

CITATION: Wilson v. McNeill, 2023 ONSC 2281
COURT FILE NO.: CV-21-60532-0000
DATE: 2023 04 24

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Paul Wilson, Plaintiff

AND:

Stephen McNeill, Cannabis Innovation Group Ltd., and Argentia Gold Corporation, Defendants

BEFORE: The Honourable Justice R. B. Reid

COUNSEL: Fraser Dickson, Counsel, for the Plaintiff

Jennifer McCarthy Counsel, for the Defendant, Argentia Gold Corporation

Stephen McNeill and Cannabis Innovation Group Ltd., Self-represented

HEARD: April 13, 2023

DECISION ON MOTION FOR SUMMARY JUDGMENT

[1] The plaintiff made a loan to the defendant Cannabis Innovation Group Ltd. in the amount of \$100,000 and received a written promissory note dated March 25, 2021, in return. When the loan was not paid, he started this action.

[2] By motion, the plaintiff now seeks summary judgment against each of the defendants.

The Parties:

[3] The plaintiff (“Wilson”) is a chartered professional accountant with some experience in the development of an early-stage cannabis company of which he was CEO.

[4] The defendant Stephen McNeill (“McNeill”) is the president and sole director of the defendant Cannabis Innovation Group Ltd. (“CIG”), which provides consulting services to assist companies in the cannabis industry. From January to August 2021, he was also CEO of the defendant Argentia Gold Corporation (“AGC”).

[5] AGC holds licenses to cultivate and process cannabis and to sell medical cannabis.

[6] McNeill appeared on his own behalf as a self-represented party. He requested leave pursuant to rule 15.01(2) of the *Rules of Civil Procedure*, RRO 1990, Reg. 194 (the

“*Rules*”) to represent CIG at the motion hearing. He confirmed that he was knowledgeable about the affairs of CIG as its president and sole director, and that it did not have the financial resources to hire a lawyer. In view of those circumstances and the fact that counsel for both Wilson and AGC agreed, leave was granted.

Background Facts:

- [7] In December 2019, Wilson was President and CEO of a company known as Marigenix in the business of producing and marketing cannabis products. McNeill entered a six month consulting agreement to assist Marigenix develop a business strategy and investor package.
- [8] In early 2020, McNeill approached Wilson with the purpose of raising funds for AGC.
- [9] On March 25, 2021, Wilson agreed to loan CIG \$100,000 which sum was paid in two tranches of \$50,000 by cheques dated April 1 and April 29, 2021. CIG issued a promissory note in favour of Wilson which provided that the \$100,000 would be repaid plus 20 percent interest in the amount of \$20,000 on or before September 1, 2021. In lieu of payment of the principal and interest, Wilson could be given a half of one share interest in AGC.
- [10] CIG failed to pay the sum of \$120,000 on September 1, 2021, and those funds remain outstanding.

The Test for Summary Judgment:

- [11] Rule 20.04(2)(a) requires that the court grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.
- [12] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 SCR 87, the Supreme Court of Canada made it clear that there will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination of the merits on a motion for summary judgment. As the Court held at paragraph 49, “[t]his will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result”.
- [13] Unless it is in the interest of justice to proceed to a trial, the court can use its expanded fact-finding powers under the *Rules* if needed to consider the evidence submitted by the parties, weigh the evidence, evaluate credibility, and draw reasonable inferences from the evidence. The parties are expected to put their best foot forward and the court can assume that all necessary evidence has been tendered in support of and in opposition to the summary judgment motion.
- [14] Ultimately, whether using the expanded fact-finding powers or not, the motions judge must determine if there is a genuine issue requiring a trial.

Should there be a judgment against CIG?

