

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Anishnawbe Mushkiki Inc, Plaintiff
v.
Corrina Gagnon, Tanya Mainville, Morris Wapoose, Shelly Knott
Claudia Legarde, Anthony Shapwaykeesic, Genevieve Desmoulin, Zeatha Arcon,
Jeffrey Busniuk and Grant Thornton, Defendant(s)

HEARD: October 20, 2020

BEFORE: Fitzpatrick J.

COUNSEL: *Ms. M. Macdonald*, counsel for the Plaintiff
M. Wapoose, In Person

Endorsement on Motion for Partial Summary Judgment and Mareva Injunction

[1] This is a motion by the Plaintiff Anishnawbe Mushkiki Inc. (hereinafter referred to as “Mushkiki”) seeking partial summary judgment against the Defendant Morris Wapoose. This motion date was scheduled on August 18, 2020 and came as the result of ongoing hearings arising from a Mareva Injunction motion brought by Mushkiki. I granted the injunction against Mr. Wapoose on July 10, 2020. It was subsequently modified on July 17, 2020, August 6, 2020, and August 18, 2020. The relief sought in the motion materials filed by Mushkiki in support of the Mareva Injunction was also before the Court on this motion.

Background

[2] The evidence on behalf of Mushkiki for the motion for partial summary judgment was provided through an affidavit of Michael Hardy, sworn August 13, 2020. Mr. Hardy is the Executive Director of Mushkiki. Mr. Hardy also prepared an affidavit in support of the motion

for the Mareva Injunction. Mr. Wapoose did not file any responding materials on either motion. On consent, an email Mr. Wapoose forwarded to the court on September 25, 2020, was made an exhibit on this hearing. The email stated Mr. Wapoose was unable to obtain counsel in respect of this motion. It also discussed the submissions made on his behalf in a criminal matter which will be discussed below.

[3] Mushkiki is an Aboriginal Health Access Centre located in the City of Thunder Bay. It is a not-for-profit charitable organization and provides primary health care, integrated chronic disease prevention, social support services, and overall wellness programs to over 6,000 clients in the Thunder Bay region.

[4] Mushkiki is overseen by a voluntary board of directors. Mr. Wapoose held the position of Treasurer on the Mushkiki board.

[5] In 2014, Mushkiki retained an independent forensic auditor to investigate allegations of fraud made against several of its board members and employees, including Mr. Wapoose. A report was prepared. The report found that between April 1, 2012, and March 31, 2014, several senior employees and board members of Mushkiki, including Mr. Wapoose, engaged in activities to the detriment of Mushkiki and received at least \$792,372.27 in the form of fraudulent payments characterized as, among other things, “board participation wages.” Also discovered were payments of gift cards and credit card accounts receivable in excess of the board members’ entitlements and contrary to the by-laws, letters patent, policies, and provincial regulations for not-for-profit organizations, and expressly contrary to the Mushkiki by-laws and letters patent.

[6] In 2016, Mushkiki sued a number of individuals in the within action, claiming they were part of a scheme between 2012 to 2014 to defraud Mushkiki of approximately \$790,000.00. The action has now been dismissed against the defendants Jeffery Busniuk and Grant Thorton. Tanya Mainville, Corrina Gagnon, Anthony Shapwaykeesic, and Genevieve Desmoulin have all been noted in default. No discoveries have been held in respect of the other remaining defendants and no trial date has been set.

[7] Mr. Wapoose was charged with fraud over \$5,000.00. On March 20, 2020, he plead guilty to this charge. He has had several appearances in the Ontario Superior Court of Justice over the summer of 2020. He is to be sentenced on November 16, 2020.

[8] In submissions made on his behalf to the Superior Court of Justice, and as part of the agreed statement of facts supporting his plea of guilt, Mr. Wapoose admitted to having defrauded Mushkiki of anywhere between \$59,091.70 and \$76,677.06.

