief in the Order

- [24] The Appellants submit that the motion judge erred in law in granting partial summary judgment. According to the Court of Appeal partial summary judgment is a “rare procedure

that should be sparingly invoked”. The reason for this is two-fold. First, instead of fostering timely and affordable justice, partial summary judgment motions can increase both delay and costs. Second, partial summary judgments can increase the danger of inconsistent findings being made at trial when there is a more complete record: see *Way v. Schrembri*, 2020 ONCA 691, 8 B.L.R. (6th) 158, at para. 16.

- [25] Cach takes the position that this was not a motion for partial summary judgment. None of the material filed in support of the motion requested partial summary judgment and it was not referred to as a motion for summary judgment when it was scheduled by Koehnen J. The fact that Myers J. referred to it as a motion for partial summary judgment does not mean that is what it was. Rather, it was a motion for injunctive relief and for relief under Part III of the *Commercial Tenancies Act*.
- [26] Regardless of how this motion is characterized, Myers J. made a finding that the Order was a final order. This finding has not been appealed. Therefore, it is appropriate to examine whether the motion judge should have made a final order in the circumstances of this case. The concerns with doing so are same as the ones that have been highlighted by the Court of Appeal with reference to partial summary judgments.
- [27] The motion judge found that the record before him was uncontested. Subsequent to the argument of this appeal the panel found that there was a transcript of a cross-examination of Ms. Zhu that was not filed or adverted to during the hearing of the appeal, but that was before the motion judge. The transcript was referred to by Cach during its submissions but not by Canada One during its submissions. The panel wrote to counsel requesting that they make submissions on the issue of whether the transcript, which did contain answers from Ms. Zhu contesting some of the key facts asserted by Cach, meant that the motion judge erred when he found that the record before him was uncontested.
- [28] The Appellants’ submitted that the motion judge did err and that this error was material. In doing so they pointed to those portions of the transcript that they assert contest the facts put forward by Cach.
- [29] The problem with this submission is that the Appellants did not refer the motion judge to those portions of the transcript during the hearing before him. As put by the Divisional Court in *Cannon v. Geritz*, 2022 ONSC 6867 (Div. Ct.):

[37] A determination of whether a judge committed a reversible error can only be made by examining whether that judge rendered a decision and made appropriate decisions based on the evidence that was brought to the attention of the judge. To suggest otherwise is to invite litigation chaos and uncertainty. If judges are required to look for additional language in a document that has not been clearly brought to their attention by a litigant with respect to an issue that was not put in issue on the motion, the decision-making process would be endless. That result runs contrary to the goals of our adversary system. (emphasis added).

[30] In *Wasyluk v. Simcoe (County)*, 2023 ONCA 781, the Court of Appeal states the following:

[15] When reviewing a trial judge's reasons for palpable and overriding error, this court must consider the reasons as a whole in the context of the issues raised and the arguments made. *Faraj v. Fellowes*, [2022] ONCA 254, at para. 45. It is not enough for an appellant to point to an ambiguity, inconsistency, omission, or other shortcoming in some aspect of the trial judge's reasons. Appeal courts do not exist to grade the reasons of trial judges. Appellate courts must determine, on a fair and full reading of the record as a whole, whether the appellant has demonstrated reversible error. When the alleged error targets the fact-finding process at trial, deference sounds the loud key-note for appellate review.

[31] In my view, it was not a reversible error for the motion judge not to consider evidence that was never brought to his attention during the hearing before him. I note again that this evidence was also not adverted to by counsel during the appeal before us.

[32] My view on this is not changed by the fact that the Appellants did not have a lawyer. To put the onus on a motion or trial judge to dig through the record to find material that may support the position of a self-represented litigant is to risk distorting the adversarial process by turning the judge into an advocate for the self-represented litigant. That is not and cannot be the judge's role: *College of Optometrists of Ontario v. SHS Optical Ltd.*, 2008 ONCA 685, 93 O.R. (3d) 139, at paras. 57-59.

[33] Thus, I find that the motion judge did not err when he found that evidence before him was uncontested. The issues before him were urgent and he was in a position to make the findings he did in an efficient and cost-effective way. This fostered justice, rather than impeding it.

[34] The real concern is the danger of inconsistent findings at trial. This concern was discussed by Myers J., particularly with reference to the question of which lease was the valid lease. In addition, there is the question of who the owners of Cach actually were. While the motion judge did not specifically find that the five-year lease was the only valid lease, as Myers J. noted, he proceeded on this assumption. He also made findings that Mr. Lam was the only director of Cach and that the only person entitled to control it. If found to be binding these findings could prejudice the Appellants' damages claim at trial.

[35] The question then becomes whether it is an error for a judge to make a final order on an uncontested record because of the possibility that at trial the record may in fact be contested. In my view it is not. First, if a trial judge chooses to make a different factual finding than the motion judge did, it will be easy to explain why. Second, as the law on summary judgment motions make clear, a party to a summary judgment motion must put their best foot forward or risk losing. In this case, the Appellants lost because of their failure to advert to any admissible evidence or to point the motion judge to any documents in support of their position. In the face of this failure, it would be an injustice not to grant

urgent relief when the only evidence brought to the attention of the motion judge was in support of the relief being granted.

- [36] Thus, even if the Appellants are correct and the Order is an order for partial summary judgment, the motion judge did not err in granting the Order.

The motion judge’s reasons were not inadequate

- [37] The Appellants argue that the motion judge’s reasons were inadequate since they do not reference the principles governing the granting of partial summary judgment.

