CITATION: Goldentrust Development Inc. v. Chen, 2026 ONSC 6282
COURT FILE NO.: CV-23-709591
DATE: November 6, 2026

SUPERIOR COURT OF JUSTICE - ONTARIO

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RE: Goldentrust Development Inc. v. Zhiming Chen, Yi Niao Li and Equitable Bank;

BEFORE: **ASSOCIATE JUSTICE C. WIEBE**

COUNSEL: Zhiming Chen *for himself and his wife, Yi Niao Li (together "the Owners")*;
Peng Zhang *for Goldentrust Development Inc. ("Goldentrust");*
James Butson *for Equitable Bank;*

HEARD: July 9 and July 23, 2026.

REASONS FOR DECISION

[1] The Owners bring this motion for summary judgment dismissing this action and for other relief such as orders for repayment of the Tarion enrolment fees and all money paid by the Owners to Goldentrust, and declarations that the subject construction contract is illegal and void and that the principal of Goldentrust, Peng Zhang, committed fraudulent misrepresentation. Goldentrust obviously opposes this motion.

Background

[2] The following background facts I gleaned from the motion material and are undisputed.

[3] The Owners owned a residential property at 23 Morewood Crescent, North York, Ontario ("the Property"). On August 2, 2022 the Owners entered into a contract with Goldentrust, memorialized by a document created by Goldentrust called a "New Custom Building Project Agreement," whereby Goldentrust was to manage the construction of a custom-built residential home of 7,668 square feet on the Property in 12 months. Both parties signed this contract document. The contract had features of a cost-plus contract, namely a requirement that Goldentrust be paid its project costs plus a fee of 12% of these costs. The Owners resided in rental premises during the construction.

[4] Work proceeded. The Owners paid Goldentrust $782,171.39 for the work done. On April 10, 2023, at Goldentrust's direction, the Owners paid Goldentrust $31,740.20 to enroll the project under the *Ontario New Home Warranty Plan Act ("ONHWA").*

[5] The Owners say that in August, 2023 they learned that Goldentrust was not licensed by the Home Construction Regulatory Authority ("HCRA") under the *New Homes Construction Licensing Act, 2017*, SO 2017, c.33, Sch. 1 ("*NHCLA*") and that the project was not enrolled with Tarion. The

work ceased in early October, 2023 and was not completed. The Owners served a notice of termination and had it published.

[6] On November 3, 2023, Goldentrust registered a claim for lien in the amount of $275,620.63. On November 14, 2023 Goldentrust perfected its lien by commencing this action. On January 25, 2024 the Owners delivered their statement of defence and counterclaim. In their counterclaim, the Owners (who had lawyers at this time) claimed $1,953,000 for "rectification and completion costs" and unspecified damages pursuant to *Construction Act,* R.S.O. 1990, c. C.30 ("*CA*") sections 35 and 86 and interest and costs. They pleaded that, despite the $31,740.20 that was paid to Goldentrust for Tarion enrollment, that did not happen. They alleged they made this payment pursuant to a misrepresentation from Goldentrust. They pleaded delay related costs.

[7] This action has had several interlocutory proceedings due to Goldentrust's delays and non-compliance with court orders. Here they are:

- On May 14, 2024 Goldentrust's lawyer obtained a removal order. Goldentrust did not comply with the order. As a result, on August 7, 2024 the Owners moved for an order dismissing the action and striking the Goldentrust defence to the counterclaim. The motion was adjourned for two months to allow Goldentrust to get a lawyer. The motion came before me on October 15, 2024 and I adjourned it one last time to October 21, 2024. By October 21, 2024 Goldentrust had retained a lawyer. I dismissed the motion but ordered that Goldentrust pay the Owners $6,000 in costs in 30 days due to Goldentrust's non-compliance with the removal order.

- Goldentrust did not pay the ordered costs. On February 3, 2025 the Owners moved before me for an order dismissing the action and striking the Goldentrust defence to the counterclaim due to this non-payment. I adjourned the motion to March 10, 2025 to give Goldentrust a last chance to pay. At Goldentrust's request, I also scheduled a motion on March 10, 2025 by Goldentrust for leave to have Mr. Zhang represent it in this action. The $6,000 costs order was paid on the day of the motion, March 10, 2025. On March 14, 2025 I denied the Goldentrust motion for leave to be represented by Mr. Zhang. On May 5, 2025 I ordered that Goldentrust pay the Owners $3,800 in costs in three days. These costs are still not paid.

- On January 10, 2026 Mr. Chen on behalf of the Owners (now without lawyers) emailed me wanting to schedule an urgent motion under *CA* section 46 for an order declaring the Goldentrust lien expired for its failure to set this action down for trial and get an order for trial. The Owners were arranging financing to avoid mortgage enforcement proceedings. I scheduled a case conference for January 16, 2026. At the case conference I scheduled the Owners' s.46 motion for February 2, 2026, and encouraged the parties to resolve the issue as it was obvious the Goldentrust lien had expired. The parties resolved the issue and on January 30, 2026 I signed a consent order declaring the Goldentrust lien expired and vacating its claim for lien and certificate of action. On February 2, 2026 I ordered that Goldentrust pay the Owners $5,000 in costs in 30 days. These costs are still not paid.

