

CITATION: *FD Commerce Ltd. et al. v. Céline Claire Cosmetic Inc.*, 2026 ONSC 5214

COURT FILE NO.: CV-23-00699228-0000

DATE: 20260915

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: FD COMMERCE LTD. and FARID DELAIE, Plaintiffs

AND:

CÉLINE CLAIRE COSMETIC INC., CELINE CLAIRE ON COSMETIC INC.
and BABAK CHAFFARI MAJDABADI, Defendants

BEFORE: Paul B. Schabas J.

COUNSEL: *Ardeshir Tahbaz*, for the Plaintiffs

S.K Zandi, for the Defendants

HEARD: August 27, 2026

REASONS FOR JUDGMENT

Background

- [1] This is a motion for summary judgment arising from a failed business relationship between two friends. In September 2022, the plaintiff, FD Commerce Ltd. (“FD”), entered into a Distribution Agreement with Céline Claire Cosmetics Inc. (“CCCI”), in which CCCI was to provide cosmetic products to FD. FD was appointed by CCCI as a “nonexclusive distributor” of the products in certain regions.
- [2] Under the Distribution Agreement, FD agreed to purchase from CCCI a minimum of \$30,000.00 of products in the first year of the agreement. The parties agreed that they would “consult together in good faith” for subsequent years.
- [3] On September 23, 2022, FD paid CCCI \$30,000.00 for products to be sold by it, as discussed between the principals of FD and CCCI, Farid Delaie (“Farid”) and Babak Ghaffari Majdabadi (“Babak”), respectively. Pursuant to s. 15(a) of the Distribution Agreement, the products were to be delivered to FD within 14 days. FD had sales prospects waiting. However, no products were delivered by CCCI within the agreed timeframe. All CCCI provided were some samples of products for marketing purposes, many of which had not been ordered by FD, worth just over \$100.00.
- [4] On November 9, 2022, FD sent a written order to CCCI repeating what had been ordered verbally on September 23, 2022. The written order requested that the previously ordered products be delivered by November 12, 2022. On November 30, all that FD received were

two items, along with three products that were not ordered, collectively worth about \$197.50.

- [5] Babak told Farid that he was having difficulty with his suppliers who were based in China. On November 28, 2022, Babak asked Farid to place another order and pay CCCI an additional \$50,000.00 which, according to Babak, would help CCCI obtain delivery of the previously ordered products from China. Farid complied and provided the funds that same day. The order was confirmed in writing on December 4, 2022. Farid told Babak that he was using funds that he would need to meet payments on a pre-construction condominium he had purchased, which Babak denies. Farid states that he relied on Babak's assurances that CCCI would deliver the products ordered to FD within 14 days.
- [6] During the month of December, CCCI delivered products worth \$10,371.00 to FD. Some were products not ordered by FD, and other products appeared to be stale dated.
- [7] On January 19, 2023, CCCI repaid \$20,000.00 to FD, in recognition of CCCI's failure to deliver products ordered by FD. On February 6, 2023, FD terminated the Distribution Agreement, stating that CCCI had failed to comply with its terms. FD sought repayment of \$48,431.50, which was the amount outstanding from FD's total advance of approximately \$80,000.00 (after deducting the value of the products delivered, the \$20,000 repayment, and other reimbursements). CCCI failed to return any additional funds and this lawsuit was commenced.
- [8] Additionally, on or about November 23, 2022, Babak offered Farid the position of Chief Commercial Officer for CCCI, for which Farid would receive 10% of CCCI's profits. Babak accepted this position, which was confirmed in an email announcing the appointment dated November 23, 2022. Babak now claims that the email was "premature" and says no contract was ever finalized. However, Farid's uncontradicted evidence is that he worked for CCCI in that capacity until he terminated the Distribution Agreement on February 6, 2023.
- [9] FD's action asserts the following causes of action: breach of contract, loss of opportunity, profits, and expectancy loss, misrepresentation, intentional interference with contractual and economic relations, *quantum meruit*, unjust enrichment, and negligence. FD seeks damages for the failure to repay funds advanced, as well as for lost opportunity profits and punitive damages.
- [10] The defendants' position is that if there is any liability under the Distribution Agreement, it is only from the defendant CCCI that the plaintiffs can claim relief. Babak asserts that Farid was aware of the difficulties CCCI was having obtaining supply from China. Babak also asserts that FD knew that the funds it advanced were used to pay CCCI's Chinese suppliers. Babak states that FD sold some products at a discount on eBay, contrary to the Distribution Agreement, and that this price undercutting led to the cancellation of a contract by CCCI's exclusive Texas distributor. As a result, the defendants have counterclaimed against the plaintiffs for \$197,000.00. The defendants have also asserted that the plaintiffs contacted CCCI's Chinese manufacturer to obtain confidential pricing and other

information, and that Farid sought to become the exclusive distributor for Quebec which, Babak states, “was the cause of the breakdown in relationship between us.”

