

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Royal Bank of Canada )  
 ) No one appearing on behalf of the Plaintiff  
Plaintiff )  
 )  
– and – )  
 )  
Greb Tele-Data Inc., Robert B. Woodrow, ) D. Veinot, for the Defendants Robert B.  
and Anne Woodrow ) Woodrow and Anne Woodrow  
 )  
Defendants )  
 )  
Ross E. Greb, Greb Tele-Data Inc., Greb ) M. Harris for the Third Party Ross E. Greb  
Tele-Data Ltd. and James Ross Greb )  
Third Parties )  
 ) **HEARD:** May 30, 2024

**A.D. HILLIARD**

**Overview**

- [1] Robert B. Woodrow and Ross E. Greb were the only two (2) shareholders and directors of the corporation, Greb Tele-Data Inc. In their role as shareholders and directors, they personally guaranteed the company’s debts. Anne Woodrow is Mr. Woodrow’s spouse. She also provided personal guarantees for the company’s debts.
- [2] On or about May 6, 2013, Ross E. Greb made a Consumer Proposal. That proposal outlined that Mr. Greb’s financial difficulties were the result of business failure. The trustee noted that the downturn in the economy and shareholder issues had put a severe strain on the company’s cash-flow. It was also noted that the company, Greb Tele-Data Inc., had ceased operations. Among the creditors included in the consumer proposal was the Royal Bank of Canada in relation to debts of Greb Tele-Data Inc. which had been personally guaranteed by Mr. Ross Greb.
- [3] RBC commenced an action against Greb Tele-Data Inc. and Robert and Anne Woodrow, as personal guarantors, in and around May 2014 claiming repayment of the debt owed by the corporation. Mr. Ross Greb was not named due to his consumer proposal.

- [4] The Woodrows then caused a Third-Party Claim to be issued on July 3, 2014, against Ross E. Greb, Greb Tele-Data Ltd., and James Ross Greb claiming indemnification from the Third Parties in relations to the claims of RBC.
- [5] Mr. Ross Greb did not respond to the Third-Party Claim issued by the Defendants Woodrow, nor did any of the other third parties. On or about August 29, 2014, the Defendants Woodrow requisitioned the Court to have all of the Third Parties noted in default.
- [6] On February 25, 2016, Robert and Anne Woodrow, obtained an order for default judgment.
- [7] The Defendants Woodrow now move for a declaration pursuant to section 178(1)(d) of the *Bankruptcy and Insolvency Act* that the Default Judgment survives the insolvency proceedings discharging Mr. Ross Greb from his debts, and a declaration that the Writ of Execution obtained pursuant to the Order granted on February 25, 2016 continues in full force and effect.
- [8] For the following reasons, the Defendants Woodrow's motion is dismissed.

### **The Litigation**

- [9] Section 178(1)(d) provides that an order of discharge does not release a bankrupt from any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity.
- [10] In their Statement of Defence in response to the RBC action, the Defendants Woodrow claimed that Mr. Ross Greb was in sole control of the company, its affairs and finances. The Defendants Woodrow alleged that Mr. Ross Greb had mismanaged the company's finances, made inappropriate and unauthorized withdrawals of funds, and caused the company not to pay its debts when due and owing. They cross-claimed against the company for full and complete indemnification in respect of any and all amounts the Woodrows may be called upon the pay to RBC.
- [11] On or about February 19, 2015, the Defendants Woodrow filed a Motion Record seeking an Order against the Third Parties, including Mr. Ross Greb, for default judgment.
- [12] A supplementary motion record was filed on behalf of the Defendants Woodrow on or about January 15, 2016.
- [13] At a court appearance on February 25, 2016, the Motion for default judgment was heard and the draft order signed by Gordon, J.
- [14] The relief granted in the Default Judgment included leave to continue the third party claim against Ross E. Greb, despite the commencement of his consumer proposal, declaratory relief regarding the conduct of the Third Parties, specific damages payable to the Defendants Woodrow personally and damages payable to the Defendant Robert Woodrow,

in trust for the Receiver General of Canada, on account of unpaid taxes, along with an Order for costs payable by the Third Parties.

- [15] Pursuant to the Default Judgment, the Defendants Woodrow filed a Writ of Seizure and Sale in the Regional Municipality of Waterloo against Mr. Ross Greb. That Writ was renewed on or about February 23, 2022, and remains in force and effect until August 25, 2028.
- [16] Upon discovering the Writ in 2023, Mr. Ross Greb instructed his lawyer to write to the Sheriff to advise of the completion his Consumer Proposal and request that the Writ be removed, and all enforcement ceased. That request was then sent to counsel for the Defendants Woodrow, which then prompted this Motion to be brought.

