

CITATION: A.J. Lanzarotta Fruits & Vegetables Ltd. v. United Farmers et al.,
2024 ONSC 1780
COURT FILE NO.: CV-21-00001073-0000
DATE: 2024 03 25

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

A.J. LANZAROTTA WHOLESAL
FRUITS & VEGETABLES LTD.

Plaintiff

- and -

UNITED FARMERS, 2773125
ONTARIO INC., 2773125 ONTARIO
INC. o/a UNITED FARMERS, JANET
MICHELLE BRUNTON and WAYNE
D. KING

Defendants

) T. H. McLean, for the Plaintiff

) No one appearing for the Defendants

) **HEARD:** January 23, 2024

ENDORSEMENT

DALEY J.

Introduction:

[1] The defendants' statement of defence having been struck out, this matter initially proceeded as a motion for judgment pursuant to rule 19.01 (2) of the *Rules of Civil Procedure*. However, Agarwal J. determined that the matter could not properly proceed as a motion for judgment as such a proceeding under that rule followed a noting in default and not in circumstances where the defendant's statement of defence has been struck out, as is the case here. It was therefore ordered that this matter proceed as an uncontested trial with supporting evidence in respect of both liability and damages.

[2] The plaintiff's statement of claim seeks a variety of relief and is essentially based on an action grounded in fraudulent misrepresentation and deceit related to the defendants' fraudulent conduct in obtaining large quantities of food products..

[3] A *Mareva* injunction was granted by the court which remained in full force and effect up to this trial.

[4] The plaintiff seeks judgment and damages against the defendants, jointly and severally, for the stated fair market value of the food products sold to the defendants in the amount of \$1,766,349.71. It is alleged that credit was granted by the plaintiff to the defendants to allow them to purchase the plaintiff's food

products from it with payment to follow under the terms of the credit agreement reached between these parties.

[5] The issues to be addressed based on the evidence adduced are liability, damages, and whether an order pursuant to section 178 (d) of the *Bankruptcy and Insolvency Act*, RSC, 1985, C. B-3 should be granted. The plaintiff also seeks punitive damages from the defendants for their fraud, deceit and alleged egregious conduct.

[6] In considering the damages claimed, it must be determined which is the appropriate level of compensation for the plaintiff's claim – the fair market value of the food wrongly taken by the defendants inclusive of lost profit, or the cost that the plaintiff incurred in acquiring the food that was received by the defendants, exclusive of lost profit. The plaintiff also seeks several heads of consequential damages alleged to be causally connected to the defendants' fraudulent conduct.

Evidentiary Record:

[7] This uncontested trial proceeded in person. However, substantial affidavit evidence involving thousands of pages of accounting records and financial history was adduced in evidence. Two affidavits by Tina Lanzarotta ("Tina"), office manager of the plaintiff sworn December 7 and 8, 2023 were filed in

evidence and this witness testified in the trial that her affidavit evidence was truthful at the time the affidavits were executed and remains truthful without any revisions up to the time of trial.

[8] Further a Loss Quantification Report dated November 10, 2023, prepared by Mark Vandertoorn CA, was also filed in evidence along with his supporting affidavit sworn on November 16, 2023. This witness appeared at the trial via Zoom from his offices in Calgary, Alberta.

[9] A qualification *voir dire* was held and based on the evidence of the witness Mark Vandertoorn and my review of his curriculum vitae and credentials. I was satisfied that he be qualified as an accounting expert to offer an opinion with regard to the quantification of the losses sustained by the plaintiff.

[10] The witness Vandertoorn did not offer any evidence as to his opinion on the proper quantification of the plaintiff's loss beyond that outlined in his expert report. He confirmed that the report was true and accurate at the time it was prepared and that there were no changes required with the passage of time since it was completed by him.

[11] The plaintiff is a full-service fruit and vegetable distribution and processing company located in Mississauga, Ontario. Its business is primarily wholesale distributing.

[12] At the commencement of this uncontested trial, I asked counsel whether any of the defendants had been petitioned into bankruptcy or had filed a voluntary assignment into bankruptcy. Counsel advised that the plaintiff had not been notified by any of the defendants nor by a trustee in bankruptcy that any of the defendants were in a state of bankruptcy, despite suggestions by the defendants, as outlined in the affidavit evidence, that they may file for bankruptcy protection.

