

COURT OF APPEAL FOR ONTARIO

CITATION: Hrycko v. Miller Estate, 2015 ONCA 296

DATE: 20150430

DOCKET: C59742

Doherty, Pepall and van Rensburg JJ.A.

BETWEEN

John Hrycko

Plaintiff (Respondent)

and

Justin Booth, Estate Trustee of the Estate of Olga Miller, Ferro & Company and
Lucio Anthony Ferro (a.k.a. Lou Ferro)

Defendants (Appellants)

William G. Scott, for the defendants (appellants)

Ronald Bohm, for the plaintiff (respondent)

Heard: April 24, 2015

On appeal from the judgment of Justice Gilmore of the Superior Court of Justice,
dated November 17, 2014.

APPEAL BOOK ENDORSEMENT

[1] We do not agree that the motion judge applied the wrong test in assessing damages for the admitted breach. She identified and articulated the correct test (paras. 28-29). The crucial finding, i.e. that it was reasonably foreseeable that

the respondent would continue to lend money to Ms. Miller was reasonably available given, first, the history of the lending relationship between the respondent and Ms. Miller as known to the appellant's law firm (he advanced seven loans over several months) and, second, the purpose of the loans (living expenses). We would not interfere with the finding.

[2] To the extent that s. 13 of the *Ontario Evidence Act* is engaged, we agree with the motion judge's analysis of the case law and her conclusion, at para. 44 of her reasons.

[3] The appeal is dismissed. Costs to the respondent in the amount of \$13,000, inclusive of disbursements and relevant taxes.