### **Analysis**

- [17] For the debt created by the Default Judgment to survive the completion of Mr. Ross Greb's consumer proposal, there must be a finding that liability arose out of the enumerated grounds in s. 178(1)(d) and a finding that the liable individual was acting in a fiduciary capacity during the time that the individual engaged in the libelous conduct. The test is conjunctive and mandatory.
- [18] Mr. Ross Greb's initial argument<sup>1</sup> relates to the different ways in which he was referred to in the Default Judgment. He argues that the reference to "Third Parties" in the sections that make orders for the payment of damages do not apply to him. There is no merit to this argument.
- [19] In the style of cause, Mr. Ross Greb is one of the listed Third Parties. The argument that Mr. Ross Greb is specifically excluded from the parts of the Order that refer collectively to the "Third Parties" goes against the principle of interpretation indicating that Judgments and Orders are to be read in their entirety applying logic and common sense. Although there is one paragraph that specifically addresses Mr. Ross Greb, insofar as the request that the claim be permitted to continue despite his consumer proposal, there is nothing to indicate that the following paragraphs of the Order that refer to the "Third Parties" specifically exclude Mr. Ross Greb.
- [20] There are provisions in the Default Judgment that refer to the individual Third Parties – for example Mr. Ross Greb is referred to individually as "Greb" and the company is referred to as "Inc.". However, when the Third Parties are referred to collectively as a group, the term "Third Parties" is used. Therefore, the argument that Mr. Ross Greb is somehow not included in the provisions of the Order that provide for the payment of monies by the "Third Parties" to the Defendants Woodrow is inconsistent with the wording in the Default Judgment and the way the Third Parties are referred to, both collectively and individually.

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<sup>1</sup> There were additional arguments raised in Mr. Greb's motion materials that were ultimately abandoned during submissions.

- [21] Mr. Ross Greb indicated during argument that he is not challenging the validity of the Default Judgment or questioning any of the provisions therein as he concedes that such an argument would amount to an impermissible collateral attack. This is an appropriate position to take as Mr. Ross Greb has chosen not to appeal that judgment nor bring a motion to set it aside.
- [22] Despite this concession, Mr. Ross Greb argued that the Default Judgment should not be interpreted as creating a debt owed by him to the Defendants Woodrow. This argument is premised on the position that the test for an order lifting the automatic stay of proceedings against an undischarged bankrupt is different than the test for a Declaratory Order pursuant to section 178 of the *BIA*. This argument is a collateral attack formulated as an interpretation argument.
- [23] The Defendants Woodrow conceded that there is no declaration pursuant to section 178 of the *BIA* in the Default Judgment and that relief was not sought in the motion heard and determined by Gordon J. The argument that the debt in the Default Judgment does not relate to Mr. Ross Greb is premised on the inability or incorrectness of taking two steps one after the other in the same court appearance – lifting the stay of proceedings and then making an order against the undischarged debtor. I have no jurisdiction to review or question the correctness of the Default Judgment and such an interpretation would, in my view, require me to find that there was an error made in the determination of the motion for default judgment.
- [24] The correctness of the Default Judgment having been conceded by Mr. Ross Greb, there is no dispute about the issue of liability arising out of fraud, embezzlement, misappropriation or defalcation. The Order includes the following declaratory relief:
1. The powers of Greb (Ross E. Greb) as a Director of Inc. (Greb Tele-Data Inc.) are, have been or are threatened to be exercised in a manner, that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of the Defendants Woodrow.
  2. The Third Parties have conspired one with the other and have acted in concert to:
    - defeat, delay defraud or hinder the creditors of Greb and Inc. including the Plaintiff, the Defendants Woodrow and third parties such as Canada Revenue Agency;
    - cause an unjust enrichment of the Third Parties by attempting to cause the Defendants Woodrow to pay amounts owing to the Plaintiff and others on account of liability of Greb and Inc. to the detriment of the Defendants Woodrow without juridical reason therefor.
  3. Greb has, with the knowledge, complicity and assistance of the Third Parties, James Ross Greb and Greb Tele-Data Ltd:

- Removed for his own personal use money and other assets of Inc. surreptitiously, fraudulently and without colour of rights; and
  - Caused Inc. to transfer its assets to the Third Party Ltd. without any or adequate fair market consideration.
4. All transfers of assets (whether tangible or intangible including goodwill and accounts receivable) from Inc. to Third Party Ltd. are:
- Void pursuant to the *Assignments and Preferences Act*;
  - Voidable as having been carried out contrary to, or not in accordance with, the *Bulk Sales Act*; and,
  - Void as having been made contrary to the *Fraudulent Conveyances Act*.

