

**CITATION:** HSBC Bank Canada v. Guido, 2024 ONSC 5750  
**COURT FILE NO.:** CV-19-00612709-0000  
**DATE:** 20241017

**ONTARIO**

**SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

<b>BETWEEN:</b>	)	
	)	
HSBC BANK CANADA	)	<i>Deborah Palter &amp; Jessica DeFilippis</i> , for the
Plaintiff/Defendant by Counterclaim	)	Plaintiff/Defendant by Counterclaim, HSBC
	)	Bank Canada
<b>– and –</b>	)	
	)	
ANTONIO GUIDO, also known as	)	<i>Rory McGovern</i> , for the Defendant/Plaintiff
ANTHONY GUIDO	)	by Counterclaim, Antonio Guido also known
Defendant/Plaintiff by Counterclaim	)	as Anthony Guido
	)	
<b>– and –</b>	)	
	)	
HSBC BANK CANADA, MICHAEL	)	
THOMAS & ASSOCIATES LTD.,	)	
BRUNO CAMPOLI and JOHN DOE 1-X	)	
Defendants to the Counterclaim	)	
	)	
	)	<b>HEARD:</b> August 8, 2024

**KIMMEL J.**

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

**The Motion and Outcome**

[1] HSBC Bank Canada ("HSBC", or the "Bank" or the plaintiff) moves for summary judgment of its claim on the guarantee provided by Antonio Guido, also known as Anthony Guido ("Guido"). HSBC also moves for the dismissal of Guido's counterclaim against it. HSBC recognizes that the counterclaim will continue against the other defendants to the counterclaim, including a proposed new individual defendant, if leave is granted to Guido to add him.

[2] The Bank's claim is on Guido's guarantee of the debt owed by his company, Royal Canadian Bedrock Inc. ("RCB"). There is no dispute that Guido signed a guarantee of RCB's debt dated January 10, 2017 (the "Guarantee"), Canada Revenue Agency ("CRA") issued requirements to pay in respect of RCB in March 2018, RCB stopped providing financial reporting to the Bank in July 2018, and a receiver was appointed by another creditor over the assets of RCB in September 2018. The Bank issued demands for repayment of its loans to RCB and demanded payment under

the Guarantee in October 2018. Neither RCB or Guido have paid any amounts to the Bank since the Bank's demands. Limited recoveries have been obtained from RCB's assets by a receiver appointed by the Bank which have been applied towards the outstanding indebtedness claimed by the Bank.

[3] In his defence and in his counterclaim, Guido makes claims against the Bank predicated upon allegations of breach of contract, breach of the duty of good faith in contractual performance, negligent misrepresentation, conspiracy, unjust enrichment and unconscionability. He grounds those allegations in the alleged misconduct of the defendants by counterclaim, Michael Thomas & Associates Inc. ("MTA") and Bruno Campoli ("Campoli "). MTA and Campoli were retained as the exclusive agents of RCB and Guido under a written agency agreement, to assist in securing credit facilities. All payments made by Guido were to Campoli and MTA. Guido admits that neither he or RCB ever remitted any monies to the Bank outside of obligations under the Credit Facilities and he admits that the representations that he relies upon were all made by Campoli.

[4] Guido's defences and counterclaims are predicated upon the assertion that these intermediaries who he had retained (MTA and Campoli) were also acting as agents of HSBC. Guido alleges that Campoli and MTA made misrepresentations to him that are binding on the Bank (because of the claim that they were HSBC's agents) and that they conspired with HSBC executives to extract unlawful fees from him in exchange for promises of leniency and forbearance.

[5] After five years of litigation, the exchange of affidavits of documents among the parties, cross-examinations of the Bank and Guido and a Rule 39.03 examination of Campoli, there is no evidence to corroborate Guido's theory. There is no evidence that Campoli was acting as an agent for and/or conspiring with HSBC executives to mislead and induce Guido into a false sense of security that his Guarantee (and the loan to his company) would not be enforced. Nor is there any evidence to corroborate Guido's theory that any HSBC employees received payments in furtherance of this alleged scheme.

[6] The claims by and against the Bank are inextricably interconnected and could not be separated; summary judgment has to be granted on both the claim by, and counterclaim against, the Bank. Where, as here, there is no genuine issue requiring a trial in relation to either the Bank's claims or the counterclaims against it, summary judgment is not precluded simply because of the continuation of Guido's counterclaim against others.