[13] The defendants Janet Michelle Brunton (“Brunton”) and Wayne D. King (“King”) approached the plaintiff seeking to be customers in August 2020. At the time they approached the plaintiff company, they represented that they were operating a business that supplied produce to remote communities in northern Ontario and that they had contracts with the federal government to supply produce to Indigenous communities. King also represented that he was a pilot and that he owned a plane that was operated through a company called King Air. The plan proposed to the plaintiff was that these defendants would purchase produce from the plaintiff and then King Air would fly the produce to northern Ontario for delivery to Indigenous communities.

[14] Tina deposed in her affidavit of December 7, 2023 that, believing these representations to be true, the plaintiff relied upon them. The plaintiff extended credit to the defendants and relied further on the representation by the

defendants that they had government contracts, which would involve guaranteed paid orders.

[15] On August 5, 2020, the defendants, Brunton and King, entered into a Customer Credit Application and Agreement on behalf of the defendant United Farmers wherein they represented that they were the president and vice president respectively of the business involved in “fruit & vegetable wholesale”.

[16] On August 30, 2020, Tina received an email from Brunton requesting a change in the billing arrangement with the plaintiff whereby all invoicing that would otherwise be sent to United Farmers would be sent to 2773125 Ontario Inc. (“277”) and it was confirmed to the plaintiff that this corporation was operating as United Farmers.

[17] During discussions with Brunton at the beginning of the defendants’ business relationship with the plaintiff, she represented to Tina that she was a licensed paralegal and she identified herself as such on all her correspondence with the plaintiff.

[18] Initially, the defendants placed regular orders through Brenton or King and these orders were paid by credit card or bank draft, with the payments between August and October 2020 totaling \$283,997.60.

[19] In September 2020, United Farmers were delayed in making payments on time and as of October 1, 2020, the plaintiff granted a further extension on the credit agreement with the defendants whereby the payment terms were changed from “C.O.D.” to “Net 15”. The plaintiff agreed to this more lenient payment arrangement based on the representations made by the defendants and the initial success in the parties’ business relationship.

[20] As the accruing debt with the plaintiff increased significantly over a short period of time, Brenton and King advised the plaintiff that the delays and payments were related to the Covid-19 pandemic and late payment to them under their government contracts.

[21] With the defendants’ explanations for the delay in their payment on the accruing debt under their credit terms, the plaintiff continued to deliver goods to the defendants with the result that the debt reached approximately \$1.7 million.

[22] The evidence is that at the outset of the relationship between the plaintiff and the defendants, and on an ongoing basis through until the point in time when the plaintiff stopped dispensing food to the defendants, numerous false and fraudulent representations were made to the plaintiff’s representative, which induced the plaintiff to provide ongoing credit to the defendants and further induced the plaintiff to continue the delivery of food products to the defendants.

[23] The fraudulent representations relied upon by the plaintiff in granting credit to the defendants, are particularized in detail in Tina's affidavit sworn on December 7, 2023, at paragraphs 18 – 21, inclusive. By overview, these fraudulent misrepresentations were part of a complex and sophisticated scheme whereby the defendants represented to the plaintiff that they had a plane to transport produce purchased from the plaintiff and further that they had government contracts to supply Indigenous communities. The full particulars of these fraudulent misrepresentations are set out in the referenced paragraphs.

[24] When the defendants fell into significant arrears in maintaining payments on their credit account with the plaintiff, they offered fraudulent representations as to the reasons for the delay in payments and those misrepresentations are outlined in paragraph 21 of that affidavit. Having considered the evidence adduced, I find as a fact that these fraudulent misrepresentations were made and that they induced the plaintiff to enter into the credit contract, to extend further time for credit payment, and to continue the delivery of food products to the defendants.

[25] In the fall and the latter part of 2020 and into the early months of 2021, the plaintiff's representative determined that the defendants did not have contracts through any government agency to provide food products purchased from the plaintiff to Indigenous communities in the north. Furthermore, Brunton,

by way of a text on January 26, 2021, a copy of which was sent to Tina, acknowledged that they had no meetings with Indigenous leaders or government representatives, and she admitted that she did not know of any government program with which the defendants were associated.