The law on summary judgment law

[11] Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, states that “[t]he court shall grant summary judgment if...the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.” The word “requiring” was added in 2010. In 2010, Rule 20 was also amended to provide judges with the discretion to use additional fact-finding powers designed to expand the scope and use of summary judgment.

[12] In *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, the Supreme Court of Canada addressed the issue of summary judgment, including when it is appropriate to use and the test to be met. Karakatsanis J. summarized the Court’s position as follows, at para. 49:

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.

[13] In *Royal Bank of Canada v. 1643937 Ontario Inc.*, 2021 ONCA 98, 154 O.R. (3d) 561, the Court of Appeal for Ontario noted, at para. 27, that “motion judges are required to engage with the *Hryniak* framework process...look at the evidentiary record, determine whether there is a genuine issue requiring a trial, and assess, in their discretion, whether resort should be taken to the enhanced powers under rr. 20.04(2.1) and (2.2) of the Rules of Civil Procedure.”

[14] The *Hryniak* framework is summarized by the Court of Appeal in *Royal Bank*, at para. 24, as follows:

1. First, the motion judge should have determined if there was a genuine issue requiring a trial based only on the evidence before her, without using the enhanced fact-finding powers under r. 20.04(2.1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194.

2. Second, if there appeared to be a genuine issue requiring a trial, the motion judge should have determined if the need for a trial could be avoided by using the enhanced powers under r. 20.04(2.1) – which allowed her to weigh evidence, evaluate the credibility of a deponent, and draw any reasonable inference from the evidence – and under r. 20.04(2.2) to order that oral evidence be presented by one or more parties.

- [15] On a motion for summary judgment, the parties are required to put their best foot forward on the issues. As the Court of Appeal stated in *Toronto-Dominion Bank v. Hylton*, 2012 ONCA 614, at para. 5:

A party moving for summary judgment has the evidentiary burden of showing there is no genuine issue for trial. Once this burden is discharged the responding party must prove that its defence has a real chance of success. Each party must put its best foot forward to establish whether or not there is an issue for trial. The court is entitled to assume that the record contains all the evidence the parties would present at trial. [Emphasis added.]

- [16] The best foot forward requirement also means the full foot forward. As Corbett J. stated in *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 33, aff'd 2014 ONCA 878: “[t]he court will assume that the parties have placed before it, in some form, all of the evidence that will be available for trial.” Or, as Karakatsanis J. stated when she was a judge of this court, “[t]he court is entitled to assume that the record contains all the evidence which the parties will present if there is a trial”: *New Solutions Extrusion Corporation v. Gauthier*, 2010 ONSC 1037, at para. 12.
- [17] In this case, the issues raised by the plaintiffs involve facts which are largely admitted by the defendants or are not disputed. The evidence put forward by the defendants in support of their counterclaim is largely inadmissible hearsay. To the extent there is conflict in the evidence, largely arising from assertions by the defendants, the use of my enhanced power to weigh the evidence and prefer one side over the other can be done with confidence — the disputed evidence is not supported by contemporaneous records (which would have been within the power of the defendants to produce). The defendants failed to attend for cross-examination despite being served with a notice of examination, and the defendant chose not to cross-examine the plaintiffs. The issues raised are discrete and straightforward, and there is sufficient evidence from which I can draw conclusions. I do not require a fuller appreciation of the facts that might occur at a trial.

Analysis

- [18] The facts presented by the plaintiffs relating to the Distribution Agreement are essentially undisputed. The documents support the plaintiffs’ account of the breach of the Distribution Agreement. CCCI failed to deliver goods and failed to fully reimburse FD. The facts supporting an order that CCCI repay FD \$48,431.50 are essentially beyond dispute.
- [19] The claim for damages arising from Farid’s role as Chief Commercial Officer for CCCI is less straightforward, as Babak disputes the appointment. However, there is contemporaneous evidence of the appointment. Babak’s failure to attend for cross-examination or to make full production, and other inconsistencies in his position (such as the timing of wire transfers of money to China (which were made before the Distribution Agreement was signed and after it was terminated)), leads me to prefer Farid’s evidence, which is detailed and specific.