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[8] This motion began immediately after the resolution of the Owners' s. 46 motion. This motion has the following complicated history:

- On February 2, 2026 Mr. Chen emailed me seeking an appointment for a motion for an order striking the Goldentrust claim. The reasons given were that Mr. Zhang had not substantiated the Goldentrust claim as he promised in a cross-examination on January 29, 2024, that the contract was "illegal" and unenforceable as Goldentrust was not licensed by the HCRA, and that the $31,740.20 the Owners paid to Goldentrust for Tarion enrollment should be returned due to Goldentrust's misrepresentation in this regard. Mr. Chen complained about the conduct of Messrs. Zhang and the Goldentrust lawyer, Junqing Ren. With the Goldentrust lien gone, the request appeared to be for a partial summary judgment motion. As the action remained under the *CA*, I convened a motion case conference on February 12, 2026 to determine whether leave should be given for such a motion.

- On February 12, 2026 Mr. Chen advised by email that the Owners wanted a motion for summary judgment on three grounds: the "illegality" of the contract due to Goldentrust's failure to get an HCRA license; the alleged Goldentrust "fraud" in getting the Tarion $31,740.20 enrollment fee from the Owners; and Goldentrust's failure to substantiate its claim. At this time, with Mr. Ren present, Ms. Zhang openly admitted Goldentrust had neither Tarion registration nor an HCRA license. He said he used a related company, Spring Garden Homes Inc. ("SGH"), in this regard. All of this was highly suspicious. I granted leave for the motion and scheduled it to be argued on April 17, 2026.

- On February 19, 2026 Mr. Chen served and filed the Owners' three-part motion record. It contained an affidavit sworn by Mr. Chen on February 18, 2026. The notice of motion sought a dismissal of the action and declarations that were generally consistent with the previously stated three grounds for the motion.

- On March 6, 2026 Mr. Ren brought a motion before me for a removal order. The proffered evidence alleged that Goldentrust had "fired" Mr. Ren in mid-February, 2026 due to its dissatisfaction with and inability to pay for his services. I reluctantly granted the motion. I cancelled the Owners' summary judgment motion schedule and converted the April 17, 2026 appointment into a case conference.

- On March 24, 2026 Mr. Zhang emailed me asking for a date for another motion by Goldentrust for leave to be represented by Mr. Zhang. I scheduled the motion for April 20, 2026 and adjourned the case conference to that date. On April 20, 2026 I granted the requested leave, but only in relation to the Owners' pending summary judgment motion given the immediacy and gravity of that motion. In the case conference, I re-scheduled the Owners' motion to July 9, 2026 and set a new motion schedule. I noted that the Owners had served their motion record and I did not give the Owners leave to serve another.

- The Owners, however, did serve and email a new motion record on May 15, 2026. It contained an affidavit sworn by Mr. Chen on April 16, 2026. This was during my medical convalescence which began on May 4, 2026. I was not aware of this. The notice of motion

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included the new request for an order that Goldentrust repay the entirety of the $782,171.39 the Owners had paid Goldentrust plus interest. The record included other documents. Goldentrust did not object. Goldentrust served its responding motion record on May 15, 2026, a record that contained an affidavit sworn by Mr. Zhang on May 14, 2026. On June 22, 2026 it served a supplementary affidavit sworn by Mr. Zhang on June 22, 2026.

- The parties filed their motion material. At the argument on July 9, 2026, I was made aware of the Owners' new motion record and its contents. I also gave guidance on oral argument. As a result, I adjourned the motion argument to resume on July 23, 2026.

- On July 13, 2026 Mr. Chen served and filed a supplementary affidavit sworn by him on July 10, 2026. The affidavit improperly contained evidence concerning the issues being argued. It also contained a ruling by the HCRA dated July 9, 2026 wherein the HCRA suspended the licence of SGH and laid eight provincial offence charges against Goldentrust and Mr. Zhang for illegal building. These events stemmed from this case. The SGH licence was suspended because it facilitated Goldentrust's circumvention of *ONHWPA* and could not account for the Owners' money. The charges against Goldentrust and Mr. Zhang concerned Goldentrust's lack of an HCRA licence and failure to enroll the project with Tarion.

- This motion was argued on July 23, 2026. I reserved my decision. On August 31, 2026 Mr. Chen emailed the court attaching a news release from the Toronto Police Service ("TPS") dated August 28, 2026 wherein the TPS announced the arrests of Mr. Zhang and two others on charges of fraud over $5,000. The particulars given as the basis for the charges did not expressly refer to the subject project but only alluded to it.

