

COURT OF APPEAL FOR ONTARIO

CITATION: Gayle v. Cambridge Mercantile Corp., 2025 ONCA 612

DATE: 20250908

DOCKET: COA-24-CV-0533

Sossin, Favreau and Wilson JJ.A.

BETWEEN

Sharna Gayle* and Wesley Kerr

Plaintiffs (Appellant*)

and

Cambridge Mercantile Corp., Jason Squire*, Lerner LLP*,
Mark Freiman*, Rebecca Shoom*, Jacques Feldman and
Bernard Heitner

Defendants (Respondents*)

Wesley Kerr, as agent for the appellant¹

Luisa Ritacca and Olivia Eng, for the respondents

Heard: August 27, 2025

On appeal from the order of Justice Michael T. Doi of the Superior Court of Justice,
dated April 16, 2024, with reasons reported at 2024 ONSC 1792, 93 C.C.E.L. (4th)
153.

REASONS FOR DECISION

¹ Mr. Kerr, by order of Sossin J.A. dated July 30, 2025, was given permission to make submissions in the appeal as an agent on behalf of the appellant (his spouse).

[1] The appellant, Sharna Gayle, brought an action for wrongful dismissal against her former employer, Cambridge Mercantile Corp. (“Cambridge”). The respondents represented her in the litigation, with Jason Squire and Rebecca Shoom as her counsel of record. Mr. Squire consulted the respondent, Mark Freiman, also a lawyer at Leners LLP at the time, on occasion on issues relevant to the claim.

[2] One of the key issues in the wrongful dismissal action was the compensation to which Ms. Gayle was entitled. Cambridge is a foreign exchange company. Cambridge’s two principals are Orthodox Jews whose religious observance prevents them from working on Jewish holidays. When Ms. Gayle started working for Cambridge, the business was closed on Jewish holidays. Some time after Ms. Gayle started working for Cambridge, the parties entered into a memorandum of agreement that provided that Ms. Gayle would operate the business on Jewish holidays and that set out the compensation she was to receive for this work. In her action for wrongful dismissal, amongst other matters, Ms. Gayle claimed that Cambridge failed to compensate her for her work on Jewish holidays in accordance with the terms of the memorandum of agreement.

[3] After Ms. Gayle commenced her claim for wrongful dismissal against Cambridge, the parties agreed to participate in a mediation. By that point, Cambridge had commenced a counterclaim against Ms. Gayle for amounts it claimed it had overpaid her and against her spouse, Wesley Kerr, for defamation

based on statements he posted online after Ms. Gayle started her action. The parties settled the claim at the mediation. As part of the settlement, Mr. Gayle received a payment of \$500,000, and the parties signed a full and final mutual release. Ms. Gayle was present at the mediation. She reviewed and approved the settlement.

[4] Over one year later, Ms. Gayle commenced an action against her former lawyers, the respondents to this appeal, alleging breach of fiduciary duty, breach of contract and negligence. Amongst other matters, Ms. Gayle claimed that the respondents conspired with Cambridge's principals, preferred Cambridge's interests over her own and induced her to enter into an improvident settlement.

[5] The respondents brought a motion for summary judgment. The motion judge granted the motion and dismissed Ms. Gayle's claim. The motion judge found that the claim did not raise any genuine issues for trial. The motion judge rejected Ms. Gayle's position that the respondents had colluded with Cambridge's principals, and found that there was otherwise no merit to Ms. Gayle's claim.

[6] At the oral hearing before us, Ms. Gayle's primary argument was that the motion judge misinterpreted a provision in the memorandum of agreement. She submitted that section 6(b) of the memorandum of agreement provided that she was to receive all the profits Cambridge made on Jewish holidays. She submitted that her interpretation of this provision is consistent with Jewish law, which would

preclude Cambridge's principals from receiving any profits made on Jewish holidays.

[7] We see no merit to this argument. The primary issue before the motion judge was not the terms of Ms. Gayle's employment and her entitlement to compensation under the memorandum of agreement. Rather, the issue was whether her claim against the respondents, who had represented her in the wrongful dismissal action, raised a genuine issue for trial. The terms of her former employment were relevant on the issue of whether she entered into an improvident settlement on the advice of the respondents. It was therefore not the task of the motion judge to reach a correct interpretation of the memorandum of agreement, but, rather, to determine whether there was a genuine issue for trial that the advice the respondents gave Ms. Gayle leading to the settlement was unreasonable and fell below the standard of care.

