

**CITATION:** York Region Condominium Corporation No. 863 v. 2595904 Ontario Inc.,  
2025 ONSC 901

**COURT FILE NO.:** CV-20-00638648

**MOTION HEARD:** 20250131

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** York Region Condominium Corporation No. 863, Plaintiff

**AND:**

2595904 Ontario Inc., Defendant

**BEFORE:** Associate Justice B. McAfee

**COUNSEL:** Jun Yun Chen, in person, non-party claimant

Lili Zhang, in person, non-party claimant

No one else appearing

**HEARD:** January 31, 2025

**ENDORSEMENT**

[1] This is a motion brought by Ms. Chen and Ms. Zhang, non-party claimants (the moving claimants), for an order pursuant to Rule 43.04(2) and Rule 72.03 permitting the payment out of court to the moving claimants of the amount of \$618,360.20, plus accrued interest.

[2] Rule 43 governs interpleader motions. Rule 43.02 provides where an interpleader motion is available:

43.02(1) A person may seek an interpleader order (Form 43A) in respect of property if,

(a) two or more other persons have made adverse claims in respect of the property;  
and

(b) the first-named person,

(i) claims no beneficial interest in the property, other than a lien for costs, fees or expenses, and

(ii) is willing to deposit the property with the court or dispose of it as the court directs.

(2) A claimant who is entitled to do so under subrule 60.13(4) or (5) may seek an interpleader order (Form 43A).

- [3] I am not satisfied that the motion before me is an interpleader motion. There is no first-named person claiming no beneficial interest who is willing to deposit the property with the court or dispose of it as the court directs.
- [4] An interpleader motion has already been heard in this matter. On April 20, 2023, Associate Justice Wiebe granted an interpleader motion brought by the plaintiff resulting in funds being paid into court and the liability of the plaintiff being extinguished. There is no indication that any relief on the interpleader motion was adjourned.
- [5] Rule 43.04 provides for powers of the court and orders that can be made on the hearing of a motion for an interpleader order and I am not satisfied this is such a motion.
- [6] Rule 72.03 deals with payment out of court but does not provide the authority to determine questions of entitlement.
- [7] On the basis of the material before me and the submissions of the moving claimants, I am not satisfied that the relief sought on this motion is properly sought pursuant to Rule 43.04(2) and 72.03 or that I have the jurisdiction to make the order requested at this time.
- [8] Even if this motion is appropriately brought, which I am not satisfied is the case, I am also not satisfied that proper notice of the motion has been given. It is not clear to me that the defendant or any other mortgagees or other persons who may claim an interest in the monies have proper notice of this motion. No affidavits of service were before me. While I was advised that certain material was emailed on January 27, 2025, that would have been short notice.
- [9] Without determining or limiting the appropriate manner in which to seek payment out of court, the moving claimants may need to consider whether it would be appropriate to bring an application to seek a determination of their entitlement to the funds.
- [10] I urge the claimants to retain a lawyer if they are able to do so. If they require assistance locating a lawyer, they may wish to contact the Law Society Referral Service operated by the Law Society of Ontario. More information about the service is available at <https://www.lso.ca/>.
- [11] The motion is dismissed without prejudice.

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Associate Justice B. McAfee

**Date:** February 10, 2025