COURT OF APPEAL FOR ONTARIO

CITATION: Canadian Tire Corporation, Limited v. Eaton Equipment Ltd., 2025 ONCA 720
DATE: 20251023
DOCKET: COA-25-CV-0134 & COA-25-CV-0136

Rouleau, Favreau and Pomerance JJ.A.

BETWEEN

Canadian Tire Corporation, Limited

Plaintiff (Respondent)

and

Eaton Equipment Ltd.*, Scott Milburn*, a.k.a. Scott Eaton*, Servantage Dixie Sales Canada Inc., Carleigh Milburn*, Intellectual Inventive Inc.*, Citrus Grove MortgageCo Ltd.*, Tammy Diane Robertson*, Libero Everett Tassone*, Appslack Ltd.*, Appakiss Ltd.* and Appnatty Ltd.*

Defendants (Appellants*)

and

Gardner Inc., Servantage Dixie Sales Inc., Gavin Bequiri, John T. Finn, John F. Finn and Mark Brennan

Third Parties

AND BETWEEN

Eaton Equipment Ltd., Scott Milburn, a.k.a. Scott Eaton

Plaintiffs by Counterclaim

and

Canadian Tire Corporation, Limited

Defendant to the Counterclaim

Scott Milburn, Carleigh Milburn, Tammy Robertson, Shane Robertson and Libero Tassone, acting in person

Scott Milburn, acting in person for Eaton Equipment Ltd., Citrus Grove MortgageCo. Ltd., Intellectual Inventive Inc., Appslack Ltd., Appakiss Ltd. and Appnatty Ltd.[1]

Colin Pendrith and Jessica L. Kuredjian, for the respondents

Heard: October 10, 2025

On appeal from the judgment of Justice William Black of the Superior Court of Justice, dated January 7, 2025.

REASONS FOR DECISION

[1] This is an appeal from an order of summary judgment against the appellants, holding them liable to the respondent for civil fraud.

[2] The action arose out of a scheme whereby Scott Milburn's ("Mr. Milburn") company, Eaton Equipment Ltd. ("Eaton"), claimed to have repaired products purchased from the respondent, Canadian Tire Corporation, Limited ("CTC") as part of a warranty program. CTC paid for the repairs. However, most of the invoices and receipts Eaton submitted were falsified. The customers were not real

[1] Mr. Milburn obtained leave from George J.A. to represent the appellant corporations as a non-lawyer.

customers, the products were not real products, and the repairs were not performed.

[3] The motion judge found that the evidence of fraud was clear and uncontroverted, and that the other appellants, relatives and associates of Mr. Milburn, were complicit in the scheme, helping to run Eaton and the other corporate entities through which funds were funneled. The appellants were found jointly and severally liable for $3.325.238.09 in damages (including pre-judgment interest) and $1.2 million in costs on a partial indemnity basis. The motion judge also ordered $50,000 in punitive damages personally against Mr. Milburn.

[4] The appellants challenge the summary judgment order. We are satisfied that summary judgment was properly ordered against all appellants, save for one, that being the appellant, Carleigh Milburn (“Ms. Milburn”), Mr. Milburn’s daughter.

BACKGROUND

[5] In 2008, CTC contracted with Servantage Dixie Sales Canada Inc. (“Dixie”) to administer its warranty repair program. In 2009, Dixie appointed Eaton to repair defective products brought to it by CTC customers. Mr. Milburn was the sole shareholder, director and officer of Eaton.

[6] The program contemplated that customers would not pay for repairs. Rather, they would provide proof of purchase to Eaton and Eaton would invoice Dixie for

the cost of the repair work. Dixie would, in turn, invoice CTC who would pay Dixie, with the intention that payment be remitted to Eaton.

[7] Between 2015 and 2018, Eaton submitted 35,520 invoices/claims for repair work, and 27,738 receipts. Only 135 receipts were genuine, with 99.51 percent of them having been falsified. In total, CTC forwarded $2,810,835.45 for fraudulent repair program claims plus taxes. During the same timeframe, CTC paid Dixie $397,141.60 for administrative work directly corresponding to Eaton's claims during the same period, resulting in a total loss to CTC of $3,207,977.05.

[8] The scheme was relatively sophisticated. Among other things, Eaton hired a graphic designer to electronically falsify receipts, using customer information – names and other details – that had been scraped from the internet.

[9] In 2018, Dixie and CTC became concerned about irregularities in Eaton's invoices. In one instance, Eaton submitted 83 claims at the same time for customers whose names began with the letter "A". Some of Eaton's receipts looked different than those submitted by other companies doing repair work. Calls to so-called customers rang through to Eaton employees. Once the investigation began, the scheme unraveled, and the fraud was quickly exposed.

[10] CTC commenced an action against the appellants seeking damages for, among other things, fraud, fraudulent misrepresentation, misappropriation and conversion, knowing receipt, knowing assistance and unjust enrichment. On

August 19, 2019, Penny J. granted *Mareva* and *Norwich* orders against Mr. Milburn and Eaton. Further interlocutory orders were granted against other appellants. The appellants unsuccessfully moved to set aside the *Mareva* orders. They also brought an unsuccessful anti-SLAPP motion seeking to dismiss CTC's action.

[11] CTC moved for summary judgment. Various appellants brought their own motions for summary judgment based on their counterclaims against CTC, a crossclaim against Dixie, and third-party claims against persons associated with Dixie.

