

CITATION: Foster v. Prado, 2025 ONSC 4509
COURT FILE NO.: CV-25-00737016-0000
DATE: 20250806

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
)
 ROBERT JOHN FOSTER and)
 CAPITAL CANADA LIMITED) Jacqueline King, Jeff Buchan, and Jack
) Plaintiffs) Powles, for the Plaintiffs
)
 – and –)
)
 LETICIA LINDICEY SOBRINHO PRADO)
 and) Celso Sakuraba, for the Defendants
 MARIANO PELLEGRINI STEINER)
) Defendants)
)
)
)
) **HEARD:** July 18, 2025

2025 ONSC 4509 (CanLII)

REASONS FOR JUDGMENT

AKAZAKI J.

OVERVIEW

- [1] The genesis of these competing summary judgment motions was the return of *Mareva* and *Norwich* orders freezing the defendants’ assets and compelling the production of information about the defendants’ finances, pending judgment of the fraud claim.
- [2] The plaintiffs started the action, after discovery of large sums of money stolen by Leticia Prado, the office manager and bookkeeper of Capital Canada, the investment firm owned and operated by Robert Foster. The ensuing investigations and document disclosures uncovered the following categories of transactions:
- a. 31 e-transfer payments of \$10,000 each, from Mr. Foster’s RBC account to Ms. Prado’s TD account. Some transfer notes were made to appear to be payments to Mr. Foster’s wife Julia, but Ms. Prado was the true recipient.
 - b. 17 cheques from Mr. Foster’s RBC account to Ms. Prado, totalling \$315,886.67. Ms. Prado asserted that one cheque, drawn in the amount of \$100,000, was a personal gift to help her and her husband buy a home. Ms.

Prado affixed Mr. Foster's signature on a letter stating it was a gift, so as not to trigger tax consequences.

c. Payments to Ms. Prado's Platinum Amex Card account, totalling \$563,232.70.

- [3] Ms. Prado did not dispute the transactions. She alleged that Mr. Foster authorized them. On the reciprocal logic that the action should be dismissed if she could prove the authorizations, and that judgment should be granted if she could not, the parties agreed to convert the balance of the motions for directions under the *Mareva* and *Norwich* order into a Rule 20.04(2)(b) summary judgment motion. That type of joint summary judgment motion, frequently framed as a "boomerang" motion, allows adjudication on a foundation of undisputed facts resulting in judgment for the plaintiff or dismissal of the action in favour of the defendant.
- [4] The Rule 20.04(2)(b) procedure was appropriate and expeditious, because there was no dispute over the many individual transactions. The sheer number of significant payments by Ms. Prado to herself from Mr. Foster's bank account also set up the compelling logic that it was within Ms. Prado's power to provide some proof of her draws from the account. If, as she alleged, some of it consisted of a reimbursement of expenses incurred for Mr. Foster, she could prove her payment for those expenses. Or, if Mr. Foster agreed to fund her lavish personal spending or desire to buy a home in Toronto, she could have provided some evidence of a relationship or motive for Mr. Foster's extreme generosity toward an employee, starting with a cheque of \$5,750 given to her on October 19, 2022, the day after she started working at the firm after arriving from Brazil on a work visa. (Before the year 2022 was even out, the cheques to her for random amounts totalled \$68,002.)
- [5] In granting judgment for the plaintiff Robert Foster, I have concluded that he did not authorize the \$1,189,119.37 in personal fund transfers to Ms. Prado during the roughly two years she was in his company's employ. I will detail my findings below, but they can be summarized as a complete absence of credibility on Ms. Prado's part. There being no credibility to evaluate, the uncontested facts establish that there is no genuine issue requiring a trial. There was no need to weigh evidence, evaluate credibility, or draw inferences, pursuant to subrule 20.04(2.1) to arrive at this conclusion. Even if there were such a need, Ms. Prado's story was so disconnected from reality that the court can instantly find that all the transfers were misappropriations.
- [6] Ms. Prado had access to Mr. Foster's personal bank accounts, including online banking codes and passwords, electronic signatures, and cheque books. That Mr. Foster is a wealthy and busy financial consultant looking after other people's money meant he did not detect the depletion of over a million dollars from his personal bank account, until a newly hired assistant to Ms. Prado stumbled on the suspicious transactions.
- [7] Insofar as Mr. Foster entrusted Ms. Prado with access to his funds, she was a fiduciary and obligated to account for every transaction she made on his behalf. She bore the onus of proving express authority to exercise the power for her own benefit: *Zimmerman v.*

