

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
DEBT AID CONSULTING INC.)
)
Plaintiff) Filipe Mendes, Counsel for the Plaintiff
)
– and –)
)
FINANCIAL RESCUE LLC)
)
Defendant) Darryl Singer and Nadia Condotta, Counsel
) for the Defendant
)
)
) **HEARD:** January 24, 2023
)

2023 ONSC 3470 (CanLII)

GIBSON J.

REASONS FOR JUDGMENT

Overview

[1] The Plaintiff Debt Aid Consulting Inc. (“Debt Aid”) is a debt relief marketing company licenced to provide services in Ontario. The Defendant Financial Rescue LLC (“Financial Rescue”) is a limited liability marketing company specializing in debt relief, with its head office located at 416 S Hillview Drive, Milpitas, California, in the United States of America. The two are competitors in the Ontario marketplace whose principals, Ben Lou and Rodolfo Mercado, have a history of deep personal animosity.

[2] By its Amended Statement of Claim dated May 16, 2019, the Plaintiff seeks a declaration that the Defendant is not entitled to conduct business nor advertise in Canada; a declaration that the Defendant intentionally misled Canadian consumers by advertising to them despite knowing that it was not licenced to offer its services within the jurisdiction; damages of \$100,000 to the

Plaintiff for business and revenue that it lost to the Defendant by virtue of its conduct and/or tortious interference with the Plaintiff's business; punitive, special and/or exemplary damages; pre- and post-judgment interest; and costs on a solicitor and client basis.

[3] The Plaintiff and the Defendant both cater and market directly to the Filipino Diaspora. The Plaintiff contends that the Defendant should pay damages to it as a result of the Defendant unfairly competing in this jurisdiction and for the same ethnic target market audience and falsely claiming that it is a resident corporation of Ontario and Canada.

[4] The Defendant resists the Plaintiff's claims. It says that it is a legitimate competitor of the Plaintiff in the Canadian market, and that operating a competing business does not amount to tortious interference. It contends that the Plaintiff is attempting to use the Court to obtain a tactical competitive business advantage that it has not been able to obtain in the ordinary commercial marketplace. It seeks the dismissal of the action with costs on a substantial indemnity basis.

[5] This was a Rule 76 Simplified Procedure trial in which the evidence-in-chief of the witnesses was provided by affidavit, and they were then subject to cross-examination by counsel for the opposing party.

Evidence at trial

[6] Two witnesses gave evidence for the Plaintiff: Benedicto Lou, who is the Director of Debt Aid, and Maria Monzon, who is employed as an Office Manager with Gem Debt Law ("Gem"), for which Financial Rescue provides marketing services. Two witnesses gave evidence for Financial Rescue: Rodolfo Mercado, who is the President and CEO of Financial Rescue; and George Doufexis, who is the Director of Operations at Gem.

[7] Benedicto Lou was previously an employee of the Defendant Financial Rescue, with which he parted company on September 29, 2011. He started up Debt Aid Consulting LLC in the United States in November 2011, then incorporated the Plaintiff Debt Aid Consulting Inc. on January 16, 2012 in Ontario. About a month after the Plaintiff began to operate in Ontario, he noticed advertisements running on The Filipino Channel ("TFC"), a 24-hour global subscription

television network owned and operated by ABS-CBN and based in Daly City, California. He subsequently complained to the Financial Consumer Agency of Canada that Financial Rescue was operating in Canada without being incorporated or otherwise licenced here. He subsequently also noticed advertisements for Financial Rescue running on GMA Pinoy TV (“GMA”), another television network that broadcasts to the Filipino community in the USA, Canada, the United Kingdom and Europe. He contends that the increase in the number of the Defendant’s advertisements running on TFC and GMA began to affect the Plaintiff’s revenue and resulted in Debt Aid having to incur additional costs in advertising to counter Financial Rescue’s advertisements.

[8] On cross-examination, he acknowledged that Debt Aid is a marketing company, which does not actually provide debt settlement services to clients. Rather, it refers clients to debt relief service providers. He acknowledged that he has never made a complaint to the broadcast regulator, the Canadian Radio-television and Telecommunications Commission (“CRTC”) about Financial Rescue’s advertising, nor does he remember making any complaint to the Competition Bureau of Canada.