[8] We see no error in the motion judge's determination on this issue. He gave an explanation, which was well supported by the record, for his conclusion that the respondents gave reasonable advice to Ms. Gayle. He specifically addressed the interpretation of section 6(b) of the memorandum of agreement, and found that Ms. Gayle reached a reasonable settlement in the circumstances of her case. The motion judge concluded as follows on this issue:

Although the interpretation of the [memorandum of agreement] offered by the Defendants and by Cambridge

were at least arguable, I am satisfied that the Plaintiffs' interpretation is not. In my view, the Plaintiffs cannot reasonably argue that the settlement was improvident by not accounting for Ms. Gayle's alleged entitlement to *all* of Cambridge's gross profits for every Jewish holiday, which they claim was about \$20 million as pleaded, although no records were adduced to substantiate this figure. Mr. Squire and Ms. Shoom assessed Ms. Gayle's dividend entitlement as approaching \$878,788.54 (i.e., based on the Canadian calendar of Jewish holidays), although the Plaintiffs submit that this figure should instead be \$887,974.71 (i.e., based on the US calendar of Jewish holidays). Even if the larger figure were applied, I am not persuaded that the \$500,000.00 settlement amount would have been improvident given the various risks associated with the Plaintiffs continuing to litigate the Cambridge Action, including: a) Cambridge's defence of after-acquired cause (i.e., that, if successful, would have disentitled Ms. Gayle from her termination pay) and its counterclaim for \$670,000.00; b) a court finding that the Plaintiffs' claims from or before 2013 were statute-barred; c) the court adopting Cambridge's interpretation of Ms. Gayle's entitlements under the [memorandum of agreement] and finding that the company's obligations to her were satisfied; and d) Cambridge's impending defamation claim against Mr. Kerr that would potentially hinder Ms. Gayle's ability to settle her wrongful dismissal claim afterwards. On this motion, the Plaintiffs have essentially ignored or disregarded these risks in claiming that the settlement was improvident. Taking this all into consideration, I find that the settlement was not improvident or unreasonable given the risks which the Plaintiffs would face if the Cambridge Action did not settle. [Emphasis in original.]

[9] Ms. Gayle submits that it was an error for the motion judge to decide the motion in the respondents' favour in the absence of expert evidence on Jewish law. We disagree. To the extent that it was relevant on the motion, the

memorandum of agreement was to be interpreted in accordance with Ontario law. In this case, the motion judge correctly observed that the fact that Cambridge's principals did not work on Jewish holidays did not mean that they could not choose to earn profits on Jewish holidays. Whether Jewish law prohibits religious observers from earning profits on holidays or not would not determine the terms of the agreement between Ms. Gayle and Cambridge's principals. More importantly, as indicated above, the only issue before the motion judge was whether the respondents' interpretation of the memorandum of agreement was reasonable, not whether it was correct.

[10] While not raised in oral argument, in her factum, Ms. Gayle submitted that the motion judge erred in deciding the case without the benefit of expert evidence from the respondents on the standard of care, while criticizing her for not introducing her own expert evidence. We see no error on this issue. As this court has held, it is generally inappropriate for a trial judge to decide a solicitor's negligence case without the benefit of expert evidence on the standard of care, but there are exceptions: *Krawchuk v. Scherbak*, 2011 ONCA 352, 106 O.R. (3d) 598, at paras. 130-135, leave to appeal refused, [2011] S.C.C.A. No. 319; *Formosa v. Persaud*, 2020 ONCA 368, at para. 10. The extensive evidentiary record put forward by the respondents in this case allowed them to show, and the motion judge to find, that there was no genuine issue for trial in respect of Ms. Gayle's claims that (1) the respondents colluded with Cambridge's principals, or that

(2) the respondents led Ms. Gayle to enter into an improvident settlement. These were questions of fact or mixed fact and law that the motion judge was well equipped to decide without the benefit of expert evidence.

[11] Once the motion judge was satisfied that the respondents met their burden of showing that there was no genuine issue for trial, he considered whether Ms. Gayle had met her burden of showing that there was a genuine issue for trial. It was in this context that the motion judge commented that Ms. Gayle had failed to lead any expert evidence on the standard of care. This was not an error. It was part of his overall analysis that Ms. Gayle failed to put forward evidence, including expert evidence, that would raise a genuine issue for trial. In other words, he relied on the well-established principle that, in responding to the motion for summary judgment, Ms. Gayle had an obligation to put her best foot forward and that she failed to do so. We see no errors in the motion judge's analysis.

[12] The appeal is dismissed. The respondents are entitled to \$5,000 in costs all inclusive.

“L. Sossin J.A.”
“L. Favreau J.A.”
“D.A. Wilson J.A.”