[26] Through further investigation conducted on behalf of the plaintiff, after it became apparent that the defendants would not be paying the outstanding debt, the plaintiff obtained evidence that the defendants had carried out similar fraudulent schemes with other food supply companies, the particulars of which are set forth in paragraph 23 of Tina's affidavit of December 7, 2023.

[27] It was Tina's evidence that, in reliance on the fraudulent representations made by the defendants, they extended credit to them resulting in a loss to the plaintiff in the sum of \$1,766,349.71 all of which remains outstanding. It was submitted on behalf of the plaintiff that this amount represents the fair market value of the goods sold to the defendants, however I have concluded that this amount includes a profit component.

[28] The plaintiff's accounting expert offered his opinion as to the value of the plaintiff's loss in the total amount of \$1,463,857. This amount was based on the cost incurred by the plaintiff from purchasing and supplying the product to the

defendants. This did not include loss of profits from the margins the plaintiff would have earned had the defendants paid for the purchases.

[29] It is urged on behalf of the plaintiff that its full loss at the fair market value, including its profit of the products sold and delivered to the defendants represents its true loss for which it should be granted judgment.

Legal Framework:

[30] The principal cause of action asserted by the plaintiff against the defendants is that of fraudulent misrepresentation, which is also interchangeably referred to as the intentional torts of fraud and deceit. A variety of relief is sought in the statement of claim, however at this trial, counsel confirmed that the relief sought includes a judgment in the defrauded damages, various heads of consequential damages to be discussed below, punitive damages against the individual defendants and costs on a full indemnity basis. Although the statement of claim seeks a declaration that the plaintiff has standing to seek an oppression remedy against the defendants pursuant to section 248 of the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16, that claim was not pursued at trial.

[31] The plaintiff also sought a declaration that any judgment granted in this action would survive the present or future bankruptcy of the defendants in

accordance with section 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, C. B-3, as amended.

[32] The plaintiff asserts that the defendants are concurrently liable in tort and contract. As to the primary cause of action asserted by the plaintiff against the defendants, namely civil fraud or deceit, given the serious nature of the allegations involved in these intentional torts, clear cogent and convincing evidence must be adduced in order to establish liability for these intentional torts: *Anker v. Sattaur*, [2007] O.J. No. 5257, at para. 117.

[33] In its decision in *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 SCR 12, the Supreme Court of Canada held that where a given wrong prima facie supports an action in contract and in tort, the party may sue in either or both, subject to any limit the parties have themselves placed on that right in their contract.

[34] Fraudulent misrepresentation is a cause of action in both contract law and tort law. Although the same facts will often support an action framed in contract or tort, there are some differences between the required elements and available remedies for each: *Hayat v. Raja*, 2016 ONSC 6805 at para 100.

[35] Where a plaintiff has a right to recourse through a concurrent or alternative liability in tort or contract, the plaintiff has the right to assert the cause

of action that appears to be most advantageous in respect of any legal consequence: *Central Trust Co. v. Rafuse*, [1986] 2 SCR 147.

[36] The measure for damages for deceit or fraudulent misrepresentation requires that the injured party be placed in the position it would have been had the misrepresentation not been made: *Todd Family Holdings Inc. v. Gardiner*, 2017 ONCA 326. However, the restoration of the plaintiff's position should not amount to an under or overcompensation but should only result in the amount of compensation that will make the plaintiff whole.

[37] It is the general rule that damages for either fraudulent or negligent misrepresentation are assessed as at the date of the breach: *Wiebe v. Gunderson*, 2004 BCCA 456 at para 9.

[38] The determination as to whether lost profits resulting from fraudulent misrepresentation are a recoverable type of consequential damages remains quite nuanced when comparing the circumstances of an action based on breach of contract as distinct from a tort action in fraudulent misrepresentation: see: *Todd Family Holdings Inc.; BG Checo International Limited*.

[39] The jurisprudence supports that what may constitute consequential damages is sufficiently broad such that many losses sustained by a plaintiff in a

fraudulent misrepresentation case may be recoverable as consequential losses where it can be established that the losses were a direct result of the fraud.

[40] The defendant's motive to deceive is irrelevant to the assessment of the defendant's liability for fraud or deceit: *Fiorillo v. Krispy Kreme Doughnuts Inc.* (2009), 98 O.R. (3d) 103 (S.C.), at paras. 75 – 77.

