

CITATION: Murray v. The Toronto-Dominion Bank, 2025 ONSC 4916
COURT FILE NO.: CV-19-00625154-0000
DATE: 20250827

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
STUART CAMERON MURRAY) *John W. Bruggeman* for the Plaintiff
)
) Plaintiff)
) (Respondent))
)
) – and –)
)
THE TORONTO-DOMINION BANK) *Nicholas E. Fitz* for the defendant
)
) Defendant)
) (Moving Party))
)
) **HEARD:** March 18, 2025

2025 ONSC 4916 (CanLII)

KOEHNEN J.

REASONS FOR JUDGMENT

Overview

- [1] The defendant, the Toronto Dominion Bank (“TD”) moves for summary judgment to dismiss this action against it. The Plaintiff, Stuart Cameron Murray, resists the motion for summary judgment.
- [2] The Plaintiff brings this action against TD for damages of \$10,000,000 which the Plaintiff alleges flowed from the revocation of his license to practice law and his criminal conviction for one count of fraud over \$5,000.00 under s. 380(1)(a) of the

Criminal Code, R.S.C., 1985, c. C-46 (“*Criminal Code*”). The Plaintiff submits that the license revocation and conviction flowed from the conduct of TD in its administration the Plaintiff’s trust account.

- [3] For the reasons set out in greater detail below, I grant the defendant’s motion and dismiss the action. Although there were problems in the administration of the trust account that may ultimately be the fault of TD, those problems had nothing to do with the revocation of the Plaintiff’s license to practice law or his criminal conviction. Both the license revocation and the conviction were the result of the Plaintiff’s misappropriation of trust funds. Those misappropriations had nothing to do with the problems that arose out of TD’s administration of the trust account.

Background Facts

- [4] The Plaintiff was called to the bar in 2011. In 2012, he opened his own practice which operated as a sole proprietorship under the name Mullun Law. In 2015, the Plaintiff reported that real estate transactions comprised 85% of his practice.
- [5] By November 2016, the Plaintiff had offices in 10 cities, employed 3 lawyers including himself, and employed additional staff in each office.
- [6] TD served as the bank for the Plaintiff’ legal practice. A substantial number of transactions flowed through his accounts. According to the Plaintiff’s factum, he processed almost \$1 billion in legal transactions through TD between 2012 and 2016.

- [7] In November 2016, the Law Society of Ontario (the “Law Society”) commenced an investigation into the Plaintiff’s practice. On November 17, 2016 the Law Society made an unannounced visit to the Plaintiff’s office. His trust account was frozen the next day. The Law Society suspended his license to practice on November 23, 2016 and revoked his license to practice in reasons dated January 20, 2021. On November 26, 2020, the Plaintiff pleaded guilty to and was convicted of one count of fraud over \$5,000.00 pursuant to s. 380(1)(a) of the *Criminal Code*. He was sentenced on February 3, 2021 to a conditional sentence of imprisonment for 18 months, among other conditions.
- [8] The Plaintiff alleges that he was convicted and that his license to practice was revoked because of TD’s negligence, breach of contract, and conversion in the administration of his trust account. TD agrees that it debited 15 cheques twice between 2015 and 2016 instead of once. The double debits arise out of the way in which TD certifies cheques and how cheques are cleared.
- [9] Ordinarily, when a cheque is drawn on a customer account the funds are debited from the account after the cheque is cashed. This occurs by way of an automated process applicable to all cheques which reads information contained in a magnetic ink character recognition code, or MICR, found on the cheque. The MICR contains the information necessary to debit the account including the account number, the financial institution number, and the bank transit number at which the account is located.

- [10] Funds on a certified cheque are debited from the account when the cheque is certified as opposed to after the cheque is cashed. To prevent the cheque from being debited a second time as it proceeds through the automatic cheque clearing process after it is cashed, the MICR code is covered with a sticker when the cheque is certified.
- [11] From time to time that sticker can become detached from the cheque. This can happen because someone has removed the sticker or because the sticker is somehow otherwise separated from the cheque. When this occurs, the automated cheque clearing process debits the cheque a second time because the MICR code is not covered. When a customer notifies TD of the double debit, TD usually corrects the issue within a day.
- [12] On November 15, 2016 the Plaintiff was scheduled to close a real estate transaction for a client named Wang-Liu. The Plaintiff required \$300,000 in his trust account to close the transaction. There were not sufficient funds in the trust account to close the transaction. As of November 15, 2016 there were double debits outstanding of over \$1,000,000 which the Plaintiff had not noticed and of which he had not notified TD.
- [13] The Plaintiff says that the Law Society investigation began as a result of a complaint from Wang-Liu and that the investigation would never have commenced had TD not double debited the Plaintiff's account because there would have been sufficient funds in the account to close the transaction.

