

**CITATION:** Deng v. Danjing Han & Canamex Fire Protection International Inc., 2023 ONSC 98

**COURT FILE NO.:** CV-16-00564292-0000

**DATE:** 20230517

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

PING DENG

Plaintiff

– and –

DANJING HAN and CANAMEX FIRE PROTECTION INTERNATIONAL INC.

Defendants

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)  
) *David N. Bleiwas and Shane Greaves, for the*  
) *Plaintiff*

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)  
) Danjing Han, on her own behalf

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) **HEARD:** April 17, 18 (in person), 21, 27,  
) May 3, 2023 (in writing)

**KOEHNEN J.**

**REASONS FOR JUDGMENT**

**Overview**

- [1] The plaintiff, Ping Deng brings an action for oppression seeking damages of \$50,000 plus punitive, aggravated, and exemplary damages of a further \$50,000 from the personal defendant Danjing Han.
- [2] I find Ms. Han liable for oppression. On my view of the evidence, she withdrew funds from the corporation without authorization. Awarding Mr. Deng \$50,000 would, however, overcompensate him. It would mean he would get his total investment back while two other shareholders would not. The appropriate remedy here is to take the amounts shareholders have received personally and re-allocate those amounts rateably according to their capital contributions. That approach would call for Ms. Han to pay Mr. Deng

\$39,796.26 and for Ms. Han to pay Jiemin Wu \$3,160.48. In my view this is not a case that warrants punitive damages.

## **The Facts**

- [3] Mr. Deng operated a business in China that focused on the sale of firefighting equipment. He hoped to expand into Canada. Mr. Deng had no business experience in Canada. He did, however, know Ms. Han. She had helped him purchase a residential home in Uxbridge in 2013. Mr. Deng's son had also lived with Ms. Han for approximately one year when he was studying in Canada. Mr. Deng believed that Ms. Han had Canadian business experience. As a result, in November 2013, they formed the corporate defendant Canamex Fire Protection International Inc.
- [4] Each of Mr. Deng and Ms. Han contributed \$50,000 to Canamex. Mr. Wu contributed \$20,000.
- [5] On January 18, 2014, Canamex as tenant entered into a two year lease with Ms. Han as landlord to rent a commercial unit on Don Mills Road in Toronto. Between January to May 2014, Canamex paid \$23,387 in rent to Ms. Han.
- [6] On September 16, 2014, the Defendant withdrew \$55,000 from the Canamex bank account and deposited it into her own bank account. That withdrawal gives rise to the principal dispute between the parties.
- [7] The plaintiff relies on a document dated September 19, 2014 which purports to be the minutes of a meeting held at a coffee shop at which Ms. Han agreed to repay \$58,261.59 to the corporation. This reflected the \$55,000 withdrawal and some smaller additional amounts. The document notes that all three shareholders were present and is signed by Mr. Deng and Mr. Wu. It is not signed by Ms. Han. Ms. Han says she did not attend the meeting. Mr. Deng's son, Chengyun Deng testified at trial that he attended the meeting, and that Ms. Han was at the meeting and agreed to return the funds to the corporate bank account. Ms. Han notes that the plaintiff did not call Mr. Wu to testify about the meeting or her presence. The original minutes are handwritten in Chinese and signed by Mr. Deng and Mr. Wu. Ms. Han has introduced no evidence to suggest that Mr. Wu's signature on the document is not in fact Mr. Wu's signature. The minutes record Ms. Han as attending the meeting.
- [8] Ms. Han defends the withdrawal of the \$55,000 saying that the funds reflected unpaid lease payments after the lease was terminated in June of 2014. She takes the total lease payments for the 24 month lease (\$80,184) subtracts from that, the amount of rent paid, (\$23,387) which comes to \$56,797 in unpaid rent. Mr. Wu had already withdrawn \$12,000 from the corporate bank account of the \$20,000 that he had invested. Ms. Han says the plaintiff agreed by telephone that she could withdraw the funds.