[7] There is no issue requiring a trial of the Bank's claim on the Guarantee, nor in respect of Guido's defences and counterclaims.<sup>1</sup>

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<sup>1</sup> The court was advised at the hearing that the argument raised in Guido's responding factum about HSBC's standing to pursue its claim against him in light of its amalgamation with RBC (after the commencement of this action) pursuant to letters of patent in accordance with s. 229(1) of the *Bank Act*, S.C. 1991, c. 46, was not being pursued.

[8] Summary judgment is granted on the Bank's claim against Guido for amounts owed under the terms of the unlimited demand guarantee he provided in support of the debt owed by his company, RCB. The amount owed to the Bank as of the original demand for payment on October 26, 2018 was \$2,039,042.84 and interest has continued to accrue since then. Summary judgment is also granted, dismissing the counterclaim by Guido against the Bank.

[9] Summary judgment is not sought, or granted, in respect of the counterclaim by Guido against MTA and Campoli. Campoli and MTA have not cross-claimed against the Bank and do not oppose the relief sought by the Bank on this motion.

### **Preliminary Matters: Guido's Adjournment Request**

[10] Guido has a history of requesting adjournments of this motion. That history is relevant to the court's decision on August 8, 2024 not to grant his adjournment request.

[11] The plaintiff's summary judgment motion was originally served on January 24, 2020, and was scheduled and timetabled to be heard on April 29, 2021. It was adjourned after Guido sought to amend his pleading to, among other things, add the counterclaim against the plaintiff and other parties.

[12] At a November 14, 2023 case conference, the HSBC summary judgment motion was rescheduled to be heard on August 8, 2024. By that time, the parties had exchanged affidavits of documents. The summary judgment motion was scheduled over Guido's objection and request that the parties first conduct their examinations for discovery. The court determined that: "the Plaintiff should be allowed to proceed with its motion. Mr. Guido will be entitled to conduct a cross-examination and other proper examinations in opposition to this motion."

[13] On August 7, 2024, the day before this motion was heard, Guido delivered a motion seeking an adjournment and the following additional relief:

- a. An order that the Bank's witness (Andrew O'Coin, "O'Coin") and Campoli answer refusals (the "O'Coin Refusals" and "Campoli Refusals") from their respective cross-examinations on the summary judgment motion held on July 11, 2024 (the "O'Coin Examination") and May 23, 2024 (the "Campoli Examination"); and
- b. Leave to deliver a Second Amended Statement of Defence and Counterclaim ("Amended Defence and Counterclaim") to name a new defendant, Anthony Deleo ("Deleo", previously a "John Doe" defendant), whose identity was disclosed to Guido on May 23, 2024 during the Campoli Examination.

[14] Guido's request to schedule a refusals motion in connection with the Campoli Refusals had previously been denied at a July 8, 2024 case conference. At that time, the court refused to schedule a refusals motion in respect of the Campoli Refusals prior to the hearing of this summary judgment motion, stating that the Campoli Refusals were not directly relevant to the summary judgment motion and that they could be addressed between Guido and Campoli after this motion. On July 8,

2024 it was confirmed that the August 8, 2024, date for HSBC's motion would remain in place and that the date was peremptory to Guido.

[15] The court observed at that time that "[t]he record shows that this court has already extended significant accommodations to Mr. Guido (there have been a number of timetables previously ordered on consent, and Mr. Guido has repeatedly failed to comply with agreed deadlines)." The court commented that "the procedural "bobbing and weaving" on the part of Mr. Guido, apparently with a view to avoiding or substantially delaying HSBC's pending summary judgment motion" could not continue.

[16] On July 18, 2024, a further case conference was convened at the request of Guido to schedule a refusals motion in connection with the O'Coin Refusals and to bring a motion to amend the statement of defence and counterclaim to name Mr. Deleo as a party. Guido once again requested an adjournment of this summary judgment motion. The adjournment request was once again denied, and it was again noted that the August 8, 2024 motion date was peremptory to Guido.

[17] At the July 18, 2024 case conference, it was noted that Guido would not be prohibited from delivering a motion record in respect of the O'Coin Refusals in advance of the summary judgment motion so that the refusals would be before the court at the return of this motion and submissions could be made about them. Guido made submissions about adverse inferences that should be drawn by the court from both the O'Coin and Campoli Refusals, which have been considered, where relevant, later in this endorsement.