- [14] I do not accept the Plaintiff's version of events.
- [15] The Law Society's reasons that revoked the Plaintiff's license to practice clearly indicate that the Law Society began its investigation in response to a complaint filed by the Plaintiff's former law clerk.¹
- [16] Paragraph 19 of those reasons make it equally clear that between April 2015 and October 2016 the Plaintiff misappropriated \$735,854 by transferring them out of his trust account via electronic transfers. Most of those transfers were deposited into a general account over which the Plaintiff had sole signing authority.
- [17] Paragraph 20 of the Law Society reasons note that immediately following the transfers out of trust, the Plaintiff made payments toward his own real estate purchases, Canada Revenue Agency debts, payroll, his credit card, and to himself. Without these withdrawals from trust, the Plaintiff would not have been able to make these payments.
- [18] The misappropriations occurred by way of electronic transfers carried out by the Plaintiff. They did not involve certified cheques or the problems that TD encountered in cashing certified cheques. The Plaintiff was the only person authorized to make electronic transfers out of the trust account.

¹ Law Society reasons, para. 2.

- [19] In addition, the Law Society reasons reveal that during the unannounced visit to the Plaintiff's office on November 17, 2016, the Plaintiff left the office briefly for the bank where he transferred over \$25,000 from his trust account to his credit card.²
- [20] In 2018, the Law Society's forensic auditor gave the Plaintiff a list of transfers totalling approximately \$735,000 that required an explanation. The Plaintiff never explained for those transfers.
- [21] The Law Society's reasons also note that the Plaintiff had not reconciled his trust account since December 31, 2015 in violation of section 18 of By-law 9 under the *Law Society Act*³ and that the Plaintiff signed blank trust cheques and allowed others to insert the dates, amounts, and payees in his absence that contrary to Rule 6.1-1 of the Rules of Professional Conduct.⁴
- [22] It is in this context that the plaintiff says the Wing-Liu transaction could have closed had TD not double debited his trust account. At the same time, however, the Wing-Liu transaction could also have closed had the Plaintiff met his responsibilities as a lawyer and not misappropriated trust funds or had reconciled his trust account on a regular basis.

² Law Society reasons at para. 12.

³ *Law Society Act*, RSO 1990, c L.8.

⁴ Law Society reasons, para. 48.

Is Summary Judgment Appropriate?

- [23] The Plaintiff submits that summary judgment is not appropriate because: (i) His theory of the case raises genuine issues for trial which require the court to determine, among other things, what prompted the Law Society complaint and whether TD acted negligently in double debiting his accounts or by allegedly converting trust funds from his trust account; (ii) The Law Society reasons and the criminal conviction cannot be relied on because they are based largely on an agreed statement of facts and a guilty plea which the Plaintiff says he agreed to when he was psychologically unfit to do so; and (iii) The Law Society reasons and the criminal conviction cannot be relied on because he is appealing both.
- [24] I do not find those to be persuasive reasons to direct the matter to trial. As set out below, the liability of TD for the damages arising from the revocation of the Plaintiff's licence to practice can be disposed of on legal principles. The agreed statement of facts is largely irrelevant. The most fundamental point is that the Law Society found that the Plaintiff had misappropriated \$735,854.86 from his trust account into accounts that he controlled. That finding was not based on an agreement from the Plaintiff. Rather, it was based on a list of transactions in respect of which the Law Society asked the Plaintiff for an explanation and in respect to which the Plaintiff provided none. The Plaintiff could also have provided an explanation for those transactions on this motion but failed to do so. During oral argument, I made it clear to the Plaintiff's counsel that to avoid summary judgment, he had to demonstrate that there was a genuine issue for trial about

whether the Plaintiff had in fact misappropriated \$735,854.86 from trust. I received no explanation of those transactions, let alone one that demonstrated a genuine issue for trial. Although the Plaintiff has appealed his license revocation and criminal conviction, he does not appear to have advanced those appeals in the four and a half years since the revocation and conviction. Moreover, the appeals are somewhat of a red herring because the Plaintiff had the opportunity to demonstrate that there was a genuine issue for trial with respect to the \$735,854.86 in misappropriations from trust but failed to do so.