- [9] I find it implausible that Mr. Deng would have agreed to let Ms. Han withdraw \$55,000 from the corporate bank account. I do not accept Ms. Han's evidence that Mr. Deng approved the withdrawal and find that Ms. Han improperly withdrew the funds. I do so for several reasons.
- [10] First, there is no documentary evidence to support Ms. Han's entitlement to the payment. There are no emails or text messages to support the withdrawal either before or after it was made. One might expect someone who was, for all practical purposes, emptying the corporate bank account to send some sort of email or text confirming that Mr. Deng had agreed to the withdrawal.
- [11] The need for some form of written confirmation is all the more important in light of the Joint Investment Agreement that all three shareholders signed on October 23, 2013 which provides that:
- a. "Significant decisions of the company ... shall all be decided on through shareholders' resolutions in shareholder meetings"; and
  - b. "any changes to any relevant issues during the process of the investment ... shall be based on written documents executed by the three Parties".
- [12] Second, the economics of the transaction make it unlikely that Mr. Deng would have agreed.
- [13] Allowing Ms. Han to withdraw the \$55,000 would mean that at least \$82,753.63 of the company's \$120,000 of working capital, was paid to Ms. Han. She received \$23,387 in rent; received \$55,000 from the withdrawal in dispute and an additional \$4,366.63 from two other cheques.<sup>1</sup> Put another way, Ms. Han took more out of the company than she put in and Mr. Deng lost all of the \$50,000 that he put into the corporation. When Ms. Han was asked to explain that discrepancy, her answer was to ask Mr. Deng.
- [14] Third, the lease itself is questionable. When the lease payments were made between January and May of 2014, Ms. Han did not actually own the property although she claims she had a right to occupy it. She did not take the court to any documents to establish this right of occupancy. Mr. Deng admits that he agreed in principle to the lease but did so based on Ms. Han's explanation that the business required premises to demonstrate that it was successful.
- [15] Ms. Han admits, however, that Canamex never occupied the premises and conducted no business out of it. This was so even though it was Ms. Han who was responsible for marketing the business. Ms. Han admitted that she carried out no marketing activities and made no sales.

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<sup>1</sup> \$3,921.13 from a cheque dated February 18, 2014 and \$445.50 from a cheque dated March 12, 2014.

- [16] Fourth, I did not find Ms. Han to be a reliable or credible witness. I prefer the evidence of Mr. Deng and his son to that of Ms. Han.
- [17] I had the distinct impression that whenever Ms. Han was confronted with a fact or proposition that she perceived as harmful to her she avoided answering, gave contradictory answers or gave answers that were the opposite of what she had agreed to on discovery.
- [18] By way of example, during examinations for discovery, Ms. Han agreed that Mr. Deng wanted her to be involved with the business in Canada because he trusted her. At trial, she disagreed that Mr. Deng had trusted her even when confronted with the transcript of her evidence on discovery.
- [19] During her examinations for discovery, she agreed that she had told Mr. Deng that it was important for Canamex to have an office so that the company appeared to be a successful business. When that was put to her during cross-examination at trial, she would not answer the question and simply repeated several times that that the lease was agreed to by all three shareholders. At trial, she ultimately denied ever making the representation that she had agreed to during her examination for discovery. I find that Ms. Han made the statement she agreed to on discovery.
- [20] Ms. Han agrees she signed the lease as landlord. At trial she denied having signed the lease as tenant even though paragraph 17 of her statement of defence admits that she did so. During her examination for discovery, she first said that Mr. Deng had signed the lease on behalf of Canamex; and then said that Mr. Deng's son had signed for Canamex. At trial she said that Mr. Wu had signed the lease on behalf of Canamex. The tenant's signature on the lease resembles other signatures that she admitted at trial were hers.
- [21] When asked why the lease was in the best interests of Canamex she simply said all three shareholders agreed to the lease. When asked why she thought it was in the best interests of Canamex apart from the agreement of the two other shareholders she kept repeating that it was all three who agreed and then concluded by stating that "it's not me".
- [22] On several occasions Ms. Han denied ever having seen a document when she had clearly seen it before including the lease and the Joint Investment Agreement.
- [23] On another occasion, the defendant's testimony showed her clear disregard for the best interests of the company. The evidence established that rent in the amount of \$3,341 was payable under the lease on the 18th of every month. However, Ms. Han received two rental payments of \$3,341 in April 2014: one payment on April 7, 2014<sup>11</sup> and another payment on April 18, 2014.<sup>12</sup> When cross-examined about what she did when she realized that she had been overpaid, she answered, "I don't care" because the other shareholders were allegedly responsible for the cheques.

