

CITATION: *Capital SLC Inc. et al. v. Spotless Consultancy Inc., et al.*, 2025 ONSC 3198
COURT FILE NO.: CV-22-00676521-0000
DATE: 20250609

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Capital SLC Inc., 2593820 Ontario Inc. and
EMC3 Technologies Inc.

Plaintiffs

– and –

Spotless Consultancy Inc., Ciara McHale and
Yahya Hashiru

Defendants

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) *Simon Bieber, Cameron Rempel and Rachel
Allen, for the Plaintiffs*
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) *Yahya Hashiru, Self-represented*
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) **HEARD:** May 15, 2025

REASONS FOR DECISION

CALLAGHAN J.

[1] The plaintiffs seek to recover \$2.85 million from the defendants. The plaintiffs assert that the defendants participated in a civil fraud and were unjustly enriched. As a result, the plaintiffs seek a money judgment and various equitable remedies against the defendants.

[2] For the reasons that follow, I grant judgment in favour of the plaintiffs.

Background

[3] The plaintiffs are a group of companies (collectively “Capital SLC”) owned by Jim McKenzie (“Jim”). The principal business of Capital SLC is snow removal and lawn care in the Ottawa area. Jim’s daughter, Saera McKenzie (“Saera”), has been the CEO of Capital SLC since December 2021.

[4] In the fall of 2020, the long-time bookkeeper of Capital SLC passed away. Jim hired his ex-wife and Saera’s mother, Ciara McHale (“Ciara”) to manage the books. Ciara had been the bookkeeper prior to her divorce from Jim years before.

[5] In and around December 2020, Ciara was granted signing authority over Capital SLC's CIBC account to process payroll and other expenses.

[6] Soon after, Ciara met a person purporting to be Aiden Seaman on an online dating app. She then struck up an online romance with "Aiden". Some 500 pages of text messages were exchanged over WhatsApp from February 2021 to January 2022.

[7] Ciara was convinced that "Aiden" needed funds to ship a "box" of gold to Canada from a storage facility with Royal Vaults Security Company ("Royal Vaults") in Germany. She believed "Aiden" was in the military and that he needed the box returned before he went overseas on a dangerous mission.

[8] To release the box, Ciara was convinced to send money to pay for storage and taxes. She began by using her own money but soon started using her mother's money. Eventually, she used Capital SLC's money. In the end, she misappropriated and funneled \$2,801,150 of Capital SLC's money to "Aiden" via various accounts.

[9] The bulk of the money was directed by "Aiden" to be sent to the defendant, Spotless Consultancy Inc. ("Spotless"). The scam included, among other things, a purported invoice from Royal Vaults for storage fees with a direction to remit the funds to Spotless at a Scotiabank account. There was also a letter to "Aiden" from Royal Vaults confirming it was holding a "package" containing 320kg of gold bars. Certificates from the German government were included that purported to verify ownership of the gold bars by Ciara and "Aiden".

[10] Of course, there were no gold bars and no "Aiden". Ciara was the subject of what is known as a "romance scam".

[11] When Saera became CEO in December 2021, she reviewed the financial records of Capital SLC. It was during this review, that the misappropriation by Ciara became known. Ciara eventually accepted that she had been the target of a romance scam.

[12] Investigations into the whereabouts of the money ensued. It was later learned that Spotless was a company owned by the defendant, Yahya Hashiru ("Yahya"). Mareva injunctions and supporting orders were issued against Spotless, Yahya, and Ciara.

[13] As a result of the orders, more facts were revealed. The financial records showed the money that went to Spotless was eventually forwarded to accounts at the RBC and Stanbic Bank in Ghana in the name of Yahya and a Stanbic Bank account in the name of Best Coastline Limited, a Ghanaian company of which Yahya is an officer and director.

[14] Of the missing funds, Yahya received \$703,089 directly and Best Coastline received \$2,005,641. There is no transparency from the bank records where the money went thereafter.