[41] In order to make out an actionable claim in fraud or deceit it is not sufficient that the defendant was aware of the false representations or that he or she benefited as a result of the fraud. It must be established that the defendant committed the fraudulent conduct by inducing the plaintiff to act in a way resulting in a loss to him or her: *Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8, [2014] 1 S.C.R. 126, at para. 19.

[42] The plaintiff must establish on a balance of probabilities that the fraudulent misrepresentation was a material inducement, but not necessarily the sole inducement that causes the plaintiff to act resulting in a loss: *Caroti v. Vuletic*, 2022 ONSC 4695, at para. 545.

[43] The required elements of the intentional torts of civil fraud and deceit were outlined by the Supreme Court of Canada in *Hryniak* as follows: (1) a false representation made by the defendant; (2) some level of knowledge of the falsehood by the defendant (whether through knowledge or recklessness); (3) the

false representation caused the plaintiff to act; and (4) the plaintiff's actions resulted in a loss: *Hryniak*, at para. 21.

[44] Given that fraud and deceit are intentional torts, in addition to the requirement that a plaintiff establish the elements outlined above, intent on the part of the defendant must also be proven in order to make out a claim in fraud or deceit: *Midland Resources Holding Limited v. Shtaif*, 2017 ONCA 320, 135 O.R. (3d) 481, at para. 162, leave to appeal to S.C.C. refused, [2017] S.C.C.A. No. 246.

[45] As to the potential personal liability of the defendants Brunton and King, as distinct from 277, in order to pierce the corporate veil, two factors must be established: (1) the alter ego must exercise complete control over the corporation whose separate legal identity is to be ignored; and (2) the corporation whose separate legal entity is to be ignored must be the instrument of fraud or a mechanism to shield the alter ego from its liability for illegal activity: *Aviva Canada Inc. v. Lyons Auto Body Limited*, 2019 ONSC 6778, 1 C.C.L.I. (6th) 60, at para. 60.

[46] Personal liability is not engaged solely because a corporation acts through a human agency. Directors, officers and employees, however, may be liable for their own tortious conduct. For an employee to be liable in tort for

conduct associated with their work: (1) the actions of the employee must be in and of itself tortious; or (2) the actions of the employee must exhibit a separate identity or interest from those of the employer so as to make the employee's conduct his or her own discrete conduct: *Aviva* at paras. 61-62.

[47] In *Sataur v. Starbucks Coffee Canada Inc.*, 2017 ONCA 1017, 140 O.R. (3d) 307, the court held that employees may be sued personally for their tortious conduct, and the fact that at the time of the tortious conduct they are acting in the course of their employment with an incorporated business is no defence to an action against them in their personal capacity.

[48] In *Whiten v. Pilot Insurance Co.*, 2002 SCC 18, [2002] 1 S.C.R. 595, at para. 94, Binnie J. set out the 11 factors to be considered when determining whether an award of punitive damages is warranted and supported by the evidence as well the considerations to be examined in fixing an appropriate award.

[49] As to the quantification of a proper award of punitive damages, the court in *Midwest Amusement Park, LLC v. Cameron Motorsports Inc.*, 2018 ONSC 4024 at para. 103 stated as follows:

It follows from Justice Binnie's remarks that an assessment of punitive damages requires an appreciation of: (a) the degree of misconduct; (b) the amount of harm caused; (c) the availability of other remedies; (d) the quantification of compensatory damages; and (e) the adequacy of

compensatory damages to achieve the objectives of retribution, deterrence, and denunciation. These factors must be known to ensure that punitive damages are rational and to ensure that the amount of punitive damages is not greater than necessary to accomplish their purposes.

Analysis:

[50] Although it is stated in the endorsement of Mandhane J. in March 2023, when she struck out the defendants' statement of defence, that the defendants did not oppose the motion to strike their statement of defence and that they had admitted that they are liable for the damages claimed but did not have the funds to satisfy a default judgment, I have nevertheless considered the evidence adduced on the question of the defendants' liability for fraudulent misrepresentation.

