CITATION: Royal Bank of Canada v. Sunn et al, 2025 ONSC 6669
COURT FILE NO.: CV-24-00717666-00CL
DATE: 20251128

SUPERIOR COURT OF JUSTICE – ONTARIO
(COMMERCIAL LIST)

RE: ROYAL BANK OF CANADA, Plaintiff

AND:

KURT ANTHONY SUNN 122 LAIRD GENERAL PARTNER INC., ADRIAN JOHANSSON, JOHN DOE, JAME DOE, BANK OF MONTREAL, THE TORONTO DOMINION BANK, CANADIAN IMPERIAL BANK OF COMMERCE and THE BANK OF NOVA SCOTIA, Defendants

BEFORE: Justice J. Dietrich

COUNSEL: *Norman Groot,* counsel for Kurt Sunn

Catherine Francis, counsel for the Royal Bank of Canada

Anna Johnson, Stephen Jackson, counsel for 2356660 Ontario Inc.

Charles Haworth, counsel for Luxury Auto

Thomas Tong, Cindy Tong, self-represented

HEARD: November 21, 2025

REASONS FOR DECISION

Introduction

[1] There are two motions before me today. At issue in both motions is whether the Royal Bank of Canada ("**RBC**"), as a victim of fraud, is entitled to the return of funds that have been identified as proceeds of fraud and frozen, or if the recipient of the proceeds of fraud is entitled to retain the funds on the basis that they were unaware the funds were proceeds of fraud when received, and the funds were paid to discharge a debt owed to the recipient.

[2] Specifically, RBC seeks an order for recovery of the sum of $120,000 (the "**BMO Funds**") being held in 2356660 Ontario Inc.'s ("**235**") account at Bank of Montreal ("**BMO**"), bearing Account No. 2070-1998-756 (the "**235 Account**"). As well, Kurt Anthony Sunn seeks an order for the recovery of $2,669 (the "**CIBC Funds**") to RBC which are being held in Cindy and Thomas Tong's account at Canadian Imperial Bank of Commerce ("**CIBC**") bearing Account No. 03022-6475132 (the "**Tong Account**").

[3] Mr. Sunn had sought similar relief as against Luxury Auto, however, the parties have agreed to adjourn that relief, in part, to consider the impact of these reasons on that motion.

[4] As well, just 10 days prior to the hearing, 235 filed a motion seeking summary judgment. However, during the hearing, counsel for 235 withdrew that motion.

[5] For the reasons set out below, the motions by RBC and Mr. Sunn are granted.

Background

Procedural Background

[6] RBC began this action by way of a Statement of Claim issued on April 3, 2024, to trace and recover the proceeds of counterfeit cheque fraud. The counterfeit cheques were deposited into Mr. Sunn's trust account at RBC (the "**Sunn Trust Account**"). From the Sunn Trust Account, the proceeds (totalling $7,290,000) were sent to an account held by 122 Laird General Partner Inc. ("**122 Laird**") at BMO bearing Account No. 3731-1992122 (the "**122 Laird Account**").

[7] There is no dispute among the parties that on or about March 21 and 22, 2024, Mr. Adrian Johanssen deposited either fraudulent or counterfeit cheques into Mr. Sunn's Trust Account. Mr. Sunn is a lawyer. Hethen proceeded to transfer the funds from his trust account into the 122 Laird Account. 122 Laird is an entity controlled by Mr. Johannsen.

[8] However, on or about March 26 and 27, 2024, RBC became aware that the cheques were counterfeit or forged and the amount at issue was charged back to Mr. Sunn's trust account, leaving Mr. Sunn's trust account in an overdraft position.

[9] Based on various interbank communications, it was determined that funds had been moved from the 122 Laird Account to various other accounts. These included the BMO Funds and the CIBC Funds at issue. The relevant banks put a freeze on the 235 Account and the Tong Account around the same time (March 26-28, 2025).

[10] Since that time, RBC and counsel to Mr. Sunn have been working to recover the proceeds of the fraud (the "**Fraud Proceeds**").

[11] By Order dated June 17, 2024 (the "**June 17, 2024 Order**"), Justice Kimmel authorized and directed RBC, BMO, The Toronto-Dominion Bank and CIBC to disclose information required to trace the Fraud Proceeds.

[12] Pursuant to the June 17, 2024 Order, RBC traced the receipt of $120,000 of the Fraud Proceeds to the 235 Account on March 22, 2024. There is no dispute between RBC and 235 on this issue.

[13] Similarly, the undisputed evidence is that in March of 2024, $11,500 of the Fraud Proceeds were transferred from the 122 Laird Account to the Tong Account. On or about June 21, 2024, CIBC advised RBC that it held $2,669 of the $11,500 received by the Tongs.