[15] Spotless did not defend the action and has been noted in default. Yahya was initially represented and filed a defence. He subsequently filed a notice to act in person. He attended at this motion via video from Ghana. He relied upon his affidavit filed on the return of the Mareva motion.

Issues

[16] The plaintiffs seek judgment against Spotless and Yahya.

[17] In the case of Spotless, the plaintiffs seek default judgment. In the case of Yahya, the plaintiffs seek summary judgment. The plaintiffs rely on affidavit evidence of Jim, Ciara and Saera.

[18] The plaintiffs seek judgment against Spotless in the amount of \$2,726,150, being the full amount that was received by it. In the case of Yahya, the plaintiff initially sought judgment for the same amount, but modified its request to \$713,089, being the amounts that were directed to Yahya's personal bank accounts.

Discussion

[19] The plaintiffs claim damages relying on the legal doctrines of civil fraud and unjust enrichment. In argument, much of the discussion centred on the claims of unjust enrichment. As such, I will address these motions for judgment from that perspective.

[20] A plaintiff will succeed in a claim of unjust enrichment if he or she can show: (a) that the defendant was enriched; (b) that the plaintiff suffered a corresponding deprivation; and (c) that the defendant's enrichment and the plaintiff's corresponding deprivation occurred in the absence of a juristic reason: *Moore v. Sweet*, 2018 SCC 52 (CanLII), [2018] 3 SCR 303, at para. 37.

Spotless

[21] In the case of Spotless, this matter proceeds as a default judgment. As the defendant has not defended the action, the allegations of fact in the statement of claim are admitted. Even where facts are admitted, the motions judge is still required to scrutinize the admitted facts and any evidence to determine if the requested judgment is warranted. As stated by the Court of Appeal in *Paul's Transport Inc. v. Immediate Logistics Limited*, 2022 (ONCA) 573:

The motion judge is entitled to scrutinize both the deemed admissions in the pleading and any evidence tendered by the plaintiff to see whether the plaintiff is entitled to judgment: *Salimijazi*, at para. 28. (at para. 77).

[22] Based on the admitted facts from the statement of claim and the affidavit evidence, Spotless received some \$2,726,150 of SLC's funds. This constitutes both a detriment to SLC and corresponding benefit to Spotless. There was no juridical reason for this benefit. I accept that this was part of a scam. The evidence and the admissions confirm that SLC had no business relationship with Spotless, and it never authorized the transfer of funds to Spotless for any legitimate purpose. The gain obtained by Spotless was not justified by any of the established categories of juristic reasons such as contract, donative intent or other valid common law, equitable or statutory obligation: *Moore v. Sweet*, at para. 57. Having established there is no established juristic reason for the benefit received by Spotless, the onus shifts to the defendant to establish that there is some residual reason to deny recovery: *Moore v. Sweet* at para. 58. None has been demonstrated by Spotless.

[23] Having unjustly received \$ 2,726,150, I award judgment in favour of the plaintiff and against Spotless in that amount.

Yahya Hashiru

[24] In respect of the motion against Yahya, the plaintiff seeks summary judgment in the amount of \$713,089.

[25] Summary judgment is appropriate, under r. 20, where there is no “genuine issue requiring a trial”. The Supreme Court in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49 provided the following guidelines as to when summary judgment is appropriate:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

[26] If the court concludes there is a genuine issue for trial, the court may use the enhanced fact-finding powers under r. 20.4 (2.1) if appropriate. There is a two-step process which was summarized by Justice Diamond in *Apotex Inc. v. Pfizer Ireland Pharmaceuticals*, 2021 ONSC 6345, at para. 11:

As recently held by the Court of Appeal for Ontario in *Royal Bank of Canada v. 1643937 Ontario Inc.*, 2021 ONCA 98 (CanLII), when hearing a motion for summary judgment, the Court must follow the analytical process set out in *Hryniak* and carefully analyze all the evidence relied upon by a responding party in his/her efforts to show the presence of a serious issue requiring a trial. First, the Court must consider whether there is a genuine issue requiring a trial based on the record alone and without utilizing the enhanced fact-finding powers in Rule 20.04 (2.1) of the Rules of Civil Procedure.

