

COURT OF APPEAL FOR ONTARIO

CITATION: Foster v. Prado, 2026 ONCA 277

DATE: 20260417

DOCKET: COA-25-CV-1111

Zarnett, Monahan and Rahman JJ.A.

BETWEEN

Robert John Foster and Capital Canada Limited

Plaintiffs (Respondents)

and

Leticia Lindicey Sobrinho Prado and Mariano Pellegrini Steiner

Defendants (Appellants)

Leticia Lindicey Sobrinho Prado and Mariano Pellegrini Steiner, acting in person

Jacqueline L. King and Jeffrey Buchan, for the respondents

Heard: March 25, 2026

On appeal from the order of Justice R. Lee Akazaki of the Superior Court of Justice, dated August 6, 2025, with reasons reported at 2025 ONSC 4509.

REASONS FOR DECISION

[1] The motion judge granted summary judgment ordering the appellant, Leticia Lindicey Sobrinho Prado (“Prado”), to pay damages of \$1,189,119.37 to the respondent, Robert John Foster (“Foster”), as well as punitive damages of \$100,000 to both Foster and the respondent Capital Canada Limited (“Capital

Canada”). He also granted judgment to Foster against the appellant, Mariano Pellegrini Steiner (“Steiner”), for “damages to be confirmed after a reference to trace misappropriated funds to [] Steiner”.

[2] Both Prado and Steiner appeal.

[3] For the reasons that follow, we dismiss the appeal by Prado other than to set aside the punitive damages award against her in favour of Capital Canada. We allow the appeal by Steiner, set aside the judgment against him, and direct that the claim against him for knowing receipt proceed to trial.

Background

[4] Between October 2022 and January 2025, Prado was the office manager of Capital Canada, an investment firm owned and operated by Foster. During that period, in addition to receiving her salary from Capital Canada, significant amounts were transferred to Prado from Foster’s personal accounts.

[5] Foster denied authorizing any of the transfers. Alleging that Prado had misused her access to Foster’s banking codes, cheques and electronic signature to misappropriate funds from Foster, the respondents sued Prado for, among other things, breach of fiduciary duty, fraud and conversion, and sued her husband, Steiner, for knowing assistance in Prado’s fraudulent conduct, or knowing receipt of property obtained through Prado’s fraudulent breaches of duty.

[6] The respondents obtained *Mareva* and *Norwich* orders. Through investigations facilitated by those orders, the respondents asserted that the transfers included:

- (1) 31 e-transfer payments from Foster's bank account to Prado's bank account. The transfers were each in the amount of \$10,000, except for one transfer of \$5,000. All were made by Prado using Foster's bank access code.
- (2) 17 cheques totalling \$315,886.67, drawn on Foster's bank account, payable to Prado.
- (3) Payments from Foster's bank account to Prado's Platinum Amex Card account, totalling \$563,232.70, for purchases of luxury goods, cosmetic medical treatments, business class flights, and an \$18,000 tattoo.

[7] In response, Prado alleged that Foster expressly authorized the transfers, while Steiner denied any participation in or knowledge of the transfers or knowingly receiving any of the funds.

[8] The parties agreed that motions for directions under existing *Mareva* and *Norwich* orders were to be converted into a summary judgment motion under r. 20.04(2)(b) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, with the respondents seeking judgment on their claims and the appellants seeking dismissal of the action.

The Decision Below

[9] Although the parties agreed to proceed by summary judgment, the motion judge noted that appellants' counsel "attempted to hedge his clients' options" at the hearing by arguing, among other things, that summary judgment was not appropriate because the evidence required credibility assessments and thus discovery and a full trial. The motion judge therefore directed himself to consider whether the evidence raised a genuine issue requiring a trial. He concluded it did not.

[10] The motion judge found that Prado was in a fiduciary relationship with Foster, given that Foster had entrusted her with access to and control over his personal accounts. Accordingly, it was her onus to show that Foster authorized the transfers from those accounts for her benefit. He found that Foster's evidence that he did not authorize any of the transfers was supported by the complete lack of a motive to do so. He also accepted Foster's evidence that he had not noticed the transfers until a new assistant brought a suspicious transaction to his attention, noting that Foster was a wealthy person who was busy managing the money of others.

[11] On the other hand, the motion judge found Prado's evidence overall to be "spurious", in that its internal logic bore no connection to the reality of the parties' relationship. He examined, and rejected, her explanations for each group of transfers.

