CITATION: Business Development Bank of Canada v. 11518801 Canada Inc.
2025 ONSC 5636
COURT FILE NO.: CV-24-00727224-0000
DATE: 20251009

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
BUSINESS DEVELOPMENT BANK OF CANADA Plaintiff	*Ian Klaiman and Elina Fish,* for the Plaintiff
– and –	
11518801 CANADA INC. and ABDIFATAH AHMED Defendants	No one appearing for the Defendants
	Read: October 9, 2025

L. BROWNSTONE J.

[1] The plaintiff seeks default judgment against the defendants in respect of a loan made on which the defendants defaulted. The plaintiff seeks damages for fraud, punitive damages, an order that the plaintiff has a constructive trust over the loan proceeds, a tracing remedy to determine where the funds ultimately went, and a constructive trust over any traceable proceeds. The plaintiff also seeks a declaration that the defendants' debt and liability result from obtaining property or services by false pretenses or fraudulent misrepresentations.

[2] The statement of claim was issued on August 9, 2024, and served on September 24, 2024. The defendants were noted in default on February 21, 2025. The defendants were served with motion materials for this motion for default judgment and did not respond.

[3] Under rule 19.02, a defendant who has been noted in default is deemed to admit the truth of all allegations of fact made in the statement of claim. Of course, judgment issues only if the facts alleged entitle the plaintiff to judgment: rule 19.06.

[4] The inquiry undertaken by the court on a motion for default judgment is the following: (i) What deemed admissions of fact flow from the facts pleaded in the statement of claim?; (ii) Do those deemed admissions of fact entitled the plaintiffs, as a matter of law, to judgment on the claim?; and (iii) If they do not, has the plaintiff adduced admissible evidence which, when combined with the deemed admissions, entitles it to judgment on the pleaded claim? That is, do the deemed admissions and evidence filed make out the elements of a valid cause of action?: *Elekta Ltd. v. Rodkin*, 2012 ONSC 2062 at para. 14.

[5] The deemed admissions flowing from the statement of claim and supplemented by the background and documents provided by the affidavit evidence include the following.

[6] The plaintiff is a Canadian financial institution wholly owned by the government of Canada. The corporate defendant ("the borrower") is a Canadian corporation whose registered office is on Weston Road in the GTA. The personal defendant's address is the same as that of the corporation. He was at all material times the director and controlling mind of the corporate defendant, and a guarantor of the corporate defendant's obligations to the bank.

[7] The bank, in partnership with the Federation of African Canadian Economics, established the Back Entrepreneurship Loan Fund to support Black business owners and entrepreneurs with capital investments, working capital, and short-term receivable financing. To be eligible for financing under the fund, the loans provided had to be used for capital investments, working capital, or short-term receivable financing.

[8] The defendants applied to the bank for the $250,000 loan under the fund in June 2024, in order to purchase a new 2025 Freightliner Cascadia. The business financing request was prepared by the Federation of African Canadian Economics.

[9] The bank approved the loan subject to terms of the Letter of Offer on about July 24, 2024.

[10] The Letter of Offer provided that the loan was to be disbursed upon receipt from the borrower of invoices evidencing an intention to purchase equipment permitted under the loan purpose. The borrower was required to provide proof of payment for all items financed under the loan.

[11] As part of the application process for the loan, in order to secure financing, the defendants produced documentation to the bank and made express and implied representations to the bank as follows:

a. That the proceeds of the loan would be used by the borrower to purchase a new 2025 Freightliner Cascadia; (The defendants clearly listed the purpose of financing on their application documents as "capital investment of truck");

b. The defendants provided the bank a copy of the vehicle purchase agreement between the corporate defendant and the dealer, Cold Iron Truck Centre, dated May 29, 2024, in which the defendants represented an intention to purchase the Freightliner Cascadia;

c. The defendants gave the bank a copy of the bill of sale between the corporate defendant and Cold Iron dated August 7, 2024, show a $500 deposit paid by the borrower to Cold Iron for the purchase of a new 2025 Freightliner Cascadia, with the serial number specified;

d. The defendants agreed that the proceeds of the loan could only be used for the loan purpose of a capital expenditure, the purchase of the Freightliner, and represented and warranted that "All information provided by it to BDC is complete and accurate and does not omit any material facts";

e. The defendants further represented and warranted that the proceeds of the loan would only be used for eligible purposes, in this case, for capital expenditure to purchase the Freightliner.