If the Court finds the presence of a genuine issue requiring a trial on the record alone, then the second question is whether the need for a trial can be avoided by using the said fact-finding powers. In his recent decision *Oxygen Working Capital Corp. v. Mouzakis* 2021 ONSC 1907 (CanLII), Justice Myers posed the following (non-exhaustive) questions for the Court to consider at the second stage:

- a) Will making findings of fact on the evidence before the court provide a fair and just result as compared to a mini-trial or a trial?
- b) Does the material before the court illuminate the factual issue sufficiently to allow the judge to make findings of fact and credibility?
- c) Is there something missing that is needed for basic fairness despite the fact that the parties chose not to put that evidence forward?

d) Do considerations of the litigation as a whole mandate some further process before making factual or credibility findings?

[27] As a general rule, the court may assume that both sides have put their best foot forward and filed all the relevant evidence. During argument, there was some suggestion that Yahya may have had additional evidence to file. However, after further discussion, he indicated he had no further evidence to provide.

[28] In this case, I am satisfied any issue of fact that would give rise to a genuine issue requiring a trial may be resolved using the powers under r. 20.04(2.1).

[29] The evidence is clear that Yahya is involved in these transactions. He does not dispute that he controls Spotless. He does not dispute that money received by Spotless was then transferred to his personal accounts in the amount of \$713,089.

[30] However, he says he has never met or spoken with Ciara. He says that in early 2021, he was approached by Djabiri Dauda, a person he knows from Ghana, who requested that he facilitate an investment in what Yahya understood to be a Ghanaian mining venture. He testifies that Dauda had arranged for the investment with a Canadian company, being Capital SLC Inc. He says that he agreed to facilitate the transaction for a “nominal fee” which he said was 0.5-1%. He said that his agreement was with Dauda, Dauda’s company called Jadon Shatta Enterprise and Best Coastlines.

[31] There was no supporting evidence that a mining operation exists. There is no supporting information regarding the terms of any such investments or the arrangement between Yahya and Dauda.

[32] While it is not disputed that his bank accounts received the money, Yahya was unable to advise where the money went thereafter. Indeed, it is not clear that it has left his accounts in Ghana. Similarly, he was unable to advise where the \$2 million went after entering Best Coastline’s account, even though he is a director.

[33] In my view, there is no juridical reason for Yahya receiving the \$713,089. Yahya wishes the court to accept he was duped. Even then, I do not see this as a juridical reason why he ought to keep the money or not be responsible for its loss. To refer back to *Moore v Sweet*, even if he was duped, neither the parties’ “reasonable expectations” or “public policy”, would support Yahya retaining the money.

[34] If I am wrong, Yahya’s explanation might give rise to a genuine issue for trial as it requires an assessment of credibility that he was unknowingly in receipt of money received via a scam for what he believed was a legitimate purpose. If his explanation could constitute such a reason, then it would seem to be a genuine issue for trial. In which case, I am satisfied I can resolve this matter with the evidence before me and relying on the powers under r. 20.04(2.1).

[35] On the current record, it is not adequately explained why Yahya cannot account for the money that entered accounts controlled by him. There is no evidence in support of this supposed mining operation. On his own evidence, Yahya refers to receiving only a “nominal” commission

for assisting Dauda. He described it as 0.5-1 %. However, the money flowing through his accounts far exceeds that amount. The money comes from the Spotless account which Yahya controls. He provides no explanation how \$713,089 is considered a “nominal” fee. Clearly, this explanation does not account for his receiving the money. In my view, this explanation does not give rise to a juridical reason for retaining the fund or any reasonable expectation n he ought to be able to retain the money.

[36] Accordingly, I grant judgment in favour of the plaintiff as against Yahya in the amount \$713,089.