- [15] The existence of the promissory note between Wilson and CIG is not disputed. The sum of \$100,000 was advanced. It was signed by McNeill who had authority to bind CIG. No payment was made on or before September 1, 2021, and demand for payment was made by Wilson.
- [16] The note in part states as follows: “IN LIEU OF PAYMENT (Principal and Interest): One half (1/2) share of Argentia Gold Corp.” CIG owned shares in AGC and therefore was in a position to transfer a half share if it chose to do so.
- [17] CIG takes the position that, on and after September 15, 2021, it offered the AGC half share in lieu of payment but that the offer was unjustifiably rejected. Had it been accepted, there would have been no need for the litigation.
- [18] During discussions between McNeill and Wilson prior to the signing of the promissory note, several representations concerning AGC were made by McNeill. Those representations in early 2020 included a *pro forma* income statement for 2020, 2021 and 2022 showing projected annual net income exceeding \$12 million, \$27 million and \$39 million, respectively.
- [19] McNeill admitted in cross-examination that those numbers were not accurate but stated that they were possible. In fact, he had not seen any income, revenue or valuation figures for AGC as of the signing of the promissory note. No update was given up to March 25, 2021, even though there was in fact no revenue received by AGC in 2020.
- [20] By email dated November 10, 2020, forwarded under his name as CEO of “Argentia Gold”, McNeill provided Wilson with a “Short Term Loan Proposal” that set out AGC’s plan to establish a full warehouse and cannabis distribution network beginning in Atlantic Canada. In that proposal, McNeill represented to Wilson that AGC had inventory with a retail value of \$3.95 million.
- [21] The testimony of current AGC CEO Brian Keating was that the company never had \$3.9 million worth of inventory on hand in 2021 or 2020 altogether. In his cross-examination, McNeill admitted that the inventory estimate was just a guess.
- [22] On several occasions during discussions prior to signing the promissory note, McNeill advised Wilson that AGC was valued at approximately \$30 million. Wilson thought that valuation appeared conservative when compared to the *pro forma* income statement that had been provided in early 2020.
- [23] In his examination relating to this motion, Mr. Keating was asked whether it would be accurate to say that in March 2021 the value of AGC was \$30 million to which his response was: “By no means, it’s still nowhere worth \$30 million. We are, like I said, on an average month we are losing \$200,000 a month.” There were only two months of sales in 2021 with a net loss of about \$4.5 million that year and a net loss of about \$2.1 million in 2022.

- [24] Wilson stated that he relied on McNeill's representation about the company's value, income, revenue, and inventory, without which he would not have agreed to the loan or the provision to be repaid with a one half share of AGC. McNeill's response was that Wilson was a sophisticated and experienced businessperson with knowledge of the cannabis industry. He took on what was obviously a risky debt, as evidenced by the substantial anticipated interest payment reflecting a rate of return exponentially higher than that offered by the Bank of Canada.
- [25] Saying that Wilson "should have known better" than to provide the loan without undertaking further due diligence fails to reflect the significant inaccuracy of McNeill's inducements. The agreement to provide a one half share of AGC in lieu of payment only made sense if the share value bore a reasonable relationship to the loan.
- [26] The *pro forma* income statement was obviously a projection. However, by March 2021, McNeill was certainly in a position as CEO of AGC to update the projection, particularly since by that time the lack of any income in 2020 was known. At the very least, silence on the point constituted a false representation.
- [27] The representation that inventory existed having a retail value of \$3.95 million accompanying the loan proposal was demonstrably false.
- [28] Finally, the verbally expressed \$30 million company value for AGC was grossly overstated.
- [29] As set out in *Midland Resources Holding Limited v. Shtauf*, 2017 ONCA 320 at para. 162, fraudulent misrepresentation is established where the following five elements exist: (i) a false representation of fact is made by the defendant to the plaintiff; (ii) the defendant knew the representation was false, (or that there was an absence of belief in its truth, or recklessness as to its truth); (iii) there was an intention by the plaintiff act in reliance on the representation; (iv) the plaintiff did act on the representation; and (v) the plaintiff suffered a loss in doing so.
- [30] In this case, the representations made by McNeill to Wilson of income projection, inventory and corporate value were false. McNeill admitted that he did not believe the representations to be true as regards the income projections and inventory value. The corporate value estimate was at the very least reckless as to its truthfulness based on McNeill's presumed knowledge as CEO of AGC and based on the subsequent assessment by Mr. Keating. McNeill was in negotiations with Wilson to secure funds for use in the operation of either CIG or AGC. He intended the information to be an inducement for Wilson to loan the funds. There is no doubt that Wilson relied on the representations in choosing to make the loan and that he has suffered a loss in the amount of the unpaid loan in response.
- [31] Based on the foregoing, I find that there was a fraudulent representation as a result of which Wilson is entitled to avoid or rescind the contract with CIG thereby entitling him to a return of the funds advanced. There is no genuine issue requiring a trial in that the appropriate