McMichael Estate, 2010 ONSC 2947, at paras 91-94. Even if she had acted honestly and was guilty only of a technical breach, the burden was still hers to demonstrate why she should be relieved of the breach of trust: *Cahill v. Cahill*, 2016 ONCA 962, at para. 50. The fact that all the payments were made to her to fund her lavish lifestyle and indulgences meant she had a lot of explaining to do.

- [8] Oddly, she did not try to cast Mr. Foster as a kind of Santa Claus or adoptive father figure. Ms. Prado's affidavit evidence led with the accusation that Mr. Foster was a domineering and abusive employer who instilled fear in her and the other office personnel. She provided no evidence of a relationship with Mr. Foster, or with his wife, beyond the relationship as an employee of Mr. Foster's company earning about \$105,000 in salary in 2024.
- [9] Ms. Prado's position is that Mr. Foster expressly authorized her to deplete his bank account to pay for a lavish lifestyle, including purchases on Amex of luxury goods, cosmetic medical treatments, business class flights to her native Brazil, and an \$18,000 tattoo. Her claim that he and Mrs. Foster presented her with a \$100,000 cheque to help save for a house, simply because Ms. Prado had complained about the cost of Toronto real estate, had no objective correlation to her other facts. These included the fact that she and her husband were not even looking for a home to buy, and the fact that she was not saving for anything.
- [10] All the transactions were payments drawn on Mr. Foster's personal bank accounts. Capital Canada was included as a plaintiff, because the plaintiffs' investigation was still in its early stage when they started the action. The action in the name of Capital Canada should not be dismissed, because stealing from the employer's principal is also a fundamental breach of the employment contract that commands an award of punitive damages. I will therefore award punitive damages in favour of both plaintiffs the combined amount of \$100,000.
- [11] I will now focus on the three issues on the motion, namely the absence of a genuine issue requiring a trial, punitive damages, and the extent of Mr. Steiner's liability. Because of the disposition of these issues, the defence motion to dismiss the action can simply be dismissed.

IS THERE A GENUINE ISSUE REQUIRING TRIAL?

- [12] In a summary judgment motion, the court must follow the provisions of Rule 20.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the relevant provisions of which are reproduced below:

20.04 (2) The court shall grant summary judgment if,

(a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence; or

(b) the parties agree to have all, or part of the claim determined by a summary judgment and the court is satisfied that it is appropriate to grant summary judgment.

(2.1) In determining under clause (2) (a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:

1. Weighing the evidence.
2. Evaluating the credibility of a deponent.
3. Drawing any reasonable inference from the evidence.

