

CITATION: Liberty Tax Service, Inc. v. Pinto, 2025 ONSC 2429
COURT FILE NO.: CV-24-00002316
DATE: 20250424

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
LIBERTY TAX SERVICE, INC.)
) Michael A. Polvere, for the Plaintiff
Plaintiff)
)
– and –)
)
SAMANTHA PINTO and 1000025109)
ONTARIO INC. o/a FERNHILL TAX &) Melvyn Solmon and Faraaz A. Damji, for
ADVISORY) the Defendants
)
Defendants)
)
)
)
) **HEARD:** April 4, 2025

2025 ONSC 2429 (CanLII)

REASONS FOR DECISION

CHARNEY J.:

[1] The Plaintiff, Liberty Tax Service Inc. (“Liberty Tax”), brings this motion for an interlocutory injunction against the Defendants, restraining them from engaging in activities that it alleges violate the post-termination obligations set out in the Franchise Agreement (the “Agreement”) between Liberty Tax and the Defendant, Samantha Pinto. The Plaintiff also seeks an order compelling the Defendants to return client records.

Facts

- [2] The Plaintiff, Liberty Tax, is a corporation which operates a tax return preparation franchise system with offices in several cities in Ontario.
- [3] The Defendant, Samantha Pinto, is a Certified Professional Accountant. She operated ten Liberty Tax franchises until they were terminated by the Plaintiff on January 5, 2024.
- [4] The Plaintiff alleges that Ms. Pinto is the director and operating mind of the Defendant 1000025109 Ontario Inc. o/a Fernhill Tax & Advisory, and that Ms. Pinto continues to

operate a competing tax preparation service under the name Fernhill Tax & Advisory (“Fernhill”).

The Franchise Agreement

- [5] On December 23, 2019, Liberty Tax Service Inc., as the franchisor, entered into ten franchise agreements with various parties. Two of these agreements were with 11544764 Canada Corp., as the franchisee. Ms. Pinto signed these two agreements on behalf of 11544764 Canada Corp.
- [6] There were eight other identical agreements with various other corporations and signed by individuals who are not parties to this proceeding, for a total of ten identical agreements.
- [7] In November 2021, Ms. Pinto established a new corporation: 1000025109 Ontario Inc., and transferred her two franchises to the new corporation. She then acquired (through transfers) the eight other franchises into the same corporation. She acknowledges that she and 1000025109 Ontario Inc. were parties to the ten franchise agreements with Liberty Tax, and that she was the owner, director and operating mind of 1000025109 Ontario Inc. from November 12, 2001 to January 15, 2024.
- [8] The Agreement states:
- Liberty Tax Service Inc. (“Liberty,” “Liberty Tax”) has developed a system for the operation of tax return preparation offices in Canada. The Liberty system utilizes special marketing techniques and operating procedures to facilitate the provision of tax return preparation and related services.
- [9] The Agreement was effective for a five year term, subject to renewal and buyback. The franchise territory was set out on a map in a schedule to each Agreement. There are a total of ten agreements covering the following areas in Ontario:
- 1) Barrie
 - 2) Mississauga
 - 3) Wasaga Beach
 - 4) Kingston
 - 5) Windsor
 - 6) Innisfil
 - 7) London
 - 8) Windsor (this is a second Windsor location)

9) North Bay

10) Oshawa

[10] The Agreement spells out the fees and royalties to be paid by the franchisee and the obligations of the franchisor and franchisee.

Post-Termination Obligations

[11] The Agreement also spells out the Post-Termination Obligations of the parties. The key obligations at issue on this motion are the non-compete and non-solicitation clauses prohibiting the Defendants from competing within 40 kilometers of the former franchise territory for a period of two years post-termination and to return any original and copies of client lists and client documents.

