

CITATION: Mootrey v. The Toronto Dominion Bank, 2026 ONSC 3534
DIVISIONAL COURT FILE NO.: DC-25-47
DATE: 20260618

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
Shore, O'Brien, and Smith, JJ.

BETWEEN:)
)
RENEE LYNN MOOTREY as the ESTATE) Renee Lynn Mootrey, Self-represented
TRUSTEE for the Estate of RAYMOND C.)
MOOTREY also known as RAYMOND)
CLYDE MOOTREY, deceased, RENEE)
MOOTREY)
)
Appellant)
)
– and –)
)
THE TORONTO DOMINION BANK) Aaron Boghossian (Co-counsel), for the
) Respondent
Respondent)
)
)
) **HEARD at Brampton:** March 2, 2026

REASONS FOR DECISION

Shore, J.

- [1] This is an appeal of the summary judgement decision of Justice C.J. Conlan, dated April 23, 2025, in favour of the respondent, the Toronto Dominion Bank (“TD”). The judge found the Estate of Raymond C. Mootrey (“Raymond’s Estate”) liable for indebtedness under a business line of credit extended to Raymond Mootrey’s company, Ingredient Supply Co. Inc. (the “Company”) by TD.
- [2] For the reasons below, the appeal is dismissed.

Background:

- [3] On February 24, 1999, TD granted the Company a line of credit, with a limit of \$48,000. Raymond and his wife, Molly, executed personal guarantees for the line of credit.

- [4] TD advanced the money to the Company. The Company ultimately fell into arrears and defaulted.
- [5] TD brought an action in the Superior Court of Justice on February 7, 2023, against the Company and the two guarantors. However, by the time the action was commenced, Raymond had passed away. He died on April 8, 2022. TD therefore brought the action against the appellant, Renee Lynn Mootrey, in her capacity as the Estate Trustee. Renee is Raymond's daughter.
- [6] On the day of Raymond's death, Renee registered a Power of Attorney (POA) on title to two of Raymond's properties, 189 Bechtel Drive, Kitchener, Ontario (the "Bechtel Property") and 301 Alexandra Avenue, Point Edward, Ontario (the "Point Edward Property").
- [7] On the same day as registering the POA, title to both properties was transferred into Renee's name.
- [8] TD moved for summary judgement on liability for the line of credit. After reviewing the evidentiary record, the judge found that Raymond personally guaranteed the indebtedness of the Company, negating any genuine issue for trial regarding liability on the part of Raymond's Estate.
- [9] The order made by the judge reads as follows:

1. THIS COURT ORDERS that the Defendant, RENEE LYNN MOOTREY as the ESTATE TRUSTEE for the Estate of RAYMOND C. MOOTREY also known as RAYMOND CLYDE MOOTREY, deceased pay to the Plaintiff the sum of \$49,328.06, together with prejudgment interest and postjudgment interest thereon calculated at the Plaintiff's Prime Rate of interest in effect from time to time plus 3.00% per annum from November 7, 2022; and

2. THIS COURT ORDERS that the Defendant pay to the Plaintiff its costs of this Motion and the within Action fixed in the sum of \$10,000.00.

Appellant's Position:

- [10] The appellant submits that the judge correctly found that there was no genuine issue for trial, but in favour of the wrong party. The summary judgement motion should have resulted in an order striking TD's claim (a "boomerang" order). The appellant submits that the judge erred on three grounds:
 - a. The judge failed to consider the appellant's evidence.

b. The judge erred in law and fact in finding that she was the Estate Trustee.

c. The judge erred in finding that the properties were owned by the Estate.

[11] I will address each of these grounds below.

Standard of Review:

[12] The standard of review on a question of law is correctness. On a question of fact, the standard of review is palpable and overriding error. The standard of review on a question of mixed fact and law is palpable and overriding error, except if there is an extricable error of law: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 262, at paras. 8, 10, 37.

No Misapprehension of Evidence

[13] The appellant submits that the judge did not consider the evidence and facts within her affidavits, exhibits, or factum, that the judge misinterpreted evidence from TD, and that the judge failed to reference some of her evidence in the decision.

[14] The appellant submits that the judge failed to read her affidavit, and only relied on her submissions, because the preamble in the reasons does not refer to her affidavit. However, in the very first paragraph of the decision, the judge commends the appellant “for her very thorough materials filed”. During the hearing, the judge also confirmed that the appellant’s material had been uploaded and that he had read the material. Further, a judge is not required to refer to or address every piece of evidence filed. There was no error in the judge’s failure to expressly address the appellant’s affidavit evidence.

[15] The appellant submits that the judge misinterpreted the evidence and therefore made palpable and overriding errors in findings of fact. The appellant may not agree with the judge’s findings of fact, as they differ in some regards from her version of the events, but that does not mean the judge did not consider the evidence. The appellant has the onus to prove there was a palpable and overriding error in the finding of facts and she failed to do so. An appeal is not an opportunity to simply reargue the issues.

[16] Specifically, on the primary issue before the judge, I find no error with the judge’s finding that Raymond guaranteed the indebtedness of the Company and that the liability passed to his Estate. The judge set out his reasons for the finding, which are supported by the evidence:

[6] There is absolutely no question that Raymond, Renee's late father, guaranteed the indebtedness of the corporate Defendant (A22, Case Center).

[7] At the time of his death, there is no question that Raymond was liable for that indebtedness. That liability passed to his Estate.