- [38] The motion judge’s reasons were sufficient to permit meaningful appellate review. He explained what evidence was before him, what evidence he was accepting and why. He explained that the evidence was uncontested and summarized the evidence that was relevant to the issues before him. He dealt with the relevant issues and his chain of reasoning is clear.

Conclusion

- [39] For these reasons the appeal is dismissed. The Respondent is entitled to its costs of this appeal, which we fix in the amount of \$15,000, all inclusive.

ACJ McWatt J

I agree

Sachs J.

MOLLOY J. (dissenting)

Introduction

- [40] I have had the benefit of reading the reasons for decision of my colleague Sachs J., with McWatt A.C.J concurring. I agree with the majority on the issue of mootness and also agree that the reasons of the motion judge were sufficient to allow appellate review. However, I respectfully disagree with the majority on the issues of procedural fairness and whether it was open to the trial judge to make a final order in face of what I can consider to be a record showing a substantial dispute on the underlying facts.

- [41] In my view, the relief granted was, in substance, a partial summary judgment and the orders of Hood J. ought not to have been made in the circumstances before him. Further, I would have found the motion judge breached procedural fairness by completely rejecting the material filed by Ms. Zhu, who was not represented by counsel, and proceeding with the

motion as if it were based on undisputed facts. Although her material was not in the appropriate sworn form, it is clear from the material filed and the pleadings in the action that the facts underlying the relief sought were very much in dispute. Had Ms. Zhu's material been filed in a form with the standard language at the end affirming Ms. Zhu swore them to be true, summary judgment under Rule 20 could not have issued. Further, counsel for Cach cross-examined Ms. Zhu on her "affidavit" and the transcript of that cross-examination was filed on the motion before the motion judge. In that cross-examination, she stated under oath that Cach held the property in trust for One Family, asserted many of the facts set out in her unsworn affidavit, and denied many of the assertions made by Mr. Lam. Even if the affidavit was excluded, the transcript of the cross-examination contains sworn evidence contradicting the claims made by Cach. This also would be sufficient to prohibit granting summary judgment. It is completely understandable that the motion judge did not see the material filed. I also recognize that this material was not brought to the attention of the motion judge by the unrepresented defendant. Regardless, the purpose of this review is not to find fault with the motion judge, nor to find him without fault, but rather, to provide a just result to the parties, considering all the circumstances. The trial judge made a fundamental and overriding error in failing to take this evidence into account and basing his decision on a complete absence of contradictory sworn evidence.

- [42] I would find that Ms. Zhu did not have a fair hearing, the trial judge overlooked material evidence inconsistent with his decision, and that the requirements for summary judgment were not met. I would therefore have set aside the decision. My reasons for reaching those conclusions follow.

The Issues in the Action

- [43] The underlying action was commenced in early 2022 by Cach Platform ("Cach") against Canada One Family Network ("One Family") (which is a not-for-profit corporation) and Ms. Zhu. The Fresh as Amended Statement of Claim is dated February 22, 2026. The action was initiated by Cach based solely on the instruction of Wai Hui Lam ("Mr. Lam"), who purports to be the sole officer, director, and shareholder of Cach. The Statement of Claim seeks an order declaring that the Lease-Purchase Agreement dated March 26, 2022 is null and void, as well as \$2,000,000 for "debt or in the alternative damages," and a further \$100,000 for aggravated, exemplary, and punitive damages.
- [44] The property at the heart of the action is a two-storey commercial condominium at 400 Esna Park Drive in Markham ("Unit 21"). Cach holds the title to the property. According to the Statement of Claim, Cach is the landlord for three concurrent leases in connection with Unit 21. The first lease with tenant One Family is dated March 26, 2022. This lease includes the whole premises for a five-year term and a monthly rent of \$2,400. The second lease is also dated March 26, 2022 and is a Lease-Purchase agreement, again with One Family as tenant and \$2,400 monthly rent. The third lease is alleged to have been dated April 1, 2022 and relates only to the ground floor. The Statement of Claim alleges that Ms. Zhu deceived Mr. Lam (who was 80 years old at the time) into signing the Lease-Purchase Agreement by telling him it was just a second copy and identical to the five-year lease. It

is also alleged that he signed the April 1, 2022 lease because Ms. Zhu's instructed him to do so without understanding its contents.