[12] The corporate defendant also executed and delivered to the bank a General Security. Agreement dated August 2nd, 2024, which was registered in accordance with the provisions of the *Personal Property Security Act*, R.S.O. 1990, c. P.10, thereby granting the bank security interest in the assets, and entitling the bank to immediate possession of the assets on default of the borrower's obligations. The bank registered the GSA for a period of 11 years.

[13] On about August 8, 2024, the bank granted the corporate defendant a loan in the principal sum of $250,000, with interest accruing at the base rate plus 1.65% per annum. As security for the loan, that personal defendant executed and delivered a guarantee dated August 8, 2024, for100% of the outstanding balance on the date the bank demands payment with interest accruing at base rate plus 1.65% per year from the date of demand.

[14] At all material times, the defendants' representations were false. Rather than using the proceeds of the loan to purchase the Freightliner, the defendants intentionally misappropriated the proceeds for their own personal use and benefit. The defendants made the representations and produced the application documents to the bank, knowing that they were false, without belief in their truth, or were recklessly indifferent or willfully blind to whether the representations were true or false, with the intention that the bank would rely on the representations and application documents in advancing the loan.

[15] The bank relied on the representations in the application documents, which caused the bank to suffer losses and damages.

[16] On August 16, 2024, Cold Iron contacted the bank inquiring about the status of payment for the Freightliner, as the defendants did not complete the purchase of the Freightliner.

[17] The bank emailed the defendants requesting confirmation of payment for the Freightliner on August 20, 2024, and August 27, 2024. The defendants failed to respond to the bank's emails.

[18] On September 4, 2024, Cold Iron advised the bank that the corporate defendant never paid for the Freightliner and so it was never sold. Cold Iron requested a discharge of the bank's PPSA registration in connection with the Freightliner.

[19] Cold Iron confirmed the defendants made no payment for the Freightliner other than the $500 deposit.

[20] As of September 4, 2024, the borrower was indebted to the bank for $251,641.73 for the loan and interest. By letters dated September 6, 2024, the bank, through its lawyers, made demands on the defendants and enclosed a notice of intention to enforce security.

[21] The defendant failed or refused to pay any amounts to the bank and interest continues to accrue at the applicable rates.

[22] After the plaintiff started the action, it obtained a Mareva injunction restraining the defendants from dissipating their assets. The personal defendant and the bank's counsel arranged for a virtual examination to take place. However, the personal defendant, after calling in on the morning of the examination, refused to appear on camera, take an oath or affirmation, or respond to any questions.

[23] The bank has learned that between August 13 and August 26, 2024, after it deposited the loan funds into the corporate defendant's bank account, approximately $233,651.00 was withdrawn from the account. The vast majority of the loan was drawn on through a series of INTERAC e-Transfers, cash withdrawals, bank drafts and a bill payment.

[24] As of July 17, 2025, the corporate defendant was indebted to the bank in the sum of $271,227 for the loan amounts and interest. The updated interest calculation provided by the plaintiff places the debt as of today's date at $276,079.08.

[25] I agree with the plaintiff that the facts admitted, and those adduced by affidavit evidence, establish that the defendants made false representations, knew or were reckless as to the falsity of the representations, that the false representations caused the bank to advance the loan, and that advancement of the loan resulted in a loss to the bank. The defendants represented that the proceeds of the loan were to be used to purchase the Freightliner. They provided documents indicating that they were going to purchase the Freightliner. They agreed that the proceeds of the loan could only be used for the loan purpose of the capital expenditure of the purchase of the Freightliner. They represented that the information provided to the bank was complete and accurate. Yet they did not use the loan for that purpose. They took the money for their own unauthorized use.

[26] In addition to the deemed admission in the statement of claim that they knew or were reckless about whether their statements to the bank were false, the facts set out above amply support this finding. The bank clearly relied on those false statements in advancing the loan, and suffered a loss as a result.

