CITATION: Rodd v. Intuit Canada ULC, 2026 ONSC 1212
COURT FILE NO.: CV-22-00686049-00CP
DATE: 20260227

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
MEGAN JESSICA ZITANI RODD Plaintiff/Responding Party	*Joel Rochon, Rabita Sharfuddin, Pritpal Mann,* and *Brian Quick*, for the Plaintiff/Responding Party
– and –	
INTUIT CANADA ULC and INTUIT INC. Defendants/Moving Parties	*Dana Peebles, Gillian Kerr, Adam H. Kanji,* and *Sabih Ottawa* for the Defendants/Moving Parties
	HEARD: In writing

LEIPER, J.

REASONS FOR DECISION

INTRODUCTION

[1] The defendants, Intuit Canada ULC and Intuit Inc., in this proposed class action brought a motion in writing to have a paragraph in the plaintiff's statement of claim struck and portions of the motion record on certification struck as inadmissible evidence.

[2] The plaintiff, Ms. Rodd, is a customer of the defendant, Intuit Canada ULC ("Intuit Canada"). She alleges that the TurboTax software marketed to her by Intuit Canada, was falsely advertised as being "free". Ms. Rodd has also named Intuit Canada's U.S. parent company, Intuit Inc., as a defendant. Her action is for damages for breaches of Canadian provincial consumer protection legislation and for breaches of the *Competition Act*, R.S.C., 1985, c. C-34.

[3] The defendants object to a paragraph in the claim which describes the settlement of similar litigation in the U.S. They submit that this is irrelevant to the Canadian lawsuit, or if it is marginally relevant, it would be unfair and prejudicial to permit this pleading. The defendants further submit

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that much of the proposed evidence included in the plaintiff's certification record about the U.S. litigation is inadmissible as irrelevant and as hearsay.

[4] The plaintiff disagrees. She submits that the defendants are not distinct entities and the U.S. litigation is relevant to the "some basis in fact" test on certification of the Canadian class proceedings. In her submission, the pleading is proper, the evidence is relevant and admissible and she should be permitted to file that evidence as part of her motion for certification.

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THE IMPUGNED PLEADINGS AND EVIDENCE

[5] The impugned paragraph 38 in the fresh as amended statement of claim refers to regulatory and civil litigation in the U.S. against Intuit Inc. as follows:

> [38.] In May 2022, Intuit Inc. entered into a settlement with the Attorneys General for all 50 states and the District of Columbia, which required Intuit to pay $141 million to U.S. consumers as restitution for, among other violations, "bait and switch" advertising. As part of the settlement, Intuit committed to end its "free, free free" advertising campaign in the U.S. Canadian consumers were not included in the settlement. On September 8, 2023, in a separate proceeding brought by the Federal Trade Commission, arising out of the same misleading advertising, Chief Administrative Law Judge D. Michael Chappell ruled that Intuit Inc. engaged in deceptive advertising in violation of section 5 of the *Federal Trade Commission Act*, and deceived consumers when it ran ads for "free" tax products and services.

[6] The impugned evidence filed in support of the plaintiff's motion for certification is found in two affidavits, from Normela Miranda, dated November 13, 2023 and the second in the affidavit of Vincent Genova, dated September 19, 2024. These affidavits contain the following exhibits which the defendants argue should be struck:

i. Exhibit F: A press release about a U.S. Proceeding issued by the New York State Attorney General, Letitia James, titled "Attorney General James Secures $141 Million for Millions of Americans Deceived by TurboTax", dated May 4, 2022;

ii. Exhibit G: A press release about a U.S. Proceeding issued by California Attorney General, Rob Bonta, titled "Attorney General Bonta Announces Nationwide Settlement Against Intuit for Deceptive Advertising of "Free" TurboTax Products", dated May 4, 2022;

iii. Exhibit H: An Assurance of Voluntary Compliance between Intuit Inc. and 50 U.S. state Attorneys General;

iv. Exhibit I: A Consolidated Class Action Complaint against Intuit Inc. filed in the United States District Court for the Northern District of California, dated September 13, 2019;

v. Exhibit J: A U.S. Order and Opinion Denying a Motion for Preliminary Approval of a Class Action Settlement by Judge Charles R. Breyer of the United States District Court for the Northern District of California, dated March 5, 2021;