Issues

[9] Having reviewed the evidence and the submissions of the parties, I find that the following issues need to be determined:

a) What is the test on a motion for summary judgment?

b) Have the Owners proven that the contract was illegal and void *ab initio*?

c) Have the Owners proven that Goldentrust is not entitled to its damages claim?

d) Have the Owners proven entitlement to repayment of the paid contract price?

e) Have the Owners proven entitlement to repayment of the Tarion fee and deposit?

f) Are the Owners entitled to the claimed declarations?

g) Are the Owners entitled to the claimed s.35 damages?

h) Should Mr Zhang be found to be personally liable for the damages claimed?

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Summary judgment test

[10] Rule 20.04(2)(a) of the *Rules of Civil Procedure* authorizes a court to grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence. Summary judgment is available when the judge is able to reach a fair and just determination on the merits on the motion. This will be the case when the motion material (1) allows the judge to make necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result; see *Hryniak v. Mauldin,* 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 50.

[11] Rule 20.04(2.1) of the *Rules* specifies that, when determining whether there is a genuine issue requiring a trial, the court shall consider the evidence filed by the parties. However, as an associate judge, I do not have the jurisdiction to exercise the enhanced fact-finding powers available to a judge under Rule 20.04(2.1) and (2.2), including weighing the evidence, assessing the credibility of witnesses, or drawing reasonable inferences from the evidentiary record. That means I must determine whether there is a genuine issue requiring a trial based entirely on the filed motion records. There were no cross-examinations in this motion.

[12] There are two more stipulations: the moving party has the burden of proof to establish that there is no genuine issue requiring a trial; and both parties must put their "best foot forward" with respect to the existence or non-existence of material issues to be tried; see *Pearl Hospitality Inc. v. Le et al.*, 2026 ONSC 5340 (CanLII) at paras. 16 and 17.

[13] It should be noted that this motion is for partial summary judgment. It is well-established law that motions under Rule 20 for partial summary judgment should be allowed only if the issues on the motion can be readily bifurcated from the others and be dealt with in an expeditious and cost-effective manner; see *Truscott v. Co-Operators General Insurance Company*, 2023 ONCA 267 (CanLII), para. 54.

[14] This being a *CA* case and given *CA* section 50(2), namely subsection that specifies that the *CA* governs where it conflicts with the *Rules of Civil Procedure*, I applied instead the test for leave in *Ont. Reg.* 302/18, s. 13, namely whether this motion was "necessary or would expedite the resolution of issues in dispute." I find though that the two tests are not that dissimilar.

[15] As the motion was originally described and presented to me by Mr. Chen on February 2 and 12, 2026, I found that it could expedite the resolution of the issues in dispute. I found that the motion might resolve the important preliminary and, in my view, distinct issues of whether the governing contract was enforceable and whether Goldentrust had established the evidentiary foundation for its claim. This was distinct from the other issues in the case which concerned the breaches of the otherwise enforceable contract and the damages that flowed from that. I determined that, if the contract was unenforceable and if Goldentrust had not established the evidentiary foundation for its case, the other parts of this proceeding would radically change and be shortened. On that basis I granted leave for the motion to proceed.

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"Illegal" contract

[16] Mr. Chen argued that Goldentrust was a "builder" under a "construction contract" for the construction of a home for the purposes of the *NHCLA* and the *ONHWPA*, and that as a result was required to be licensed by HCRA and to have the project, a home construction project, enrolled with Tarion. Under *NHCLA* section 37(2), "no person shall act or hold oneself out as a builder, offer to construct a new home or construct a new home unless the person is licensed as a builder and meets the other prescribed requirements, if any." Under *ONHWPA* section 10.2(3), a "builder" is prohibited from entering into a construction contract, namely the construction of a "home," unless it is licensed under *NHCLA,* has paid the required Tarion fee and enrolled the project with Tarion.

[17] Referring to a leading decision on contract illegality, *Still v. Minister of National Revenue (C.A.)* 1997 CanLII (F.C.A.) 6379, Mr. Chen argued that, as Goldentrust was not *NHCLA* licensed and was not registered under *ONHWPA*, the contract was illegal and should be declared illegal and *void ab initio,* namely void from the beginning leading under the law to a denial of enforcement and restitution of the monies paid. Goldentrust's single response was that Goldentrust was not a builder, but a "manager."

[18] This claim by the Owners was not pleaded, which alone is fatal. Furthermore, as I will articulate later, I doubt my jurisdiction to issue declarations. But, given the centrality of this issue to the Owners' motion, I will deal with the factual and legal underpinning of the claim at this point.

[19] The definition of a "builder" for the *NHCLA* and the *ONHWPA* is contained in the *ONHWPA* s. 1(1). This definition essentially boils down to the following: a builder is "a person who undertakes the performance of all the work and supply of all the materials necessary to construct a completed home." In his factum, Mr. Chen referred to "Advisory #4 (November 2021)" which he said confirms that a person who arranges for the work and does not perform it is nonetheless a "builder." He did not attach this document or show what, if any, legal authority it has. He provided no legal decision on this issue.

[20] Does the motion material show a genuine issue requiring a trial concerning the issue of whether Goldentrust was a "builder"? Determining what Goldentrust "undertook" to do turns on two sets of evidence, the governing contract and the subsequent performance of the parties that may have amended the contract by conduct.