[12] The relevant portions of the Agreement provide:

9. Upon expiration, termination, transfer or nonrenewal of this Agreement for any reason by any party, including a sale of the Franchised Business, you must immediately:

...

b. Stop identifying yourself as a Liberty Tax franchisee, never hold out as a former Liberty Tax franchisee and forever cease the use of any of the Marks or any other marks that may be confused with the Marks; and

...

e. Transfer to Liberty all telephone numbers, email accounts, URLs, domain names, internet accounts, cloud server accounts, listings and advertisements used in relation to the Franchised Business, sign any required documentation and deliver to Liberty copies of such documents of transfer...

f. Assign to Liberty (if Liberty elects) any interest that you have in any lease, sublease or any other agreement related to the Franchised Business. Regardless of the forms and documents that may have been signed by Franchisee under this provision, Franchisee hereby irrevocably appoints Liberty as Franchisee's true and lawful agent and attorney-in-fact with full power and authority for the sole purpose of taking any necessary action to complete the assignments required pursuant to this section. This shall in no way obligate Liberty to assume any obligations or liabilities of Franchisee associated with the leases. This limited power of attorney will survive termination, expiration or nonrenewal of this Agreement; and

g. Deliver to Liberty any original and all copies, including electronic and cloud based copies and media, of lists and other sources of information containing the names, addresses, e-mail addresses, or phone numbers of customers of the Franchised Business; and

h. Deliver to Liberty any original and all copies, including electronic and cloud based copies and media containing customer tax returns, files, and records;

...

10 b. Post-Term Covenant Not to Compete. For a period of two (2) years following the termination, expiration, transfer or other disposition of the Franchised Business, or your removal as a signator to this Agreement, you agree not to directly or indirectly, for a fee or charge, prepare or electronically file income tax returns, or offer tax discounting, within forty (40) kilometers of the boundaries of the Territory except, if applicable, in your capacity as a Liberty Tax franchisee pursuant to a valid Liberty franchise agreement.

...

d. Covenant Not to Solicit. For a period of two (2) years following the termination, expiration, transfer or other disposition of the Franchised Business, or your removal as a signator to this Agreement, you agree that you will not, within the Territory or within forty (40) kilometers of the Territory, directly or indirectly, solicit any person or entity served by any of your prior Liberty offices within the last twelve (12) months that you were a Liberty franchisee for the purpose of offering such person or entity, for a fee or a charge, tax preparation, electronic filing or tax discounting except, if applicable, in your capacity as a Liberty franchisee pursuant to a valid Liberty franchise agreement. You further agree for a period of two (2) years following the termination, expiration, transfer or other disposition of the Franchised Business, or your removal as a signator to this Agreement, not to employ or solicit for employment without Liberty's prior written consent any of Liberty's employees or those of any other of Liberty's franchisees, or induce any such employee to leave his or her employ.

...

h. Waivers. You acknowledge and agree that the provisions of Section 10 are reasonable, valid and not contrary to the public interest. You waive all defenses to the strict enforcement of Section 10. You further agree that Liberty is entitled to a temporary restraining order, preliminary and/or permanent injunction for any breach of duties under any of the non-

monetary obligations of Sections 9 and 10. You hereby waive any requirement that Liberty post a bond related to any temporary restraining order or injunctions requested as a result of an alleged violation of Sections 9 and 10.

- [13] The Plaintiff alleges that the Defendant failed to pay Liberty Tax the royalties owed under the Agreement. On July 10, 2023 and December 22, 2023, Ms. Pinto was served with Notices to Cure Default, offering the Defendants an opportunity to rectify their breaches of the Franchise Agreements by paying outstanding franchise fees and amounts due to Liberty Tax.
- [14] On January 5, 2024, Liberty Tax unilaterally terminated the Franchise Agreements with the Defendants due to the Defendants' failure to pay franchise fees. Liberty Tax alleges that the Defendants owe Liberty Tax over \$1 million dollars in outstanding royalties.
- [15] Liberty Tax commenced this Action against the Defendants for, *inter alia*, breach of contract, in May, 2024. Liberty Tax is claiming \$907,218 for breach of contract and \$128,597 for monies owed pursuant to a promissory note.
- [16] The Plaintiff also seeks a permanent injunction to enforce the Post-Termination Obligations in the Franchise Agreement. Since the Post-Termination Obligations expire two years from the date that the Agreement was terminated on January 5, 2024, it is likely that this relief will be moot by the time the action is heard.
- [17] In the alternative, the Plaintiff has claimed damages of \$1.7 million for breach of the Post-Termination Obligations.
- [18] The Defendants have responded with a Statement of Defence and Counterclaim.