- [45] The Statement of Claim acknowledges that Ms. Zhu "was previously involved with" Cach but provides no further information about the nature of that involvement including how or when it ended. The Claim further alleges that in 2023, Ms. Zhu accessed the mailbox at Unit 21 and obtained information that enabled her to fraudulently file a false Form 6 with the government to change the directors of Cach. Through this change, she was able to have the Royal Bank of Canada ("RBC") give her sole control of Cach's bank account.
- [46] The Statement of Claim alleges that there were no payments under the Lease-Purchase Agreement and no payments under the April 1, 2022 lease.
- [47] Further, it is alleged that One Family stopped paying rent on the valid five-year lease in April 2023 and that as of October 1, 2023, there were arrears of \$16,800. Additional breaches are also alleged. There is no claim for a writ of possession for relief under the *Commercial Tenancies Act*.
- [48] At the time of the pleadings, Ms. Zhu and One Family were represented by counsel. They filed a Statement of Defence and Counterclaim, where they asserted that the action was not "duly authorized" by Cach and should be stayed. Ms. Zhu claimed to be a 50 percent shareholder in Cach. The Defence alleges that Ms. Zhu, Mr. Lam, and three other individuals founded Cach in 2015 to be a shell company that would hold title to Unit 21 in trust for the benefit of One Family and that it would be used as a Chinese cultural centre. One of these individuals withdrew from the agreement. The other four contributed \$140,000 in cash towards the purchase of Unit 21, with the balance to be covered by a mortgage with RBC. According to the pleading, Ms. Zhu contributed \$70,000 and became a 50 percent shareholder; Mr. Lam contributed \$20,000 and became a 14.3 percent shareholder; another person contributed \$20,000, and became a 14.3 percent shareholder; and a fourth person paid \$30,000 and became a 21.4 percent shareholder.
- [49] The Statement of Defence alleges that all parties always understood that the purpose of Unit 21 was for it to be used as a community centre and title would be held in trust for One Family by the shell company, Cach. It is further alleged that Mr. Lam became a director of One Family in 2016.
- [50] According to the Statement of Defence, the main floor of Unit 21 was leased to generate income of \$2,400 to cover all expenses required to maintain the property, including the mortgage. The Defence alleges that the parties jointly operated the property for several years, but there were some disputes, which I will not detail here.
- [51] The Statement of Defence alleges that Mr. Lam decided to retire from his activities related to the property in 2022 and there were discussions about how to transfer the property to One Family. Initially, this led to the five-year lease dated March 26, 2022. However, it is alleged that they changed their minds and entered into the 10-year Lease-Purchase agreement, which replaced the five-year lease. However, the parties neglected to destroy

the five-year lease. The explanation the parties provided for the April 1, 2022 lease was that this lease was for 900 square feet and was only for six months' duration. They state the intent behind the space was that Mr. Lam would use it for Chinese seniors events.

- [52] The Counterclaim seeks an order vesting title to Unit 21 in One Family.
- [53] In its Reply and Defence to Counterclaim, Cach alleges that the \$70,000 Ms. Zhu contributed was a loan and that it has since been repaid. It further alleges that RBC froze Cach's bank account because of this dispute. It states that a solicitor's demand letter was made with respect to the rental arrears of \$19,200, failing which, the landlord would repossess the property on November 11, 2023. Due to this demand letter, One Family delivered \$19,200 to Cach's solicitor, Ernest Woo.
- [54] In brief, both Cach and One Family claim a 100% beneficial ownership in Unit 21 and both accusations of misrepresentation and fraud are made against Ms. Zhu and Mr. Lam.

The Motion by Cach

- [55] In May 2024, Cach filed a requisition for an urgent hearing date citing that a commercial tenant had broken into leased property after the lease was terminated for failure to pay rent and the locks were changed. The requisition stated that the motion was being brought under Part III of the *Commercial Tenancies Act*. The action number cited was the one I referred to above.
- [56] Counsel for both parties appeared before Koehnen J. at which time, counsel for Ms. Zhu and One Family was removed from the record at his request and an urgent motion date was set for August 23, 2024. A timetable was set for the delivery of material and Ms. Zhu's address was fixed as the address for service of all material on her and One Family. Koehnen J. advised Ms. Zhu there was an urgent need for her to retain new counsel, that the motion would proceed on the appointed date, and that her inability to find new counsel would not constitute grounds for an adjournment.
- [57] Cach filed a Notice of Motion seeking two areas of relief – the first, relating to the property, and the second, relating to the bank account. Cach sought: (1) a declaration that the lease was terminated effective January 18, 2024, a writ of possession for Unit 21, and an order that One Family pay overholding rent from January 1, 2024 to the date of the hearing; and, (2) a declaration that Ms. Zhu had no authority over the RBC account and that Mr. Lam has sole signing authority and control over the account.

Initial Material Filed by Cach on Motion before Hood J.

- [58] Cach filed a Motion Record dated June 7, 2024, which included a Notice of Motion in which it relied upon Rule 20 (the summary judgment rule) and Part III of the *Commercial Tenancies Act*.
- [59] Cach also filed the sworn affidavit of Mr. Lam, dated June 6, 2024, stating, *inter alia*, that he was the sole shareholder and sole director of Cach, that Cach was the owner of Unit 21,

and that One Family was the tenant. He stated that One Family paid rent for the first year of the lease, was in arrears from April to November 2023, and that after a demand letter and a threat of repossession, One Family paid the \$19,200 arrears through solicitors in November 2023. Thereafter, he said One Family failed to provide post-dated cheques for rent going forward and failed to provide proof of insurance as required by the lease. He described a dispute with Ms. Zhu about the form of payment she was tendering for December 2023 and January 2024 and ultimately hired a company to change the locks on the premises on January 18, 2024.

- [60] He acknowledged in his affidavit that Ms. Zhu’s position was that the rent for those months was paid directly into Cach’s bank account and that he had received a letter from One Family’s then-solicitor advising of this and their position that the landlord’s entry was illegal.
- [61] Mr. Lam also stated in his affidavit that Ms. Zhu had unlawfully seized control of Cach’s RBC bank account and that when he tried to rectify this with the bank, they froze the account completely.
- [62] He said that after the company he hired in January changed the locks, One Family broke back into the premises and changed the locks again. He claims that at that time, One Family had not been paying rent.
- [63] Cach also filed a factum and relying on Rule 20 and the *Commercial Tenancies Act*. In the portion of the factum devoted to Rule 20, Cach maintained, *inter alia*, that there was no genuine issue for trial, that the issues to be decided were severable from any issues that were left, and that there was no risk of inconsistent decisions.
- [64] Cach’s material makes no mention of the Lease-Purchase Agreement, nor of the claims made by One Family that Cach was a shell company whose only function was to hold title to Unit 21 in trust for One Family. However, the pleadings were included in the Motion Record and those allegations are set out therein.