vi. Exhibit K: A Complaint for a Temporary Restraining Order and Preliminary Injunctive Relief by the Federal Trade Commission against Intuit Inc. filed in the United States District Court for the Northern District of California, dated March 28, 2022;

vii. Exhibit L: A Post-Trial Brief of the Federal Trade Commission filed on May 24, 2023, in an administrative proceeding commenced by the Federal Trade Commission against Intuit Inc.;

viii. Exhibit M: The initial decision of Chief Administrative Law Judge D. Michael Chappell in an administrative proceeding commenced by the Federal Trade Commission against Intuit Inc., dated September 6, 2023; and

ix. Exhibit WW: The opinion of Commissioners Alvaro M. Bedoya, Lina M. Khan and Rebecca Kelly Slaughter in an administrative proceeding commenced by the Federal Trade Commission against Intuit Inc., dated January 19, 2024.

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ISSUES

[7] There are two issues to be determined in this motion:

i. Should paragraph 38 of the statement of claim be struck?

ii. Should the material in the record concerning the U.S. litigation be found to be inadmissible on the motion for certification?

STATUTORY FRAMEWORK

[8] The test for striking out a pleading arises from Rule 25.11 of the *Rules of Civil Procedure*, RRO 1990, Reg.194, which reads:

Rule 25.11 Striking out a Pleading or Other Document

The court may strike out or expunge all or part of a pleading or other document, with or without leave to amend, on the ground that the pleading or other document,

a) may prejudice or delay the fair trial of the action;

b) is scandalous, frivolous or vexatious; or

c) is an abuse of the process of the court.

[9] A pleading may be struck where it contains irrelevant facts which have no bearing on the issues before the court: *Canadian National Railway Company v. Brant*, 2009 CanLII 32911, para. 27. Where allegations of fact are marginally relevant to the claim, the court may strike the pleading under Rule 25.11 if the probative value of those facts is outweighed by their prejudicial effect: *CNR v. Brant* at para. 15.

[10] At the pleadings stage, the court will read a pleading generously "as if they were true or could be proven at trial": *Taylor v. Canada Cartage Systems Diversified GP Inc*., 2018 ONSC 617 at para. 9.

ANALYSIS OF THE ISSUES

A. Should paragraph 38 in the statement of claim be struck as irrelevant?

[11] The defendants submit that the reference to the U.S. settlement and the agreement by Intuit Inc. to end its advertising of the TurboTax software as "free free free" is irrelevant to the Canadian proceedings for similar advertising and similar allegations. They submit that this fact has been pleaded without reference to the Canadian claim, untethered to any part of the Canadian cause of action or as a material fact required to be proved to make out the claim in Canada. The plaintiff does not allege that the U.S. advertising targeted Canadian customers.

[12] The defendants submit that because the plaintiff has failed to plead that the U.S. proceedings are tied to the Canadian market, the Canadian customers, or the Canadian defendant, the paragraph discussing the U.S. settlement is irrelevant, an unnecessary complication to this action, and should be struck. Alternatively, the defendants submit that the paragraph is prejudicial as it casts the U.S. defendant, Intuit Inc. in a negative light.

[13] Ms. Rodd submits that the U.S. settlement for substantially the same conduct is relevant to her claim in punitive damages. She intends to argue that after the U.S. settlement, Intuit Inc. along with its Canadian subsidiary, Intuit Canada, developed and implemented similar misleading advertising to Canadian consumers. The statement of claim alleges that the false advertising continued in Canada for the 2022 and 2023 tax year, which is after the U.S. settlement as pleaded in paragraph 38. Ms. Rodd submits that this is the same conduct, by the same defendant, albeit in

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a different jurisdiction and in the context of a settlement that does not apply to Canadian consumers.

[14] The plaintiffs rely on case law that permits pleading a pattern or course of conduct that is sufficiently similar in support of findings of punitive damages: *Dosanjh v Maple Leaf Sports*, 2016 ONSC 8005 at para. 33(a).

[15] In weighing whether to strike allegations of similar conduct, the court must consider any added complexity, the degree of similarity between the facts alleged, and whether adding these facts will mean a prolonged inquiry: *A.S. v. Lucy*, 2021 ONSC 4958 at para. 21; *Prism Data Services Ltd. v. Neopost Inc.,* [2003] O.J. No. 2994 (S.C.J.) at para. 9.