Accepted Evidence

[14] For purposes of this motion, all parties agree that:

a. The BMO Funds and the CIBC Funds are proceeds of fraud – they are directly traceable to the forged/counterfeit cheques produced by Mr. Johannsen to Mr. Sunn and deposited into the Sunn Trust Account and then transferred to the 122 Laird Account;

b. Neither 235 or the Tongs were aware of the fraud when it occurred or that the BMO Funds or CIBC Funds were proceeds of fraud upon receipt of those funds into their accounts;

c. 235 became aware that the BMO Funds were proceeds of fraud by the end of March 2024 when it discovered that the 235 Account had been frozen. Since that time, the BMO Funds have remained frozen in the 235 Account;

d. Although the exact time frame is not clear, Mr. and Mrs. Tong are aware that the CIBC Funds are proceeds of fraud and those funds also remain frozen in the Tong Account;

e. Mr. and Mrs. Tong were owed money by Mr. Johannsen, and they understood the $11,500 they received in March of 2024, including the remaining CIBC Funds, was a partial repayment of that pre-existing loan owed to them; and

f. 235 was owed money by Rank Experiences Inc. (a company controlled by Mr. Johannsen), and Mr. Johannsen told 235 that the BMO Funds were deposited into the 235 Account to repay that pre-existing loan owed to 235.

[15] As noted above, 235 also brought a motion for summary judgment which has now been withdrawn. Outside of this motion, however, the validity of the loan claimed by 235 remains a live issue between the parties. If the validity of the loan is relevant following disposition of this motion, the parties acknowledge that issue will need to be addressed in the future.

Issues

[16] The issues to be determined today are whether RBC and Mr. Sunn are entitled to a return of the BMO Funds and CIBC Funds.

Analysis

[17] The parties agree on the relevant case law, but dispute how it is to be interpreted and applied.

[18] The starting point is a summary of the relevant law provided by Justice Penny in *City of Saskatoon v. Doe*, 2019 ONSC 6735, 7 C.L.R. (5th) 61 [***Saskatoon v. Doe***]. That case

involved a contractor for the City of Saskatoon who provided construction services and was paid by electronic transfer. Fraudulent emails claiming to be from the chief financial officer of the contractor were sent to the City purporting to change the deposit details for payment to a new bank account at TD Bank. The City changed the deposit details as instructed and subsequently deposited a payment of approximately $1 million owing to the contractor into the new (fraudulent) TD account. Within a day or two, the contractor advised the City it had not received payment. On investigation, the City learned that the new (fraudulent) TD account did not belong to the contractor. With the assistance of the bank, counsel for the City was quickly able to trace all the funds and obtained a freezing order. At the time the motion in *Saskatoon v. Doe* was argued, the majority of the money had been returned. Disputes remained over $345,000 of the stolen funds. Each of the individuals who received the funds at issue claimed to be an innocent victim of the fraud and to have paid valuable consideration for the transfer of the fraudulently stolen funds.

[19] In summarizing the relevant law, the Court in *Saskatoon v. Doe* wrote::

> [14] Cases of this kind have been dealt with under principles of constructive trust, *J. Todd Holmes v. Amlez International Inc.*, 2009 CanLii 58984 (ONSC), and money paid under mistake of fact, *Arrow ECS Norway AS v. John Doe,* 2017 ONCA 664. In both approaches, however, as I understand, if the recipient of fraudulently obtained money wishes to retain that money in priority to the defrauded party, they must show that they had no knowledge that the source of the funds was from a fraud and either paid value valuable consideration for the receipt of the fraudulent funds or innocently changed their position as a result of the receipt of the fraudulent funds. This is, for example, set out by the Court of Appeal in *Arrow, supra,* in the context of reviewing the decision of the SCC in *BMP Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15:
>
> The court accepted the test in *Simms* for recovering money paid under a mistake of fact (at p. 535): "if a person pays money to another under a mistake of fact which causes him to make the payment, he is *prima facie* entitled to recover it as money paid under mistake of fact." However, the court noted three defences under which the claim may fail: first, where: "the payer intends that the payee shall have the money at all events, whether the fact be true or false, or is deemed in law so to intend"; second, where "the payment is made for good consideration, in particular if the money is paid to discharge, and does discharge, a debt owed to the payee (or a principal on whose behalf he is authorized to receive the payment) by the payer [or] by a third party by whom he is authorized to discharge the debt"; and third, "where the payee has changed his position in good faith, or is deemed in law to have done so." [Emphasis added].

[20] 235 and Mr. and Mrs. Tong claim to fall under the second defence as noted in *B.M.P. Global Distribution Inc. v. Bank of Nova Scotia*, 2009 SCC 15, 1 S.C.R. 504 [**B.M.P.**]. Specifically, they rely on the example provided in the language above, referencing that repayment of a debt is sufficient consideration to satisfy the second defence.

