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The rejection of a third party's evidence is not capable of establishing liability for the torts of knowing assistance or knowing receipt

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In *Quantum Dealer Financial Corporation v. Toronto Fine Cars and Leasing Inc.*, the Court of Appeal for Ontario considered the torts of knowing assistance and knowing receipt, confirming that the former “requires a heightened level of awareness by strangers to the trust relationship”, while the latter requires “knowledge of facts that would put a reasonable person on notice to inquire into the situation.”¹

The decision provides useful guidance regarding the type of evidence capable of establishing liability for knowing assistance and knowing receipt and stands for the proposition that judicial conclusions on liability cannot rely on the mere rejection of evidence.²

The Facts

The plaintiff corporations, Quantum Dealer Financial Corporation (“Quantum”) and NextGear Capital Corporation (“NextGear”), were in the business of financing used car inventories.³ One of the plaintiffs’ customers, Toronto Fine Cars and Leasing (“TFCL”), was a used car dealership based in Mississauga.⁴ TFCL was owned and operated by an individual named Diego, who was its sole officer, director and controlling shareholder.⁵

¹ *Quantum Dealer Financial Corporation v. Toronto Fine Cars and Leasing Inc.*, 2023 ONCA 256 (CanLII) (“COA”), [para. 53](#).

² COA, [para. 68](#).

³ *Quantum Dealer Financial Corporation v. Toronto Fine Cars and Leasing Inc.*, 2022 ONSC 1132 (CanLII) (“Reasons”), [para. 1](#).

⁴ Reasons, [para. 2](#).

⁵ Reasons, [para. 2](#).

In 2014, Diego and TFCL entered into lending and security agreements with the plaintiffs (the “Agreements”), pursuant to which the plaintiffs agreed to finance different portions of TFCL’s inventory.⁶

In October 2016, the plaintiffs attended TFCL’s premises and discovered that the dealership had been abandoned.⁷ None of the vehicles financed by the plaintiffs were on the lot. It was subsequently discovered that all the plaintiffs’ inventory had been sold in the United States.⁸ Although the Agreements required Diego and TFCL to hold all the monies derived from the sales in trust for the benefit of the plaintiffs, no funds were ever remitted to either company.⁹

The Action

The plaintiffs commenced an action against Diego and TFCL, alleging that they fraudulently sold the vehicles they had financed without paying for them, contrary to the Agreements. In addition to Diego and TFCL, the plaintiffs named several other defendants who appeared to have participated in or received funds from the fraudulent scheme, including:

- Diego’s wife, Claudia, who was part of the management team at TFCL, had signing authority on TFCL’s accounts and was responsible for depositing all company cheques¹⁰;
- Claudia’s sister, Jasmin, who was the sole officer, director, and shareholder of 2564523 Ontario Inc. (“256”), a numbered company which operated *Compra Y Venta* (“CYV”), a Spanish weekly classifieds newspaper in Toronto.¹¹ As detailed below, the plaintiffs alleged that Diego used CYV to conceal his fraud and defeat his creditors; and
- Jasmin’s spouse, Garnette Williams (“Williams”).¹²

The plaintiffs alleged that Claudia, Jasmin, 256 and Williams (collectively the “Third-Party Defendants”) assisted Diego and TFCL in dissipating the fraudulently procured funds through a series of overseas and non-arm’s length transactions.¹³

⁶ Reasons, [para. 3](#).

⁷ Reasons, [para. 4](#).

⁸ Reasons, [para. 4](#).

⁹ Reasons, [para. 4](#).

¹⁰ Reasons, [para. 22](#).

¹¹ Reasons, [para. 9\(c\)](#).

¹² COA, [para. 8](#).

¹³ Reasons, [para. 10](#).

The Third-Party Defendants denied assisting Diego in any way and denied ever receiving any money from him. They each claimed to have learned of Diego's wrongdoings, for the first time, when they were served the statement of claim, more than two years after the vehicles were sold.¹⁴

Newspaper Business Used to Funnel Misappropriated Funds?