[16] Here the pleading alleges a settlement of U.S. litigation involving deceptive advertising of Intuit Inc.'s tax software, by marketing it as "free." The pleading makes that claim in Canada as well. Thus, on the face of the pleading, there is a degree of similarity between the U.S. conduct which ended with a settlement, and the pleaded cause of action in Canada. However, the pleading is vulnerable because it does not connect the U.S. settlement to the claim in punitive damages. There is no pleaded admission of fault by the defendants. There will be differences in the legal regimes to support any claim for punitive damages based on U.S. conduct and some linkage to Canadian conduct. This presents a clear potential for a prolonged inquiry into the effect of the U.S. settlement agreement on any Canadian findings of liability or damages. I conclude that any relevance of the pleaded facts in the U.S. paragraph is insufficient to allow the paragraph to remain.

[17] The motion to strike paragraph 38 of the plaintiff's statement of claim is granted. I turn next to the portions of the record which the defendants seek to have excluded as inadmissible.

B. Should Portions of the Certification Record be Struck as Inadmissible?

[18] The defendants have raised the issues of relevance and admissibility of the evidence in the record concerning the U.S. proceedings against Intuit Inc. They submit that proceedings in other jurisdictions involving separate conduct and plaintiffs is wholly irrelevant to the issues on certification.

[19] The rules of evidence apply at certification motions. To be admissible, evidence must be relevant, otherwise admissible, and its probative value may not be outweighed by its prejudicial effect: *Syngenta AG v. Van Wijngaarden*, 2025 BCCA 334 at para. 63.

[20] The plaintiff submits that because there were similar findings and allegations in the U.S. that Intuit Inc. marketed TurboTax in a misleading or deceptive way, that this is evidence to support a finding that there is "some basis in fact" to find common issues in Canada. The plaintiff further submits that the similarities as between the conduct in the U.S. and that alleged in Canada will support its submissions to certify questions in aggregate damages, punitive damages, unjust enrichment, and disgorgement.

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[21] The plaintiff submits that the evidence out of the U.S. will show that its conduct was widespread, and because the parent company controlled the actions of its Canadian subsidiary, that there should be no distinction between the conduct in the U.S. and in Canada.

[22] I disagree. The Divisional Court upheld a ruling by Perell, J. which excluded evidence of regulatory proceedings and judgments against the defendants in other countries in the context of a consumer protection class action: *Hoy v. Expedia Group, Inc.,* 2024 ONSC 1462 (Div. Ct.). Justice Perell had ruled that the evidence was not sufficiently relevant to the Ontario case to support the tenability of a pleading for punitive damages: *Hoy v. Expedia* at para. 178.

[23] As the plaintiff does here, the plaintiffs in *Hoy v. Expedia* argued that the international regulatory proceedings against the defendants were relevant because despite changing their practices in other jurisdictions, the defendants did not make similar changes to their disclosure practices to consumers in Canada. In upholding the decision to exclude evidence of adverse outcomes in other countries, the Divisional Court wrote at para. 112:

> The factual allegations that regulatory proceedings, in other jurisdictions, under different statutes, resulting in one adverse adjudicated outcome against one of the defendants in Australia, and undertakings not to engage in certain conduct given to EU and UK regulators by some of the Defendants, do not address the issue of how the Defendants' conduct in respect of Plaintiffs seeking redress under Canadian consumer protection legislation amounted to the exceptional circumstances that, if proven, would justify an award of punitive damages.

[24] In the case at bar, the tendered documents are press releases from two Attorneys General involved in the actions against Intuit Inc. and pleadings from the U.S. proceedings, relative to a different legal regime and legislation. They involve advertising to U.S., not Canadian consumers. I conclude that they have little to no probative value in Canada, but if they are admitted and used to support certification, this could needlessly expand the inquiry on certification to questions of how similar the facts and the legal frameworks are to one another. The Canadian action should rise and fall on the Canadian legal framework and the facts relative to the advertising to Canadian consumers. I am also guided by the logic and the reasoning of the Divisional Court in *Hoy v. Expedia.*

[25] I conclude that the material related to the U.S. proceedings that is included in the plaintiff's certification record is inadmissible on the motion for certification and shall be struck.

Leiper, J.

Released: February 27, 2026

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