

judgment. However, at the motion hearing, Defendants' counsel conceded that the only genuine issue for trial was whether the Defendants entered into an any corporate or personal guarantee with respect to the OD account. Counsel for the Plaintiff subsequently agreed to abandon the requests relating to the OD account.

[3] The issues to be decided are: one, is there a genuine issue for trial?; and two, are the Defendants in default of the loan agreements, and if so, what remedies are they entitled to?

Issue 1: Is there a genuine issue for trial?

[4] Pursuant to Rule 20.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and in accordance with the test set out for summary judgment in *Hryniak v Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, I find there is no genuine issue for trial.

[5] While the Defendant Veluppillai initially argued that the corporate and personal guarantees for the loans were entered into under stressful conditions and without the benefit of legal advice, Defendant's counsel conceded at the hearing that those arguments were no longer being advanced.

[6] Even in the absence of those concessions, I find it is well settled that guarantors who are officers and directors of a corporation, as is the case with Mr. Veluppillai, are not required to obtain independent legal advice. In the absence of fraud or misrepresentation, a person is bound by an agreement they have signed whether or not they choose to read it: *Bank of Nova Scotia v Antech Electric Ltd.*, 2010 ONSC 6362 at paras. 27-29. Furthermore, Mr. Veluppillai has neither filed any affidavit evidence to support his claims nor properly pled the elements of misrepresentation by CIBC in his pleadings: *Bank of Montreal v Featherstone* (1989) 68 OR (2nd) 541 (Ont. CA); *Hamilton v 1214125 Ontario Ltd.*, 2009 ONCA 684 at para 35. Consequently, I do not find these claims constitute genuine issues for trial.

[7] This leaves the only contested claim being the accruals on the OD Account which Plaintiff's counsel has withdrawn and therefore, need not be adjudicated.

[8] In these circumstances, I find that a summary judgment motion is proportionate, expeditious, and the least expensive manner in which to address the factual and legal issues raised. Upon review of the materials filed by CIBC and upon hearing submissions of both counsel, I am

satisfied that the pleadings allow me to make the necessary findings of fact and apply the law on the summary judgment motion: *Hyrniak* at para 49.

Issue 2: Are the Defendants in default of the loan agreements, and if so, what remedies are they entitled to?

[9] The Defendants entered into a credit agreement with CIBC on February 5, 2020, in respect of two loans in the amounts of \$78,000, referred to as DLoan #2, and \$442,500 referred to as DLoan #3. Both were small business loans provided at CIBC's prime rate of interest plus 1% per year. The Defendants were required to commence monthly payments on March 15, 2020. The terms and conditions of these loans were set out in the CIBC Small Business Credit Agreement and Guarantee dated February 15, 2020 ("February Credit Agreement") signed by Mr. Veluppillai.

[10] The February Credit Agreement set out various guarantees for the loan. As security for the loans and interest, 2391642 Inc. granted CIBC collateral charges and a general assignment of rents over two properties at 21 Russell Street and 23-25 Russell Street East, Smith Falls, Ontario ("Properties"). CIBC registered the charges over the Properties with the Land Registry Office. The legal descriptions of the Properties is as follows:

PT LT 219 S/S RUSSELL ST PL 13884 LANARK S SOUTH EMSLEY AS IN
RS183044; S/T RS183044; TOWN OF SMITHS FALLS being PIN: 05277-0141
(LT).

LT 220 S/S RUSSELL ST PL 13884 LANARK S SOUTH ELMSLEY T/W
RS197465; TOWN OF SMITHS FALLS being PIN: 05277-0029 (LT).

[11] As further security for the loans and accrued interest, Chuckles Jack Inc. granted CIBC a security interest in all of its present and after-acquired personal property and all proceeds thereof. This guarantee was set out in both the February Credit Agreement as well as a Corporate Guarantee dated February 5, 2020, and signed by Mr. Veluppillai.

[12] Finally, in the final paragraph of the February Credit Agreement, Mr. Veluppillai agreed to be a personal guarantor for the loans. The agreement notes that all the guarantors, corporate and personal, are jointly and severally liable for the loans plus interest.

[13] During the COVID-19 pandemic, CIBC provided 2391642 Inc. with mortgage payment deferrals. Following the end of the deferral period, CIBC converted all deferred mortgage interest into a third loan in the amount of \$11,896 referred to as DLOAN #1. This loan was also at the CIBC prime plus 1% interest rate.