- [13] When parties agree that a case is appropriate for summary judgment, Rule 20.04(2)(b) applies. However, at the hearing, defence counsel attempted to hedge his clients' options. He submitted that the failure on the plaintiffs' part to undertake production of Ms. Prado's office email account amounted to their failure to put their best foot forward. This, he submitted, should result in dismissal of the action. In the alternative, the overall contest of evidence required evaluation of credibility requiring examinations for discovery and a full trial of the merits. Consequently, the court was required to consider whether these points raised a genuine issue, as contemplated in Rule 20.04(2)(b), in accordance with the court's jurisdiction to refuse a Rule 20.04(2)(a) motion if the genuine issue test is not met: *Unique Lighting v. Green Services*, 2019 ONSC 4438, at paras. 30-31.
- [14] The rationale for setting the motion up under Rule 20.04(2)(a) had been Ms. Prado's instructions to defence counsel that all the transactions were authorized, and the whole case was a misunderstanding on the Fosters' part. I could see how, once the full extent of the evidence came out in the *Norwich* order process, this position proved untenable. The defence fell back to a speculative position that more information could come out during discovery to justify a trial, such as forensic examination of the company email server.
- [15] Rule 20.04(2) requires the court to grant summary judgment if there is no genuine issue requiring a trial. Prior to the current wording of the rule, there was considerable uncertainty about whether "for trial" meant "requiring a trial," and whether any single issue, such as one of credibility, necessitated a trial: *Irving Ungerman Ltd. v. Galanis (C.A.)* (1991), 4 O.R. (3d) 545 (C.A.), at p. 551. The Rule was amended in 2010 to require the court to consider whether the case can be determined more expeditiously and preserve a "fair and just adjudication": *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 47-51.
- [16] The Supreme Court's guidance in *Hryniak*, at paras. 66-68, requires the court first to determine whether there is a genuine issue requiring trial, based on the evidence in the motion records, without resort to the three fact-finding powers in Rule 20.04(2.1). If there appears to be a genuine issue requiring a trial, the court may then employ the three powers to determine whether the need for a trial can be avoided.

- [17] In the above-cited paragraphs in *Hryniak*, the Supreme Court focused on the rule change from “for trial” to “requiring a trial,” but the meaning of “genuine” remains “not spurious”: *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 (CanLII), at para. 13.
- [18] Taken in its totality, Ms. Prado’s evidence of Mr. Foster’s approval of the transactions must be considered spurious, because its internal logic bears no connection with the reality of the parties’ relationship. I will analyze each type of transaction in turn, but it is also important to consider them cumulatively.

(a) 31 E-Transfers

- [19] Ms. Prado earned a modest salary as a Capital Canada employee. She explained the 31 transfers of \$10,000 each, from June 2023 to November 2024, as bonuses or compensation for extra work performed for Mr. and Mrs. Foster, such as organizing trips, editing a Wikipedia page, and running errands.
- [20] The \$310,000 of tax-free income during the period in question must be compared to her highest annual salary of \$105,769 which, after tax, would have amounted to about \$70,000. What pushed the categorization of this evidence from unbelievable to untenable were two facts.
- [21] First, the notes on several of the transfers made them appear to have been made to Julia Foster. Tracing data from the banks showed the transfers being made to Ms. Prado and not to Mrs. Foster. This showed an intent to mask the entries from anyone reviewing Mr. Foster’s bank statements.
- [22] Second, there was no catalogue of great labours performed over a year-and-a-half during her time outside work hours that could justify \$310,000 of income, and no reporting to Canada Revenue Agency of such income, income on which Ms. Prado would have had to pay about half as income tax and other statutory deductions.

(b) 17 cheques totalling \$315,886.67 incl. \$100,000 Cheque for Home Purchase Deposit

- [23] Because these were manual personal cheques, Mr. Foster’s signature on them would have been evidence that he intended to pay the amounts to Ms. Prado. Counsel for Ms. Prado submitted that, in the absence of a forensic handwriting expert, the plaintiffs have not established that Ms. Prado forged the cheques. Likewise, Mr. Foster’s denial of having issued the cheques to her only establishes an issue for trial.
- [24] The plaintiffs need not prove the cheques were forged. Ms. Prado could have signed them, with Mr. Foster’s authority, in the same way as the electronic transfers: *Bills of Exchange Act*, R.S.C. 1985, c. B-4, s. 4. The issue remains Mr. Foster’s approval or authority. In *Hryniak*, at para. 49, the court’s task was described as follows:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the 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.