- [20] The next question is what flows from this appointment, as I have no evidence of CCCI's profits during the brief period of Farid's work as Chief Commercial Officer. However, this uncertainty is due to CCCI's failure to produce its financial statements. I draw an adverse inference from CCCI's non-disclosure and conclude that CCCI made profits which it does not wish to disclose.
- [21] To determine the quantum of profits, the plaintiffs submit that I can at least rely on Babak's evidence asserting that the loss of the Texas distributor cost CCCI approximately \$105,000.00 in lost profit, as a proxy for the level of profit earned by CCCI. Because Farid was entitled to 10% of CCCI's profits as Chief Commercial Officer, this would support a damage award to Farid of \$10,500.00. I agree that this amount should be paid to Farid.
- [22] CCCI's counterclaim has no merit. The evidence that CCCI lost the Texas distributor because FD posted goods for sale on eBay at discounted prices is based on a letter from the distributor that does not mention FD or eBay. The evidence is hearsay and inadmissible. If there is any merit to this assertion, CCCI was obliged to put its best foot forward by tendering admissible evidence relevant to this issue. Further, to the extent FD may have attempted to sell any product on eBay, this was brief and involved very little content.
- [23] As for FD communicating with Chinese manufacturers, this was not pleaded and the evidence is also inadmissible hearsay. In any event, the alleged communications took place after the Distribution Agreement was terminated and there is no evidence or explanation of how this breached any legal obligation to the defendants or how it harmed the defendants.
- [24] Accordingly, I find that the plaintiff FD is entitled to judgment against CCCI for \$48,431.50 for breach of the Distribution Agreement. I also draw an adverse inference arising from CCCI's failure to produce financial records and accept Farid's claim that he should be awarded \$10,500.00 for his role as Chief Commercial Officer of CCCI.
- [25] The plaintiffs also seek judgment against Babak personally and against a company that appears to be related to CCCI, Celine Claire ON Cosmetic Inc. ("CCOCI").
- [26] In my view, there is no legal basis to attach liability to CCOCI. The Distribution Agreement was between FD and CCCI. Furthermore, according to Farid's statement of claim and his evidence, the agreement to be Chief Commercial Officer was with CCCI.
- [27] To attach liability to Babak requires that the plaintiffs plead, and the court find, that Babak, as a director or officer of the company, engaged in some fraudulent or dishonest conduct towards the plaintiffs. Liability can be found even when the individual is "acting in the line of duty": *General Electric Capital Canada Inc. v. Deloitte & Touche LLP* (2002), 29 B.L.R. (3d) 308 (Ont. S.C.), at para. 35, citing *ADGA Systems International Ltd. et al. v. Valcom Ltd. et al* (1999), 43 O.R. (3d) 101 (Ont. C.A.), at p. 105.
- [28] In this case, the plaintiffs pleaded that Babak acted dishonestly in making representations that were untrue or he knew were incapable of being performed, and acted in his own self-interest by taking funds from FD knowing that CCCI could not deliver product. According

to the statement of claim, Babak's actions caused CCCI to breach the Distribution Agreement and not honour the Chief Commercial Officer agreement. In my view, the evidence amply supports this position. Accordingly, Babak shall also be liable to FD for FD's judgment against CCCI.

- [29] The plaintiffs seek additional damages for lost opportunity costs. However, Farid has not presented admissible evidence to support a reliable calculation of what those damages would be, if any. While Farid also suffered damages by losing funds earmarked for the purchase of his pre-construction condominium, there is no claim for those damages in the pleadings.

Conclusion

- [30] The plaintiff FD shall therefore have judgment against the CCCI and Babak in the amount of \$48,431.50, and Farid shall have judgment against CCCI in the amount of \$10,500. Both items shall be subject to pre- and post-judgment interest in accordance with the *Courts of Justice Act*. The counterclaim is dismissed.
- [31] The plaintiffs shall have their costs of the motion on a substantial indemnity basis fixed in the amount of \$45,000, inclusive of disbursements and HST, to be paid by CCCI and Babak. A review of the history of the proceeding shows that the defendants have unnecessarily delayed the matter, been uncooperative and that this has required unnecessary motions and adjournments. I have also found that the defendants acted dishonestly. These factors all support an award of costs on a substantial indemnity basis. The amount awarded also includes costs thrown away flowing from the adjournment of this motion addressed by Shin Doi J. on February 12, 2026.

Schabas J.

Date: September 15, 2026