[51] In addition to the deemed admissions arising from the defendants' statement of defence being struck out, the totality of the evidentiary record provides cogent and compelling evidence supporting the plaintiff's position that the defendants, by fraudulent misrepresentation, induced the plaintiff to enter into a credit contract and various contracts for sale of food products with the intention of defrauding the plaintiff and converting the plaintiff's food products to their own use, for ultimate sale by them. I can draw the reasonable inference that having defrauded the plaintiff under the terms of the credit contract and converted the plaintiff's food products to their own use that the defendants intended to defraud the plaintiff.

[52] Among other fraudulent misrepresentations, I find as a fact that the defendants, initially on their own and then through the vehicle of the corporate entity 277, made a continuous stream of fraudulent and deceitful representation to the plaintiff. The individual defendants on their own and on behalf of 277 were fully aware that the representations were false. I further find that the plaintiff, in reliance upon the fraudulent representations made by the defendants, granted credit to them and entered into the credit contract and that the losses sustained by the plaintiff are causally connected to the fraudulent misrepresentations made by the defendants.

[53] Moreover I find that the defendants made the following fraudulent misrepresentations, which induced the plaintiff to enter into the credit contract and sell to them, on credit, a substantial amount of food products: (a) that the defendants were legitimate and to be trusted with respect to the credit contract and the sale of food products on credit; (b) that the defendants had government contracts to supply Indigenous Canadian communities with food products of the type sold by the plaintiff; (c) that the defendant King was a pilot who owned a plane and flew the food products to northern Indigenous communities; (d) that the defendants were late in paying their outstanding accounts to the plaintiff as a result of several fraudulent reasons, including the COVID-19 pandemic,

government accounting errors resulting in the defendants not being paid under their government contracts, reserve accounting mistakes, and lawyer delays.

[54] Furthermore, I find as a fact that the defendants individually and collectively knew that these representations were false, that they were intended to induce the plaintiff to enter into the credit contract and the sale of food products thereafter, and that they were made with the intention that the plaintiff would rely upon them.

[55] I find further as a fact that the defendants obtained credit from the plaintiff based on false and fraudulent misrepresentations as to their occupations, contractual relations with third parties for the resale of the food products, and their creditworthiness, thereby taking advantage of the plaintiff's belief in the fraudulent representations made by them.

[56] I also find that all the misrepresentations referred to above and those which are more fully particularized in the affidavit evidence adduced at this trial are causally connected with the plaintiff's agreement to provide credit to the defendants as well to sell food products to them over the course of their business relationship.

[57] Also, the evidence is clear that this sophisticated and somewhat complex fraudulent scheme implemented by the defendants and through the corporate

defendant 277 was carried out with the intended purpose of deceiving the plaintiff to the advantage of the defendants.

[58] Furthermore, on the evidence adduced, I find as a fact that the defendants Brunton and King are personally liable to the plaintiffs, distinct from the corporate defendant 277. I am satisfied that as these defendants are alter egos of the corporation, it is warranted that there be a piercing the corporate veil and a finding that the corporate entity was the instrument of fraud used by the individual defendants and as well as a mechanism to shield the individual defendants' alter egos from possible liability for their illegal and fraudulent conduct: *Aviva Canada Inc.*, at para. 60.

[59] As to the proper determination of damages, this will necessarily involves consideration of the evidence as to damages sustained as a result of the fraudulent misrepresentations, including losses relating to the credit contract, the goods sold to the defendants, and several heads of consequential damages which are outlined in the evidentiary record. Additionally, the plaintiff's entitlement to and the proper amount of punitive damages must be addressed.

[60] Although the evidence adduced through Tina's affidavit sworn December 7, 2023, could have been more precise, as set out in that affidavit, it appears that the plaintiff is seeking damages in the sum of \$1,766,349.71. This amount is

particularized at paragraph 28 of that affidavit which summarizes the purchases made by the defendants, the billed amounts and payments made by the defendants. The total amount billed to the defendants for the food products purchased was \$2,053,247.31, from which was deducted the payments made by the defendants in the sum of \$286,897.60 resulting in the net amount claimed, namely \$1,766,349.71. This amount is exclusive of the other consequential damages that were claimed on behalf of the plaintiff and which will be considered below. This amount is further described by the deponent as at the fair market value of the goods sold to the defendants. Although not expressly stated in the affidavit evidence, I have concluded that this amount includes a profit that would otherwise have been achieved had the contract been properly completed and the monies paid by the defendants.