- [25] What is missing from Ms. Prado's narrative is the complete absence of a reason for Mr. Foster to issue her the cheques. If he needed her to pay an invoice for a personal expense, it would make sense to make the cheque payable to the issuer of the invoice and ask her to mail it out. Why pay her? She certainly presented no evidence of her payments to third parties on Mr. Foster's behalf. It also made no sense that Mr. Foster should expect Ms. Prado to spot him a \$5,750 pay for an expense to be reimbursed on October 19, 2022, the day after her first day at the firm. It was not quite the same as expecting the office manager to buy a carton of milk for the coffee station.
- [26] The alternative argument, that the cheques were gifts, also lacked any connection with reality. Neither side alleged that the Fosters had adopted Ms. Prado informally as a family member or that they were even socially connected. They hardly knew each other, when the first of a steady number of cheques went into her account.
- [27] Ms. Prado's evidence that Mr. Foster was an emotionally abusive employer also threw on an additional layer of absurdity. The first half of her affidavit described how Mr. Foster:
- a. overworked her and caused her "mental health issues,"
 - b. required her to undergo breast reduction surgery,
 - c. pressured her to return to work while being treated for an infection from the surgery, and
 - d. resisted her attempts to quit her job.
- [28] At this point, the court must turn its mind to the \$100,000 cheque. Ms. Prado's narrative was that she had casually commented on how expensive it was to buy a home in Toronto. Out of the blue, so her story goes, the Fosters wanted to fund her purchase of a home. The ordinary first reaction of any reasonable person would be to refuse such a gift. By her own admission, she and her husband were not even looking for a home. Considering the totality of the Fosters' alleged generosity, they could have bought her a home outright instead of funding a tattoo and hundreds of thousands on body treatments.
- [29] The next piece of the story that made no sense was that Mr. Foster, the owner of an investment fund company, apparently advised her to invest the funds in an account managed by a competitor to Capital Canada, Wealth One Bank, because "the interest rates there were better."

(c) \$563,232.70 on Ms. Prado's Platinum Amex Card Paid by Mr. Foster

- [30] Ms. Prado charged \$579,960.76 in purchases to her Platinum Amex card from August 2023 to February 2025 and paid \$563,232.70 of that amount from Mr. Foster's RBC account. She agreed that she made these payments. As with the other categories of transactions, she explained that Mr. Foster approved the payments to Amex. Indeed, she asserted that most of it was for Mr. Foster's expenses. Her counsel was unable to direct the court to any purchases in the Amex statements that were made on Mr. Foster's behalf. And yet her affidavit on this subject led with the following statement (emphasis added):

In August 2023, Robert *made me* apply for a personal Amex credit card so I could make personal purchases on his behalf.

- [31] Ms. Prado's evidence on this point deflated any speculation that the court should permit a fishing expedition to search for emails authorizing transactions. If the purpose of the Amex card was to pay for Mr. Foster's expenses, what were they? This information was entirely in her power, and neither she nor her counsel could identify Mr. Foster's purchases on her card.
- [32] The Amex charges were the capstone to the case against Ms. Prado, because they triggered the plaintiff's discovery of the whole scheme. In January 2025, Capital Canada hired an assistant office manager to help Ms. Prado. (It would have been more sensible and cheaper for Mr. Foster to hire a personal assistant for himself, if Ms. Prado's part-time work was costing him over \$400,000 annually.) Mr. Foster asked the new assistant manager to pay his Amex bill. She told him there had already been payments made to Amex out of his account. When they checked, he knew nothing about them: three January 2025 payments of \$65,000, \$12,471.90, and \$14,507. Inquiries with RBC's fraud department revealed that the payments were not for Mr. Foster's Amex account but, rather, for Ms. Prado's. The charges could not have been for Capital Canada's operational expenses, because it issued Ms. Prado her own company credit card for such purposes.
- [33] A somewhat emblematic purchase was a \$18,110.02 tattoo Ms. Prado put on the Amex card. To have the work done, she flew business class to Brazil. Although these expenditures were dwarfed by about \$200,000 in medical spa and cosmetic treatments in Toronto, the tattoo could not be fluffed off as a Mr. Foster purchase, because the tattoo studio posted promotional videos on Instagram showing Ms. Prado having it done under sedation. The artist's commentary on one of them stated:

Leticia came all the way from Canada just to put her leg and back with me.
... While she sleeps, I turn her body into art.