[21] However, in *B.M.P.*, the Supreme Court of Canada expresses the second branch of the test in different ways. The quote above, which was noted for reference in *Arrow ECS Norway AS v. John Doe*, 2017 ONCA 664, [***Arrow***] is from paragraph 21 of the Supreme Court of Canada's Decision in *B.M.P.* which, in turn, quotes *Barclays Bank Ltd. v. W. J. Simms Son & Cooke (Southern) Ltd.*, [1979] 3 All E.R. 522 (Q.B.), at p. 541 [***Simms***].

[22] When the Supreme Court of Canada restates and applies the test in *B.M.P.*, it is framed more broadly. After noting that the first step in the *Simms* test was met, as it was common ground that the payment was made on the basis of a forged instrument the Supreme Court of Canada wrote:

> [25] I reiterate that the second step of the test involves three enquiries: (1) Did the payor intend that the payee keep the money in any event or is the payor precluded by law from raising the mistake? (2) Did the payee give consideration? (3) Did the payee change its position? [Emphasis added].

[23] Much of the discussion in *B.M.P.* surrounds the first enquiry, which is not in issue in the present case.

[24] When considering the second enquiry, the Supreme Court of Canada in *B.M.P.* wrote:

> 4.2.2.2 Consideration
>
> [61] The question whether BMP has given consideration is easily answered in light of the trial judge's finding of fact that BMP gave no value for the instrument.

[25] In *Arrow*, the Ontario Court of Appeal noted at paragraph 9 that the recipient of the proceeds of fraud had transferred the equivalent in Chinese currency to the fraudster after having received the funds in question. Accordingly, in *Arrow*, the Court found the recipient had paid valuable consideration for the proceeds and had also changed its position and, therefore, was entitled to keep the funds: at para. 22.

[26] Neither *Arrow* nor *Saskatoon v. Doe* considered the specific repayment of debt example that 235 and the Tongs rely on from *Simms*, as quoted in *B.M.P.* In reading that language closely, something more than just receipt of funds by a person who is owed money by the fraudster (or someone authorized by the fraudster to repay on their behalf) is required. The language at issue specifically references that the funds are to be paid to discharge and does discharge a debt. The additional words provide context to show that consideration must be provided by the recipient. In *Saskatoon v. Doe*, the second potential defence was characterized at paragraph 19 as that of a *bona fide* purchaser for value without notice.

[27] In the present circumstances, the BMO Funds and the CIBC Funds remain frozen. They were not used to actually discharge a debt. Neither 235 nor the Tongs provided consideration for the receipt of the funds in issue. I accept, for purposes of this motion, that both Mr. and Mrs. Tong, and 235 have previously made loans to Mr. Johansson or a company related to him, but those loans were made long ago and were not made in consideration of the receipt of the disputed funds. The simple fact that a recipient of stolen funds is owed money by the fraudster is not sufficient to meet the second defence set out in *B.M.P*. There must be something more to show consideration for the payment received.

[28] I recognize that both 235 and Mr. and Mrs. Tong had no knowledge of the fraud when the funds were received. However, as stated in *Holmes v. Amlez International Inc*., 2009 CanLII 58984 (ON SC), at paragraph 12, in describing the doctrine of knowing receipt, even if the property is received innocently, once the recipient learns of the fraud or breach of trust, whether actually or constructively, they are obligated to return the funds.

[29] Mr. and Mrs. Tong rely on *Sarhan v. Chojnacki*, 2012 ONSC 747. However, that case focused on the knowledge of the recipients of the funds in question and the basis of a constructive trust. It predates *Saskatoon v. Doe* and *Arrow* and does not consider the test set out in *B.M.P*. As noted in paragraph 2 of *Sarhan v. Chojnacki*, the parties agreed that the funds should remain with the recipient unless it was found that the recipient was complicit in the fraud. As such, I am not persuaded that the analysis in that case is helpful in the present circumstances.

[30] I am not persuaded that 235 or Mr. and Mrs. Tong have established that they provided good consideration for the BMO Funds or the CIBC Funds. Accordingly, I find that RBC and Mr. Sunn are entitled to the return of the BMO Funds and the CIBC Funds.

Disposition

[31] For the reasons set out above, I grant the motion of RBC and Mr. Sunn.

[32] As discussed at the hearing, no costs are sought as against Mr. and Mrs. Tong. RBC and 235 have agreed that costs would be payable to the successful party in the amount of $13,500. Accordingly, 235 is ordered to pay that amount to RBC within 30 days.

The Honourable Justice J. Dietrich

Date: November 28, 2025