[25] It has now been almost 10 years since the complaints were lodged against the Plaintiff. That is ample time to come up with an explanation for the misappropriations from trust.

[26] It is well-established that on a motion for summary judgment: (a) each party must put its best foot forward; (b) the responding party “must lead trump or risk losing”; and (c) the motion judge is entitled to assume that all evidence that might be adduced by the respondent at trial has been adduced on the motion.⁵

[27] I am confident that the record before me allows me to: (i) to make the necessary findings of fact, (ii) apply the law to the facts, and (iii) is a proportionate, more expeditious and less expensive means to achieve a just result as the Supreme

⁵ *Broadgrain Commodities Inc. v. Continental Casualty Company*, 2018 ONCA 438 at para 7.

Court of Canada decision in *Hryniak v. Mauldin*⁶ requires to warrant summary judgment.

Causation

- [28] The Plaintiff claims against TD for breach of contract, negligence and conversion.
- [29] The fundamental problem with the Plaintiff's claims for breach of contract and negligence is that he must demonstrate that any damages he seeks were caused by TD's breach of contract or negligence. The plaintiff has failed to establish any causal link between TD's double debits and the damages he seeks.
- [30] The Plaintiff's theory is that TD was the sole cause of his conviction and license revocation because the double-debits put the trust account into a shortfall which in turn rendered him unable to close the Wang-Liu transaction which in turn led to the Law Society investigation and revocation of his license. The Plaintiff's responding affidavit on this motion summarizes his case as follows:

But for TD's wrongful unauthorized double withdrawals actions, Wang-Liu's real estate transaction would have certainly closed, no complaint would have been made to the LSO, and no criminal charges would have been brought against me...

...The sole cause was TD taking money from Mullan Law's trust account without authorization and depositing the monies in their own internal bank accounts for TD's own use.⁷

⁶ *Hryniak v. Mauldin*, 2014 SCC 7 at para.49.

⁷ Plaintiff's Affidavit, paras. 11 – 12, Case Center p. A6 – A7.

- [31] In other words, the plaintiff says that the double debits caused the Wang-Liu transaction to fail which caused the Law Society to investigate.
- [32] The problem with this theory is that it is factually wrong. The Law Society is clear in its reasons: it began its investigation in response to a complaint by the Plaintiff's former law clerk, not in response to a complaint by Wang-Liu. In addition, the reasons are equally clear that the Plaintiff's licence was revoked because \$735,854.86 was transferred out of his trust account in a series of transactions that the Plaintiff never explained although he was asked to do so. The Plaintiff's license was not revoked because TD double debited his account. Indeed, the Law Society reasons refer to the double debits and to funds being recovered from TD in that regard, but do not cite the double debits as a ground for revoking the Plaintiff's license.
- [33] The criminal conviction arose because the Plaintiff pleaded guilty to the charges. The Plaintiff now says he was not psychologically competent to plead guilty and has tendered a psychiatrist report in support of that assertion. That may or may not be the case. What remains the case is that the immediate cause of his conviction was his guilty plea. The Plaintiff was represented by experienced counsel in both the criminal and Law Society matters. Moreover, on this motion I am not basing my judgment upon the guilty plea or the simple fact of the revocation of his license to practice. I am basing it on detailed allegations of misappropriation that the Law Society found amounted to misappropriation. I did not take the Law Society's finding in this regard as conclusive, but invited the Plaintiff to explain the

\$735,854.86 in transfers from trust. He failed to do so. In those circumstances, he has failed to demonstrate that the revocation was caused by TD's double debiting. On the record before me, the revocation was caused by the Plaintiff's unexplained transfers from the trust account. In the absence of any explanation for those transfers, I conclude that the transfers amount to misappropriations.

[34] That the Law Society's investigation was prompted by the complaint of the Plaintiff's former law clerk is not merely window-dressing. The former law clerk's complaint raised detailed and specific allegations that the Plaintiff was using funds from the trust account to pay for business and personal expenses, including personal real estate purchases.⁸ The law clerk identified specific transactions, often electronic transfers rather than cheques.⁹ The law clerk complained to the Law Society on November 3, 2016, *before* the trust account experienced the shortfall that prevented the Wang-Liu transactions from closing.