documents have been provided and that evidence has been given under oath by the appropriate witnesses. I can make the necessary findings of fact, apply the law to the facts and find that summary judgment is a proportionate, more expeditious, and less expensive means to achieve a just result as mandated by the Supreme Court in *Hryniak*.

- [32] Since the contract is avoided or rescinded, Wilson is not entitled to the interest that was contractually undertaken, but rather to conventional prejudgment interest. It is unnecessary to consider remedies arising from breach of contract or failure to perform the contract honestly and in good faith.

Should there be a judgment against McNeill?

- [33] Throughout his relationship with Wilson, McNeill wore several hats. He was the president of CIG, providing consulting services to the cannabis industry. From January to August 2021, he was also the Chief Executive Officer of AGC and held himself out as such from November 10, 2020, when he provided Wilson with the short-term loan proposal. The misrepresentations to which I previously referred were made in one or both of those capacities.
- [34] Wilson submits that McNeill was unjustly enriched by the receipt of the loan which appears to have been used for living, rent and travel expenses incurred by McNeill and his colleague at CIG, Robert Zuk.
- [35] I do not agree that the loan funds received by CIG and subsequently used by McNeill created unjust enrichment. In fact, the funds were received by CIG and used for purposes which supported its operation.
- [36] Wilson submits that the corporate veil around CIG should be pierced because McNeill as its directing mind made the fraudulent misrepresentations which led to the loan and that as a result McNeill should be liable personally.
- [37] In *Mitchell v. Lewis*, 2016 ONCA 903 at para. 18, the Ontario Court of Appeal confirmed the test to be applied in determining whether the corporate veil should be pierced. It endorsed the statement by Laskin J.A. in *642947 Ontario Ltd. v. Fleischer* (2001), 56 OR (3d) 417 (ON CA), at para. 68, as follows:

Typically, the corporate veil is pierced when the company is incorporated for an illegal, fraudulent or improper purpose. But it can also be pierced if when incorporated “those in control expressly direct a wrongful thing to be done.” Sharpe J. set out a useful statement of the guiding principle in *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.*: “the courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct.” (citations omitted)

- [38] The decision to pierce the corporate veil will depend on the context of the case, but against the background that the separate legal personality of a corporation should not be lightly set aside. As noted in *Fleischer*, only exceptional cases that result in flagrant injustice warrant doing so. The corporate veil can be pierced if those in control expressly direct a wrongful act to be done.
- [39] In this case, I find as a fact that McNeill was the operating mind of CIG given his position as president and sole director. He actively solicited Wilson to loan funds to CIG. In particular, the “Short Term Loan Proposal” of November 10, 2020, for which McNeill was responsible contained false information about the AGC inventory and the corporate value of AGC was significantly overstated. Both those elements achieved their intended purpose in helping to convince Wilson that the loan should be made.
- [40] These are exceptional circumstances which justify piercing the corporate veil in order to prevent CIG from being used as a shield for fraudulent or improper conduct, and in order to place responsibility where it belongs: on McNeill.
- [41] Therefore, there will be a summary judgment against McNeill personally in the amount of \$100,000 plus prejudgment interest.

Should there be a judgment against AGC?