[9] Maria Monzon is currently employed by Gem Debt Law as an Office Manager. Gem is licenced to provide debt repayment services in Ontario. Gem works in connection with the Defendant Financial Rescue, which operates out of California and performs marketing services for Gem. Once a potential client contacts Financial Rescue, the client provides all pertinent information to Financial Rescue, who then uploads the information to a database, and Financial Rescue notifies Gem by email. If the file submitted is complete a client agreement with Gem is created and sent to the client for their signature. Ms. Monzon noted that clients are sometimes confused by being contacted by Gem, when they were expecting Financial Rescue. She explains to them that Financial Rescue is a marketing firm who has referred the file to Gem. Some clients refuse to move forward on their debt settlement, and others continue with the services of Gem.

[10] Rodolfo Mercado is the President and CEO of the Defendant corporation Financial Rescue, which is based in Santa Clara, California, United States of America. Financial Rescue offers marketing services for businesses that provide debt relief services in Ontario. One such

business that provides debt relief services is Gem. Mr. Mercado contends that while Financial Rescue is licenced to provide marketing for debt relief services in California and in other jurisdictions, it does not require a licence to offer those services in Ontario, and only operates as a marketing vehicle for third-party debt relief services. Mr. Mercado says that Mr. Lou was formerly employed by Financial Rescue and that he was fired with cause, before going on to open Debt Aid. They are both of Filipino background and devote a significant part of their businesses to serve the Filipino Community. Financial Rescue does not cold-call customers, but rather markets through television, newspaper and radio ads, and clients contact them as a result of those ads. Financial Rescue advertises mainly on two platforms, TFC and GMA. He insists that no regulatory licence is required to provide these marketing services in Ontario, and that it is not necessary to have a Canadian corporation to operate in Canada. Since 2019, Financial Rescue provides a disclaimer in its ads advising that not all services are available in all Canadian provinces. He denies that Financial Rescue has intentionally sought to interfere in the business relations of Debt Aid.

[11] On cross-examination, he insisted that Financial Rescue does not provide legal advice, or debt reduction advice.

[12] George Doufexis is the Director of Operations at Gem Debt Law. He is not a lawyer. Scott Cook is the principal lawyer at Gem. Mr. Doufexis's evidence was that in Ontario, debt settlement services can be legally operated under a licensee of the Law Society of Ontario, or registered under the *Collection and Debt Settlement Services Act, 1990*, administered by the Ontario Ministry of Public and Business Service Delivery, if not operating under a licensee of the Law Society of Ontario. He contends that there is no licence requirement for marketing debt settlement services in Ontario. Financial Rescue entered into a contract with Gem in 2019 to provide marketing services to Gem. Gem had bought a book of business from Rabideau Debt Law, who had an arrangement with Debt Aid. It had been made clear to Gem from both parties, Lou and Mercado, that given their animosity, it would not be feasible to work with both at the same time, and that Gem would have to choose only one. Gem chose Financial Rescue.

[13] On cross-examination, he insisted that screening and enrollment of potential clients were not the same thing.

Positions of the Parties

Position of the Plaintiff Debt Aid

[14] The position of the Plaintiff Debt Aid is that the liability of the Defendant Financial Rescue is premised on a breach of statute, namely, the *Collection and Debt Settlement Services Act*, R.S.O. 1990, c. C.14 (“*CDSSA*”); the *Business Names Act*, R.S.O. c. B.17; and the *Competition Act*, R.S.C. 1985, c. C-34. It contends that, first, it is clear on the evidence that Financial Rescue is not simply a marketing company, and that it fits the definition of a “collection agency” under s.1 of the *CDSSA*: its ads promote itself, and it is unclear what product it is selling. Section 4 of the *CDSSA* provides that no person shall carry on the business of a collection agency unless registered under the Act. The consequence, it submits, is that Financial Rescue is in substance carrying on business as a collection agency, in direct contravention of the rules, and the result for the Plaintiff is that it is competing against an agency that does not follow the rules, thus requiring it to do more work and spend more on advertising. Second, it submits, Financial Rescue meets the definition of a “debt settlement service”, because a fee is paid by the debtor to Gem Debt Law, and Gem pays a portion of money to Financial Rescue.

[15] It also submits that Financial Rescue is not in compliance with the *Business Names Act*, as it has not registered its name.

[16] Debt Aid also contends that Financial Rescue is engaging in deceptive marketing practices contrary to s.74.01 of the *Competition Act*, and engaging in misrepresentations to the public contrary to s.74.011(1)-(5).