[35] The Plaintiff's claim for breach of contract requires him to establish that he suffered a loss that was *caused* by TD's breach. As the British Columbia Court of Appeal described it:

To begin with, "compensatory" damages by definition contemplate compensation for loss. Without loss, there is nothing to compensate. A causative link between the defendant's wrong and the plaintiff's loss is essential. A defendant cannot be held liable for a plaintiff's losses that

⁸ Law Clerk Complaint, Case Center p. B-1-231 – B-1-232.

⁹ Law Clerk Complaint, Case Center p. B-1-235 and B-1-237.

were not caused by the defendant's misconduct.¹⁰ (citations omitted)

- [36] To attribute the loss to the defendant requires an unbroken causative link without an intervening event. As the Ontario Court of Appeal put it:

The burden rests on the Plaintiff alleging breach of contract to prove on the balance of probabilities that the breach **and not some intervening factor or factors** has caused loss to the Plaintiff.¹¹ (emphasis added)

- [37] Although a defendant can be liable for instituting a chain of events, that chain can be interrupted by acts of the Plaintiff which would defeat a breach of contract claim:

The breach of contract must lead to the damages claimed. It must, in other words, be the cause of the loss. It need not be the only cause of the loss as long as it was an "effective" cause... In some cases, the defendant might have triggered a chain of events, but the defendant will not be liable if a third party, a natural event, or the Plaintiff himself causes an action that breaks the "chain of causation".¹²

- [38] Here, it cannot be said that TD's double debiting was the effective cause of the license revocation or the criminal conviction. Both the license revocation and the criminal conviction were based on misappropriations not on simple deficits in a trust account caused by TD's double debiting. I do not find it necessary to engage in an analysis of whether the misappropriations "broke the chain of causation" attributable to the double debiting because the double debiting did not cause the license revocation or the criminal conviction. Were it necessary to do so, I would

¹⁰ *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at para 113.

¹¹ *Eastwalsh Homes Ltd. v. Anatal Developments Ltd.*, 1993 CanLII 3431 (ONCA).

¹² *Smith v. 663556 Ontario Limited*, 2011 ONSC 4496 at para 23, citing Bruce MacDougall, *Introduction to Contracts*, (Markham, Ont: LexisNexis Canada, 2007) at p. 303.

find that the Plaintiff's misappropriations broke the chain of causation between the double debiting and the license revocation and criminal conviction.

[39] With respect to the Plaintiff's claim in negligence, he must show that either his injury would not have occurred but for TD's negligence, or that some breach by TD materially contributed to his injury.¹³ The plaintiff has not and cannot meet that burden.

[40] The license revocation and the criminal convictions would have occurred in the absence of double debiting because they were both the product of the complaint by the Plaintiff's former law clerk. Those penalties did not arise out of double debiting or an inadequate balance in the trust account. They arose out of misappropriations from trust. For the same reason it cannot be said that the double debiting materially contributed to the license revocation or the criminal conviction.

Conversion Claim is Untenable

[41] In my view, conversion claim is untenable because the tort of conversion does not apply to the facts of this case.

[42] The 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."¹⁴

¹³ *Clements v. Clements*, 2012 SCC 32 at para 46.

¹⁴ *Boma Manufacturing Ltd. v. Canadian Imperial Bank of Commerce*, 1996 CanLII 149 (SCC) at para 31.

[43] Conversion does not apply to debts such as bank accounts or other choses in action but applies only to tangible goods.¹⁵

[44] In addition, conversion is meant to compensate for the loss of property. In this case, any potential damages under conversion would be the value of the double-debited cheques. TD has, however, corrected the double debits and has therefore returned whatever property was taken even if the tort of conversion did apply.

Other Issues

[45] TD has also raised a number of other issues in its defence including a limitation of liability clause in its Business Banking and Services Agreement with the Plaintiff, the Plaintiff's obligation to bring any errors to the attention of TD within 30 days of receiving a bank statement failing which the statement is accepted as accurate as set out in the Business Banking and Services Agreement, and a limitations defence. Given the strength of the position on causation and conversion, I do not find it necessary to address these other issues.

Conclusion and Costs

[46] For the reasons set out above, I grant the defendant's motion and dismiss the Plaintiff's action.

¹⁵ *Sarzynick v Skwarchuk*, 2021 BCSC 443 at paras. 256 - 263.

[47] Any party seeking costs arising out of these reasons will have three weeks to deliver written submissions. The responding party will have two weeks to deliver its answer with a further one week for reply.

Koehnen J.

Released: August 27, 2025

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Plaintiff
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