

COURT FILE SUMMARY SHEET

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Style of Cause: Wang v. 2426483 Ontario Limited

Reporter Citation: R.P.R.

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DOCUMENT TITLE:

Notice of Application

DOCUMENT CATEGORY (Circle One):

PLEADINGS

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FACTA/BRIEFS – MOTIONS

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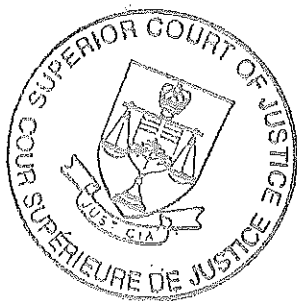
**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JINNING WANG

Applicant

-and-



2426483 ONTARIO LIMITED

Respondent

NOTICE OF APPLICATION

APPLICATION UNDER Rules 14.05(1) - (3), 14.05(3)(d), (e), (h)
and Section 98 of the *Courts of Justice Act* R.S.O. 1990, c. C.43

TO THE RESPONDENT:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on a date to be scheduled on an urgent basis, at 10:00 a.m. or as soon after that time as the Application can be heard, at the courthouse at 330 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but ~~not later than 2 p.m. on the day before the hearing.~~
at least four days

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

April 20, 2020

Issued by
Local registrar

330 University Avenue
Toronto, ON

MSG 1R7

TO: **2426483 ONTARIO LIMITED**
% FRIEDMAN LAW PROFESSIONAL CORPORATION
800-150 Ferrand Drive, Suite 800
Toronto, ON M3C 3E5

Stephen Nadler, LSO# 37946G

Tel: (416) 496-3340
Fax: (416) 497-3809

Lawyer for the respondent, 2426483 Ontario Limited

APPLICATION

1. The applicant makes an application for:

- (a) A declaration that the applicant is not in breach of the Agreement of Purchase and Sale executed between the parties on March 14, 2016, and any amendments thereto (the "**APS**"), with respect to the property municipally known as Lot [redacted] [redacted] [location omitted] (the "**Townhouse**");
- (b) A declaration that the APS remains valid and binding;
- (c) In the alternative, if the applicant has breached the APS, an order granting the applicant relief from forfeiture;
- (d) An order granting leave to the applicant to register a certificate of pending litigation on title to the Townhouse;
- (e) An order validating service of the within application on the respondent by serving a copy of the notice of application on the respondent's lawyer, Stephen Nadler, via email or facsimile, if required;
- (f) Costs of this application, on a substantial indemnity basis; and
- (g) Such further and other relief as counsel may advise and this Honourable Court deems just.

2. The grounds for the application are:

Background

(a) On March 14, 2016, the applicant entered into the APS to purchase the Townhouse from the respondent for the purchase price of \$1,188,800.

(b) In accordance with the APS, the applicant paid deposits totaling \$150,000, as well as occupancy fees in the amount of \$15,531.79 for occupying the Townhouse from December 5, 2019 onwards.

(c) Section 11.4(a) of the APS subjects the applicant to a fee of \$2,500 plus applicable taxes if he, *inter alia*, sells or lists for sale the Townhouse, without prior written consent of the respondent.

(d) Following defaults and breaches of the APS by the respondent, on January 15, 2020, the applicant entered into an agreement of purchase and sale as vendor to sell the Townhouse to Jianyun Ma as purchaser ("**Ma**"), for \$1,290,000, with a closing date of April 8, 2020.

(e) The applicant understood that given the respondent's breaches of the APS, it would not be necessary to obtain its consent to the sale or that at worst a \$2,500 penalty would be applied pursuant to the terms of the APS.

(f) However, on or about March 4, 2020, before the sale of the Townhouse to Ma closed, counsel for the respondent sent a letter to the applicant alleging that the applicant was in breach of s. 11.4(a) of the APS by listing for sale and selling the

Townhouse without obtaining the respondent's prior consent. Instead of requiring the applicant to pay the \$2,500 fee, the respondent declared the APS to be terminated and null and void pursuant to s. 8.3 of the APS, and took the position that all deposits and other monies paid under the APS, being \$150,000 plus occupancy fees paid to the respondent, were forfeited to the respondent.

(g) The agreement of purchase and sale between the applicant and Ma was conditional on the respondent conveying title to the applicant. Given the respondent's position, the applicant terminated the transaction with Ma.

(h) As such, there is no subsisting breach of the APS by the applicant, if there was one previously.

Relief from Forfeiture & Certificate of Pending Litigation

(i) It is just that relief from forfeiture be granted if the court finds that there is a breach of the APS by the applicant. The applicant has acted reasonably, and the forfeited sum would be out of proportion to the alleged damages suffered by the respondent.

(j) Further, given the respondent's breaches of the APS it is submitted that the respondent cannot terminate the APS on the basis of the applicant's terminated deal with Ma.

(k) The applicant's interest in the Townhouse is in question.

Urgency of the Application and Service

(l) The respondent has not agreed to refrain from taking steps to evict the applicant or market the Townhouse for re-sale.

(m) The respondent has, in fact, taken steps to evict the applicant by May 31, 2020, by serving the applicant with a Form N8 Notice to End Your Tenancy.

(n) If the respondent proceeds to evict the applicant or sell the Townhouse the applicant will suffer irreparable harm.

(o) In the circumstances, it is in the interests of justice that this application be heard on an urgent basis.

(p) It is impractical to effect prompt service of the application record on the respondent in light of the COVID-19 pandemic, and given the lack of process servers available to effect personal service.

(q) There is good reason to conclude that serving the application on Stephen Nadler, who has been corresponding as counsel for the respondent, will be effective in giving notice of the application to the respondent.

Other

(r) Sections 98 and 103 of the *Courts of Justice, Act* R.S.O. 1990, c. C.43.

(s) Rules 1.04(1) – (1.1), 1.05, 2.03, 3.02, 14.05(1) - (3), 14.05(3)(d), (e), (h), 16.04, 38, 39, 42 and 57 of the *Rules of Civil Procedure*.

(t) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The Affidavit of Jinning Wang, affirmed March 31, 2020.
- (b) Such further and other evidence as this Honourable Court may permit.

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April 1, 2020

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JINNING WANG
Applicant

-and-

2426483 ONTARIO LIMITED
Respondent
NAD-00639139-0000
Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at Toronto

NOTICE OF APPLICATION :

WAGNER SIDLOFSKY LLP
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