[61] In his accounting analysis of the plaintiff's losses, the plaintiff's accountant determined that the cost of goods sold to the defendants, which is referred to as the cost of sales based on the plaintiff's purchase invoices totals \$1,113,872. Thus, this amount does not include any profit that would have been achieved on the completion of the contract of credit and the various contracts relating to the sale of the food products.

[62] Damages for deceit and fraudulent misrepresentation are not calculated on the assumption that the injured party is entitled to enforce the agreement

entered into as a result of the misrepresentation and as such loss of profits are generally not recoverable: see *Todd Family Holdings Inc.*, at para 25.

[63] Similarly in *BG Checo*, the court concluded that the appropriate damages were to cover extra costs sustained by the plaintiff but not loss of profit: at para 41.

[64] The granting of damages in the form of lost profits within the context of this claim which is primarily grounded on the assertion of a fraudulent misrepresentation by the defendants would constitute an award calculated on the assumption that the plaintiff is entitled to enforce the agreement entered into, which position is not supported by the current jurisprudence.

[65] Furthermore, this approach to the damages would improperly put the plaintiff in a position that they would have been in had the misrepresentation been true. Expectation damages and loss of bargain damages are not recoverable for fraudulent misrepresentation: *Halsbury Laws of Canada – Misrepresentation and Fraud* (2023 Reissue) at HMF-67.

[66] Therefore, I have concluded that the plaintiff's entitlement to damages directly relating to the sale of the food products to the defendants, which is described by the plaintiff's accountant as the "Cost of Goods Sold on Unpaid Invoices" in the sum of \$1,113,856, is the proper measure of damages.

[67] As to loan interest expenses incurred by the plaintiff due to the defendants' failure to pay the invoices delivered to them over the course of the parties' business relationship, I have concluded that this is a proper form of consequential damage in respect of which the plaintiff is entitled to be compensated. Further, I accept the accountant's calculation of the loan interest as incurred by the plaintiff in the sum of \$197,022 as set out in his report.

[68] Another form of consequential damage sustained by the plaintiff, which I have concluded flows directly from the fraudulent conduct of the defendants, is in the form of unclaimed Canada Emergency Wage Subsidy ("CEWS"). This was a government program created in response to the COVID-19 pandemic which provided savings to employers by way of a subsidy equal to 75% of an employee's wages on the first \$58,700 per employee up to a maximum of \$847 per week. In section 4.3.3 of the accountant's report, he reviews the losses sustained by the plaintiff in the form of CEWS funds not received by it which would have effectively reduced the plaintiff's salary and wage expenses in the sum of \$34,748. I have concluded that this is a proper consequential damage claim causally connected with the fraudulent conduct of the defendants.

[69] A further consequential damage claim as outlined in the plaintiff's accountant's opinion is referred to as Loss from Overstaffing in September and October 2020. According to the accountant's opinion, but for the orders

fraudulently made by the defendants in those months the plaintiff would have had a lower sales volume and a correspondingly lower cost with respect to salary and wage expenses. This loss was calculated by the accountant in the amount of \$43,063. Having considered the evidentiary record as a whole as well as the accountant's opinion, I am satisfied that this is a properly grounded consequential damage claim.

[70] Finally, the record shows that the plaintiff incurred costs of investigating the defendants' conduct as well as necessary steps taken to seek payment of the unpaid invoices. As outlined by the plaintiff's accountant, those costs incurred totaled \$7777. I find that these costs were necessarily incurred by the plaintiff as a result of the defendants' fraudulent conduct and that these expenses were reasonably incurred as a mitigation step by the plaintiff.

[71] As to the potential liability of the defendants Brunton and King in the form of punitive damages, I have examined the factors discussed by Binnie J. in *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (CanLII) at para. 94 and having regard to those factors in the evidentiary record adduced, I am satisfied that this is an appropriate case for an award of punitive damages against the defendants Brunton and King.