[21] First, the contract. The motion material contains the contract signed by the parties on August 2, 2022. This is the key document. Although unclear, it suggests that Goldentrust was indeed a "manager." It refers to Goldentrust as the "project manager team." The contract describes Goldentrust's responsibilities as arranging a schedule, preparing a budget, arranging cash flow projections, getting quotes for the owner with the owner having the right to accept them and hire a contractor, coordinating and supervising activities, inspecting the work, organizing payment requests from trades and suppliers, and payment to Goldentrust of nothing more than a fee (ie. 12% of the budget) and materials purchased for the owner.

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[22] On the other hand, there are a few features that suggest Goldentrust was a builder with responsibility for the work. The contract includes a promise by Goldentrust to provide the owner with insurance for major trades, an indemnity against all damages and costs, and a promise to the owner that all workers and trades will be paid.

[23] At the end of the contract there is a section entitled "warranty." The original document included a Goldentrust warranty of $2,000 for "each repairment" and a Goldentrust warranty that was a "mirror" of the Tarion warranty. Tarion warranties are indeed "builder" warranties. These were stroked out. What is left is the following: "P. Manager Team shall provide the client warranty as Tarion warranty." On its face, this could be interpreted as a promise by the "manager," Goldentrust, to get a "builder" with Tarion registration to contract with the Owners for the work.

[24] Mr. Chen's affidavit contains the following statements that concern the contract formation:

- at the time of the contract Mr. Zhang represented to Mr. Chen that Goldentrust was an HCRA licensed builder registered with Tarion and that the project would be covered by Tarion warranties; and

- based on this representation the Owners contracted with Goldentrust.

Mr Chen called this a "fraudulent misrepresentation" that formed the basis of the contract. These assertions were uncorroborated.

[25] Mr. Zhang's responding affidavit contains a different version of these events:

- under the contract, Goldentrust was a "manager," not a "builder"; and

- the Owners knew from the beginning that Goldentrust was nothing but a "manager" and was not HCRA licensed or Tarion registered and that SGH was so licensed and registered.

[26] Mr. Zhang's affidavit contains corroboration for these statements. There are texts showing that Mr. Zhang indeed informed Mr. Chen on August 12, 2022 (10 days after the contract) that Goldentrust was not Tarion registered and that SGH had this registration.

[27] This evidence, in short, satisfies me that at minimum there is a triable issue as to whether Goldentrust undertook in the signed contract to act as a "builder."

[28] Second, the contract performance. Here again the evidence is unclear. On the one hand, there is evidence that suggests Goldentrust undertook the entirety of the project work. There are telling admissions in the Goldentrust statement of claim and reply. Paragraphs 5 to 7 of the Goldentrust statement of claim state that Goldentrust "supplied, performed and paid for" the labour, material and equipment for "demolition, excavation, framing, concrete basement, foundation, plumbing and HVAC" on the project. This is a significant part of the project. These admissions were not withdrawn. They are also consistent with the subtrade and supplier receipts and contracts Mr. Zhang attached to his first affidavit, as they all are made out to Goldentrust. In its

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reply, Goldentrust pleads that it was registered with Tarion – an apparent falsehood. I note, however, that paragraph 5 of that reply states that the Tarion registration number was "H3568485" which in fact was the SGH Tarion registration number. I also note though that there is no express admission by Goldentrust that it was a "builder."

[29] There is also the Chen affidavit which indicates Goldentrust did the project work and undertook to get the requested Tarion enrollment in its own name as the "builder." Here are the key statements:

- at Mr. Zhang's direction and based on the above alleged fraudulent misrepresentation, the Owners paid Goldentrust $31,740.20 on April 10, 2023 to get the project enrolled with Tarion;
- Goldentrust completed only 30% to 40% of the contract scope and then abandoned the project;
- on September 27, 2023 Mr. Chen served Goldentrust with a notice of termination;
- on November 3, 2023 Mr. Chen discovered from HCRA and Tarion that Goldentrust was not an HCRS licensed builder and as a result could not and did not enroll the project with Tarion.

The only corroboration for these statements was the contract, a bank record showing the payment, and emails from HCRA and Tarion.

[30] The Zhang affidavit, on the other hand, suggests that Goldentrust may not have done the work. It shows that there was a lengthy conversation between the Owners and Goldentrust about getting SGH, not Goldentrust, to do the work and enroll the project with Tarion. Mr. Zhang's affidavit states the following:

- the Owners indeed asked for Tarion coverage after the project started;
- on October 27, 2022 Goldentrust advised the Owners as to the amounts for the Tarion enrolment fee and security deposit;
- on January 23, 2023 the Owners confirmed SGH was the company that was registered with Tarion;
- the Owners indicated a new contract "might be required" for this coverage and they wanted to get legal advice;
- the Owners never required a "new contract";
- on February 28, 2023 the Owners provided Goldentrust with a bank draft payable to Tarion for the $31,740.20, which draft showed the SGH Tarion registration number;

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- the Owners then replaced their February 28, 2023 draft with a cheque dated April 10, 2023 for the $31,740.20 payable to Goldentrust;

- Goldentrust then "arranged or authorized" SGH to obtain the Tarion enrolment;

- Mr. Zhang obtained a bank draft in his name made out to Tarion for the $31,740.20;

- the money remains with Tarion as the project is not complete.