Alleged Violations of Post-Termination Obligations

- [19] The Plaintiff alleges that the Defendants continue to operate competing tax preparation services under the name Fernhill Tax & Advisory ("Fernhill") at former Liberty Tax franchise locations and within the restricted 40-kilometer radius, and have actively solicited Liberty Tax clients.
- [20] The Plaintiff alleges that the Defendants have transferred several Liberty Tax clients to Fernhill, and have retained confidential client information.
- [21] Ms. Pinto denies soliciting the Plaintiff's clients. She states that she brought approximately 20 of her own clients to her Liberty Tax franchise, and continues to do their tax returns. She is not doing tax returns for any other former customers of Liberty Tax.
- [22] Ms. Pinto sold 1000025109 Ontario Inc. (Fernhill) on January 15, 2024 to a consultant who had worked with her. Ms. Pinto claims to have no financial interest in Fernhill. She has not identified the person who is alleged to have purchased 1000025109 Ontario Inc.

- [23] Ms. Pinto acknowledges participating at “grand openings” of Fernhill to “facilitate introductions between the new owners and the town’s elected officials, such as the mayor”. She alleges that there were no clients present at these events.
- [24] Ms. Pinto takes the position that since the termination of the Franchise Agreement she no longer has access to the Plaintiff’s electronic data or documents, and that all hard copies in her possession have been boxed and are ready for the Plaintiff to pick up.

Analysis

- [25] Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, gives the court authority to grant an interlocutory injunction “where it appears to a judge of the court to be just or convenient to do so”.
- [26] On this motion for an interlocutory injunction, Liberty Tax seeks three interlocutory Orders:
- a. An Order requiring the Defendants to deliver to Liberty Tax any original and all copies of customer tax returns and other records and any information containing names and other contact information of customers of the 10 former franchise locations.
 - b. An Order prohibiting the Defendant “or any one on their behalf” from directly or indirectly soliciting any person or entity served by any of the Defendant’s prior Liberty offices until January 5, 2026.
 - c. An Order that the Defendants shall not directly or indirectly prepare or file income tax returns or offer tax discounting, within 40 km of the boundaries of the 10 former franchise territories until January 5, 2026.
- [27] The standard test for an interlocutory injunction is articulated in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311, at p. 344, and requires the moving party to demonstrate the following:
- (a) there is a serious issue to be tried;
 - (b) the moving party will suffer irreparable harm if the relief is not granted;
and
 - (c) the balance of convenience favours the moving party.

Serious Issue/Strong *Prima Facie* Case

- [28] The Supreme Court has held (*RJR* at paras. 54-55) that the threshold for a serious issue is a low one that requires the judge to make a “preliminary assessment of the merits of the case... a prolonged examination of the merits is generally neither necessary nor desirable.”

[29] A higher “strong *prima facie* case” test has been applied in situations where the plaintiff seeks to enforce a covenant that restrains an employee from competing or soliciting customers. In *Boehmer Box L.P. v. Ellis Packaging Ltd.* [2007] O.J. No. 1694 (S.C.J.), Brown J. (as he then was) stated, at para. 39:

In *RJR-MacDonald Inc.*, supra., the Court noted that in cases where an interlocutory injunction would effectively put an end to the action, a court should consider more carefully the likelihood of whether the plaintiff will succeed at trial. In cases involving injunctions seeking to restrain a former employee from competing with, or soliciting customers of, his former employer, this principle operates to require a moving party to establish a strong *prima facie* case in order to meet the first branch of the *RJR-MacDonald* test: ... As explained by Nordheimer J. in *Jet Print Ink*, supra [*Jet Print Inc. v. Cohen*, [1999] O.J. No. 2864], at para. 11:

“... when the injunction sought is intended to place restrictions on a person’s ability to engage in their chosen vocation and to earn a livelihood, the higher threshold of a strong *prima facie* case is the more appropriate test to be applied.”

[30] See also: *LivingArt Kitchens Inc. v. Merenich*, 2024 ONSC 3088, at para. 77.

[31] The restrictive covenants in this case do not apply to a former employee, but to a former franchisee. The non-competition clause in the Agreement does, however, prevent Ms. Pinto from preparing or electronically filing income tax returns in a defined geographic area. Because Ms. Pinto was party to ten separate franchise agreements, the combined geographic areas cover most of the province, thus effectively preventing her from engaging in her profession as a Certified Professional Accountant and earning a livelihood.

