

COURT OF APPEAL FOR ONTARIO

CITATION: Deng v. Han, 2025 ONCA 258

DATE: 20250403

DOCKET: COA-23-CV-0596

Tulloch C.J.O., Pepall and Pomerance JJ.A.

BETWEEN

Chengyun Deng, Ping Deng and Heying Qiu

Plaintiffs (Respondents)

and

Danjing Han

Defendant (Appellant)

Andrew Ostrom, for the appellant

Shane Greaves and Benjamin Markusoff, for the respondents

Heard: March 18, 2025

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated May 26, 2023.

REASONS FOR DECISION

[1] The trial judge awarded the respondents damages of \$302,000 for civil deceit and unjust enrichment following an eight-day trial. Although the appellant had six different lawyers over the course of the proceedings, at trial she was self-represented. The trial judge stated that she was unable to conclude based on the evidence “what really happened between the parties”. Further, based on the evidence, she was not persuaded that the respondents had met their burden of

proof. However, based on admissions in the appellant's Statement of Defence, she was satisfied that the respondents' claims had been made out.

[2] The appellant appeals from that judgment and raises two grounds of appeal.

[3] First, she submits that the trial judge erred by construing admissions in her Statement of Defence as sufficient to establish civil deceit and unjust enrichment. Second, she submits that she was taken by surprise and not afforded procedural fairness as a self-represented litigant.

[4] We agree with this first ground of appeal for the following reasons.

[5] The respondents pleaded that the appellant had offered to purchase a residential property on their behalf and that the purchase agreement would then be assigned to the respondents at no additional cost. They maintain that the true purchase price was \$870,000 but the appellant "advised them that the true purchase price for the Property was not \$870,000, but rather \$1,172,000 (the "Fictitious Purchase Price")": Statement of Claim, at para. 18. The respondents claimed that they overpaid the appellant by \$302,000.

[6] At para. 23, they pleaded: "On top of the sum of \$900,000 which had already been paid to [the appellant] and/or the builder, [the appellant] advised the [respondents] that they still owed her the sum of \$272,000 as the balance of the Fictitious Purchase Price."

[7] At para. 24, they pleaded: “The [respondents] state that they paid all amounts to the Builder as required under the Purchase Agreement and also paid the extra amounts set out above either directly to [the appellant] or to her friends as she directed, resulting in the [respondents] paying amounts which totalled the Fictitious Purchase Price as opposed to the Purchase Price, being a difference of \$302,000 all of which went to the benefit of [the appellant] directly or indirectly.”

[8] In her Statement of Defence, the appellant pleaded that she made it very clear that the assignment price was \$1,172,000. She admitted that the extras of \$302,000 represented the difference in the original purchase price of \$870,000 in May 2011 and the assignment price of \$1,172,000 upon closing on January 29, 2013: Statement of Defence, at para. 14. The appellant also pleaded: “[The appellant] admits paragraphs 23 and 24 of the Statement of Claim, and further pleads the [respondents] fully understood and accepted the assignment price of \$1,172,000 at closing and undertook to pay the sum of \$272,000 to the [appellant] per agreement”: Statement of Defence, at para. 16.

[9] At trial, the appellant said she was not paid anything. Her position changed throughout the litigation. However, the trial judge rejected the respondents’ argument that this reflected an intent to deceive and that therefore they had met their burden of proof.

[10] Instead, the trial judge was prepared to rely on the appellant's acceptance of paragraphs 23 and 24 of the Statement of Claim as constituting admissions that the tort of civil deceit and unjust enrichment had been established. She stated that she could not "determine the basis of the conflicting evidence" or "what really happened in this case" but felt she was "bound to follow the law with respect to the conclusiveness of the admission." Accordingly, she granted judgment in favour of the respondents.

[11] While a trial judge has the discretion to interpret an admission (see *Champoux v. Jefremova*, 2021 ONCA 92, at para. 34), standing alone and in the absence of any other factual findings to support the causes of actions alleged, the trial judge made a palpable and overriding error in treating the Statement of Defence as she did. First, the term "Fictitious Purchase Price" was a defined term, referable to the amount of \$1,172,000. It was not an admission of wrongdoing. Second, a reading of the Statement of Defence as a whole is consistent with the appellant's position that she was not admitting to the elements of the two causes of action advanced by the respondents. Third, the appellant's acceptance of paras. 23 and 24 of the respondents' statement of claim do not amount to admissions of liability for deceit or unjust enrichment.

[12] The reasons for decision of the trial judge are challenging because, having found that she could not determine what happened, she based her entire decision on the pleadings. The pleadings cannot support her conclusion as the admissions

relied upon do not establish all the necessary elements for deceit and unjust enrichment.

[13] As the burden of proof was on the respondents, and as the trial judge could make no findings absent the alleged admissions, it follows that the respondents did not prove their case. In the circumstances, it is unnecessary to address the appellant's second ground of appeal relating to procedural fairness.

[14] The appeal is allowed, the judgment is set aside with costs of the appeal in favour of the appellant in the amount of \$12,000 inclusive of disbursements and applicable tax to be paid by the respondent.

"M. Tulloch C.J.O."
"S.E. Pepall J.A."
"R. Pomerance J.A."