[31] The Zhang affidavit contains the following corroboration, which I find significant:

- a text dated October 27, 2022 wherein Mr. Zhang informs Mr. Chen of the enrolment fee and security deposit amounts and asks Mr. Chen to forward the contract "for the enrolment (H3568485)" which is the SGH registration number;

- a text dated January 23, 2023 wherein Mr. Chen confirms the SGH registration with Tarion;

- a copy of the Owners' February 28, 2023 bank draft to Tarion for the $31,740.20 which draft contains SGH's registration number;

- texts showing that the Owners' lawyers advised them not to pay the fee and deposit and that Goldentrust wanted extra for the Tarion cost;

- a copy of the Owners' cheque to Goldentrust dated April 10, 2023 for the $31,740.20 which cheque again contains SGH's registration number;

- a bank draft from "Peng Zhang" to Tarion dated April 12, 2023 in the amount of $31,740.20 (without reference to the SGH registration number);

- a May 23,2023 "Enrolment Confirmation" from Tarion "to: Carnegie Zhang" confirming the enrolment of the project with Tarion, which confirmation refers to the SGH registration number, H3568485;

- a December 7, 2023 request from SGH to Tarion to relinquish the enrolment.

[32] This evidentiary record does not, in my view, form the basis for finding no triable issue as to whether Goldentrust was a "builder." There are simply too many uncertainties concerning the contract and its performance on this issue. The biggest uncertainty is in the interpretation to be given the signed contract. The evidence suggests that the signed contract was no more than a management contract wherein Goldentrust was not a "builder" and therefore arguably not in violation of the *NHCLA*. The performance of the contract also raises issues. Goldentrust made pleading admissions and disclosed documents which indicate that it undertook the bulk of the project work. However, there appears to have been a discussion between the Owners and Goldentrust about getting SGH to do the work and enroll the project with Tarion, a discussion that

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stemmed from a mutual understanding from the outset that Goldentrust was not the entity with HCRA licensing and Tarion registration. These issues need to be clarified through a trial.

[33] Mr. Chen went to some length in describing the jurisprudence on contract illegality. He referred me to the decision of the Supreme Court of Canada in *Transport North American Express Inc. v. New Solutions Financial Corp.*, 2004 SCC 7 (CanLII), [2004] 1 SCR 249 at paragraphs 21 and 54. This decision concerned a lending agreement with a criminal interest rate component. The issue was whether that interest component rendered the whole contract unenforceable or whether it could be severed. The Court held that the decision on enforceability was now discretionary and that this discretion should be exercised in accordance with the factors outlined by the Ontario Court of Appeal in *William E. Thomson Associates Inc. v. Carpenter* (1989), 1989 CanLII 185 (ONCA), 61 D.L.R. (4th) 1: whether the purpose of the statute would be subverted by severance; whether the parties entered the contract for an illegal purpose or with evil intention; the bargaining power of the parties and their conduct in reaching the agreement; and whether the debtor would be given a windfall. Given my view of the evidence concerning the underlying of issue of whether Goldentrust was a "builder," I do not have to engage with this jurisprudence and will not do so.

Damage claim

[34] Mr. Chen also argued that the Goldentrust claim for breach of contract damages for non-payment in the amount $275,620.63 (the amount of the former Goldentrust lien) should be denied in its entirety. The Owners did plead that Goldentrust should be denied the entirety of its claim. I believe the first ground for this argument on this motion was the illegal contract point, which I have dealt with.

[35] The second ground essentially boiled down to an argument that the claim was grossly excessive. He said that this claim was a "mathematical impossibility." He said that Goldentrust's entitlement is limited to 12% of "construction costs," which he said created a maximum entitlement upon completion of $230,709.84 (HST incl.). He then said that Goldentrust abandoned the project when it was "only 30-40% complete." 40% of $230,709.84 is $92,283.93, namely 33% of the claim.

[36] The evidence about the contract and its performance does not support this assertion. The contract specified that Goldentrust will be paid a fee of 12% "of Project Budget." The project budget at the back of the contract totaled $1,701,400.00 + HST. 12% of $1,701,400 + HST is $204,168.00 +HST. The contract curiously specifies a payment schedule for $200,000 + HST of this amount based on project milestones: $20,000 on signing the contract; $50,000 on completion of water connection; $30,000 on completion of window installation; $50,000 on completion of painting prime coat; and $50,000 on occupancy permit and ESA clearance. There was no evidence as to which of these milestones had been achieved. Therefore, it is a triable issue as to what Goldentrust would be entitled to in fee in its best case.