Initial Responding Material Filed by Ms. Zhu and One Family on Motion before Hood J.

- [65] Ms. Zhu filed a Responding Record on July 7, 2024, which purports to include an affidavit sworn by Ms. Zhu. Her material consisted of the following:
- A document described as “Responding Record”: This is in the same form as Cach’s Notice of Motion and which sets out the relief she sought: a declaration that the Lease-Purchase agreement is valid and enforceable and in good standing; an order replacing Mr. Lam with Ms. Zhu as the sole director of Cach; an order granting possession of Unit 21 to One Family and transferring title to One Family; and order giving Ms. Zhu control of the RBC account; and an order that Mr. Lam desist from criminal activities and behaviour that threatened her, her family, and One Family and its staff.

- A document described as “Affidavit of Yanyan Zhu”: This document starts with the standard introduction from a typical affidavit “I Yanyan Zhu, of the City of Markham, ON, MAKE OATH AND SAY”. Ms. Zhu then sets out her allegations, essentially as alleged in her pleadings, about how the plaintiff and defendant corporations were formed, her role in that formation, and that Cach is a shell company incorporated to hold the property in trust for One Family. She makes extensive references to the Lease-Purchase Agreement and accuses Mr. Lam of embezzlement. At the end of the “affidavit” is the following declaration, which is then signed by Ms. Zhu:

I, Yanyan Zhu, on this 8th day of July, 2024, voluntarily and solemnly declare the following in the absence of a commissioner of oaths:

1. I have read and understood the entire content of this affidavit.
2. I confirm that all statements and content in this affidavit are true and accurate.
3. I understand that any false statements may result in legal liability.

There are over 80 documents attached as exhibits. Each is preceded by the same declaration, and all are signed by Ms. Zhu.

Supplementary Material Filed by Cach on Motion before Hood J.

[66] Cach filed supplementary material on July 22, 2024 in the form of a supplementary affidavit sworn by Mr. Lam with 28 exhibits. In his affidavit, Mr. Lam denies the allegations made by Ms. Zhu and claims that she tricked him into signing the Lease-Purchase Agreement. He also claims that the monies advanced to him at the time of the purchase of Unit 21 were personal loans, which were repaid. The affidavit attests to the fact that there is written evidence of this and written receipts that Ms. Zhu was repaid. However, the documents attached are confusing, as such, it is difficult to confirm these claims.

[67] Mr. Lam states in his affidavit that Ms. Zhu was contacting him directly by email came to his home twice to speak to him about resolving this matter, but he told her to deal with his lawyer. He also said that on the second occasion, she showed up on his doorstep, and despite requesting she leave, Ms. Zhu did not leave until he threatened to call the police.

[68] At no time did Cach object to the form of the material filed by Ms. Zhu.

Supplementary Material Filed by One Family and Ms. Zhu on Motion before Hood J.

[69] On August 8, 2024, Ms. Zhu filed a document entitled “Supplementary of Responding Record of the Defendants.” It consists of a narrative purporting to refute the factual assertions of Mr. Lam and referencing approximately 375 pages of documents.

Factums on the Motion Before Hood J.

- [70] Counsel for Cach filed a factum dated August 13, 2024. The factum refers to the “bizarre, brazen and false assertions by Ms. Zhu that Mr. Lam is not the sole shareholder and sole director of Cach Platform” and states that these assertions are made “without evidence.” The factual portion of the factum is essentially a summary of the information in Mr. Lam’s two affidavits and the plaintiff’s pleadings in the action. Nowhere in the factum does counsel for Cach take the position that Ms. Zhu’s material is in the incorrect form and should not be considered by the motion judge.
- [71] The factum includes several references to the transcript of the cross-examination of Ms. Zhu. The factum refers to her evidence on cross-examination confirming her signature on some documents, her career and educational background, and refers to her as having refused to answer a number of other questions. The transcript of that cross-examination was not in the record before this court on appeal, but was filed on Case Center for the motion.
- [72] Ms. Zhu also filed a document referred to as a “factum” but it is simply a reiteration of the facts set out in other material she filed.

Mootness

- [73] Shortly after the Endorsement of Hood J., Cach evicted One Family and took possession of the property. Acting on the decision of Hood J., Cach persuaded RBC to restore sole control over the Cach bank account to Mr. Lam. Interestingly, it does not appear that the Order of Hood J. was ever issued and entered.
- [74] Ms. Zhu, through new counsel, filed a Notice of Appeal on October 16, 2024. On November 1, 2024, the date initially sought to commence this appeal, Davies J. directed a case conference be conducted to determine whether or leave to appeal was required and to set a timetable for the delivery of materials. At the initial case conference before Myers J. on November 21, 2024, counsel for Cach took the position that this was an interlocutory order and leave to appeal was required. By this time, Cach had already taken possession of Unit 21. Counsel for the appellants raised the possibility of obtaining a stay of the Order made by Hood J. pending appeal, but Myers J. questioned whether there was anything left to stay and suggested a better course of action was to expedite the appeal. He made an order that the appeal would be argued in two hours on an expedited basis and directed the Registrar to schedule the hearing as early in February as possible. In response to issues raised by counsel for the appellants about obtaining a Certificate of Pending Litigation, Myers J. ruled that such relief could only be obtained in the Superior Court, not Divisional Court. Myers J. adjourned the issue of whether leave to appeal was required to a further case conference before him on December 13, 2024 and directed that written submissions be filed before then.
- [75] Notwithstanding these directions, and knowing the appeal was pending, Cach immediately listed the subject property for sale.