[17] Debt Aid submits that it incurred additional costs in advertising from 2012-2014 when Financial Rescue first operated in Ontario, and that its advertising costs increased again in 2019 when the Defendant re-entered the market. It contends that in totality for the periods 2012-2014, and 2019-2020, its costs increased by \$30,000-\$40,000 per month. In this regard, it acknowledges, its damages would be limited by its pleadings to \$100,000. It contends that it should be entitled to the relief of a declaration on the basis that the Defendant was not entitled to conduct business in Ontario, and that the Defendant has misled the public. Further, it suggests that the Court could

award punitive damages.

Position of the Defendant Financial Rescue

[18] The position of the Defendant Financial Rescue is that this matter is simply about competition in the marketplace, and that Mr. Lou, having not been able to successfully compete, seeks to gain a competitive advantage through this litigation. It says that it is also a marketing company, exactly the same as the Plaintiff, and that there is no requirement that it be an Ontario corporation in order for it to carry on its activities here. It contends that the Plaintiff has not led any evidence to substantiate tortious interference with Debt Aid's business: there is no evidence of interference by illegal or unlawful means, and there is no proof of any economic loss by the Plaintiff.

Issues

[19] The issues in this matter are:

1. Liability, and in particular, whether the Defendant is in breach of the *Collection and Debt Settlement Services Act*, the *Business Names Act*, or the *Competition Act*; and
2. Has the Plaintiff demonstrated that it should be entitled to damages as a result of the Plaintiff unfairly competing in Ontario for the same ethnic target audience?

Law

[20] Paragraph 1(1) of the *CDSSA* provides that:

“collection agency” means,

- (a) a person, other than a collector, who obtains or arranges for payment of money owing to another person or who holds oneself out to the public as providing such a service,
- (b) any person who sells or offers to sell forms or letters represented to be a collection system or scheme,

(c) a person, other than a collector, who provides debt settlement services, or

(d) a person who purchases debts that are in arrears and collects them; (“agence de recouvrement”)

“debt settlement services” means,

offering or undertaking to act for a debtor in arrangements or negotiations with the debtor’s creditors or receiving money from a debtor for distribution to the debtor’s creditors, where the services are provided in consideration of a fee, commission or other remuneration that is payable by the debtor; (“services de règlement de dette”)

[21] Paragraph 74.01(1)(a) of the *Competition Act* provides that a person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatsoever, makes a representation to the public that is false or misleading in a material respect.

[22] Subsection 74.011(1) of the *Competition Act* provides:

74.011 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent a false or misleading representation in the sender information or subject matter information of an electronic message.

(2) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, sends or causes to be sent in an electronic message a representation that is false or misleading in a material respect.

(3) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, any business interest or the supply or use of a product, makes or causes to be made a false or misleading representation in a locator.

(4) In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the person who made the representation engaged in the reviewable conduct.

[23] The three essential elements of the tort of intentional interference with economic relations are: first, the defendant must have intended to injure the plaintiff's economic interests; secondly, the interference must have been by illegal or unlawful means; and thirdly, the plaintiff must have suffered economic harm or loss as a result: *Grand Financial Management Inc. v. Solemio Transportation Inc.*, 2016 ONCA 175 at para. 62, citing *Alleslev-Krofchak v. Valcom Ltd.*, 2010 ONCA 557.

Analysis

[24] In this case, a finding of liability of the Defendant is premised on a breach of statute or a finding of intentional interference with economic relations. The burden is on the Plaintiff to demonstrate this to the civil standard of proof on the balance of probabilities. In my view, it has failed to do so.

[25] The Plaintiff submits that the evidence establishes that the Defendant fits within the definition of a "collection agency" under either s. 1(1)(a) of the *CDSSA* (as holding itself out to the public as someone who provides a service of obtaining or arranging for payment of money owing to another person) or (b) (any person who sells or offers to sell forms or letters represented to be a collection system or scheme), or possibly (c) (as providing debt settlement services), because its ads promote itself.

[26] Section 2.1 of the *CDSSA*, an anti-avoidance provision, declares that in determining whether this Act applies to an entity or a transaction, a court or other tribunal shall consider the real substance of the entity or transaction and in doing so may disregard the outward form.

[27] In my view, on a common-sense appraisal, and having due regard to the anti-avoidance provision, the evidence quite simply fails to establish any of these three. The Defendant provides marketing services for debt settlement agencies such as Gem (as does the Plaintiff to other customers). It does not represent itself to the public as providing debt settlement services. It does not hold itself out to the public as someone who provides a service of obtaining or arranging for payment of money owing to another person. It is not administering a plan and does not give debt settlement advice. It is paid by Gem for attracting clients to Gem, but there is nothing illegal or

inappropriate about doing so. This does not transform it into a debt settlement service at “the front end”, with Gem providing services at “the back end,” as the Plaintiff contends.