[37] Furthermore, Mr. Zhang in his affidavit states that the Goldentrust claim is based not just on unpaid fee, but also on unpaid "construction costs." He asserts that the total construction costs incurred by Goldentrust was $1,057,792.02, of which the Owners had paid only $782,171.39 leaving a balance owing to Goldentrust of $275,620.63, the amount of its claim. This takes us back to the

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interpretation to be given to the contract and whether Goldentrust was a "builder." This evidence and position from Mr. Zhang suggests that Goldentrust acted as the "builder" responsible for the entire work, despite the wording of the contract and what he says elsewhere in his affidavits. Again, this underlying contract confusion merits a trial, as does the issue of what is owed to Goldentrust.

[38] Finally, I make a comment about Mr. Chen's assertion that the project was only 30% to 40% complete. If this assertion was relevant, I would have trouble accepting it as there is nothing presented by the Owners to corroborate it. It is just a bald statement. That also merits a trial.

Contract price repayment

[39] Mr. Chen also argued that Goldentrust should be ordered to repay the entirety of what the Owners have paid Goldentrust on the project, $782,171.39. In its statement of defence and counterclaim, the Owners pleaded that Goldentrust failed to account for its costs; but they did not expressly claim a repayment of the paid contract price.

[40] Because of the underlying pleading about cost accounting, I will deal with the argument nevertheless as it may lead to a pleading amendment. The first reason given for the argument appeared again to be the illegal contract point, which I have dealt with.

[41] The second ground appeared to be the allegation that Goldentrust had undertaken in a section 40 cross-examination on January 29, 2024 to produce signed contracts, proofs of payments to subtrades, and a verified accounting to substantiate its claim. It took Goldentrust over two years, until February 4, 2026, to purport to comply with these undertakings. Mr. Chen alleged that Goldentrust did not comply, did not produce signed contracts, did not produce proofs of payment to subtrades, and did not produce evidence of the costs that allegedly justified the Owners' payments. The argument appeared to be that the contract was essentially a cost-plus contract and that proof of Goldentrust costs were a condition precedent to entitlement to payment. Without such proof of cost, the payments were unjustified and should be returned.

[42] The list of Goldentrust January 29, 2024 undertakings was attached to Mr. Chen's affidavit. It is not as sweeping as Mr. Chen argues. There were undertakings to produce the proofs of payment for certain trades – heated flooring, elevator and plumbing. There were undertakings to produce documents supporting the cost of the foundation, footing, basement slab and garage slab. There was an undertaking to produce the contract for the demolition subcontractor. There was an undertaking to confirm (not provide proof of) which trades were paid and what they were paid.

[43] The answers sent by Mr. Ren on February 4, 2026 to Mr. Chen as attached to Mr. Chen's affidavit are indeed quite deficient. There is a signed quote from the excavator, Diamond Demolish Excavation. There are unsigned contracts with the plumber, AAA Plumbing Inc., and with the elevator trade, Cambridge Elevating. But there are no other documents - no proofs of payment, no costing documents, and no confirmation of trades and payments to trades.

[44] In his affidavit on this motion, Mr. Zhang tried to overcome this deficiency by asserting that the costing information was on a Goldentrust on-line program that Owner had access to. There was no corroboration for this statement. He asserted that the total construction cost was $1,057,792.02

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of which the Owners have paid $782.171.39, leaving $275,620.63 (the Goldentrust claim) unpaid. He attached "sample project payment records" and a summary of these costs. The "sample" payment records included quotations, orders, invoices and receipts given to or made out to Goldentrust or Mr. Zhang (in some cases to the Owners), numerous receipts and copies of cheques from Goldentrust, and several subcontracts, such as the basement and garage slab subcontract, the forming-foundation wall subcontract, the structural steel subcontract, the elevator subcontract and the plumbing subcontract. There are charts apparently summarizing the costs, though they are hard to make out. There was no explanation from Mr. Zhang as to why most of this information and documentation did not appear in the Goldentrust February 4, 2026 answers to undertakings.

[45] Given this evidence, I am not prepared to conclude there is no triable issue as to the Owners entitlement to repayment of what they have paid Goldentrust. Whether Goldentrust was a "builder" or "manager," there was clear evidence of substantial costs incurred by Goldentrust concerning the project. Indeed, Mr. Chen admitted in argument that Goldentrust had completed 30% to 40% of the scope. 40% of the budget of $1,922,582 (HST incl.) is $769,032.80, which is about what the Owners paid. What Goldentrust is entitled to is very much a live and triable issue.

[46] The failure of Goldentrust to answer its undertakings in time and in substance is unacceptable. But the appropriate and proportional remedy lies in an appropriate costs award, not, given the evidence, in the draconian result advocated by Mr. Chen.

Tarion fee and deposit

[47] Mr. Chen also argued that there should be summary judgment for repayment by Goldentrust of the $31,740.20 in Tarion enrollment fee and security deposit the Owners paid to Goldentrust on April 10, 2023. $1,740.20 was the enrollment fee and $30,000 was the security deposit. This claim was indeed expressly pleaded by the Owners. The basis for the claim is that Goldentrust obtained this money from the Owners after Mr. Zhang allegedly fraudulently misrepresented to them that Goldentrust was a licensed builder with Tarion registration.