[27] The plaintiff seeks punitive damages in the sum of $150,000. Punitive damages may be awarded when there is a marked departure from ordinary standards of decent behavior. The objective of punitive damages is to punish the wrongdoer, not to compensate the plaintiff. Punitive damages are intended to promote the objectives of punishment, deterrence, and denunciation, and respect for the rule of law: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 SCR 595 at paras. 36 and 43.

[28] I find that the behavior of the defendants in this case is egregious. They have knowingly engaged in fraudulent activity. They have refused to respond to the bank. The conduct is offensive and high-handed. The defendants have taken advantage of a fund established to support Black business owners and entrepreneurs. Debtors must be deterred from defrauding banks and cannot be allowed to simply repay the stolen funds without further consequence. The defendants here have also refused to comply with any court processes.

[29] In order to achieve the objectives of punishment, deterrence, and denunciation, I find the awarding of punitive damages in this case to be warranted. Such flagrant unlawful conduct is not to be tolerated.

[30] The amount ordered in punitive damages should be proportionate to the blameworthiness of the defendants' conduct, the degree of vulnerability of the plaintiff, and the harm directed at the plaintiff. In addition, the need for deterrence must be taken into account.

[31] In the circumstances I have outlined here, applying the factors set out above, I award punitive damages in the amount of $125,000, which is half of the plaintiff's principal loss.

[32] I also find the non-dissipation and tracing orders are appropriate. If and when the tracing order leads to a situation in which a constructive trust or other remedy is appropriate, the plaintiff may seek the further assistance of the court: *Bank of Montreal v. 1870769 Ontario Inc*., 2022 ONSC 5100.

[33] I decline to make a formal declaration "in the air" that the defendants' debt and liability herein results from obtaining property or services by false pretences or fraudulent misrepresentations. I have made factual findings that indicate the defendants engaged in false pretenses and fraudulent misrepresentation to obtain the loan. However, a formal declaration serves no purpose at this time. Should these issues become relevant in any future proceedings, these reasons speak for themselves and are available to any court to which they may be relevant.

[34] The plaintiffs seek costs on a full indemnity basis in the amount of $60,147.80 inclusive of HST and disbursements, in accordance with the agreement between the parties.

[35] Fixing costs is a discretionary exercise under s. 131 of the *Courts of Justice Act*. Rule 57 outlines, in a non-comprehensive list, factors that guide the exercise of this discretion. Relevant factors include the results of the proceeding, the principle of indemnity, the amount an unsuccessful party could reasonably expect to pay, the complexity of the proceeding and the importance of the issues.

[36] Ultimately, I must fix an amount of costs that is proportionate, and that is fair and reasonable for the unsuccessful party to pay: *Boucher v. Public Accountants Council for the Province of Ontario*, 2004 CanLII 14579 (ONCA) at para. 26. A costs award should "reflect what is reasonably predictable and warranted for the type of activity undertaken in the circumstances of the case, rather than the amount of time that a party's lawyer is willing or permitted to expend": *Apotex Inc. v. Eli Lilly Canada Inc.*, 2022 ONCA 587 at para. 65.

[37] I must also have regard to the contract agreed to between the parties. In this regard, the agreement provides that: “All costs, fees, expenses and protective disbursements incurred for the enforcement of the Loan and the Loan Documents are payable by the Loan Parties, including the full amount of all legal and professional fees and expenses paid by BDC at the rate at which those amounts are billed to BDC.”

[38] Given that agreement, and the defendants’ conduct in this case, I find full indemnity costs are appropriate. The defendants agreed to pay the full amount of legal and professional fees and expenses in accordance with the letter of offer. They brazenly and flagrantly engaged in unlawful conduct, and then avoided the plaintiffs both pre- and post-litigation.

[39] The costs incurred are reasonable, proportionate, and fair for the defendants to pay. There were two attendances for the Mareva injunction. There was an attempt at an examination, for which preparation would have been necessary, only to be thwarted by the defendants. The materials on this motion were comprehensive and I required an attendance to discuss some terms of the original order sought.

[40] I order the defendants to pay costs in the amount of $60,147.80 inclusive of HST and disbursements.

[41] I have signed the judgment.

L. Brownstone J.

Released: October 9, 2025