[37] To be clear, the \$713,089 is an amount that was part of what was wrongly obtained by Spotless, being \$2,726,050, which is now subject to an award of damages. As such, the plaintiff may only recover an amount no greater than \$2,726,050 as between both of these defendants.

[38] In respect of civil fraud, the claim is more complicated. Civil fraud is established where there is “ (i) a false representation of fact by the defendant to the plaintiff; (ii) knowledge the representation was false, absence of belief in its truth, or recklessness as to its truth; (iii) an intention the plaintiff act in reliance on the representation; (iv) the plaintiff acts on the representation; and (v) the plaintiff suffers a loss in doing so”: *Midland Resources Holding Limited v. Shtaif*, 2017 ONCA 320 (CanLII), at para 162. An omission may constitute a false representation.

[39] I do not think I can fairly resolve the issue of whether Yahya participated in a fraud or was simply duped on the current record. This is a matter of credibility where I ought to hear the evidence. The plaintiff was offered the opportunity to convert this matter to a summary trial to address this point. The plaintiff elected to proceed with the summary judgment as it relates only to the unjust enrichment claim in regards to Yahya. As such, I make no finding on the fraudulent misrepresentation regarding Yahya.

Punitive Damages

[40] The plaintiff also asks for punitive damages. Punitive damages are not compensatory but rather express the court’s condemnation of the activity and may serve as a specific and general deterrence: *Whiten v. Pilot Insurance Co.*, 2002 SCC 18 (CanLII), [2002] 1 S.C.R. 595, 209 D.L.R. (4th) 257, at pp. 635-37 S.C.R.; *Ottawa Community Housing Corp. v. Foustanelas*, 2015 ONCA 276 at para. 88. Cory J. in *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, 126 D.L.R. (4th) 129, at 1208, described the purpose for punitive damages as follows:

Punitive damages may be awarded in situations where the defendant's misconduct is so malicious, oppressive and high- handed that it offends the court's sense of decency. Punitive damages bear no relation to what the [page440] plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant.

[41] In this case, I am satisfied the money obtained through this scam was received by Spotless. The money appears now to be beyond the jurisdiction of this court having been sent to Ghana. Scams such as this are scourge on innocent parties. The use of corporate vehicles to commit these scams should be denounced by an award of punitive damages. Having regard to the sums in issue, I award \$250,000 damages as against Spotless.

Disposition

[42] The plaintiff is entitled to judgment against Spotless in the amount of \$2,726,050 plus prejudgment and post-judgment interest. The plaintiff is entitled to an award of punitive damages against Spotless in the amount of \$250,000 plus post-judgment interest.

[43] The plaintiff is entitled to judgment against Yahya Dikeni Hashiru in the amount of \$713,089 plus pre-judgment and post-judgment interest.

[44] For further clarity, the plaintiff must account for any funds recovered from either Yahya Dikeni Hashiru or Spotless such that the recovery of damages does not exceed \$2,726, 050. This does not apply to the punitive damages awarded against Spotless.

Ancillary Orders and Costs

[45] The plaintiffs also request ancillary orders and costs. I accept the plaintiffs are entitled to tracing order and a Mareva for a limited period post-judgment to ensure money is not dissipated before it can be attached. The terms of such orders were a matter of discussion at the hearing, but the plaintiffs sought an opportunity to address the court after the decision was released to determine the wording and such other orders that may be appropriate. Accordingly, if the plaintiffs seek further ancillary orders, it may file submissions of no more than 7 pages within one week. The defendants shall have one week thereafter to respond by filing no more than 7 pages.

[46] As to costs, the plaintiff has filed a bill of costs. It is presumptively entitled to costs. It may file a separate submission of costs of no more than 4 pages within one week. The defendants shall have one week to respond, also no more than 4 pages.

A handwritten signature in blue ink, appearing to read 'Callaghan J.', with a stylized flourish at the end.

Callaghan J.