

COURT OF APPEAL FOR ONTARIO

CITATION: Royal Bank of Canada v. Greb Tele-Data Inc., 2025 ONCA 80

DATE: 20250131

DOCKET: COA-24-CV-0785

Fairburn A.C.J.O., Copeland and Monahan JJ.A.

BETWEEN

Royal Bank of Canada

Plaintiff

and

Greb Tele-Data Inc., Robert B. Woodrow\* and Anne Woodrow

Defendants (Appellant\*)

and

Ross E. Greb\*, Greb Tele-Data Inc., Greb Tele-Data Ltd. and James Ross Greb

Third Parties (Respondent\*)

Daniel W. Veinot, for the appellant

Matthew R. Harris, for the respondent

Heard and released orally: January 29, 2025

On appeal from the judgment of Justice Aubrey D. Hilliard of the Superior Court of Justice, dated June 28, 2024, with reasons reported at 2024 ONSC 3747.

REASONS FOR DECISION

[1] This is an appeal from a judgment dismissing a motion for a declaration that, pursuant to s. 178(1)(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, a debt arising from a 2016 default judgment survived insolvency proceedings discharging the respondent from his debts.

[2] Section 178(1)(d) contains two elements, both of which must be met in order for the respondent's debt from the default judgment to survive bankruptcy: (i) the debt or liability must have arisen out of fraud, embezzlement, misappropriation, or defalcation; and (ii) the debt or liability must have arisen in the course of a fiduciary relationship.

[3] There is no factual dispute in this case that the respondent fraudulently embezzled funds from the corporation where the appellant and he were directors and shareholders. The central issue for the motion judge to decide was whether the respondent was acting in a fiduciary capacity in relation to the appellant.

[4] The record from the 2016 default judgment proceeding was used for purposes of deciding this motion. On the basis of that record, the motion judge concluded that there was no evidence before her upon which she could find that the respondent owed the appellant a fiduciary duty as a co-director or shareholder of the failed company. On the record before her, among other things, she was unable to conclude that there was any imbalance of power that would require the respondent to act with absolute loyalty toward the appellant.

[5] The appellant acknowledges that the motion judge correctly reviewed the law for purposes of the applying s. 178(1)(d) of the *Bankruptcy and Insolvency Act*, but argues that she misapplied the law to the facts. In short, the appellant contends that a fiduciary duty was owed because there was a clear power imbalance between the parties, one that was largely rooted in the appellant having been duped by the respondent in the context of a privately held, small corporation where the respondent was the majority shareholder and where the appellant implicitly trusted the respondent.

[6] Respectfully, the difficulty with this submission is that all of this evidence was before the motion judge, and she had a clear understanding of that evidence and a clear understanding of the law. On the basis of the evidence, it was open to her to arrive at the conclusion that there was no fiduciary duty owed by the respondent to the appellant either in his capacity as a director or a shareholder. In our view, the appellant has failed to establish any error in law, or any palpable and overriding error. In essence, he endeavours to reargue the exact same case that was put to the motion judge.

[7] We see no reviewable error in her reasons. The appeal is dismissed.

[8] There will no costs ordered in this matter.

“Fairburn A.C.J.O.”  
“J. Copeland J.A.”  
“P.J. Monahan J.A.”