Totality of Ms. Prado's Story about (a), (b), and (c)

- [34] Ms. Prado's story that Mr. Foster willingly compensated her lavishly for extra jobs and paid for her luxury expenditures made no sense, when held up against her story that he cut

her a cheque for \$100,000 after overhearing her dismay about saving up for a home in Toronto. If he had paid her \$310,000 in extras above her salary as office manager, why would she need the \$100,000? One must remember that Mr. Foster's motivation, as the source of the funds, must fit into Ms. Prado's narrative at least at some point. She obviously had a motive and incentive to receive the money, but nowhere in the evidence did she explain what motivated Mr. Foster to give it to her, starting the day after she started working for him.

- [35] The objective reference of the case was Mr. Foster's evidence denying knowledge of any of the transactions until the new assistant manager's query led to their discovery. The only consistency in Ms. Prado's evidence was of the transactions being driven by an instinct for immediate gratification. There was abundant documented proof of that. However, there was no matching subjective profile of Mr. Foster to explain his indulgence of his new office manager's pursuit of what money could buy. There was no searching cross-examination of Mr. Foster to shake out of him a secret desire that he, too, wanted Ms. Prado and her husband to have the life that he and his wife enjoyed and for which he was prepared to raid his piggy bank to help them have.
- [36] The court is not closed-minded to the idea that people do strange things, even over a span of time. The essential situational logic of this case requires Ms. Prado to prove that Mr. Foster approved all the transfers, because their common quality is that they indulged Ms. Prado's desires and provided no benefit to Mr. Foster or to the company. This context distinguishes the case from those involving disputed gifts among relative or friends. There were simply so many transactions that had no basis in a relationship between the parties beyond the temporal logic that she started stealing from Mr. Foster the day after she started working for him.
- [37] On the evidence of Ms. Prado alone, I find no reason to conclude there is a genuine issue requiring a trial. If I am wrong in this conclusion and should move to the fact-finding exercise in Rule 20.04(2.1), to weigh the evidence, evaluate the credibility of a deponent, or to draw reasonable inferences from the evidence, the conclusion cannot be any different.
- [38] The undisputed evidence that Ms. Prado drew the funds from Mr. Foster's bank account during her employment at his company had no counterweight in her explanation that she was authorized to transfer the funds to compensate her or to pay for Mr. Foster's expenses. I could not evaluate Ms. Prado's credibility, beyond giving it a null value. The only reasonable inference that I could draw from the evidence was that she drew the funds to pay for things she wanted. There was no evidence of a reason for Mr. Foster to pay her anything, except through the company's payroll.
- [39] I therefore find that there is no genuine issue requiring a trial to award judgment to Mr. Foster for the amounts Ms. Prado drew from his bank account. There is also ample and functionally uncontroverted evidence to find that she abused her position of trust to defraud him and convert the funds to her own use. Because of that inescapable conclusion, I turn next to punitive damages.

PUNITIVE DAMAGES

- [40] The plaintiffs sought punitive damages of \$100,000. The court's power to award punitive damages is based on the defendant's offence to basic decency, and awards should be assessed in proportion to the harm and misconduct: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595, at paras. 36 and 94.
- [41] The employee's theft of over one million dollars from the personal bank account of the company's owner presented a clear case for awarding punitive damages. It was not only a fraud committed against Mr. Foster. The access to his bank account was also a function of Ms. Prado's employment. Stealing from others in the workplace, whether from the boss or from a co-worker, was a sackable workplace offence, a breach of trust, and a fundamental breach of the employment relationship. A joint finding of liability to Mr. Foster and to Capital Canada for punitive damages should be made, if only to work as an estoppel against any future claim by Ms. Prado that her resignation from the firm constituted constructive dismissal.
- [42] The plaintiffs adduced evidence that Ms. Prado had sent much of the funds back to Brazil. One cannot excuse the misappropriations as an out-of-character lapse of judgment or a mental compulsion beyond the desire to have a portion of what the Fosters had. Ms. Prado's conduct requires the court's condemnation.
- [43] The company is therefore entitled jointly and severally with Mr. Foster to recover the punitive damages from Ms. Prado. I fix the amount at \$100,000.