[17] These facts are not largely in dispute between the parties. I find no palpable or overriding error in this finding of fact.

[18] This ground of the appeal is dismissed.

Estate Trustee

[19] The appellant submits that the Court erred in finding that she was her father's Estate Trustee. She denies that it was common sense to find she assumed the role of Estate Trustee because she sold two properties owned by her father immediately before his passing, under her authority as Power of Attorney. Although the appellant submits the judge made errors in law and fact, her submissions focus on the finding of fact made by the judge.

[20] After making the finding on the summary judgement motion with respect to liability, the Motion Judge carried on explaining that Renee was confusing liability with enforceability. It was during this explanation in the decision that the motion judge commented that by virtue of Renee acting as Raymond's power of attorney before his passing, "it only makes sense that she assumed the role of Estate Trustee on the passing of her father."

[21] A trustee *de son tort* is a person who is not appointed a trustee, but who takes it upon themselves to act as such by possessing and administering trust property: *Chambers Estate v. Chambers*, 2013 ONCA 511, 367 D.L.R. (4th) 151, at paras. 75 and 76, and the cases cited in support. Such a person shall be required to account for their administration of property held in trust, such as property of a person who has died but in respect of whom no estate trustee has been appointed: *Cambareri v. Sorrenti*, 2023 ONSC 4918 at para. 87.

[22] As Rutherford J. explained in *Re O'Reilly (No. 2)* (1980), 28 O.R. (2d) 481 (H.C.), at p. 486, *aff'd* 33 O.R. (2d) 352 (C.A.):

[i]t is trite law that a person not lawfully appointed an executor or administrator may by reason of his intrusion upon the affairs of the deceased be treated for some purposes as having assumed the executorship, as having constituted himself an executor *de son tort*.

[23] The Appellant submits that her actions as POA cannot be considered as intermeddling in an Estate, because they occurred prior to Raymond's death. Renee disputes the findings of fact made by the judge.

[24] I find that there was no error in law and no palpable or overriding error in this finding of fact by the judge. There was ample evidence on which the judge could make the finding that the appellant was an executor *de son tort* because of her knowledge of his financial affairs and properties and considering the actions she took in contacting TD on his death.

[25] For example:

- a. Paragraph 67 of the appellant's factum provides as follows:

Renee's Affidavit sworn February 23/24 (T9, pg.92) contains information and sworn exhibits regarding:

(1) the financial state of Ray, (T9, p. 2-6, pg. 92-93) (Ex. A-E, pg.98-124

(2) the financial state of the business, (T9, p. 7-9, pg.93)

(3) Details regarding the various homes and properties (T9, p. 10-20, pg.93-94)

b. And at paragraph 68:

Renee's Affidavit sworn February 21/25 (T10, pg.147) contains information and sworn exhibits regarding;

[...]

(2) Renee went over some timing regarding the claim and when she contacted TD in person, and over the phone, regarding the death of Ray and the insolvency and effective closure of the business, in May, July, and October of 2022 (T10, p. 7-18, pg.148-149)

c. Paragraphs 45-55 of Renee's Affidavit signed February 21, 2025, provide details as to why there was no estate actuated or administered, and no trustee, and includes financial documents for the business, as well as 6 years of tax assessments for Raymond.

[26] In addition, during the litigation, Renee admitted at times to being the Estate Trustee. At paragraph 7 and 8 of the decision, the Judge states "[a]s Renee admitted in her Statement of Defence at paragraph 17, she is the Executor (in other words, the Estate Trustee) of her late father's Estate... Although Renee subsequently amended that clause in her pleading, the said amendment is inconsistent with what the evidence in totality suggests.". At paragraph 9 of the decision, the Judge found that Renee admitted several times that she was the Estate Trustee, but also, at times, stated that she was not.

[27] It was open to the Motion Judge to find that Renee was the Estate Trustee, based on the evidence before him. I find no palpable or overriding error of fact on this issue.

Ownership of Property:

[28] The appellant submits that the Court erred in finding that proceeds of the sale of the properties belong to the Estate. Although title to both properties was transferred to the appellant on the same day as Raymond died, the appellant submits that title was transferred to her earlier in the day, prior to Raymond's death. Therefore, at the time of his death, Raymond did not own the properties and they did not form part of the estate. The appellant

submits that she had a contract with Raymond that she was the beneficial owner of the properties.

- [29] The appellant's submission seems to take issue with comments made by the Motion Judge in *obiter*. There was no finding of fact with respect to ownership of property. The decision provides as follows:

[4] [...] If Renee is correct that the Estate has no assets, then the Judgment is likely unenforceable, subject to considerations about tracing, for example.

[10] On the evidence filed, the sales of the said two properties clearly resulted in significant net proceeds to Raymond's Estate.

[11] This, hopefully for the benefit of Renee, explains why no trial is required. There is simply no genuine issue about liability on the part of the Estate of Raymond.

- [30] There was no finding of fact or order made with respect to the issue of ownership of the property. This was left open to be addressed if it became an issue should TD subsequently seek to enforce its order against the Estate.

- [31] For the reasons above, the appeal is dismissed.

Costs:

- [32] As the successful party, TD is entitled to \$7,500 in costs all-inclusive.

Shore, J.

I agree
O'Brien, J

I agree
Smith, J.

Released: June 18, 2026

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as RAYMOND CLYDE MOOTREY, deceased, RENEE
MOOTREY

Appellant

– and –

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Respondent

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