[9] In June 2020, Mr. Wapoose won an Ontario Lottery and Gaming Corporation prize in the amount of \$100,014.00. It was presented to him on June 30, 2020. Mushkiki became aware of this win through public media reports. Mushkiki then moved to obtain the Mareva Injunction. This was granted by me on July 10, 2020. By the time the order was served on local banks, only \$43,000.00 remained in accounts owned by Mr. Wapoose. Those funds were paid to the accountant of the Superior Court of Justice pursuant to my order. The injunction order remains in place only in respect of accounts held by Mr. Wapoose at the Royal Bank of Canada. Mr. Wapoose does his day to day banking with Canadian Imperial Bank of Commerce. Mr. Wapoose is unemployed. His only source of income is ODSP.

The Law

[10] Summary judgment may be granted where there is no genuine issue for trial in a matter. The leading case on summary judgments is the decision of the Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87. The case holds that there will be no genuine issue for trial if the summary judgment process can provide the motions judge “with the evidence required to fairly adjudicate the dispute [in] a timely, affordable and proportionate procedure”: *Hryniak*, at para. 66. The motions judge should look first to the evidence already before the court, but they also have discretionary fact-finding powers which may be used “if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality”: *ibid.* In *Butera v. Chown, Cairns LLP*, 2017 ONCA 783, 137 O.R. (3d) 561, at paras. 28-29, the Ontario Court of Appeal directed a judge on a motion for partial summary judgment to consider if a determination on a summary judgment motion risks duplicative or inconsistent findings of fact at trial, and whether or not granting partial summary judgment is advisable in the context of the litigation as a whole. The Court determined that partial summary judgment is to be considered in the rare case where issues can be readily bifurcated from those in the main action: *ibid.*, at para. 34.

Analysis and Findings

[11] Mr. Wapoose has pleaded guilty to defrauding Mushkiki. In my view, this is an admission which entitles Mushkiki to an award of partial summary judgment in a civil context for amounts he admits he has improperly taken from the organization. I note from his submissions before me that he does not admit in full the amount claimed by Mushkiki on this

motion, \$82,136.14. He has not filed any evidence to the contrary. In the criminal court and during submissions before me, he has admitted to having defrauded Mushkiki of funds in a range of amounts, the highest of which, \$79,000.00, comes close to the amount claimed on this motion.

[12] I accept the affidavit evidence of Mr. Hardy which sets out the findings of the forensic auditor in respect of Mr. Wapoose's fraud. In particular, I accept that Mushkiki has satisfied the court on this motion that Mr. Wapoose fraudulently misappropriated the following amounts from Mushkiki:

	Description	Payment
1.	"Participation" cheques outside of payroll (April 1, 2012 – March 31, 2013)	\$1,299.40
2.	"Participation" cheques outside of payroll (April 1, 2013 – March 31, 2014)	\$57,792.30
3.	Gift Cards	\$500.00
		\$59,591.70
4.	Travel Reimbursements (April 1, 2012 – March 31, 2013)	\$5,451.92
5.	Travel Reimbursements (April 1, 2013 – March 31, 2014)	\$12,133.44
6.	Vehicle Rentals	\$4,959.14
	Total	\$82,136.14

[13] I am satisfied from the affidavit evidence of Mr. Hardy that Mr. Wapoose was not entitled to these funds as the result of anything he did in his capacity as Treasurer for the organization. I accept Mr. Hardy's evidence as to the circumstances under which Mr. Wapoose took these funds, mostly involving unauthorized trips to casinos in Minnesota. Further, the fact

that Mr. Wapoose held a position of trust with Mushkiki makes his actions all the more concerning.

[14] The findings on this motion have no impact whatsoever on the other defendants in this matter. These amounts are discrete and unique to Mr. Wapoose. They can be readily bifurcated from any other issues Mushkiki may still pursue against Mr. Wapoose or the other defendants in the matter. Here we have a person who has pleaded guilty to a serious breach of trust offence against an Indigenous not-for-profit agency whose goal it is to assist with health care and wellness of Indigenous people. The plea is properly relied upon in a civil action and, in addition to other compelling evidence before this Court, contains all the necessary aspects to support judgment for civil fraud. In my view, granting partial summary judgment in these circumstances is the proportionate, least expensive, and expeditious way to achieve a just result in this matter.