[12] Regarding the 31 e-transfers, Prado claimed they were bonuses or compensation for extra work. In the motion judge's view, the facts made this evidence untenable. First, Prado had attempted to make Foster's wife the apparent recipient of some of the transfers to Prado, indicating an intention to mask their true nature. Second, there was no evidence of work done by Prado that would justify an extra \$305,000 of income,¹ which was about three times her annual pre-tax salary. Finally, Prado did not report any of these amounts for income tax purposes.

[13] In respect of the cheques, the motion judge did not decide whether Prado forged Foster's signature or used Foster's authority to apply his name to cheques, as the key question was whether Foster approved payment of the amounts of those cheques to Prado. He noted that there was no evidence as to why Foster would pay these monies to Prado. Prado presented no evidence to support an assertion that she made payments to third parties on Foster's behalf. Her argument that the cheques were gifts was also not tenable. There was no evidence that she and Foster shared even a moderately close relationship. They "hardly knew each other" when the cheques began.

[14] Moreover, one of the cheques from Foster, for \$100,000, was claimed by Prado to be a personal gift to help Prado and her husband buy a home. She

¹ The motion judge's reasons state that Prado received \$310,000 in transfers. As noted above, one of the 31 e-transfers was in the amount of \$5,000. The total transferred by e-transfer was thus \$305,000.

claimed Foster gave her the cheque completely on his own initiative after she had commented on how expensive homes in Toronto were. The motion judge observed, however, that Prado and her husband were not even looking for a home at the time.

[15] Finally, in respect of the transfers to the Amex card, Prado claimed that most of the charges on it were for Foster's expenses, and all were approved—indeed, her evidence was that Prado made her apply for a personal Amex card to make personal purchases on his behalf. The motion judge noted, however, that Prado was unable to direct the court to any purchases she made on Foster's account. Her lack of ability to identify any such purchases “deflated any speculation that the court should permit a fishing expedition to search for emails authorizing transactions.”

[16] The motion judge concluded that the totality of the evidence indicated that there was no reason for Foster to give Prado the money she claimed he did, starting the day after she began working for him. The transactions had no basis in the relationship between the parties. The only reasonable inference from the evidence was that Prado drew the funds to pay for things she wanted.

[17] On Prado's evidence alone, the motion judge found no reason to conclude that there was a genuine issue requiring a trial. He went on to state that, if he was wrong in that conclusion, then using enhanced fact-finding powers in r. 20.04(2.1)

and weighing the evidence, making determinations of credibility, and drawing reasonable inferences from the evidence, he reached the same conclusion. It was undisputed that Prado drew money from Foster's accounts. Her explanations were not credible. And there was no evidence of a reason why Foster would have paid these amounts to her.

[18] In addition to awarding damages for fraud and conversion payable by Prado to Foster in the amount of the transfers, the motion judge considered Prado's conduct to be deserving of condemnation. He awarded punitive damages payable by her in the amount of \$100,000, to both Foster and Capital Canada. His explanation for including Capital Canada as a joint payee of the punitive damages was that Prado's access to Foster's bank account was a function of her employment and her conduct was a fundamental breach of the employment relationship. The award should be joint "if only to work as an estoppel against any future claim by Ms. Prado that her resignation from the firm constituted constructive dismissal."

[19] Turning to the claim against Steiner, the motion judge noted it was based on the torts of knowing assistance and knowing receipt connected with another's fraud, citing *Quantum Dealer Financial Corporation v. Toronto Fine Cars and Leasing Inc.*, 2023 ONCA 256, 481 D.L.R. (4th) 137, at paras. 51-55. He recognized the respondents' concession that there was no evidence that Steiner participated in the fraudulent transfers. However, he found that the evidence

clearly indicated that Steiner had to have known that Prado had a source of funds other than her income as an office manager. He knew that Prado had gotten a large tattoo, and how much a tattoo of that scale cost. Prado paid their rent, while he did not. According to the motion judge, “[t]he foundation of the couple’s home economy was built on funds stolen from Mr. Foster.” As such, there was evidence that Steiner knew about and benefited from Prado’s fraudulent activity.

[20] However, the motion judge did not quantify the benefit or even identify the precise property that Steiner had received. Recognizing that there is a strict tracing requirement involved in a knowing receipt claim, the motion judge awarded damages in favour of Foster as against Steiner to be confirmed after a reference to trace misappropriated funds to him.