- [76] On December 13, 2024, immediately following the case conference with the lawyers for both parties, Myers J. issued a further endorsement characterizing the motion before Hood J. as a motion for partial summary judgment. Myers J. further ruled that the orders made by Hood J. granting declaratory relief were final – the five-year lease was found to be valid, it was terminated, and the landlord was granted the right to obtain a writ of possession. Hood J. also found that Mr. Lam was the sole shareholder, officer, and director of Cach, and that Ms. Zhu had none of those attributes and was not an authorized signing officer. Myers J. ruled that this was also a final decision since it determined a pleaded issue and left nothing for trial.
- [77] Unfortunately, the Registrar overlooked Myers J.’s ruling directing that the appeal be expedited and placed on the list for February 2025. Further, counsel for the appellants did nothing to rectify that, and did not obtain a Certificate of Pending Litigation.
- [78] Notwithstanding the ruling that there was an automatic right of appeal and the fact that the appeal was perfected and waiting for a hearing date, Cach proceeded with its plans to sell the property. On June 17, 2025, the Divisional Court advised counsel that the appeal was set to be heard on August 19, 2025. Notwithstanding that, on June 25, 2025, Cach completed the sale of the property and transferred ownership to the purchaser, a numbered company. It then filed a further motion to admit this new evidence on the appeal. I have no difficulty allowing this material to be filed on the appeal. There is documentation indicating that the sale price was for approximately \$1 million. The original purchase price in 2015 was \$390,000. The material does not indicate whether this was an arms-length purchaser for value. It is also not known whether the purchaser knew about the pending appeal. Counsel for the appellants did not seek to cross-examine on the affidavit filed and did not take the position that the transfer of the property could or should be invalidated, nor did they seek to freeze the proceeds of that sale.
- [79] Counsel for Cach submits that the Order of Hood J. terminating the lease and authorizing a writ of possession is now moot. Counsel for the appellants concedes this to be the case. While I find it outrageous that a party, particularly a party represented by counsel, would sell the property in the face of this pending appeal, I agree with my colleagues that this aspect of the Order of Hood J. is moot, at least as far as can be determined on the existing record. However, I also agree with my colleagues that the Order with respect to the control of the bank account is not moot, in the sense that it could still be changed (assuming the account still exists).
- [80] Notwithstanding that some aspects of the civil action have been rendered moot, there are still other matters that remain outstanding, and it therefore remains necessary to consider whether the Order of Hood J. should be set aside. Some of the declarations and findings of fact made by Hood J. are particularly problematic for One Family and Ms. Zhu.

Procedural Fairness

- [81] I disagree with the conclusion of my colleagues that Family One and Ms. Zhu had a fair hearing on the motion. It is true that Ms. Zhu had time to prepare material herself and that

she was warned by Koehnen J. that she would not be able to obtain an adjournment based solely on an inability to retain counsel. However, Ms. Zhu is not a lawyer and cannot be presumed to know the importance of having an affidavit sworn before a lawyer or Commissioner of Oaths. There is no indication that any of this was ever explained to her or that she was given the standard package of information often provided to unrepresented parties.

- [82] This is also not a situation where Ms. Zhu failed to do anything at all. She filed substantial material – indeed hundreds of pages worth of material – tracking the style of the material filed by counsel for Cach. However, she did not solemnly affirm before a Commissioner of Oaths that the content of her affidavit was true and have the Commissioner sign the affidavit. Instead, just before the signature line, she “solemnly declared” that: she understood the entire content of the affidavit; she confirmed that all statements and content were true and accurate; and she understood that any false statements could result in legal liability. While recognizing that the “affidavit” is not properly sworn within the requirements of the Rules of Civil Procedure, in my view, this is a defect of form over substance. Given the form of solemn affirmation Ms. Zhu added to the purported affidavit, it was open to the motion judge to simply accept it unsworn. Alternatively, he could have had Ms. Zhu swear to the truth of the content of the affidavit at the hearing, and then proceeded on that basis. Had the hearing been in the courthouse and not on Zoom, Ms. Zhu could have simply approached any of the dozens of lawyers and Commissioners present in the building and asked them to take her oath and sign, which would take no more than five or ten minutes. If Hood J. was not prepared to accept the material as filed or ask Ms. Zhu to swear to its truth before him, he should, at the very least, have given her a brief adjournment to rectify her material. The fact that she did not request an adjournment in those circumstances is relevant but not determinative, particularly given what she had already been told by Koehnen J. on the last appearance. It was incumbent on the trial judge to ensure that the unrepresented party understood the process and was given a fair opportunity to bring her materials within the technical requirements of the Rules.
- [83] The motion judge also noted that Ms. Zhu uploaded documents to Case Center without providing them to counsel for the plaintiffs. However, the fact that they were on Case Center meant that plaintiff’s counsel had access to the documents. Further, the plaintiff did not claim to have suffered any disadvantage arising from the manner of service, nor do I believe there was any. Indeed, as I refer to below, counsel for Cach cross-examined Ms. Zhu on the “affidavit” she filed. A failure by Ms. Zhu to properly serve Cach is not a fair basis for refusing to permit her refer to any of the documents. It is unclear whether any of the documents Ms. Zhu was holding up to the camera for the motion judge to see were documents already on Case Center. That inquiry could easily have been made but was not. In that context, I consider it unfair of the motion judge to conclude that Ms. Zhu “refused or was unable to refer to documents to support her position.”
- [84] It was apparent from the material filed that the facts alleged by Mr. Lam were diametrically opposed to those asserted by Ms. Zhu. In my view, it was unfair in this situation to simply proceed as if nothing was in dispute and as though the responding parties did not provide evidence to the contrary. This is particularly so considering that in his factum, Cach’s

