

COURT OF APPEAL FOR ONTARIO

CITATION: Titus Steel Company Limited v. Hack, 2025 ONCA 693

DATE: 20251009

DOCKET: COA-24-CV-0808

Hourigan, Sossin and Pomerance JJ.A.

BETWEEN

Titus Steel Company Limited

Plaintiff (Appellant)

and

Wayne Robert Hack, 9589864 Canada Incorporated doing business as
Progressive Armor, and Progressive Armor Incorporated USA

Defendants (Respondents)

F. Scott Turton, for the appellant

Martin P. Forget, for the respondents

Heard: October 7, 2025

On appeal from the judgment of Justice Eugenia Papageorgiou of the Superior Court of Justice dated June 25, 2024, with reasons reported at 2024 ONSC 3666.

REASONS FOR DECISION

Overview

[1] This appeal concerns a dispute between a company and a former employee who established a competing business. The trial judge dismissed the claim that the employee had fiduciary obligations toward his employer which he had

breached. She found the employee had breached his employment duties and committed the tort of conversion in his handling of confidential business records, but that this breach gave rise to no damages.

[2] We dismissed the appeal at the hearing for reasons to follow. These are our reasons.

Facts

[3] Titus Steel Company Limited, the appellant, is a family-run business specializing in ballistic steel products. In 2001, Titus hired Wayne Hack, the main respondent, as Director of Sales. In 2004, Wayne was promoted to Vice President, in the Dynamic Steel Division.

[4] Wayne became increasingly dissatisfied with the job, and his relationship with Mike Usatis, the director, treasurer, and chairman of Titus' board, deteriorated. Between late 2015 and early 2016, Wayne's wife asked him to consider resigning, while Wayne considered starting his own company. During this time, his wife took steps to incorporate a numbered corporation, register a domain name ("Progressive Armor"), and retain counsel for the purposes of obtaining advice.

[5] In March of 2016, Wayne resigned from Titus. Wayne subsequently began operating Progressive Armor, a company which also sold ballistic steel. Progressive Armor applied to set up a business account on March 29, 2016. The

trial judge found that this business was unsuccessful; it operated at a loss for one year and ultimately closed.

[6] On March 22, 2016, shortly after Wayne's resignation, Titus advised Wayne that it had evidence showing that before he left, Wayne copied and downloaded confidential and proprietary information. It asked him to return the material. Wayne wrote back the same day, saying he had backed up the files as a customary practice to ensure the files were recoverable in in the event of computer or system failure. He subsequently returned the backup USB drives with Titus' documents.

[7] Titus alleged that Wayne breached his obligations as a fiduciary, or in the alternative, as an employee when he set up his competing business. Titus also claimed damages for Wayne's alleged willful misconduct or negligence relating to the sale of armour plates to two companies: CMC of Georgia and Bemex.

Decision Below

[8] As a preliminary matter, the trial judge stated her credibility and reliability concerns with both Wayne, as a witness for the defendants, and Mike, as a witness for the plaintiff. Prior to her assessment of the parties' evidence, she stated the following at paragraph 5 of her reasons:

By way of introduction, I had serious concerns about the reliability and credibility of the two main witnesses: Wayne, for the defence, and Mike, for the plaintiff. I believe some but not all of what these witnesses attested to. In each case, I accept their evidence when it

is consistent with the evidence of other witnesses or contemporaneous documents or where other admissible and reliable evidence supports what they say. However, I reject their evidence where it is not supported in this way.

[9] The trial judge found that Wayne was not a fiduciary and thus could not breach any fiduciary duty. Mike's oversight of the business in general, and Wayne's activities in particular, meant Titus did not have the necessary degree of vulnerability required to conclude Wayne was a fiduciary. She further noted that salesmen, like Wayne, are rarely found to be fiduciaries.

[10] In the alternative, the trial judge found that if Wayne was a fiduciary, Wayne nevertheless did not breach any fiduciary duty he might have owed Titus.

[11] The trial judge further found that Wayne did not breach his employment duties of good faith, loyalty, and fidelity by competing, but did breach these duties by virtue of misappropriating Titus' business documents and sharing them with his competitive business. This constituted the tort of conversion. The trial judge was not persuaded, however, that Titus suffered any damages because of this breach.

[12] Although the trial judge found that Wayne kept over one thousand Titus business documents after resigning from Titus, she did not find that Titus had made out the tort of breach of confidence. Titus failed to show that the use of the confidential information by the employee caused the employer losses. While

finding that no damages had been proved, the trial judge directed Wayne to return all business records that he had taken from Titus within 7 days of her decision.

[13] Finally, the trial judge did not find that Wayne committed wilful misconduct or engaged in grossly negligent conduct in respect of two Titus clients prior to resigning: CMC and Bemex.

[14] The trial judge also declined to award punitive damages.

[15] The trial judge awarded costs in favour of the respondents in the sum of \$161,264.

Issues on Appeal

[16] Generally, the appellant takes issue, not with the trial judge's determination of credibility and reliability, but with her alleged failure to apply the rules she set out for herself at paragraph 5 of the reasons throughout her analysis. Because of this alleged error, the appellant argues that the trial judge erred in deciding each major issue at trial.

[17] The appellant also argues that the trial judge's reasons are insufficient, as they fail to explain the support in the record for her findings, beyond the evidence of the two key witnesses, Wayne and Mike.

Analysis

[18] In our view, this appeal must be dismissed. The appellant seeks through this appeal to relitigate the findings of the trial judge. Those findings are entitled to deference.

[19] The key findings of the trial judge, that Wayne was not a fiduciary, and that even if he was a fiduciary, he did not breach any fiduciary duties, and that Wayne did not breach his employment duties beyond the retention of business records constituting the tort of conversion, were all open to her on the record.

[20] Further, her conclusion that this one breach caused no damages in the face of the appellant's failure to lead evidence of loss, was also open to her in light of Titus' failure to lead any evidence that the respondents' competing business caused Titus to lose any customers or profit.

[21] The appellant takes an overly formalistic approach to the trial judge's caution with respect to her concerns about the credibility and reliability of Wayne and Mike as witnesses. The appellant argues the trial judge failed to abide by her own evidentiary ruling by reaching findings only possible by accepting the unsupported evidence of Wayne, which she said she would not do.

[22] First, it is not in dispute that a trial judge may accept all, some or none of the evidence tendered at trial. While the trial judge in this case explained why she rejected evidence from Wayne and Mike, if not otherwise supported, it was not

necessary for her to explain how she applied this approach with respect to each finding, or what other support in the record she relied upon. The question for this court is whether those findings were open to her on the record, and whether they reveal any reversible error. The trial judge's findings were rooted in the record, and we see no such error.

[23] Second, the appellant's ground of appeal relating to the insufficiency of reasons, if indeed this constitutes a separate ground of appeal (which is unclear from the appellant's notice of appeal) must fail.

[24] As this court confirmed in *Levac v. James*, 2023 ONCA 73, 89 C.C.L.T. (4th) 27, at para. 76:

The adequacy of reasons must be determined functionally based on whether they permit meaningful appellate review. If they do, then an argument that the reasons are inadequate fails, despite any shortcomings.

[25] The trial judge's reasons in this case make clear the basis for each of her key findings with reference to the record. There is no basis to conclude the reasons fail to permit meaningful appellate review.

Disposition

[26] For these reasons, we dismissed the appeal.

[27] The respondents are entitled to costs, fixed in the agreed upon amount of \$20,000, all-inclusive.

“C.W. Hourigan J.A.”
“L. Sossin J.A.”
“R. Pomerance J.A.”