[48] In my discussion about the "illegal contract" point, I reviewed the evidence that the Owners rely upon for this claim. I therefore will not repeat it. Suffice it to say here that there is, in my view, a triable issue as to whether there was this misrepresentation at all. The evidence in this motion suggests the following series of events:

- the Owners appear to have been informed as early as the contract date in early August, 2022 that Goldentrust was not licensed and not registered with Tarion;
- the Owners had lawyers at this time;
- the Owners then at Goldentrust's suggestion, worked with Goldentrust to get its sister company, SGH, the one with an HCRA license and Tarion registration, to do the work and get the project enrolled with Tarion;
- the Owners considered formally contracting with SGH but did not do so in the end;

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- the relationship between Goldentrust and SGH concerning the project is unclear;
- Goldentrust obviously did not want it or SGH to pay the enrollment fee and security deposit and got the Owners to pay that money;
- initially, the Owners intended to pay that money directly to Tarion but then, on advice of their lawyers, paid it to Goldentrust to get SGH to enroll the project with Tarion;
- Mr. Zhang then got SGH to pay the Tarion fee and security deposit and enroll the project with Tarion;
- the whereabouts of that money at this point is an open question.

This series of events, if found to be the case, hardly points to a fraudulent or any misrepresentation by Goldentrust. It points instead to the two parties working in concert to get the project enrolled with Tarion, whether in accordance with *ONHWPA* rules or not.

[49] I would like to address Mr. Chen's supplementary affidavit he swore, served and filed on July 13, 2026. This was **after** the motion argument commenced on July 9, 2026 and during the adjournment of the motion. I did not give Mr. Chen leave to do this and this was profoundly unfair to Goldentrust. Goldentrust understandably objected. Most of this affidavit concerned evidence Mr. Chen had in his possession for some time. I will, therefore, disregard that evidence.

[50] There is one exception. It is the attachment of an HCRA announcement dated July 9, 2026 wherein HCRA announced proceedings concerning Goldentrust and SGH which pertain to this project. This is a development that Mr. Chen could not have been aware of at the time of his original motion material. In this announcement, HCRA announced it had suspended SGH's license as SGH failed to provide HCRA with clear information as to its financial activities and banking history and failed to provide information "explaining how the homebuyer's funds were directed, despite repeated requests." The announcement stated that SGH's license had been suspended on February 14, 2026 as a result.

[51] The announcement went on to say that HCRA had laid eight Provincial Offences Act charges against Goldentrust and Mr. Zhang for "illegal building," including building new homes without a license and without Tarion enrolment. The eight charges are then described and indeed concern this alleged activity, namely building new homes without a license and without Tarion enrolment. The announcement stated that the charges were to be heard before the Ontario Court of Justice on July 10, 2026. Mr. Zhang made it clear to me on July 23, 2026 that he and Goldentrust were contesting these charges.

[52] For the purposes of this motion, I find this announcement to be of no consequence. The HCRA obviously decided that Goldentrust was a "builder" with the obligation to enroll the project with Tarion. HCRA was also obviously displeased with SGH's financial disclosure concerning the Tarion enrolment fee and security deposit leading to its suspension of SGH's license. But the payment, location and use of these funds remain a mystery at this point. HCRA also did not disclose

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the basis for its decisions about Goldentrust's "builder" status. Furthermore, I was not shown evidence that HCRA is a judicial body, and that it has made a judicial determination of these issues.

[53] For these reasons, I am not prepared to grant summary judgment requiring the repayment of the $31,740.20 in enrollment fee and security deposit. Whether there was the alleged misrepresentation is a triable issue.

Declarations

[54] The Owners claim various declarations: a declaration that the contract was illegal and *void ab initio*; a declaration that Mr. Zhang committed fraudulent misrepresentation; a declaration that the Goldentrust claim for $275,620.63 was grossly exaggerated and fraudulent. I have dealt with the factual underpinnings for these claims elsewhere in these reasons and have found that these factual underpinnings create triable issues.

[55] I will, therefore, only make two brief additional points here. First, none of these declarations were claimed in the Owner's pleadings. That alone is fatal on this motion for summary judgment.

[56] Second, my jurisdiction to make declarations is in doubt. The power to grant declarations is contained in section 97 of the *Courts of Justice Act,* R.S.O. 1990, c. C.43 ("*CJA*"), which states that the "Superior Court of Justice" may make binding declarations of right whether or not any consequential relief is or could be claimed. Historically, this power was viewed as a judicial act requiring a trial, which associate judges are not empowered to conduct other than through references. However, the *Rules of Civil Procedure* (Rule 37.02(2)) confer on associate judges all the power of judges to hear and determine motions unless that power is expressly conferred on judges. Motions for summary judgment are not motions conferred exclusively onto judges. Therefore, the argument is that in motions for summary judgment where declarations are pleaded, associate judges should be able to issue declarations, particularly as the statutory power to issue declarations is not exclusively conferred onto judges.