- [42] As noted, from January to August 2021, McNeill was CEO of AGC and he identified himself by that status when he forwarded the Short Term Loan Proposal to Wilson in November 2020.
- [43] AGC submits that it was not a party to the loan agreement and therefore that there was no privity of contract. Those facts are not disputed. The funds were loaned to and payable by CIG.
- [44] AGC further submits that McNeill was not authorized by it to negotiate loans on its behalf either directly, or through CIG, and that it had no knowledge of the solicitation of funds from Wilson. However, the general rule of agency is that a principal is bound by the acts of an agent when that agent is acting within the scope of his or her ordinary or apparent authority. There is no evidence that Wilson had knowledge of any limitation on McNeill’s authority to act on behalf of AGC or that McNeill was acting outside what appeared to be the scope of his authority. Therefore, lack of actual authorization is not relevant on this motion.
- [45] The Short Term Loan Proposal was signed by McNeill and printed on letterhead featuring AGC. It addressed a proposed loan to be used for “working capital and equipment purchases”. It discussed AGC’s development plans and a loan amount of between \$100,000 and \$400,000 with a term of four months at 15 percent interest.
- [46] After the nonpayment of the note on its due date, Wilson said he asked McNeill about the use of the funds and was advised that they had been spent in the operation of AGC.

According to McNeill, the funds were loaned to CIG to help with its costs of operating AGC, and that Wilson was advised accordingly. In his cross-examination, McNeill advised that the funds did not go directly into AGC from CIG but were used to pay expenses that were incurred for his housing, travel, and living expenses and those of his associate. As CEO of AGC, he was being paid the sum of \$6,500 per month by AGC without any additional compensation for expenses.

- [47] Wilson agreed to loan funds to CIG based on what I have found to be the representations made to him by McNeill. He did not seek security from AGC. There was no direct relationship between Wilson and AGC as regards the loan. By the earlier terms of this decision, I have identified his entitlement to seek reimbursement from CIG and McNeill. I do not accept the submission made on Wilson's behalf that he had a reasonable expectation that AGC would receive the loan proceeds and pay it back on time with interest. He was not a naïve investor, given his 30 years of business experience as a chartered professional accountant and his prior involvement in the fledgling cannabis industry. Leaving aside the misrepresentations that may have led him to advance the funds, the loan was clearly to CIG not AGC and there were no restrictions on the use of the funds. The potential to receive a one half share in AGC in lieu of payment did not require AGC's involvement given that CIG was a shareholder and could direct the transfer.
- [48] Wilson submits that AGC was unjustly enriched by the loan proceeds. However, there is no evidence that the funds were used for working capital or equipment purchases. Rather, the evidence was that the loan proceeds were used by CIG to pay for the expenses of McNeill and Mr. Zuk. As such there was a personal benefit to those two individuals in addition to any compensation received from AGC. There is no corresponding benefit to AGC that could be considered an unjust enrichment. Likewise, there was no oppressive corporate act on the part of AGC in relation to Wilson that could make the oppression remedy available.
- [49] I am satisfied that there is no genuine issue requiring a trial as to the claim against AGC in that the appropriate documents have been provided and evidence given under oath as to key evidentiary points. The lack of tracing of the loan proceeds does not negate my ability to decide the matter as a summary judgment. I conclude, based on the evidence of McNeill as to the use of the proceeds, the fact that CIG was payee of the funds, and the monthly compensation paid to McNeill by AGC that there was no unjust enrichment received by AGC. It is a proportionate, more expeditious, and less expensive means to achieve a just result to proceed by summary judgment. The action brought by Wilson against AGC is dismissed.

Costs:

- [50] The parties were encouraged to resolve the issue of costs of the motion between themselves. If they have been unable to do so, they may submit Bills of Costs and make written submissions, consisting of not more than three pages in length according to the following timetable:

- [51] The plaintiff is to serve his Bill of Costs and submissions by May 5, 2023;
- [52] The defendants are to serve their Bills of Costs and submissions by May 19, 2023;
- [53] The plaintiff is to serve his reply submissions, if any, by June 2, 2023;
- [54] All submissions are to be filed with the court, uploaded to CaseLines, and a copy sent to the judicial assistants' email at St.Catharines.SCJJA@ontario.ca by June 2, 2023.
- [55] If no submissions are received by the court by June 5, 2023, or any agreed extension, the matter of costs will be deemed to have been settled.

Justice R. B. Reid

Date: April 24, 2023