counsel failed to object to the form of the material Ms. Zhu filed. Indeed, he cross-examined Ms. Zhu under oath as though this was a valid affidavit, without ever letting her know that it was not in the appropriate form. In my opinion, this was unfair to Ms. Zhu as an unrepresented party and ought not to have been countenanced.

- [85] The factual findings made by Hood J., if allowed to stand, are fatal to most of the relief sought by Ms. Zhu in the civil action. I note as well that One Family is similarly affected and that it is a not-for-profit corporation.
- [86] The five-year lease was found to be valid and enforceable, notwithstanding the position taken by Ms. Zhu that the 10-year Lease-Purchase agreement was the valid agreement and she and Mr. Lam had simply neglected to destroy the copies of the five-year lease it replaced. The 10-year lease provides corroboration for Ms. Zhu's claim that it was always the intention of the parties that Cach held Unit 21 in trust for One Family. The finding by the motion judge that Cach is the owner of the property and that Mr. Lam is entitled to sole control over its bank account makes it very difficult for Ms. Zhu to proceed with a claim that Cach holds its property in trust for One Family and that she is a 71 percent shareholder in Cach. These are significant findings of fact that carry great consequence to Ms. Zhu and One Family. They were entitled to be heard on the merits of their case before such orders were made. In my view, given these the circumstances, this was not a fair hearing.
- [87] I realize this was set as an urgent motion because the tenant was remaining in possession without paying rent and the landlord's bank account had been frozen, making it difficult to pay expenses. However, far less Draconian orders could have been made on an interim basis to protect the landlord's interests without completely undermining the interests of Ms. Zhu and One Family.
- [88] I would set aside the decision of the motion judge on the procedural fairness ground, standing alone. This is not an area where deference is due to the decision maker. Procedural fairness is simply required, and a ruling based on a hearing found to be procedurally unfair must simply be set aside. A decision need only be administrative and affect "the rights, privileges or interests of an individual" to trigger the application of the duty of fairness.¹

Fundamental Misapprehension of the Evidence

- [89] Further, in my opinion, the motion judge's decision was based entirely on a fundamental misapprehension of fact that Ms. Zhu did not bring any sworn evidence before the court to support her claim or contradict the Cach and Mr. Lam's evidence. Even if the affidavit itself was not received in evidence, there was sworn testimony from the cross-examination of Ms. Zhu in the motion record that was disregarded by the motion judge. It is understandable that this was overlooked. It was buried in a Case Center record and referred to only obliquely in Cach's filed factum and in oral argument.

¹ *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, at para. 20; *Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511, at para. 28.

- [90] Counsel for Cach did not alert Ms. Zhu that her affidavit was not in the proper form, while at the same time, cross-examined her on the affidavit as if it was a proper filing. The 98-page transcript of the cross-examination was not filed on the appeal before this court. I found it in the Case Center file for the motion. Cach referenced the transcript in their factum and in oral submissions. However, all such references were to either answers Ms. Zhu gave that supported some things Cach relied on (such as her education and professional career) or Ms. Zhu's refusals to answer certain questions.
- [91] I do not fault Cach's counsel for referring only to portions of the transcript that assisted his case. However, it would seem that this caused the trial judge to fundamentally misapprehend the true nature of the record and make a decision based on the complete absence of any admissible, sworn evidence supporting Ms. Zhu's case.
- [92] It is likely that Ms. Zhu did not understand the significance of her answers at the cross-examination because she reiterated many of the points she made in her written material filed on the motion. However, it was critical to the outcome of the motion because it constituted sworn evidence completely at odds with the affidavit filed by Mr. Lam. A lay litigant cannot be assumed to understand the legal difference between these two things.
- [93] Ms. Zhu made many statements during cross-examination that supported her case that were either unknown to, or ignored by, the motion judge.
- [94] For example, she testified under solemn affirmation that:
- The four shareholders of Cach (which included Ms. Zhu, Mr. Lam, and two others) agreed that Cach would hold the property in trust for One Family.²
 - Mr. Lam is not the sole shareholder; there are four shareholders, and Ms. Zhu holds the majority interest.³
 - A cheque payable to her, which Mr. Lam claimed was repayment for the money he borrowed from her at the time he purchased the property, was in fact a personal loan to her when she was in financial difficulty.⁴
 - Mr. Lam did not borrow money from her or anybody else to purchase the property; they were shareholders of Cach contributing to the purchase.⁵
 - Mr. Lam met with her at her home in 2015 and they prepared the lease agreements together. Mr. Lam's English is "perfect." He was an English teacher in the public

² Transcript, p. 33, lines 3-19

³ Transcript, pp. 35-36

⁴ Transcript, pp. 43-45

⁵ Transcript, pp. 47 and 61

school system in Hong Kong and a union leader of public school teachers who negotiated and drafted documents with the government.⁶

