COURT OF APPEAL FOR ONTARIO

CITATION: Reset Electronics Inc. v. Hydro One Networks Inc., 2024 ONCA 311
DATE: 20240426
DOCKET: COA-23-CV-0186

Benotto, Zarnett and Coroza JJ.A.

BETWEEN

Reset Electronics Inc.

Plaintiff (Appellant)

and

Hydro One Networks Inc.

Defendant (Respondent)

André Marin and Adam P. Strombergsson-DeNora, for the appellant

Reeva M. Finkel, for the respondent

Heard: April 22, 2024

On appeal from the judgment of Justice Sally A. Gomery of the Superior Court of Justice, dated December 7, 2022, with reasons reported at 2022 ONSC 6849, and the costs order dated January 20, 2023.

REASONS FOR DECISION

[1] The appellant ("Reset") held the exclusive right to distribute certain electrical components that could be used to upgrade existing fluorescent light fixtures, making them more energy efficient. The respondent ("Hydro One") administered two programs of the Ontario Power Authority ("OPA") that contemplated payment

of financial incentives to electricity customers who replaced existing lighting with more energy efficient components.

[2] Customers who purchased Reset's products applied for and obtained incentive payments from Hydro One, but Reset did not achieve the sales it hoped for. After its business failed, Reset brought an action against Hydro One. The central allegation was that Hydro One's delay in processing applications for payments caused customers to lose confidence in Reset's products and services, driving Reset from the market and causing it serious losses.

[3] The trial judge dismissed the action. Relevant to the issues raised on appeal, she held that Reset failed to establish that: (i) it had a contract with Hydro One; (ii) Hydro One owed or breached any duty of care; and (iii) Hydro One caused Reset's loss of business.

[4] Seeking a new trial, Reset challenges each aspect of the trial judge's rejection of its negligence theory of liability – her findings that there was no duty of care, no breach of any duty if one were owed, and no causation. Although raised in its factum, in oral argument counsel for Reset abandoned any submission that Reset was a party to a contract with Hydro One. Reset conceded that Hydro One only entered into contracts with electricity customers who had purchased components qualifying for incentive payments, and not with Reset.

[5] We see no error in the trial judge's duty of care analysis. She correctly noted that for there to be a duty of care, a relationship of proximity had to exist. In this type of case, where Reset alleged negligent misrepresentation or negligent performance of a service, Reset had to establish an undertaking in its favour by Hydro One that invited reliance, and that Reset reasonably relied on that undertaking to its detriment: *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35, [2020] 3 S.C.R. 504, at paras. 32-40.

[6] After an assiduous review of the record, the trial judge concluded that Hydro One had given no undertaking in favour of Reset. She found that "[t]here is no evidence that Hydro One ever manifested any intention to induce Reset to rely on its representations about the eligibility of the [Reset product] or how fast it would process applications under the [OPA] programs." In coming to this conclusion, she expressly considered and rejected the points on which Reset relies on appeal to maintain that there was such an undertaking, including:

- An email sent in July 2009 that was neither addressed nor copied to Reset and that the trial judge noted dealt only with specific delays during a brief and discreet time period;
- An August 2009 email which the trial judge held could not "be taken to imply that Hydro One renounced its discretion to refuse incentives or to revisit the eligibility of" Reset's products; and

- "[A]pologies made by various Hydro One employees for delays in the approval process", which the trial judge noted could not be reasonably understood to mean similar problems would not arise in the future.

[7] There is no basis for appellate interference with any of these conclusions.[1]

[8] Nor do we accept the argument that the trial judge erred in finding a lack of reasonable reliance by Reset on any undertaking of Hydro One.

[9] As she noted, in the contracts between Hydro One and its customers, Hydro One reserved to itself an absolute discretion to reject any incentive application. Moreover, Hydro One was not bound to approve payments to any customer within any deadline. It would not have been reasonable for Reset to rely on a supposed undertaking to determine eligibility of customers and make payments to them according to criteria or deadlines inconsistent with these direct contractual arrangements.

[10] The trial judge's finding that there was no relationship of proximity sufficient to give rise to a duty of care was fatal to Reset's claim in negligence.

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[1] Reset alternatively argued at trial that its role in the approval process as a customer representative grounded a duty of care. The trial judge identified this as an assertion of an undertaking "at large", which is generally insufficient to give rise to any such duty: *Charlesfort Developments Limited v. Ottawa (City)*, 2021 ONCA 410, 156 O.R. (3d) 10, at para. 37. The point was repeated by Reset on appeal, but we decline to give effect to it. Reset's concession that Hydro One's contracts were with customers, not with Reset, does not leave room to find a duty in favour of Reset as a representative of a customer, especially one that would be inconsistent with the terms of the contractual arrangements themselves which gave Hydro One a discretion to reject any incentive payment application.

[11] The trial judge went on to find, as well, that if there was a duty, Hydro One did not breach it. She found that "Hydro One's decision to delay or suspend consideration of applications by Reset's customers in 2009 and 2012 was based on legitimate safety concerns." She also found that the delays of which Reset complained were often not attributable solely to Hydro One. Nor was there evidence that the actual times to approval were inconsistent with the performance of other electricity distributors working under the OPA programs. These findings are subject to a deferential standard of review on appeal: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 29. We are not persuaded there is any basis to disturb these findings, which on their own defeat Reset's negligence claim.

[12] Finally, Reset argues that the trial judge erred in her conclusion that Reset's damages – alleged to be a loss of prospective sales – were not caused by Hydro One's breach of duty (had the latter been shown). There is no basis to interfere with this fact specific finding about causation, which is subject to a deferential standard of review: *Edinger v. Johnston*, 2013 SCC 18, [2013] 2 S.C.R. 98, at para. 29. Reset's allegation of causation was heavily dependent, at trial, on the evidence of its principal, Mr. Whittaker, whom the trial judge did not find credible. As the trial judge noted, Reset did not lead the evidence of any potential customer who declined to do business with Reset due to delays in getting incentive payments.

[13] For these reasons, the appeal is dismissed.

[14] In a supplementary notice of appeal, Reset asked for leave to appeal the trial judge's costs award. However, no submissions were made on this point in Reset's factum or in oral argument. Leave to appeal costs is refused.

[15] Hydro One is entitled to costs of the appeal in the sum of $35,000 inclusive of disbursements and applicable taxes, an amount agreed to by the parties.

"M.L. Benotto J.A."
"B. Zarnett J.A."
"S. Coroza J.A."