[32] The Defendant argues that the non-competition clause is unreasonable in its scope and extends to areas of the province where the Plaintiff does not intend to operate. As such, it is unenforceable: *MEDIchair LP v. DME Medequip Inc.*, 2016 ONCA 168, at para. 48.

[33] In my view, the strong *prima facie* case standard applies.

[34] The issue at this stage is whether the Plaintiff has provided a strong *prima facie* case that i) the Defendant is engaged in the conduct complained of, and ii) that such conduct violates the terms of the Franchise Agreement.

Non-solicitation, Non-competition

[35] The primary issue for the purposes of this motion for an interlocutory injunction are the non-solicitation/non-competition provisions of the Post-Termination Obligations.

[36] The Plaintiff relies on the Affidavit of Lisa Snelgrove, the Canadian Operations Manager of Liberty Tax, for evidence that Ms. Pinto has been infringing these restrictions. Ms. Snelgrove deposes that:

Soon after termination of the Franchise Agreements, Liberty Tax received notice that Pinto was violating the post-termination provisions of her Franchise Agreements by soliciting clients she previously served from her former Liberty Tax office, contacting clients with the intent to transition them to her existing business, Fernhill, and informing clients that Liberty Tax does not operate in their geographic area. Clients called into Liberty Tax's corporate office and reported receiving phone calls from Fernhill.

- [37] This broad allegation is supported by the following evidence. I will address the allegations of competition and solicitation separately.

Competition

- [38] Ms. Snelgrove has included a copy of an undated "social media post" by the Town of Wasaga Beach which states:

Today, Mayor Smith, Council members and staff attended a grand opening and ribbon cutting for Fernhill Tax & Advisory (formerly Liberty Tax). They offer a wide range of services for both individuals and businesses ranging from tax assistance to small business loans and more! Congratulations to the whole team at Fernhill. Find them at Unit 7, Market Lane.

- [39] There is a second undated social media post by the Ward 1 counsellor in London, Ontario welcoming Fernhill Tax & Advisory at 972 Ham Road, Fairmont Plaza, which was previously the Liberty Tax Office.
- [40] There is evidence that former Liberty Tax phone numbers in Kingston, Wasaga Beach, Windsor, London and Innisfil now go to Fernhill.
- [41] As indicated above, Ms. Pinto sold 1000025109 Ontario Inc. (Fernhill) on January 15, 2024 to a "consultant" who had worked with her. Ms. Pinto claims to have no financial interest in Fernhill, and claims to be only a "figure head" Director. She does not identify the new owner of Fernhill.
- [42] Ms. Pinto deposes that she brought approximately 20 of her own clients to her Liberty Tax franchise and continues to do their tax returns. She denies doing tax returns for any other former customers of Liberty Tax and states that she is not operating a tax preparation service. Indeed, she claims to be presently unemployed.
- [43] Ms. Pinto further deposes that 1000025109 Ontario Inc. has not applied for or received an e-file number from Canada Revenue Agency, and cannot file any tax returns for the 2025 tax year.
- [44] In my view, Liberty Tax has presented a strong *prima facie* case that Ms. Pinto or 1000025109 Ontario Inc are, in some fashion, directly or indirectly competing against Liberty Tax by continuing to prepare or file income tax returns or offer tax discounting

within 40 km of the boundaries of at least some of the 10 former franchise territories. Ms. Pinto claims to have sold 1000025109 Ontario Inc. and “Fernhill Tax and Advisory” to an unidentified “consultant”, who is operating out of one or more former Liberty Tax premises, and conducting the same tax preparation business that Ms. Pinto was providing as a Liberty Tax franchisee. This would appear to violate para. 10(b) of the Franchise Agreement. Ms. Pinto’s protestations that she is not directly involved and is acting only as “figurehead” Director of Fernhill is unpersuasive.

[45] Ms. Pinto argues that the non-competition clause is inoperative in at least some parts of the province. That argument will have to wait until trial.