[12] The motion judge granted summary judgment in favour of CTC, finding that the evidence amply established the requisite elements of civil fraud. On this basis, it was held that there was no genuine issue for trial. In particular, the motion judge found that the appellants, through Eaton: (1) falsely represented that they were performing repair work; (2) had full knowledge of the fraud they were committing; (3) caused CTC to pay them through Dixie based on the false invoices; and (4) these actions caused CTC's loss of $3.2 million.

ANALYSIS

[13] The motion judge applied the correct test for civil fraud, which requires that the following be established: (1) a false representation made by the defendant; (2) some level of knowledge of the falsehood of the representation on the part of the defendant (whether through knowledge or recklessness); (3) that the false

representation caused the plaintiff to act; and (4) that the plaintiff's actions resulted in a loss: *Bruno Appliance and Furniture Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 21.

[14] The appellants submit that the motion judge erred in finding that the third element was satisfied. They say that the positioning of Dixie, as an intermediary between CTC and Eaton, prevents a finding of civil fraud. It is said that CTC was not acting on the representations of Eaton, but rather, on the representations of Dixie. Therefore, Eaton cannot be held liable to CTC.

[15] We do not agree. It was clear from the evidence that Dixie was merely a conduit through which representations and payments flowed between CTC and Eaton. Monthly spreadsheets sent by Dixie to CTC set out the payments Eaton claimed for repairs, based on the Eaton invoices. CTC, in turn, relied on those claims, and paid Dixie, fully expecting that the funds would be forwarded to Eaton. In the circumstances of this case, Dixie's position as an intermediary was of no legal consequence. Dixie was the messenger, but the messages – the fraudulent repair claims – were directly attributable to Eaton.

[16] So too did Eaton intend that those messages be conveyed to, and relied upon, by CTC. Eaton went to great lengths to perpetrate the fraud, going so far as to electronically mimic CTC receipts. The appellants point to the fact that the receipts were often submitted after payment was made, but this too is of no

consequence. Eaton represented, through Dixie, that it had performed the repairs by issuing fraudulent invoices, and this caused CTC to pay for repairs that Eaton had not performed. We see no merit to this ground of appeal.

[17] We similarly see no merit in the other arguments advanced by the appellants. Subject to one exception, we are satisfied that it was open to the motion judge to conclude that the elements of fraud had been proved and that summary judgment was appropriate

[18] The exception pertains to the appellant Carleigh Milburn. The motion judge concluded that Ms. Milburn was "deeply imbedded in various aspects of the Fraudulent Scheme" and that she was a knowing and willing participant. However, the reasons of the motion judge do not adequately explain the basis for this conclusion.

[19] The motion judge outlined various aspects of Ms. Milburn's conduct that caused him concern. She was less than forthright about the source of funds used to purchase a property, initially asserting that the funds were proceeds of a personal injury settlement, but later resiling from that claim. The motion judge considered that Ms. Milburn "admitted that there was no business reason for Eaton to be paying her, but that she received regular payments from Eaton."

[20] The motion judge placed particular emphasis on the fact that Ms. Milburn withdrew funds from her bank account and the accounts of the corporations that

she controlled after a *Mareva* order had been ordered against her father, but before such an order had been issued against her. She asserted that the funds from her bank account were withdrawn to pay tuition, an assertion that the motion judge found doubtful "based on the fact that she removed those funds in cash, that she sent $50,000 from [Citrus Grove MortgageCo Ltd.]'s account to a lawyer as directed by her father, and that she withdrew $5000 from [Intellectual Inventive Inc.]'s bank account to give to her father."

[21] The motion judge inferred from these financial dealings that Ms. Milburn was aware "of her own culpability", but the reasons do not substantiate the logic behind this inference. Ms. Milburn handled funds that she received from her father and managed the funds of some of the corporate appellants. However, it does not follow that she knew the funds to be proceeds of fraud. The receipt and managing of funds from a parent do not, standing alone, imply knowledge of that parent's fraudulent acts.

[22] In short, there is not a sufficient nexus between the conduct referenced by the motion judge in his reasons and the inference that he drew from that conduct. There is an inferential gap between, on the one hand, Ms. Milburn's dealing with funds vis-à-vis her father and, on the other hand, the conclusion that she was a knowing participant in the fraud.

[23] We note that the record in this case was voluminous. It may well contain evidence that could fix Ms. Milburn with the requisite knowledge for liability.

However, it is not the role of this court to draw inferences at first instance. On the basis of the reasons as stated by the motion judge, Ms. Milburn's knowledge of the fraudulent scheme was not made out. For that reason, the summary judgment against Ms. Milburn must be set aside.

[24] We therefore allow the appeal as it relates to Ms. Milburn but dismiss the appeal as it relates to the other individual and corporate appellants.

[25] We are satisfied that this disposition is appropriate. The issue of Ms. Milburn's liability is factually distinct from that of the other appellants. Because this issue can be readily bifurcated, this is not a case in which partial summary judgment poses a risk of duplicative proceedings or inconsistent findings: *HSBC v. Guido* 2025 ONCA 684 at para. 12.

[26] Finally, the respondents were successful on the bulk of the issues, and as such, are granted costs in the amount they seek of $30,000. Given Ms. Milburn's success on appeal, she is exempt from the costs ordered on appeal and is similarly released from liability for costs ordered in the court below.

"Paul Rouleau J.A."
"L. Favreau J.A."
"R. Pomerance J.A."