[25] The only remaining question for the purposes of this motion is whether there was sufficient evidence on the motion record before Gordon J. to find that Mr. Ross Greb was acting in a fiduciary capacity in his business relationship with Mr. Woodrow.

[26] The Defendants Woodrow concede that the caselaw has established that no new evidence can be considered on a 178(1)(d) motion.<sup>2</sup> Even if there is evidence that could support a finding of a fiduciary relationship, that evidence cannot now be presented and considered if it was not included in the Motion Record requesting default judgment. During argument, counsel for the Woodrows agreed that if I cannot be satisfied based on the evidentiary record before Gordon J. that there was a fiduciary relationship between Mr. Ross Greb and Mr. Woodrow then their motion fails.

[27] Mr. Ross Greb accepts that having been noted in default he was deemed to have admitted all of the allegations set out in the Statement of Claim. However, he argues that even having been deemed to admit the allegations, there was insufficient evidence before Gordon J. in the motion for default judgment upon which I can find that Mr. Ross Greb owed a fiduciary duty to Mr. Woodrow in their relationship as shareholders and directors of Greb Tele-Data Inc. I agree.

[28] The general rule that Directors owe a fiduciary duty only to the company and not to shareholders still stands.<sup>3</sup> The only cases that I am aware of where a fiduciary duty has been found to be owing by a Director of a corporation to the Shareholder(s) of that same corporation are from jurisdictions other than Ontario.

[29] The trial judge in *Canex Investment Corporation v 0799701 B.C. Ltd.* found a fiduciary relationship in a corporate relationship between the parties who were the only two

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<sup>2</sup> See *Lawyers' Professional Indemnity Company v Rodriguez*, 2018 ONCA 171

<sup>3</sup> *Bell v Source Data Control Ltd.* [1988] O.J. No. 1424 (CA).

shareholders of a corporation. However, I note that in that case, the Director who was found to have a fiduciary relationship to the other shareholder was the sole director of the corporation. Although the finding of a fiduciary duty was upheld by the British Columbia Court of Appeal, it was also confirmed that only in “exceptional circumstances” should a court find that a fiduciary duty is owed by a Director to a Shareholder.<sup>4</sup>

- [30] The decision in *Canex* is distinguishable on the facts. At the trial level, that case involved an oppression claim based on transactions in which the company secured a mortgage on behalf of another company and then paid money raised on behalf of the other company to the personal defendant who controlled both companies. In finding that a fiduciary duty existed, the trial judge held that “the evidence establishes a much broader relationship of trust and reliance on Ms. Amiri than is typical of even many closely-held companies.” She went on to indicate that the Plaintiffs “were lending money to Flame, even taking out a second mortgage on their own property in one case for Flame’s benefit and relying on Ms. Amiri to ensure that the interest on their loans were paid by Flame, and to honestly and fairly account to them in all of these respects.” The loaning of the Plaintiff’s personal funds to the corporation that was created for the sole purpose of buying and developing residential properties, makes *Canex* factually distinguishable. There is no evidence before me that Mr. Woodrow invested his own money, or took out personal loans to invest money in Greb Tele-Data Inc.
- [31] The trial judge in *Canex* also relied heavily on another BC Court of Appeal case which is entirely distinguishable on the facts – *Valastiak v Valastiak*.<sup>5</sup> In that case, it was found that the sole Director owed a fiduciary duty to the Shareholders, of whom there were only two – he and his wife. The family context and martial relationship in *Valastiak*, in my view, makes that case clearly distinguishable.
- [32] I must then go back to first principles in determining whether I can find there was a fiduciary duty owed by Mr. Ross Greb to Mr. Woodrow. As the Supreme Court of Canada reiterated in *Alberta v Elder Adovcates of Alberta*, the doctrine of fiduciary duty originates in trust, requiring one party “to act with absolute loyalty toward another party, the beneficiary or *cestui que trust*, in managing the latter’s affairs.”<sup>6</sup>
- [33] There is insufficient evidence before me to support a finding that Mr. Ross Greb was required to act with absolute loyalty towards Mr. Woodrow. There is no evidence before me that there was an imbalance of negotiating power between Mr. Ross Greb and Mr. Woodrow, specifically there is no indication that Mr. Ross Greb is significantly older than Mr. Woodrow or more experienced in the field of business being undertaken by the company. There is nothing to suggest that Mr. Ross Greb was mentoring Mr. Woodrow in the business or that Mr. Woodrow lacked the ability or experience to manage the company’s finances without Mr. Greb’s assistance or oversight.

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<sup>4</sup> 2020 BCCA 231 at para 100 – 102.

<sup>5</sup> 2010 BCCA 71.

<sup>6</sup> [2011] 2 SCR 261 at para 22.