[14] The three loans were then consolidated into the CIBC Small Business Credit Agreement and Guarantee dated October 29, 2020 (“October Credit Agreement”). The previous corporate and personal guarantees continued to apply and were specifically set out in the October Credit Agreement signed by Mr. Velupillai on behalf of all the Defendants. Mr. Velupillai was provided a Small Business Credits Terms and Conditions Booklet which sets out further conditions regarding the loan including terms related to security, personal guarantees, default, and charges.

[15] Similar to the February Credit Agreement, the October Credit Agreement provided that upon demand or upon an occurrence of an event of default, the Defendants were liable for the entire principal balance along with any accrued interest due and payable at the option of CIBC.

[16] The Defendants failed to make the loan payments. On November 17, 2022, CIBC demanded repayment on all the loans.

[17] As of September 25, 2023, the Defendants owe CIBC \$559,293 for the outstanding loans and accrued interest determined as follows:

- a. Amount due under DLOAN #1 is \$13,153.57 consisting of:

Principal \$11,896.00

Interest \$1,257.57

- b. Amount due under DLOAN #2 is \$80,606.93 consisting of:

Principal \$73,606.49

Interest \$7,000.44

- c. Amount due under DLOAN #3 is \$465,532.50 consisting of:

Principal \$425,102.73

Interest \$40,429.77

[18] Following the demand letter, CIBC did not receive any further payments from the Defendants. Consequently, I find the parties are in default of the loan agreements warranting an order for payment of the principal and accrued interest at the rates stipulated in the October Credit Agreement. In addition, I find that both the February and October Credit Agreement clearly stipulate that the Defendants are jointly and severally liable for the outstanding amounts and that CIBC is entitled to collect the security posted by the corporate and personal guarantors. Consequently there will be an Order that:

- i. The Defendants will pay the Plaintiffs the principal and pre-and post-judgment interest accrued for DLoan #1, DLoan #2, and DLoan #3 at the interest rate of 7.7%
- ii. The Defendants 2391642 Inc and Chuckles Jack will deliver to CIBC possession of all property which is the subject of CIBC's security, including but not limited to the Properties;
- iii. Upon delivery, the Plaintiffs will have possession of the Properties;
- iv. The Plaintiffs are granted leave to issue a Writ of Possession for the Properties.

Costs

[19] CIBC is the successful party on the summary judgment motion and is presumptively entitled to costs. CIBC seeks costs on a substantial indemnity basis in the amount of \$22,899.21 plus disbursements of 1,952.57.

[20] Courts have broad discretion to determine to whom costs should be paid and the quantum: *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 131(1).

[21] In exercising their discretion, judges may consider the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure* and governing jurisprudence. These factors include the following: the experience of counsel and rates charged, the amount an unsuccessful party could reasonably expect to pay, amounts claimed, and amount recovered, apportionment of liability, importance of issues, complexity of the proceedings, and the conduct of the parties.

[22] Where a loan agreement specifies that costs for the enforcement of the loan will be paid on a substantial indemnity or solicitor-client basis, courts have often respected the terms of the costs recovery term in the contract and awarded substantial indemnity costs: *Fares and Bakhos v The Toronto-Dominion Bank*, 2019 ONSC 1043 at para 7; *Royal Bank of Canada v Lunardi*, 2016 ONSC 3382 at para 4. *All-Mar Development Ltd. v HSBC Bank Canada*, 2009 CarswellOnt 6505, at paras 4 and 8, leave to appeal dismissed 2010 ONCA 221.

[23] In this case, counsel has identified paragraphs in various loan documents indicating that the loan recipient is required to pay on demand all costs and expenses incurred in connection with the operation and enforcement of the loans, including legal fees on a full indemnity basis.

[24] The Bill of Costs filed by CIBC indicates the legal fees incurred for processing the demand letter, preparing the Statement of Claim, pleadings, and summary judgment motion, and attending court. The total fees incurred were just over \$30,000. The matter was not complex. The hours accord with the work performed by various counsel. The rates charged were commensurate with counsels' varied experience.

[25] Considering CIBC's success on the motion, the complexity of the matter, the time and rates charged, the specification in the loan documents for recovery of costs, I find that the CIBC's request for substantial indemnity costs is fair and reasonable in this case.

[26] There will be an order that the Defendants pay costs in the amount of \$24,851.78 inclusive of disbursements.

Somji J.

Released: February 22, 2024

CITATION: Canadian Imperial Bank of Commerce v. 2391642 Ontario Inc., 2024 ONSC 1077
COURT FILE NO.: CV-23-91987
DATE: 2024/02/22

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Canadian Imperial Bank of Commerce

Plaintiff

– and –

2391642 Ontario Inc., Sarvanithi Yogarajan Veluppillai
and Chuckles Jack Inc.

Defendants

REASONS FOR JUDGMENT

Somji J.

Released: February 22, 2024