[15] I therefore grant partial summary judgment against Morris Wapoose in favour of Anishnawbe Mushkiki Inc. in the amount of \$82,136.14.

The Mareva Injunction Motion

[16] In my view, the granting of partial summary judgment renders moot any need for the injunction to continue in respect of the Royal Bank of Canada. The Mareva Injunction order is hereby lifted. In any event, it expired by its own terms on October 20, 2020.

Costs

[17] In my view, Mushkiki is entitled to costs on a partial indemnity basis for both motions. I have reviewed the bill of costs submitted by the plaintiffs for both motions. I am only prepared to

allow costs in respect of one counsel. This is no reflection on the work done by both counsel on behalf of the plaintiff. Rather, it is a recognition that the reasonable expectation of a defendant, in a case that was relatively straightforward because of the plea of guilt, would be to pay costs for only one opposing counsel.

[18] The efforts of plaintiff's counsel resulted in funds being seized before judgment that are now in court. These funds will be potentially subject to claims of other judgment creditors of Mr. Wapoose. The efforts of the plaintiff in securing these funds is to be recognized by the granting of a first charge against the monies paid into court to a value reflecting partial indemnity costs to achieve that result. I fix costs payable by Mr. Wapoose to Mushkiki for the Mareva Injunction to be \$7,500.00 inclusive of disbursements. I find that Mushkiki has a first charge against funds paid into court on account of this action in the amount of \$7,500.00. Accordingly, I direct as part of the final order arising from both motions that the Accountant of the Superior Court of Justice pay the sum of \$7,500.00 forthwith to Anishnawbe Mushkiki Inc.. The balance of funds remaining in court following this payment of \$7,500.00 to Mushkiki on account of this action, including any interest to date, are to be paid forthwith to the sheriff for the Northwest Region to be dealt with in accordance with the *Creditors Relief Act, 2010*, S.O. 2010, c. 16, Sched. 4. The sheriff shall treat these funds as if they were received as the result of a garnishment of a bank account owned by Mr. Wapoose.

[19] Further, I award costs to Anishnawbe Mushkiki Inc. payable forthwith by Morris Wapoose in respect of its motion for partial summary judgment in the amount of \$5,000.00 inclusive of disbursements.

[20] Mushkiki is at liberty to issue a writ of execution forthwith in respect of this judgment, including the award of costs for the motion for partial summary judgment. The execution shall not include the funds received for the Mareva Injunction costs, which are to be paid directly by the Accountant to Mushkiki. Further, I order that the writ of execution be deemed to have been issued as of the date of this endorsement, naming the sheriff of Thunder Bay as a debtor such that they can levy execution against the funds which were seized further to the Mareva Injunction, subject to the rights of any other creditors of Mr. Wapoose who file or who have filed executions against him in the thirty day period commencing on the date of this judgment.

[21] Counsel for Mushkiki shall prepare the order necessary to reflect this endorsement and file same electronically with the administrative staff for the Superior Court at Thunder Bay. Approval as to form and content by Mr. Wapoose is dispensed with. If there are any difficulties, a chamber appointment can be obtained.



Bruce Fitzpatrick J.

The Hon. Mr. Justice Fitzpatrick

DATE: October 26, 2020

Anishnawbe Mushkiki Inc. v. Corrina Gagnon et al.,
ONSC 2020 6500
COURT FILE NO.: CV-16-0159
DATE: 2020-10-26

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COUNSEL: *Ms. M. Macdonald*, counsel for the
Plaintiff

M. Wapoose, In person

**ENDORSEMENT ON MOTION FOR
PARTIAL SUMMARY JUDGMENT AND
MAREVA INJUNCTION**

Fitzpatrick J.

DATE: October 26, 2020

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