- [34] There is a division of labour in most businesses, regardless of their size. This division can be due to different experience or simply a matter of convenience. In dividing responsibilities between partners, or in this case Directors of a corporation, there is an element of trust that the person with which certain duties are tasked will execute those duties to the best of their ability, bearing in mind the good of the company and their fellow Directors. However, this trust between business partners does not in and of itself create a fiduciary relationship.
- [35] Nothing in the wording of the Default Judgment, nor in the pleadings, that suggests there was an imbalance of power between Mr. Ross Greb and Mr. Woodrow. There is also nothing indicating or suggesting that Mr. Woodrow was incapable of managing or understanding the corporation's finances, such that he had to put his trust solely in Mr. Ross Greb. Rather Mr. Woodrow chose to put his trust in Mr. Ross Greb despite information being withheld from him. Specifically, I note that in the Affidavit of Mr. Woodrow, filed in support of his motion for default judgment, he notes at paragraph 11:

Ross treated me as a junior employee and withheld from me all of the corporate information to which an Officer, Director or Shareholder would be entitled. At all materials times, Ross operated Inc. as if he, Ross, were the sole Shareholder, Officer and Director of Inc. *This did not seem anything more than annoying to me* as, throughout, I trusted Ross. (emphasis added)

The characterization of the behaviour of Mr. Ross Greb as “annoying” is informative. Even Mr. Woodrow did not describe any power imbalance as between he and Mr. Ross Greb nor indicate that he felt or believed himself to be at Mr. Ross Greb's mercy insofar as the company's finances.

- [36] Mr. Woodrow also deposes in that same affidavit that he “quit” the company in and around March 20, 2013, when he realized the state of the company's finances. There is nothing in the evidence to explain how Mr. Woodrow found out about the issue with the financial situation of the company in March 2013 despite his evidence that corporate information was being withheld from him. Mr. Woodrow's own evidence about how much access he had to corporate information is inconsistent. I also note that Mr. Woodrow at no point indicates that he specifically requested that information be provided to him about the company's finances and was denied access by Mr. Ross Greb.
- [37] Mr. Woodrow was not just a minority shareholder in the corporation, he was also a Director. As a Director of the corporation, Mr. Woodrow had an obligation to inform himself of the company's operations and finances. It is insufficient for Mr. Woodrow to state after the fact that he put his full trust in Mr. Greb to appropriately manage the corporation's finances. As a Director of the corporation, Mr. Woodrow was subject to the same trust pursuant to section 222 of the *Excise Tax Act* regarding HST remittances. As both an Officer and Director of Greb Tele-Data Inc., regardless of the trust and faith Mr. Woodrow had in Mr. Greb, or the way he was treated by Mr. Greb, Mr. Woodrow had an

obligation to satisfy himself that the finances of the corporation were being properly handled.

- [38] For me to find that Mr. Ross Greb owed a fiduciary duty to Mr. Woodrow personally, there must be some evidence that Mr. Ross Greb was required to act with loyalty towards Mr. Woodrow. There is no such evidence. Any fiduciary duty owed by Mr. Ross Greb was owed to the company, Greb Tele-Data Inc., in his capacity as a Director, not to Mr. Woodrow, either as a Shareholder or Director.

### **Conclusion**

- [39] Having found that there is insufficient evidence upon which to find that Mr. Ross Greb owed a fiduciary duty to Mr. Woodrow, the test under section 178(1)(d) is not met and the motion must therefore be dismissed.

- [40] The parties may file written costs submissions as follows:

1. Mr. Ross Greb shall serve and file written submissions no longer than three (3) pages in length, double-spaced, 12-point font, exclusive of Costs Outline and Offer(s) to Settle on or before July 8, 2024.
2. The Defendants Woodrow shall serve and file written submissions no longer than three (3) pages in length, double-spaced, 12-point font, exclusive of Costs Outline and Offer(s) to Settle on or before July 15, 2024.
3. Reply by Mr. Ross Greb, no longer than two (2) pages in length, double-spaced, 12-point font, on or before July 22, 2024.

- [41] Order to go on the motion:

1. Motion dismissed. The Defendants Woodrow shall take whatever steps are necessary to ensure that the Writ renewed on February 23, 2022 is vacated with respect to Ross E. Greb.

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A.D. Hilliard

**Released:** June 28, 2024



**CITATION:** Royal Bank of Canada v. Greb Tele-Data Inc. et al., 2024 ONSC 3747  
**COURT FILE NO.:** CV-14-47455-A1  
**DATE:** 2024/06/28

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Royal Bank of Canada

Plaintiff

– and –

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

Defendants

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

Third Parties

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**REASONS FOR JUDGMENT**

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Justice Hilliard

**Released:** June 28, 2024