Solicitation

[46] Ms. Snelgrove alleges that Ms. Pinto or someone at Fernhill is soliciting Liberty Tax clients. These allegations are all based on hearsay evidence from unidentified persons. The three main allegations are as follows:

a) On March 19, 2024, Liberty Tax received voicemail evidence from “a Liberty Tax client” that the Defendants had contacted them. The client’s name is not given. The allegation is that on March 19, 2024, the unnamed client in North Bay called the Liberty Tax corporate office and stated that “he was contacted by Samantha Pinto of Fern Hill. Client was concerned that another company not Liberty has his personal information”.

b) In February 2025, Liberty received an email from an unnamed client in London, Ontario, stating:

I got a call from a girl last week and I was told that Liberty Tax office was bought out by a company sounds like Fernhill Tax & Advisory. I am suspicious, and I came to file my taxes at Sherwood Forest Mall Liberty Tax...London. I would like to inform you, take necessary steps stop this kind of misinformation.

c) Ms. Snelgrove filed a supplementary affidavit dated March 31, 2025 (just four days before the motion was heard) in which she alleges that Liberty Tax received an email from another unidentified client on March 27, 2025, stating:

My husband and I have been getting our taxes done at the Liberty Tax in the Windsor Location on Tecumseh Road East. That location has been closed and a new company called Fern Hill has taken over. I have never dealt with Fern Hill but somehow they have all mine and my husband’s personal information. And they keep calling us to see if we want our taxes done.

[47] Ms. Pinto denies soliciting the Plaintiff’s clients.

- [48] Liberty Tax has not, in my view, presented a strong *prima facie* case that Ms. Pinto has, directly or indirectly, engaged in solicitation of Liberty Tax clients.
- [49] A deponent may make statements in an affidavit for use on a motion based on information and belief provided “the source of the information and the fact of the belief are specified in the affidavit”: Rule 39.01(4). An affiant must provide the name of the individual who is the source of the information; hearsay evidence from an anonymous source does not meet this requirement: *Hamer v. Jane Doe*, 2024 ONCA 721, at para. 72; 1 *Royal Gate Village Properties Ltd. v. CCI Group Inc.*, 2025 ONSC 2333, at paras. 65 – 66; *Gordon v. Gordon et al.*, 2022 ONSC 550, at paras. 13 – 14;
- [50] All of Ms. Snelgrove’s evidence relating to solicitation comes from anonymous hearsay. Ms. Snelgrove did not speak directly to any of these anonymous clients. Evidence from anonymous sources is easily fabricated and inherently unreliable. Opposing parties must know the identity of the source of the information so that the evidence can be verified and tested: *Colasuonno v. Colasuonno*, 2020 ONSC 2061, at para. 56.
- [51] Accordingly, there is no admissible evidence in this motion that Ms. Pinto or the corporate Defendant were engaged in solicitation of Liberty Tax clients.

Return of Documents

- [52] Finally, Ms. Snelgrove alleges that Liberty Tax has made multiple attempts to retrieve client records, but that Ms. Pinto “refused to arrange delivery of confidential customer files, as required in the Franchise Agreements, to the nearest Liberty Tax office.” She alleges that Liberty Tax has made repeated efforts to coordinate the collection of these records, but that Ms. Pinto placed “unreasonable logistical demands on the process”.
- [53] Ms. Pinto deposes that Liberty Tax has all of the electronic client documents and files. Approximately five days after Liberty Tax terminated the ten franchise agreements on January 5, 2024, Liberty Tax remotely accessed all computers at all franchise locations and changed the passwords for the tax preparation software and denied her access. In doing so Liberty Tax took over access to all the client information, and Ms. Pinto no longer has access to this electronic data. Liberty Tax has access to all the electronic client files and client data.
- [54] Ms. Pinto further deposes that she has prepared 357 boxes of paper records for Liberty Tax, but Liberty Tax did not pick them up. She believes that some files may have been picked up by clients, and some may have been shredded. She has made every effort to arrange for Liberty Tax to retrieve the boxes, and they are “available for Liberty Tax to pick up”.
- [55] I will not review the correspondence between Liberty Tax and Ms. Pinto with respect to the boxes of files. Suffice it to say that Liberty Tax blames Ms. Pinto for the failure to deliver the boxes, and Ms. Pinto blames Liberty Tax for the failure to pick them up.
- [56] For some reason, no one thought to have the boxes couriered. I would have thought that to be a less expensive option than litigation. But here we are.

[57] Given that Ms. Pinto does not oppose the return of Liberty Tax’s documents, I will grant an Order to require this. Each party has provided draft wording for such an Order.

Irreparable Harm/Balance of Convenience

[58] I will address these two steps together, because, in my view, they are interrelated.

