

CITATION: *Kuniyoshi v. Battle416 Inc. et al.*, 2026 ONSC 4288
COURT FILE NO.: CV-25-00751270-0000
DATE: 20260730

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
HIROSHI KUNIYOSHI	)	<i>Ruzbeh Hosseini and Meryl Morant, for the</i>
Plaintiff	)	Plaintiff
	)	
– and –	)	
	)	
BATTLE416 INC. A.K.A. BATTLE	)	
SCARBOROUGH INC. and CLYDE	)	No one appearing for the Defendants
PACIS	)	
Defendants	)	
	)	
	)	
	)	
	)	HEARD: In writing

REASONS FOR JUDGMENT

JOHN CALLAGHAN J.

[1] This is a motion for default judgment.

[2] The plaintiff, Hiroshi Kuniyoshi, invested \$50,000 in the corporate defendant Battle416 Inc. a.k.a. Battle Scarborough Inc. at the behest of Clyde Pacis. The investment was in support of a gym concept. Mr. Pacis provided a disclosure statement with a description of the business, financial projections and various renderings of the gyms. The gym was to be located in Scarborough.

[3] The plaintiff signed a Letter of Intent (“LOI”) that set out an investment of \$50,000 in exchange for shares. The plaintiff signed the LOI and forwarded funds in the name of the corporate defendant.

[4] After not receiving the share certificate, the plaintiff emailed Mr. Pacis requesting the share certificate and that there be a shareholder meeting to discuss financials. The email was acknowledged but there was no certificate and no call for a meeting. Indeed, the plaintiff has heard nothing from the defendants since the acknowledgement of the email.

[5] The plaintiff then attended where the gym was to be located. There was a notice on the front door that the lease for the premises had been terminated. However, the notice referred to another company being the tenant, not Battle416 which was represented to be the operating company. The corporate profile of the company that was listed on the notice as the tenant does not have any obvious relationship with the defendants.

[6] In the statement of claim, the plaintiff makes several allegations against both defendants, including breach of contract, unjust enrichment and conversion. The pleading makes allegations that both defendants misappropriated the funds of the plaintiff without justification.

[7] Pursuant to r. 19.02 of the Rules of Civil Procedure, having not defended the proceeding, a defendant is deemed to admit the truth of all allegations of fact made in the statement of claim. However, pursuant to r. 19.06, a plaintiff is not entitled to judgment on a motion for judgment or at a trial merely because the facts alleged in the statement of claim are deemed to be admitted, unless the facts entitle the plaintiff to judgment.

[8] The test on a motion for default judgement was set out in *Elekta Ltd. v. Rodkin*, 2012 CarswellOnt 2928 (ONSC) as follows: A. What deemed admissions of fact flow from the facts pleaded in the Statement of Claim? B. Do those deemed admissions of fact entitle the plaintiff, as a matter of law, to judgement on the claim? C. If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitle it to judgement on the pleaded claim?

[9] In this case, the statement of claim sets out that the plaintiff advanced funds in exchange for shares that were never provided by the corporate defendant. In my view, the LOI was an offer by the corporate defendant which was accepted by the plaintiff who advanced the requisite funds. The admissions in the statement of claim and affidavit sets out that the corporate defendant never provided the shares in return. In my view, the LOI set out that the plaintiff was to receive those shares in exchange for the \$50,000. As such, there has been a breach of the LOI which amounts to a breach of contract.

[10] In addition, as the funds were received, the corporate defendant has been unjustly enriched in the circumstances. The plaintiff has been deprived of the funds at the expense of the corporate defendant without a juridical reason given the breach of contract. In my view, this is sufficient to warrant judgment against the corporate defendant: *Moore v. Sweet*, [2018 SCC 52](#), [2018] 3 S.C.R. 303, at para. [41](#); *Kerr v. Baranow*, [2011 SCC 10](#), [2011] 1 S.C.R. 269, at para. [36](#).

[11] In addition, the admissions in the statement of claim set out that the defendants wrongly converted the funds for their own purposes rather than the purpose of the investment. As the Supreme Court of Canada explains in *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, [1996 CanLII 149 \(SCC\)](#), [1996] 3 S.C.R. 727, at para. [31](#), “[t]he tort of conversion involves a wrongful interference with the goods of another, such as taking, using or destroying these goods in a manner inconsistent with the owner's right of possession.” In my view, this applies to both defendants. The plaintiff advanced funds for the gym investment but the funds, as alleged, were never used for that purpose.

[12] Accordingly, I am satisfied that the plaintiff is entitled to judgment in the amount of \$50,000.

[13] There was a request for punitive damages. Punitive damages are an exceptional remedy: *Humphrey v Mene Inc.*, 2022 ONCA 531. While I have accepted that the admissions in the statement of claim require the defendants to return the \$50,000, the limited record does not allow me to conclude punitive damages are appropriate. That claim is disallowed.

[14] The plaintiff is entitled to its partial indemnity costs of \$4,150 plus \$1,300 in disbursements, both figures are inclusive of tax. This is a reasonable and proportionate amount which the defendants could reasonably expect in the circumstances: *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587, [2022] O.J. No. 3632, at para. 61.

[15] There shall be judgment in favour of the plaintiff against the defendants in the amount of \$50,000 plus \$5,450 in costs plus pre- and post-judgment interest in accordance with the *Courts of Justice Act*. The plaintiff may submit a draft order for approval.

Callaghan J.

Released: July 30, 2026