- The five-year lease agreement was just a draft that was meant to have been destroyed. It was not the actual agreement. The subsequent real agreement was the 10-year Lease-Purchase agreement.⁷
- Mr. Lam's statement that she tricked him into signing the Lease-Purchase agreement is incorrect. He fully understood what he was signing and participated in drafting the agreement.⁸
- Ms. Zhu did file documents with Corporations Canada in 2022, but this was because Mr. Lam wanted to retire from managing the property. She did not get instructions from Mr. Lam to do that because he never gave instructions about these things. She was the one who oversaw the corporation, and he did things on her instruction.⁹

[95] I think it is fair to say that Ms. Zhu was quite combative during the cross-examination and often refused to answer questions she considered to be irrelevant, many of which I would have found to be relevant. However, there is considerable sworn evidence in the transcript that directly contradicts the evidence of Mr. Lam, and which supports Ms. Zhu's position. That transcript formed part of the record before the motion judge, regardless of whether he read it. Further, Cach's counsel knew about the transcript and that it contained sworn evidence from Ms. Zhu contradicting the evidence of Mr. Lam.

[96] Because he had a fundamental misunderstanding as to there being any sworn evidence from Ms. Zhu, the motion judge treated the hearing before him as uncontested and made factual findings based solely on Mr. Lam's affidavit. This was a fundamental misapprehension going directly to the heart of the motion. In my view, given the test on motions of this nature, the existence of sworn evidence contradicting the evidence of Mr. Lam should have prevented the motion judge from making the orders he did.

[97] After I discovered the existence of this sworn evidence of Ms. Zhu in the motion record that was before Hood J., the parties were given the opportunity to make further written submissions to this Court. The appellant took the position that this constituted a fundamental misapprehension of the evidence, a position with which I agree. The respondent submitted that because Ms. Zhu did not refer to this in her submissions, the motion judge was not required to take it into account, a position with which my colleagues agree.

[98] The respondent relied on case authority, which in my view is distinguishable.

⁶ Transcript, pp. 64 and 68

⁷ Transcript, pp. 65-67

⁸ Transcript, p. 68

⁹ Transcript, pp. 82-88

[99] *Cannon v. Gerrits*¹⁰ was an appeal to Divisional Court from a decision of a motion judge who ordered a Certificate of Pending Litigation pending trial. The focus of the Divisional Court decision was whether a new issue could be raised on appeal. The appellant raised an argument about the interpretation of a schedule attached to an agreement that was not raised by either party before the motion judge. The appellant argued that the motion judge failed to consider an interpretation of a schedule attached to an agreement, which neither party had relied upon on the motion below. The Divisional Court did not permit the parties to rely on this new issue and held, *inter alia*, that it was not clear that this issue would have changed the result in any event and that no miscarriage of justice occurred. It should be noted as well that both parties were represented by counsel, which is a strong distinguishing factor in the case before this court. The issue here is not a new issue raised by the parties on appeal. The decision of the motion judge is based entirely on the evidence of Cach being uncontradicted by sworn evidence, which was incorrect and which counsel for Cach knew to be incorrect. This is a technical distinction that a lay litigant would not necessarily understand – and, as is clear, Ms. Zhu did not understand. The nature of the motion was also fundamentally different. In *Cannon*, the certificate of pending litigation merely preserved rights until trial, whereas the order made by the motion judge in this case was a final determination of substantial issues in the action.

[100] Respondent’s counsel also cited *Wasylyk v. Simcoe (County)*¹¹ in supplementary submissions addressing this issue. Again, I find this case to be of no assistance on this issue. The excerpt relied upon by the respondent on this appeal is as follows (with the emphasis added by the respondent, not by the Court of Appeal):

When reviewing a trial judge’s reasons for palpable and overriding error, this court must consider the reasons as a whole in the context of the issues raised **and the arguments made**: *Farej v. Fellows*, [2022] ONCA 254, at para. 45. It is not enough for an appellant to point to an ambiguity, inconsistency, omission, or other shortcoming in some aspect of the trial judge’s reasons. Appeal courts do not exist to grade the reasons of trial judges. Appellate courts must determine, on a fair and full reading of the record as a whole, whether the appellant has demonstrated reversible error. When the alleged error targets the fact-finding process at trial, deference sounds the loud keynote for appellate review.¹²

[101] The decision in *Wasylyk v. Simcoe (County)* involved an appeal from the decision of a trial judge and the issue was whether the trial judge had dealt with all the evidence and provided adequate reasons. The trial judge’s findings of fact were the central focus. There was nothing in that case that related at all to the failure of a party to specifically refer in argument to a transcript provided in the motion record but not referred to by the motion judge. The issue was whether the trial judge had provided adequate reasons to demonstrate that he had considered all the evidence and the arguments of counsel. It had nothing to do

¹⁰ *Cannon v. Gerrits*, 2022 ONSC 6867.

¹¹ *Wasylyk v. Simcoe (County)*, 2023 ONCA 781.

¹² *Ibid*, at para. 15.

with material that was in the record but not raised in argument. By way of contrast, the problem before us is not the failure of the motion judge to refer to the existence of the examination of Ms. Zhu under oath, but rather his specific finding that there was no sworn evidence from her in the record, which was clearly wrong.