[59] Irreparable harm is harm which either cannot be quantified in monetary terms or which cannot be cured. It may include permanent market loss and irrevocable damage to business reputation: *RJR MacDonald*, at p. 341.

[60] “The law is less demanding of proof of irreparable harm when an injunction is sought to enforce negative covenants”: *Parkland Corporation v. SRAA Inc.*, 2021 ONSC 2874, at para. 88; *Canpark Services Ltd. v. Imperial Parking Canada Corp.*, 2001 CanLII 28004 (ON SC), at paras. 10 – 15.

[61] The difficulty that I have with the Plaintiff’s motion is that it may be too late to prevent the irreparable harm complained of. The Defendants’ Post-Termination Obligations run for two years: from January 5, 2024 until January 5, 2026. In her reply affidavit, Ms. Snelgrove deposes that the tax season runs from February to the end of April. This means that the restrictive covenants cover two tax periods: February – April 2024 (for 2023 taxes), and the current tax season of February – April 2025 (for 2024 taxes).

[62] An injunction granted today will expire on January 5, 2026 and will not cover the February – April 2026 Tax Season (for 2025 taxes).

[63] If the Defendants were soliciting Liberty Tax clients to offer to prepare their 2023 or 2024 taxes, they have undoubtedly completed that exercise. That ship has sailed. Come January 2026, the Defendants will be free to solicit former Liberty Tax clients and prepare and file their 2025 tax returns.

[64] Liberty Tax waited until February 7, 2025 to serve its notice of motion. That is more than one year after the Franchise Agreement was terminated. I am not faulting them for this delay; Liberty Tax may have entirely valid reasons for not moving before that time. Litigation is expensive. Motions for interlocutory injunctions are risky and require evidence. The irreparable harm may not be immediately apparent. But, whatever its reason, delay remains an important factor.

[65] Liberty Tax served supporting affidavits as late as March 31, 2025. The motion was heard on April 4, 2025. My decision could not be released until April 24, 2025, just one week before the April 30, 2025 deadline for employees to file their 2024 tax returns¹.

[66] I am concerned that if I were to issue the non-competition injunction sought by the Plaintiff so late in the current tax season, it would prevent Fernhill Tax & Advisory (and the

¹ The deadline has been extended to June 16, 2025 for self-employed persons.

unnamed “consultant” who purchased and is running the corporation for Ms. Pinto) from filing the tax returns of any of its clients, whether those clients were former Liberty Tax clients or not. This could prejudice the innocent clients, who may be subject to penalties if their taxes are not filed in time. It is the innocent clients who will be subject to penalties for late filing, and it is the innocent clients who will have to pursue Fernhill, and perhaps Liberty Tax (which has given an undertaking as to damages), to recover those penalties.

[67] In assessing the balance of convenience, I must consider not only the balance of convenience as between the Plaintiff and the Defendants, but the impact of the proposed interlocutory injunction on the non-party clients who may be directly affected by an interlocutory injunction. Taking the clients’ interest into account, the balance of convenience at this late stage militates against granting the interlocutory injunction. An interlocutory injunction prohibiting the Defendants from directly or indirectly preparing or filing income tax returns will be of little value to the Plaintiff at this late stage in the tax season, but could create serious difficulties for any client who has already entrusted their tax return to the Defendants or their successors.

Return of Liberty Tax Documents

[68] As indicated, Ms. Pinto does not oppose the return of Liberty Tax’s documents. Her factum states that they are ready to be picked up.

[69] On its surface at least, the parties’ dispute appeared to be one of logistics: whether the Plaintiff would pick up the documents or the Defendant would deliver them. Given what appeared to be a lack of opposition to the Plaintiff’s request to have the documents returned, I asked the parties if they could either agree to an order that could be issued immediately, or to provide me with their respective draft wording for such an order.

[70] This proved to be more difficult than I had hoped.

[71] The Defendant advises through her counsel that, notwithstanding the statement in her Factum, the boxes are no longer ready to be picked up. She no longer has possession of any of the 357 boxes she had previously prepared. She believes that “a number” of these boxes of original records “were picked up by the clients to whom they belonged, or were shredded”. She also takes the position that the remaining boxes need to be re-indexed (name only) to ensure their content is memorialized before delivery.