[72] These defendants acted in a high-handed, malicious and reprehensible manner through multiple acts of fraud and deception thereby depriving the plaintiff of a very substantial sum of money. While the evidence offered as to the adverse effects of these defendants' fraudulent conduct is lacking in some measure, the uncontradicted evidence offered by Tina is that her father as the sole shareholder of the plaintiff has been unable to sell the business given that it is currently carrying a substantial debt resulting from the defendants' fraud. Furthermore, although hearsay evidence to some degree, this witness testifies that her father has had to liquidate personal retirement investments to generate money which was loaned to the plaintiff corporation in order to allow it to continue in business after the defendants' fraud. While it would have been preferable for this evidence to have been offered by her father, I am satisfied that as this evidence has been offered by Tina as the office manager of the plaintiff company and that as she is fully familiar with the day-to-day operation of this business, her evidence has a fairly high degree of reliability in the circumstances.

[73] As to the quantification of a proper award of punitive damages, the court in *Midwest Amusement Park, LLC*, as noted above, outlined factors to be considered.

[74] As to the degree of misconduct, clearly the individual defendants working on their own and jointly undertook a complex and sophisticated fraudulent

scheme for the purpose of depriving the plaintiff of very substantial sums. Similarly as to the amount of harm caused, the damages sustained, exclusive of interest, are approaching \$1.4 million.

[75] Regarding the considerations of the quantification of compensatory damages and the adequacy of those damages to achieve the objectives of retribution, deterrence and enunciation – given that the individual defendants made threats of voluntarily placing themselves in bankruptcy, and further given the likelihood that 277 has little or no assets that the plaintiffs could recover from, I must conclude that the compensatory damage award as made will be wholly inadequate to place the plaintiff back in the position it should be were it not for the defendants' fraudulent conduct. Recognizing that retribution, deterrence and enunciation are significant factors to be considered when granting an award of punitive damages, I have concluded that the sum of \$100,000 in punitive damages, payable by each of Brunton and King represents an award that is appropriate in all the circumstances and that it achieves all of the objectives of an award of this type.

[76] Having regard to the prospect that the defendants or any one of them would seek bankruptcy protection, I have concluded that this case, which is grounded in fraudulent misrepresentation, properly warrants consideration of section 178 of the *Bankruptcy and Insolvency Act*.

[77] Given my conclusions and findings that the plaintiff suffered substantial damages occasioned by the fraudulent conduct of the individual defendants as well as the defendant corporation, I order that the judgment granted herein will survive the bankruptcy of the defendants as judgment debtors: *PCNIX Inc. v. Tecpartner Inc.*, 2023 ONSC 2663 (CanLII).

[78] In conclusion, a judgment shall issue in favour of the plaintiff in the following terms:

(l) judgment against all of the defendants jointly and severally in respect of the following heads of damages:

(a) Cost of Goods Sold to United Farmers on Unpaid Invoices – \$1,113,856;

(b) Loan Interest Expenses Related to Unpaid Invoices – \$197,022;

(c) Unclaimed CEWS – \$34,748;

(d) Loss for Overstaffing in September and October 2020 – \$43,063; and

(e) Private Investigation Costs – \$7777.

[79] The defendants Brunton and King shall each pay punitive damages to the plaintiff in the sum of \$100,000.

[80] The defendants shall pay prejudgment interest on all damages in accordance with the provisions of the *Courts of Justice Act*.

[81] The defendants shall pay the plaintiff's costs of this action on a full indemnity basis, inclusive of disbursements and applicable taxes in the sum of \$85,000.

[82] Finally, a declaration is granted that the judgment herein against all of the defendants shall survive any present or future bankruptcy proceeding instituted by or against the defendants, in accordance with section 178 (1) (e) of the *Bankruptcy and Insolvency Act*.

[83] A judgment shall issue in accordance with these reasons for decision and counsel for the plaintiff shall submit to me a draft judgment in keeping with the terms of this decision, for my signature.

Daley J.

Released: March 25, 2024

CITATION: A.J. Lanzarotta Fruits & Vegetables Ltd. v. United Farmers et al.,
2024 ONSC 1780
COURT FILE NO.: CV-21-00001073-0000
DATE: 2024 03 25

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

A.J. LANZAROTTA WHOLESALE FRUITS
& VEGETABLES LTD.

Plaintiff

- and -

UNITED FARMERS, 2773125 ONTARIO
INC., 2773125 ONTARIO INC. o/a UNITED
FARMERS, JANET MICHELLE BRUNTON
and WAYNE D. KING

Defendants

ENDORSEMENT

Daley J.

Released: March 25, 2024