[28] I find that the activities of the Defendant do not cause it to fall within the definitions of subparagraphs 1(1)(a), (b) or (c) of the *CDSSA*, as constituting a collection agency or a debt settlement service. It is not therefore caught by the provision at s.11 of the *CDSSA*, which provides that no corporation shall carry on business in Ontario as a collection agency if it is not incorporated by or under an Act of Ontario, Canada or another province or territory of Canada, or by s.4, which provides that no person shall carry on the business of a collection agency unless the person is registered by the Registrar under the Act.

[29] The *Business Names Act* provides a regulatory scheme for dealing with contraventions of that Act, including an offence provision at s.10(1). The Defendant notes that the Plaintiff made a complaint to the Registrar under that Act, but no prosecution under s.10(1) has been forthcoming. There is nothing in the *Business Names Act* that provides for a plaintiff to sue for civil damages.

[30] The Plaintiff asserts that Financial Rescue has engaged in deceptive marketing practices caught by Part VII.1 of the *Competition Act*. I do not find that the Defendant is engaging in false or misleading representations to the public in a material respect contrary to ss. 74.01 or 74.011 of the *Competition Act*, so as to engage in reviewable conduct, or to ground a civil suit for damages. It does not represent itself to be a debt settlement service. It provides a disclaimer on its advertisements. It explains to potential clients when contacted the nature of the relationship between itself and debt settlement services such as Gem. It does not mislead the public in a material respect.

[31] The Plaintiff complains that it has had to incur additional costs in advertising because of the presence of the Defendant in the marketplace, primarily targeting the same ethnic group. That may be so, but this is a function of competition in the marketplace, not illegal conduct by the Defendant because of the alleged grounds that the Defendant was not entitled to conduct business in Ontario, or that it has misled the public.

[32] There is insufficient justification present here for the court’s intervention in the dynamic of the marketplace. “Courts should be reluctant to intervene in the competitive market-place unless the advertisements are clearly unfair”: *Purolator Courier Ltd. v. United Parcel Service Canada Ltd.*, 1995 CanLii 7313 (ON SC) at para 67.

[33] The Plaintiff has failed to establish any of the three essential elements of the tort of intentional interference with economic relations: that the Defendant intended to injure the plaintiff’s economic interests, that the interference has been by illegal or unlawful means, or that the Plaintiff has suffered economic harm or loss as a result. With regard to the third factor in particular, the Plaintiff has not provided any expert evidence or any proof at all about economic loss attributable to the Defendant beyond a broad-brush assertion that it had to spend more on advertising, nor has it established a quantum for any asserted loss.

[34] As the Plaintiff submits, in this case liability is premised on breaches of statute. Debt Aid has not established that Financial Rescue has contravened the *CDSSA* or the *Competition Act*. Neither has it established that Financial Rescue wrongfully interfered with Debt Aid’s economic relations. It has not established entitlement to the two declarations that it seeks.

[35] No basis has therefore been established to warrant the awarding of damages to the Plaintiff.

[36] Consequently, the action will be dismissed.

Order

[37] The action is dismissed with costs.

Costs

[38] The parties are encouraged to agree upon appropriate costs. If the parties are not able to agree on costs, they may make brief written submissions to me (maximum three pages double-spaced, plus a bill of costs) by email to my judicial assistant at mona.goodwin@ontario.ca and to

Kitchener.SCJJA@ontario.ca. The Defendant may have 14 days from the release of this decision to provide its submissions, with a copy to the Plaintiff; the Plaintiff a further 14 days to respond; and the Defendant a further 7 days for a reply, if any. If no submissions are received within this timeframe, the parties will be deemed to have settled the issue of costs as between themselves. If I have not received any response or reply submissions within the specified timeframes after the Defendant's initial submissions, I will consider that the parties do not wish to make any further submissions, and will decide on the basis of the material that I have received.

M.R. Gibson J.

Date: June 8, 2023

CITATION: Debt Aid Consulting Inc. v. Financial Rescue LLC, 2023 ONSC 3470
COURT FILE NO.: CV-19-598
DATE: 2023/06/08

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

DEBT AID CONSULTING INC.

– and –

FINANCIAL RESCUE LLC

REASONS FOR JUDGMENT

M.R. Gibson J.

Released: June 8, 2023