Analysis

Prado’s Appeal

[21] Prado makes a wide-ranging attack on the motion judge’s process in determining whether and when to resort to the enhanced fact-finding tools on a summary judgment motion, his conclusion that there was no genuine issue for trial, his use of pejorative language in his reasons, and his award of punitive damages. Save in one respect, we reject her grounds of appeal.

[22] On a summary judgment motion, the judge should first determine if there is a genuine issue requiring a trial without resort to the enhanced fact-finding powers

under r. 20.04(2.1) and (2.2). Only if a genuine issue appears to exist should the judge consider whether to exercise the discretion to use those enhanced powers to determine if a trial is required: *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 66.

[23] Here the motion judge ostensibly followed that sequence, first concluding that there was no genuine issue requiring a trial in connection with the claim against Prado on her evidence alone without the need to resort to the enhanced powers. That conclusion, on its own, is problematic, since one would have to reject the credibility of her evidence (and accept the credibility of Foster's) to find liability. However, nothing turns on that, because the motion judge went on to consider, in the alternative, the result if he weighed the evidence, evaluated credibility and drew reasonable inferences under r. 20.04(2.1), and reached the same conclusion. We see no reversible error in his use of those enhanced powers in this case, nor in the fact that he did not exercise his discretion to use the further powers under r. 20.04(2.2) to direct a mini-trial.

[24] As for the conclusion that there was no genuine issue requiring a trial in connection with the claim against Prado, we see no error in it that would warrant appellate interference. The motion judge analyzed each group of transactions, applied the correct legal framework, and explained why he made the findings he did, relating the legal framework to the evidence and the arguments. It was not necessary to explain his conclusions on a transfer-by-transfer basis; the nature of

the parties' competing positions made it appropriate to group the transfers for analytical purposes. We do not accept Prado's submission that an issue of credibility necessitating a trial arose because Prado claimed the transfers were authorized and Foster claimed they were not. This was the type of case in which it was open to the motion judge to make the essential evidentiary determinations using the fact-finding powers available on a summary judgment motion.

[25] In places, the motion judge used language in his reasons which was sharply critical—even dismissive—of the veracity of Prado's explanations.² He could have been more temperate while making some of the same points. Nevertheless, we are not persuaded that his language is indicative of any prejudgment of the issues or otherwise indicates a reasonable apprehension of bias. The use of sharp language on its own is not a reversible error.

[26] Where there is no extricable error of law, a motion judge's exercise of powers on a summary judgment motion, including finding whether there is a genuine issue requiring a trial, attracts deference on appeal. Such a finding will not be overturned in the absence of an extricable error in principle or a palpable and

² Some examples: "The alternative argument...also lacked any connection to reality."; "Ms. Prado's evidence that Mr. Foster was an emotionally abusive employer also threw on an additional layer of absurdity."; "Out of the blue, so her story goes, the Fosters wanted to fund her purchase of a home."; "The next piece of the story that made no sense was that Mr. Foster, the owner of an investment fund company, apparently advised her to invest the funds in an account managed by a competitor to Capital Canada, Wealth One Bank, because 'the interest rates there were better.'"; "Ms. Prado's story that Mr. Foster willingly compensated her lavishly for extra jobs and paid for her luxury expenditures made no sense..."; "The only consistency in Ms. Prado's evidence was of transactions being driven by an instinct for immediate gratification."; "I could not evaluate Ms. Prado's credibility, beyond giving it a null value."

overriding error of fact: *Hryniak*, at paras. 81-82. Prado has not shown any reversible error in the motion judge's conclusion that there was no genuine issue requiring a trial regarding her liability to Foster for the amounts transferred.

[27] Nor is there any reversible error in the award of punitive damages to Foster. Punitive damages may be imposed when there has been high-handed conduct that marks a departure from ordinary standards of decent behaviour: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 36. The motion judge found that Prado engaged in conduct falling within that description. The quantum awarded is reasonably proportionate to the harm caused, the degree of misconduct, and other relevant factors: *Whiten*, at paras. 71 and 74. There is no basis for appellate interference.

[28] However, the inclusion of Capital Canada as a joint recipient of the punitive damages was an error of law and must be set aside. Punitive damages are awarded only where other remedies granted are inadequate to achieve the objects of retribution, deterrence and denunciation: *Whiten*, at para. 74. The award of compensatory and punitive damages to Foster already addressed those purposes. As such, making Capital Canada an additional payee of the same punitive damages lacked a rational connection to the damages' purpose. The motion judge's stated goal of estopping Prado from asserting a constructive dismissal claim lies outside the purpose of a punitive damages award.