### **Oppression Claim**

- [24] The oppression remedy is found in s. 248 (2) of the Ontario Business Corporations Act

which provides:

248 (2) Where, upon an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates,

(a) any act or omission of the corporation or any of its affiliates effects or threatens to effect a result;

(b) the business or affairs of the corporation or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or

(c) the powers of the directors of the corporation or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation, the court may make an order to rectify the matters complained of.

- [25] The general principles underlying the remedy are not in dispute. The remedy gives the court sweeping, equitable jurisdiction to enforce “not just what is legal but what is fair.”<sup>2</sup>
- [26] In determining whether oppression exists courts should ask whether a reasonable expectation of the plaintiff has been breached and, if so, ask whether the breach of that expectation has been oppressive, unfairly prejudicial to or has unfairly disregarded the interests of a shareholder.<sup>3</sup>
- [27] There can be little doubt that the unauthorized withdrawal of money from a corporate bank account breaches the reasonable expectations of other shareholders and amounts to conduct that is oppressive, unfairly prejudicial to or that unfairly disregards the interests of other shareholders.<sup>4</sup> It is also conduct for which the wrongfully acting director/shareholder can be held personally responsible.<sup>5</sup>
- [28] Ms. Han resists liability by arguing that Mr. Deng agreed to the lease and that his son signed most of the cheques for rent payments. Mr. Deng agreed to the lease on the understanding that premises were necessary to conduct business in Canada and would be used to do so. Ms. Han failed to deliver on the fundamental quid pro quo for the lease, namely that it would be used to conduct an operating business. Given that it was Ms. Han who was responsible for marketing the business and its products, she is the one who,

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<sup>2</sup> *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para 58

<sup>3</sup> *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69 at para 68

<sup>4</sup> for example 70 *Badesha v. Cronos Group*, 2021 ONSC 4346 at para 96.

<sup>5</sup> *Bhangal v. Singh*, 2017 ONSC 3511 at para 97.

without further explanation, bears responsibility for this failure. In those circumstances, I find that Ms. Han is not entitled to the \$55,000 on account of the alleged remainder of the lease payments.

- [29] I also note that Mr. Deng's son does not appear to have signed anything in relation to the \$55,000 withdrawal.

### **Limitations Period Issue**

- [30] In addition to her defence that Mr. Deng consented to the withdrawal which defence I do not accept, Ms. Han also submits that the action was commenced outside of the limitations period because the \$55,000 was withdrawn on September 16, 2014 while the statement of claim was not issued until November 17, 2016.
- [31] The plaintiff submits that he only discovered the claim in April 2015 when he sold the house in Uxbridge that Ms. Han had helped him to purchase. When he purchased the house in 2013, he paid \$1,172,000 for it on the recommendation of Ms. Han. When the plaintiff sold the house in April 2015, he received only \$965,000.04. At that time the plaintiff became suspicious and began to investigate. He says he then discovered that Ms. Han paid only \$870,000 to the builder of the house when it was purchased and kept the remaining \$302,000 for herself. That dispute is the subject of a separate, ongoing proceeding.
- [32] Upon making this discovery, Mr. Deng says he asked his son to determine whether the \$55,000 had been repaid to Canamex. He discovered that it had not been repaid. As a result, he sent a demand letter to the defendant in May 2015.
- [33] Plaintiffs are presumed to be aware of complaints when the events that give rise to them occur. The plaintiff submits that to overcome that presumption, he need prove only that he did not actually discover the claim when the events occurred.<sup>6</sup>
- [34] When a plaintiff discovered a claim is a fact-based analysis.<sup>7</sup> When considering whether a reasonable person would have discovered the claim, the court must consider a person "with the abilities and in the circumstances of the person with the claim".<sup>8</sup>
- [35] In this regard it is relevant to take into account that the plaintiff resided in China, spoke no English and was unfamiliar with Canadian business practices. The plaintiff also had limited access to the company's books and records.
- [36] The plaintiff's explanation about the limitations period is uncontested.