According to the plaintiffs, CYV was "at the heart" of Diego's fraud. They claimed that Diego acquired CYV and solicited Jasmin to act as its putative owner and operator while, in reality, he called all the shots, using the company to funnel the funds he had acquired through the fraudulent sales of the plaintiffs' vehicles to his family members.¹⁵ By way of example, the plaintiffs pointed to the fact that, in the two years following Diego's fraudulent sale of the plaintiffs' inventory, CYV had paid \$182,233 to Claudia, while also paying for her children's private school tuition.¹⁶

The Summary Judgment Motion

Diego and TFCL did not defend the action and were quickly noted in default. The plaintiffs then brought a summary judgment motion against the Third-Party Defendants.¹⁷

The motion judge found that Diego, Claudia and Jasmin "formulated a plan" to use CYV "as a vehicle" to "launder and distribute the proceeds" from the sale of the plaintiffs' inventory.¹⁸ Diego was found to be "the architect of the scheme" and CYV's "true owner". In support of these findings, the motion judge pointed to evidence which indicated that "CYV could not sustain the financial outlays it was making without an external source of funding above and beyond the revenue generated by advertising."¹⁹ According to the motion judge, the Third-Party Defendants were "the obvious beneficiaries" of the scheme, "as tens of thousands of dollars a month were filtered through CYV" to pay for their families.²⁰

The motion judge concluded that the Third-Party Defendants were liable for the tort of knowing assistance, as they had knowledge that it was Diego's

¹⁴ COA, [para. 32](#).

¹⁵ Reasons, [para. 10](#).

¹⁶ Reasons, [para. 10](#).

¹⁷ COA, [para. 33](#).

¹⁸ Reasons, [para. 151](#).

¹⁹ Reasons, [para. 153](#).

²⁰ Reasons, [para. 153](#).

fraudulently obtained funds, and not CYV's legitimate advertising profits, which were funding their families' private school tuitions, grocery, gas and other household expenses.²¹ He also found that they were liable for the tort of knowing receipt, as a reasonable person in the same position as the Third Party Defendants would have inquired into and known that Diego and TFCL had engaged in wrongdoing, and that the plaintiffs' trust property was being misapplied and diverted to them via CYV.²²

The Appeal

The Third-Party Defendants appealed the motion judge's findings, submitting that he erred in drawing unwarranted inferences from the evidence, which resulted in him making flawed findings of liability.²³ Their main submission was that the motion judge erroneously focused on "the questionable expenditure of funds, rather than on whether the funds could be traced back to Diego's breach of fiduciary duty."²⁴ They claimed that there was no direct evidence before the motion judge to prove that they were in receipt of the funds misappropriated by Diego, or that any of them were aware of his dishonest dealings with the plaintiffs.²⁵ The Court of Appeal agreed, finding that the motion judge drew unwarranted inferences regarding the Third-Party Defendants' alleged knowledge of and participation in Diego's wrongdoing based on his mere rejection of their evidence.²⁶

With respect to the outpouring of cash from CYV, the Court of Appeal noted that the motion judge's rejection of the Third Party Defendants' evidence was not proof that other funds had been injected into the business or that those funds had come from the fraudulent sale.²⁷ According to the Court of Appeal, the motion judge's erroneous method of reasoning resulted in him making positive findings on the elements of knowing receipt and knowing assistance based on mere disbelief.²⁸ Although there were clear "irregularities" in the manner in which the Third-Party Defendants dealt with their finances, that fact, on its own, did not amount to proof that the funds could be traced to Diego's wrongdoing.²⁹

²¹ Reasons, [para. 154](#).

²² Reasons, [para. 156](#).

²³ COA, [para. 2](#).

²⁴ COA, [para. 3](#).

²⁵ COA, [para. 3](#).

²⁶ COA, [para. 3](#).

²⁷ COA, [para. 65](#).

²⁸ COA, [para. 69](#).

²⁹ COA, [para. 78](#).

Key Takeaways

- A judge cannot make positive findings on the elements of knowing assistance and/or knowing receipt based on the mere disbelief of a witness' evidence.³⁰
- Conclusions on liability cannot be grounded on the mere rejection of evidence. More is required, including independent evidence to support the conclusion that the rejected evidence was fabricated or concocted for the purpose of avoiding liability.³¹
- Financial “irregularities” and “suspicious financial moves”, on their own, are not capable of establishing liability for the torts of knowing assistance and/or knowing receipt.³²
- In assessing liability for knowing assistance and/or knowing receipt, it is an error for a judge to consider the evidence against a group of defendants as a “package.”³³

³⁰ COA, [para. 69.](#)

³¹ COA, [para. 68.](#)

³² COA, [para. 46.](#)

³³ COA, [para. 45.](#)