[57] In *Visual Bible International, Inc. v. Cinemavault Releasing Inc.*, 2005 CanLII 16592 (ONSC) Master McLeod (as he then was) raised this jurisdictional issue on the motion for summary judgment that was before him. He declined to resolve the jurisdictional issue as he found there was no triable issue concerning the underlying issues and dismissed the motion. I note that in two decisions involving the jurisdiction of registrars-in-bankruptcy to issue declarations, namely *Re Ghajar,* 2023 ONSC 6041 at para. 16 and *Re Organic Garage (Canada) Ltd.,* 2026 ONSC 1129 at para. 203, Associate Justices Rappos and Ilchenko referred to *Visual Bible* in declining to exercise this jurisdiction. I too find my jurisdiction concerning declarations at best unclear, and, had that relief been pleaded in this case, I would have had difficulty granting it.

[58] For these reasons, I do not grant the requested declarations.

Section 35 damages

[59] Mr. Chen also claims $35,000 in damages pursuant to *CA* section 35 due to "the exaggerated/fraudulent lien." This claim is in fact pleaded by the Owners. *CA* section 35 specifies

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that, where a "person" preserves a claim for lien and knows or ought to know that the amount of the lien has been wilfully exaggerated or that there is no lien, that person is liable to any other person who suffers damages as a result.

[60] Elsewhere in these reasons I have found that there is a triable issue as to what Goldentrust is owed on its claim, if anything. As a result, I am not prepared to find that there is no triable issue as to Goldentrust's liability under section 35.

[61] Furthermore, and in any event, there is no evidence as to the alleged damages the Owners have suffered as a result of the this "exaggerated/fraudulent lien." Mr. Chen blamed the Goldentrust claim for lien and Goldentrust's alleged abandonment of the project for the Owners' default on the mortgage and the mortgagee's subsequent power of sale process, all of which he said caused his family considerable stress. There is no corroboration for this alleged line of causation, namely the alleged family stress and the alleged costs concerning same.

Peng Zhang personal liability

[62] In his factum, Mr. Chen argued that Mr. Zheng should be found personally liable for the liabilities of Goldentrust on the basis that Mr. Zheng is the sole director and shareholder of that company and completely dominates it and that Mr. Zhang incorporated and uses Goldentrust for an illegal purpose, namely flouting the *NHCLA* and *ONHWPA* ; see *642947 Ontario Ltd. v. Fleischer,* 2001 CanLII 8623 (CA), para. 68.

[63] I dismiss this argument for two reasons. First, I have found that there are triable issues concerning the claimed liabilities of Goldentrust, all as previously discussed. Second, and most importantly, Mr. Zhang is not a party to this action and the Owners have pleaded no relief against him here. They may have done so in their civil action, but not in this lien action. That alone is fatal to this argument. One cannot obtain summary judgment on a claim that is not pleaded.

Conclusion

[64] For all these reasons, I dismiss this motion in its entirety.

[65] Concerning costs, the parties filed costs outlines. The Owners' costs outline dated July 23, 2026 shows costs totaling $26,250. The Goldentrust costs outline dated July 23, 2026 shows partial indemnity costs totaling $30,000 and substantial indemnity costs totaling $35,000.

[66] I have decided to deal with the issue of costs based on the submissions on this motion and what I am aware of concerning the history of this case. Clearly, Goldentrust was the successful party and usually that results in an award of costs in its favour. I note also Rule 20.06(a) which states that if a party acts unreasonably in bringing a motion for summary judgment, an award of substantial indemnity costs may be made against that party.

[67] I am not prepared to make an award of costs in favour of Goldentrust in this motion for the following reasons. There is evidence of Goldentrust's misconduct in this case.

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[68] First, it is undisputed that Goldentrust has not paid two of my costs orders, namely my order dated May 5, 2025 that Goldentrust pay the Owners $3,800 in costs, and my order dated February 2, 2026 that Goldentrust pay the Owners $5,000 in costs in thirty days. Also, Goldentrust complied with my October 21, 2024 order to pay the Owners $6,000 in costs in 30 days no sooner than on March 10, 2025, namely almost four months late. Given this history of noncompliance with court orders, Goldentrust should not be allowed to avoid these long overdue costs liabilities with a costs award in its favour in this motion.

[69] Second, Goldentrust took over two years to purport to comply with the undertakings Mr. Zhang gave at his section 40 cross-examination on January 29, 2024. This is wholly unacceptable. In addition, the answers given were quite inadequate as is evident from the costs evidence Mr. Zhang attached to his initial affidavit on this motion. This Goldentrust noncompliance with its legal obligations of disclosure was one reason the Owners brought this motion. Though the Owners were unsuccessful, this Goldentrust non-compliance with its disclosure obligations must be given weight on the issue of costs.

[70] Furthermore, I am not satisfied that the Owners acted unreasonably in bringing this motion given the said Goldentrust noncompliance with its disclosure obligations and Mr. Zhang's open admission before me in court that Goldentrust is not a licensed builder.

[71] Therefore, I order that there be no costs award on this motion.

DATE: November 6, 2026

ASSOCIATE JUSTICE C. WIEBE

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