Steiner's Appeal

[29] Turning to the appeal by Steiner, the claim against him was based on the torts of knowing assistance and knowing receipt. The motion judge erred in not dismissing the knowing assistance claim, and in finding liability on the knowing receipt claim and directing a reference instead of directing the entire knowing receipt claim to trial.

[30] The tort of knowing assistance imposes liability on a stranger to a fiduciary relationship who participates in a breach of trust by the fiduciary. Participation or assistance by the stranger in the fiduciary's fraudulent or dishonest conduct is a prerequisite to liability on this theory: see *Christine DeJong Medicine Professional Corp. v. DBDC Spadina Ltd.*, 2019 SCC 30, [2019] 2 S.C.R. 530, at para. 1, adopting the dissenting reasons of van Rensburg J.A. in *DBDC Spadina Ltd. v. Walton*, 2018 ONCA 60, 419 DLR (4th) 409, at para. 211; *Quantum*, at para. 50.

[31] The motion judge noted the respondents' concession that there was no evidence that Steiner participated in the frauds, but he failed to give effect to it. The motion judge should have dismissed the claim for knowing assistance against Steiner, as there was no evidence of an essential element of that tort.

[32] Paciocco J.A. described the test for knowing receipt in *Caja Paraguaya de Jubilaciones y Pensiones del Personal de Itaipu Binacional v. Garcia*, 2020 ONCA 412, 151 O.R. (3d) 529, at para. 57:

The legal test for knowing receipt therefore requires that (1) the stranger receives trust property, (2) for his or her own benefit or in his or her personal capacity, (3) with actual or constructive knowledge that the trust property is being misapplied. In addition to actual knowledge, including wilful blindness or recklessness, requirement (3) can be met where the recipient, having "knowledge of facts which would put a reasonable person on inquiry, actually fails to inquire as to the possible misapplication of the trust property". [Citations omitted.]

[33] In *Quantum*, at para. 54, Trotter J.A. emphasized the strict tracing requirement in a claim for knowing receipt: "it must be proved that the stranger took title to, possession of, or control over the trust property; this is because liability for this tort is based on unjust enrichment principles".

[34] The motion judge found that Steiner had to have known that Prado had a source of funds beyond her salary, that "there was ample evidence to show that... Steiner benefited from...Prado's fraudulent activity and had to know where it came from" and that the "foundation of the couple's lifestyle was built on funds stolen from...Foster". In support of this finding, he pointed only to Steiner's knowledge of the tattoo Prado obtained and what it cost, and Prado, not Steiner, paying the rent on their apartment.³

³ At the hearing of the appeal, Steiner pointed out that although Prado paid the rent to the landlord, there was evidence on the motion that he made regular payments to Prado, which he explained were his contributions to their living expenses. The motion judge did not grapple with this evidence.

[35] But the motion judge appears to have recognized that these findings did not equal a finding of Steiner having taken title to, possession of, or control of trust property sufficient to meet the strict tracing requirement. This is apparent from his direction of a reference to address that requirement. He ordered a reference to “trace misappropriated funds” to Steiner. As the motion judge noted in his costs endorsement, in which he declined to order costs payable by Steiner, it is a “possibility” that “nothing will be found in Mr. Steiner’s hands.”

[36] In other words, the state of the evidence before the motion judge did not justify summary judgment against Steiner holding him liable for knowing receipt. There was a genuine issue that the motion judge acknowledged (by his order for a reference) could not be determined on the summary judgment motion: whether Steiner knowingly received any of the trust property, that is, knowingly received any of the misappropriated funds.

[37] That issue, which went to liability and quantum, could not be off-loaded to a reference. The motion judge did not identify the authority under which he directed a reference. But as the actual receipt of trust property by Steiner is a precondition to his liability, neither r. 20.04(3) or (5) provide such authority. The motion judge should have directed the issue to trial.

Disposition

[38] Prado's appeal is allowed in part. Paragraph 2 of the order below is varied to delete the award of punitive damages to Capital Canada. In all other respects Prado's appeal is dismissed.

[39] Steiner's appeal is allowed to the following extent. Paragraph 3 of the order below is set aside. In its place an order is substituted dismissing Foster's claim against Steiner for knowing assistance and directing that Foster's claim against Steiner for knowing receipt shall proceed to trial.

[40] Foster is entitled to costs of the appeal against Prado in the all-inclusive amount of \$10,000. No costs of the appeal are awarded for or against Capital Canada or Steiner.

"B. Zarnett J.A."
"P.J. Monahan J.A."
"M. Rahman J.A."