- [102] The Court in *Wasyluk* referred to its earlier decision in *Farej v. Fellows*.¹³ However, that decision is also about the adequacy of the reasons of a trial judge on questions of fact and whether they were sufficient to permit appellate review. It has no bearing on the issue before us in this case.
- [103] I wish to be clear that I do not fault the trial judge for failing to go through the record in search of the transcript and to find out for himself that there was sworn evidence from Ms. Zhu. However, this is not about fault finding – it is about getting to the right result. If the trial judge had overlooked binding recent case authority going to the heart of his decision because the parties had failed to bring it to his attention, his decision would nevertheless be wrong and could not stand. I do not see this situation as being, in essence, any different, particularly where one of the parties was not represented by counsel.

Partial Summary Judgment/Final Order

- [104] I agree with Myers J. that the order made by the motion judge in favour of Cach is properly characterized as a partial summary judgment. It is clear from the decision of the motion judge, particularly when seen in light of the pleadings, that he determined that the five-year lease was valid and enforceable (as claimed by Cach). That determination and a writ of possession were the principal relief Cach claimed in the action. It is true that this relief could have been obtained by way of an application under the *Commercial Tenancies Act*, but that is not the route Cach chose. Instead, Cach commenced an action and proceeded by way of a motion within that action. The Order sought fully determines several of the forms of relief sought in the action. It is, in my opinion, clearly a partial summary judgment.
- [105] The other form of relief Cach sought in its statement of claim was control over its RBC bank account. This is not relief that could have been obtained under the *Commercial Tenancies Act*. It is a form of relief sought in the action, and has now been wholly decided in favour of Cach.
- [106] Cach maintains that the relief obtained with respect to the property is properly characterized as relief under the *Commercial Tenancies Act* and that the relief in respect of the bank account is in the nature of a declaratory order or injunction. It is not apparent what the motion judge considered to be the legal basis for the orders made. He made no reference to the *Residential Tenancies Act*, to the test for partial summary judgment, or to the test for injunctive relief.
- [107] Although Cach now seeks to distance itself from characterizing this as a partial summary judgment, that is not the position it took on the motion. In its factum filed on the motion,

¹³ *Farej v. Fellows*, 2022 ONCA 254, at para. 45

Cach specifically relied on the summary judgment motion (Rule 20) and submitted that it was entitled to the relief sought under that Rule, citing case authority to that effect. Paragraph 94 of that factum states:

Partial summary judgment is also appropriate because there is **no genuine issue requiring a trial** and this Honourable Court is able to reach a fair and just determination on the merits of this motion. It is not preferable that the fact-finding powers be exercised at a far off and expensive trial. The issues to be decided now are severable from any other issues that may be left. There is no risk of inconsistent decisions. It is clear that the tenant has abysmally failed to deliver rent cheques to the landlord as required by the lease for many months (even the purported 10-year lease with an option to purchase requires delivery of post-dated cheques to the landlord).

- [108] The test for partial summary judgment was clearly not met. As I have discussed above, there were genuine issues for trial which could only be resolved through findings of credibility, which is not possible on a summary judgment motion. The issues decided on the motion are not severable from the issues remaining. One key example of this is the true ownership and control of the company and its property. According to the evidence of Ms. Zhu, she was an approximate 50 percent shareholder in Cach, whose only function was to hold the property in trust for One Family. The factual findings made by the motion judge are completely to the contrary. In order to determine the claims made in the statement of defence and counterclaim, there is a very real risk of inconsistent verdicts.
- [109] Interim injunctive relief might have been appropriate in this case to ensure that the expenses for the property could be paid out of Cach's bank account and that One Family was paying rent to Cach. However, the trial judge did not as much as mention the test for injunctive and declaratory relief, let alone meet that standard. In my view, there was no evidence that Cach would suffer irreparable harm if an injunction were not granted. Other lesser remedies would have sufficed. On the other hand, however, the operations of One Family would likely have suffered irreparable harm given that the subject property housed its operations and the corporation claimed an ownership interest in that property. The impact of the orders made is amply demonstrated by the fact that they empowered Cach to sell the property, rendering One Family's ownership claim moot. Most importantly, final declaratory orders and injunctions were granted without any consideration of whether interim relief could have been ordered to preserve the interests of all parties until the credibility issue could be properly determined.
- [110] In my opinion, there was no proper legal basis to make the final orders that the motion judge granted, and I would have set them aside, perhaps with interim orders to provide for payment of rent, scrutiny of the bank account, preservation of assets, and the like. The motion judge could have also ordered a summary or expedited trial of the issues with respect to the status and control of Cach and which lease was valid.

Conclusion

[111] In my view, the decision of the motion judge should not be permitted to stand for two reasons. First, he based his decision on a fundamentally flawed premise – that there was no sworn evidence supporting Ms. Zhu’s version of events, when the facts suggest the opposite is true. Second, he acted unfairly by rejecting Ms. Zhu’s material which was improper only in form and which could have been easily remedied. Ms. Zhu was entitled to have the motion decided on its merits, and it was not. Either of these grounds would be sufficient, standing alone, to set aside the decision. Therefore, I would have granted the appeal.

Molloy J.

Released: December 2, 2025

CITATION: Canada One Family Network v. Cach Platform Inc., 2025 ONSC 6713
DIVISIONAL COURT FILE NO.: 651/24
DATE: 20251202

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

McWatt ACJ, Molloy and Sachs JJ.

BETWEEN:

Canada One Family Network and Yan Yan Zhu

Appellant

– and –

Cach Platform Inc.

Respondent

REASONS FOR JUDGMENT

Released: December 2, 2025