MARIANO STEINER

- [44] Mr. Steiner's sole involvement in the case was that he was Ms. Prado's husband. There is no legal theory of tort liability based on the marital relationship. For Mr. Steiner to be found liable, there must be a factual and logical connection between him and the funds stolen by Ms. Prado.
- [45] The Court of Appeal set out the elements of the torts of knowing assistance and knowing receipt connected with another's fraud in *Quantum Dealer Financial Corporation v. Toronto Fine Cars and Leasing Inc.*, 2023 ONCA 256, at paras. 51-55.
- [46] Counsel for the plaintiffs conceded there was no evidence that Mr. Steiner participated in the frauds. It falls to the court to determine whether he knew or ought to have known that his wife was receiving stolen funds. The evidence on the face of the record was clear that Mr. Steiner had to have known that there was a source of the funds for Ms. Prado's contribution to the couple's lifestyle beyond her modest income as the office manager. He knew about the tattoo. He knew how much tattoos cost, especially ones of the scale of Ms. Prado's. Ms. Prado paid the rent on the apartment. He did not. The foundation of the

couple's home economy was built on funds stolen from Mr. Foster. For this reason, there was ample evidence to show that Mr. Steiner benefited from Ms. Prado's fraudulent activity and had to have known where it came from.

- [47] The "strict traceability requirement" of the knowing receipt theory of liability would mandate a closer look at the bank accounts restrained by the *Mareva* injunction order, to determine the amount by which Mr. Steiner benefited from the fraud. The only practical means of accomplishing this aim would be to direct an accounting reference.

CONCLUSION

- [48] Judgment shall issue as follows:

- a. To Robert Foster as against Leticia Prado: damages for fraud and conversion in the amount of \$1,189,119.37, plus prejudgment interest.
- b. To the plaintiffs as against Leticia Prado: punitive damages in the amount of \$100,000
- c. To Robert Foster as against Mariano Steiner, damages to be confirmed after a reference to trace misappropriated funds to Mr. Steiner. The reference shall be made to an associate judge, unless the parties agree on an out-of-court referee such as a forensic accountant.
- d. The defendants' motion for summary judgment is dismissed.
- e. To the plaintiffs, costs in accordance with the award following exchange of submissions below.

- [49] The *Mareva* and *Norwich* orders of Papageorgiou J. dated February 25, 2025, and continued by my order dated March 7, 2025, shall be extended as against the assets of Leticia Prado for a period of six calendar months from the date of this order, to facilitate writs of execution and to prevent dissipation of assets. At the conclusion of the six months, the orders shall expire, unless the plaintiffs apply in a case conference for further extension before the expiry: *Coast to Coast Against Cancer v Sokolowski*, 2016 ONSC 170, at para. 11.

- [50] The same orders shall remain in place as against the assets of Mariano Steiner until six months after the confirmation of the referee's report pursuant to Rule 54.07. The same availability of further extension is also ordered.

- [51] The plaintiffs shall deliver their costs submissions and bill of costs within 14 days of the release of these reasons. Thereafter, the defendants shall deliver costs submissions within a further 14 days. In both cases, the parties shall both file the submissions with proof of service and send them to my judicial assistant.

Akazaki J.

Released: August 6, 2025

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

**ROBERT JOHN FOSTER and
CAPITAL CANADA LIMITED**

Plaintiffs

- and -

**LETICIA LINDICEY SOBRINHO PRADO and
MARIANO PELLEGRINI STEINER**

Defendants

REASONS FOR JUDGMENT

Akazaki, J.

Released: August 6, 2025