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<sup>6</sup> *Vuniqui v. Paramount Property Management*, 2020 ONSC 7934 at para 33; *Morrison v. Barzo*, 2018 ONCA 979 at para 3

<sup>7</sup> *Novak v. St. Demetrius*, 2017 ONSC 3503 at para 16

<sup>8</sup> *38 Novak v. St. Demetrius*, 2017 ONSC 3503 at para 16

[37] It is not necessary for me to accept the plaintiff's complete explanation for the time it took him to file the claim. I note that the minutes of settlement do not set a date by which Ms. Han was required to repay the funds to the company. Once the funds were repaid, a reconciliation of accounts was to occur. I find that it is reasonable that Mr. Deng would have allowed Ms. Han some time to repay the funds to the company. It strikes me that allowing her until November 17, 2014 or some time later is not unreasonable given the difficulties the plaintiff faced. This would put the claim within the limitation period separate and apart from the plaintiff's explanation about how he discovered the claim as a result of the sale of the Uxbridge house.

### **Remedy**

[38] As noted, the plaintiff seeks \$50,000 in damages from Ms. Han. To my mind that may overcompensate him. When the issues first arose in September 2014, the solution was to have Ms. Han repay \$58,261.59 to the corporation, have Mr. Wu repay his \$12,000 withdrawal and have the parties prepare an accounting with the view to a final settlement. Given the relatively modest amounts at issue, the passage of time, the breakdown of relations between shareholders and the logistics of Mr. Deng and his son living in China, an accounting would be a costly and impractical exercise.

[39] The remedy, however, should approximate what an accounting would yield based on the record before me.

[40] As noted earlier, Ms. Han received a total of \$82,753.63 from the company. Mr. Wu withdrew \$12,000. Mr. Deng has received nothing. The most appropriate remedy in the circumstances is an award that pro-rates the withdrawals from the company according to each shareholders' capital contribution. Ordering Ms. Han to pay Mr. Deng \$50,000 would potentially overcompensate him. It would mean that he would get his full capital back but other shareholders would not.

[41] Although Ms. Han says almost all of her withdrawals were on account of rent, I find that she is not entitled to that rent because she never caused the company to occupy the premises or conduct business from them even though that was her responsibility.

[42] The total withdrawals in favour of Mr. Wu and Ms. Han come to \$94,753. Each of Mr. Deng and Ms. Han contributed \$50,000 of the company's total capital of \$120,000 or 42%. Mr. Wu contributed 16%. Applying those percentages to the \$94,753 withdrawn from the company, would mean that each of Mr. Deng and Ms. Han is entitled to \$39,796.26 and Mr. Wu is entitled to \$15,160.45. As noted earlier, Mr. Wu has already withdrawn \$12,000 as a result, his entitlement at this point comes to \$3,160.48.

[43] As a result of the foregoing Ms. Han shall pay Mr. Deng \$39,797.26 and shall pay Mr. Wu \$3,160.48 to ensure that the return of capital to the various shareholders is proportionate to their capital contributions.

[44] As noted at the outset of these reasons, the plaintiff also seeks punitive damages. In my view this is not an appropriate case for punitive damages. The defendant justified her conduct by saying that the money she withdrew was on account of rent for the balance of the lease. Even though I find that the basis on which the plaintiff agreed to the lease was never accomplished, there was at least a lease which gave rise at least to an issue about Ms. Han's entitlement. Although Ms. Han failed on that issue, the failure of a defence does not automatically result in punitive damages.

### **Conclusion and Costs**

[45] As a result of the foregoing, Ms. Han shall pay Mr. Deng \$39,797.26 and shall pay Mr. Wu \$3,160.48. Any party seeking costs as a result of these reasons may make written submissions within 14 days of their release. Any responding party shall deliver submissions within 10 days with a further 5 days for reply

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Koehnen J.

**Released:** May 17, 2023



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**BETWEEN:**

PING DENG

Plaintiff

– and –

DANJING HAN and CANAMEX FIRE PROTECTION  
INTERNATIONAL INC.

Defendants

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**REASONS FOR JUDGMENT**

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Koehnen J.

**Released:** May 17, 2023