[72] Ms. Pinto further advises through her counsel that she made inquiries of the current tenants of some of the former franchise locations, and can confirm the location of only 97 of the 357 boxes, as follows:

	Location	Count
1.	Tecumseh	7
2.	Wyandotte	5
3.	London	6
4.	Oshawa	10
5.	Kingston	29

6.	Innisfil	10
7.	Kozlov	7
8.	Wasaga Beach	6
9.	Orillia	7
10.	North Bay	10
	Total	97

[73] Ms. Pinto further advises through her counsel that “the Landlord took possession of the Kingston Location and the Defendants do not know the location of the 29 boxes that were at the Kingston location”.

[74] The parties were not able to agree on an Order, and each provided me with a proposed draft order.

[75] The Plaintiff seeks an Order:

That the Defendants, and their officers, directors, servants, agents, or anyone on their behalf, shall deliver to Liberty Tax at 16-110 Riviera Drive in Markham, Ontario, within 10 days of the date of this Order, the following:

- (a) any original and all copies of lists and other sources of information containing the names, addresses, e-mail addresses, or phone numbers of customers of the 10 former franchise locations; and
- (b) any original and all copies of documentation containing customer tax returns, files and records from the 10 former franchise locations.

[76] The Defendants’ proposed Order is somewhat more complex, with lengthy recitals setting out the information that the Defendant gave to her lawyer after the hearing of the motion (see above). In my view, these recitals are inappropriate because they do not reflect what happened in Court. A party cannot use an Order to supplement the record.

[77] The operative part of the Defendants’ proposed Order provides:

- a. **THIS COURT ORDERS** that the Defendants shall index the remaining boxes (and if available, the Kingston boxes) to record only the names and no other information, so as to record that identifying information which is sufficient to memorialize the contents, without disclosing any confidential information.
- b. **THIS COURT ORDERS** that Liberty Tax shall provide written authorization for the Defendants to pick up all boxes of Original Records (and if available, the Kingston boxes) as noted above on behalf of Liberty Tax.

- c. THIS COURT ORDERS that the Defendants and their officers, directors, servants, agents, or anyone on their behalf, shall complete the indexing and deliver all boxes of Original Records referred to above, (and if available, the Kingston boxes) and the completed index to these boxes, to Liberty Tax at 16-110 Riviera Drive, Markham, Ontario, within 30 days of the date of this Order.

Conclusion

[78] Having reviewed the draft orders, I will issue the following Order:

- a. THIS COURT ORDERS that the Defendants shall index the remaining boxes (and if available, the Kingston boxes) to record only the names and no other information, so as to record that identifying information which is sufficient to memorialize the contents, without disclosing any confidential information.
- b. THIS COURT ORDERS that the Defendants shall pick up all remaining boxes of Original Records and copies (and if available, the Kingston boxes) on behalf of Liberty Tax.
- c. THIS COURT ORDERS that the Defendants shall deliver all boxes of Original Records and copies referred to above, (and if available, the Kingston boxes) and the completed index to these boxes, to Liberty Tax at 16-110 Riviera Drive, Markham, Ontario, within 30 days of the date of this Order.
- d. THIS COURT ORDERS that the “Records” referred to above shall include the original and all copies of (a) lists and other sources of information containing the names, addresses, e-mail addresses, or phone numbers of customers of the 10 former franchise locations; and (b) documentation containing customer tax returns, files and records from the 10 former franchise locations.
- e. This Order is made without prejudice to any claim the Plaintiff may have with respect to missing or unaccounted for documents.

[79] The balance of the Motion is dismissed.

[80] If the parties are not able to agree on costs, the Plaintiff shall serve and file costs submissions (maximum 3 pages) plus costs outline and any offers to settle, within 20 days of the release of this decision, and the Defendants shall serve and file costs submissions on the same terms within a further 15 days.

Justice R.E. Charney

Released: April 24, 2025

CITATION: Liberty Tax Service, Inc. v. Pinto, 2025 ONSC 2429

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

LIBERTY TAX SERVICE, INC.

Plaintiff

– and –

SAMANTHA PINTO and 1000025109 ONTARIO
INC. o/a FERNHILL TAX & ADVISORY

Defendants

REASONS FOR DECISION

Justice R.E. Charney

Released: April 24, 2025