

COURT OF APPEAL FOR ONTARIO

CITATION: Fritz Marketing Inc. v. Metz, 2015 ONCA 410

DATE: 20150609

DOCKET: C59617

Feldman, Hourigan and Pardu JJ.A.

BETWEEN

Fritz Marketing Inc.

Respondent (Plaintiff)

and

Joseph Henry Metz, Elmira Bag & Burlap Ltd., Ontario Bag Company Ltd. and
GX Packaging Canada Ltd.

Appellants (Defendants)

Wade W. Sarasin, for the appellants

James R. Smith, for the respondent

Heard: June 3, 2015

On appeal from the judgment of Justice Price of the Superior Court of Justice,
dated October 10, 2014, and amended October 24, 2014.

ENDORSEMENT

[1] The appellant, Joseph Henry Metz, appeals from the order of Price J. granting summary judgment against him personally for amounts owing on invoices for bags supplied by the respondent to Mr. Metz's two companies, Elmira Bag & Burlap Ltd. and GX Packaging Canada Ltd. He submits that the

motion judge erred by making findings of fact that determined liability based only on the motion record, which included cross-examinations on the affidavits filed, and without resorting to the powers under Rule 20 to order the trial of an issue or to hold a mini-trial on genuine issues for trial.

[2] He submits that there were two genuine issues that required a trial: 1) whether the appellant had agreed to be personally liable for the debts of the companies; and 2) whether he had agreed that the monies that were paid in respect of the new purchases made on behalf of two of the companies, Elmira Bag & Burlap Ltd. and GX Packaging Canada Ltd, were to be credited first to the old debt of another of the companies, Ontario Bag Company Ltd. Although he disputed any direct connection with Ontario Bag, he acknowledged his connection on cross-examination.

[3] In our view, the motion judge made no error either in the procedure he followed or in his conclusions based on the record.

[4] His reasons refer to the evidence that amply supports his conclusions that the appellant agreed to be personally liable for the past and future debts of his companies in order to allow him to order and receive more bag inventory from the respondent. Further, the record, which includes extensive documents as well as affidavits and cross-examination on them, is clear that the appellant knew and

understood that the outstanding Ontario Bag Company Ltd. debt was being paid down before the new invoices.

[5] We agree with the motion judge's conclusion that there was no need to order the hearing of any further evidence on the issues.

[6] The appellant submits that the motion judge's decision did not dispose of the counterclaim for damages for defective bags. Although the motion judge did not make final orders dismissing both the appellants' counterclaims and the respondent's claims against Elmira Bag & Burlap Ltd. and GX Packaging Canada Ltd on the invoices, it is clear from his reasons that he made those findings and that his intention was that the summary judgment order would determine and deal with all issues raised by the parties. His conclusion that there was no sustainable set-off for defective bags was unassailable. If an amendment to the order is needed, the respondent can obtain it in the Superior Court.

[7] The appeal is therefore dismissed, with costs fixed in the agreed amount of \$19,000, inclusive of disbursements and HST.

"K. Feldman J.A."
"C. W. Hourigan J.A."
"G. Pardu J.A."