[18] At the outset of the hearing on August 8, 2024, the court heard submissions regarding Guido's further adjournment request contained in the motion he delivered on August 7, 2024. The grounds were, once again, tied to the evidence disclosed at the Campoli Examination on May 23, 2024 and the O'Coin and Campoli Refusals. Campoli had testified that some of the fees he received from Guido were paid to Deleo, who worked for Desjardins. Campoli testified that he had not paid any fees to any HSBC executives, although Campoli admitted that he had told Guido he did so. The proposed Amended Defence and Counterclaim seeks, among other things, to include assertions that Deleo was an executive or agent of HSBC and that he had connections to HSBC and/or remitted fees to HSBC executives.

[19] Guido's request for an adjournment of the summary judgment motion was denied. This was the third adjournment request since the disclosure about Deleo's involvement had been made at the Campoli Examination on May 23, 2024. Guido's attempts to delay or avoid this motion before and after that examination are well documented. In addition to the two most recent endorsements reiterating that the hearing date was peremptory to Guido, the Bank prepared a chronology for this motion documenting the many deadlines in the timetable for this motion that were missed by Guido along the way.

[20] The more recent disclosures about Deleo's identity and involvement with Campoli provide no evidentiary support for the suggestion that Deleo was an agent for HSBC (when he received funds from Campoli) or that he was making payments to HSBC executives. There is no evidence

connecting Deleo to HSBC, aside from Campoli admitting that he had lied Guido when he said he was making payments to an HSBC executive when, in fact, it turns out that he was paying fees to Deleo. Campoli testified that Deleo was not an employee or representative of HSBC. Campoli acknowledges that he misled Guido, and denies that either he or Deleo were acting on behalf of HSBC. The issues between Guido/RCB and Campoli/MTA, and now Deleo, do not need to be decided on this motion.

[21] O'Coin was questioned about the alleged fees or payments to HSBC executives in Guido's Amended Defence and Counterclaim. O'Coin testified that he was not aware of any record of such fees having been received and that the executives involved in this loan at the time were asked and were similarly not aware of this having occurred. Guido argues that he needs further documentary discovery from the Bank that is specific to Deleo, and that the Bank has refused to provide this. However, there has been extensive documentary production from the Bank of all relevant documents pertaining to the RCB and Guido loan facilities and security documents and not a single reference to Deleo has been identified in any of the Bank's productions. The more recent disclosures about Deleo do not create a need for any further production from or discovery of the Bank beyond what has already been canvassed through the productions and examinations to date.

[22] Complaints raised at the hearing about privilege redactions in productions of the Bank delivered more than a year earlier that became the subject of some of the O'Coin Refusals were also determined not to provide a legitimate basis for an adjournment. The pattern of conduct of Guido is one of delay. These could have been raised in a timely manner during the very elongated timetable of pre-hearing steps between November 14, 2023 and August 8, 2024 if they were of real concern.

[23] Guido's adjournment request was denied at the outset of the hearing, with the court reserving the final decision on the adjournment to be reconsidered after hearing the full argument of the motion. After hearing the submissions of the parties for the balance of the day, the adjournment was not granted (for brief oral reasons provided in court, and elaborated upon above) and the decision on the summary judgment motion was taken under reserve.

[24] The motion for leave to further amend Guido's Defence and Counterclaim to add Deleo as a defendant was not heard on August 8, 2024, as Deleo was not present. There was not sufficient time for that motion to be heard in any event.

## **Background Facts**

### *Undisputed Facts*

[25] There is a basic chronology of undisputed facts that the Bank primarily relies on in support of its request for summary judgment.

[26] Campoli is the principal of MTA. MTA and RCB entered into a written agency agreement dated August 10, 2016 (the "MTA Agency Agreement"), pursuant to which Guido and RCB retained MTA as its "exclusive agent" to provide financial consulting and relationship services for

the purposes of obtaining the credit facilities. HSBC did not sign and was not a party to that agreement. It maintains that it only became aware of the MTA Agency Agreement in the course of this litigation. There is no evidence to contradict that.

[27] On or about October 31, 2016, HSBC provided Guido and his company with a letter (the "Credit Facility Letter") detailing the credit facilities that HSBC was prepared to make available (the "Credit Facilities"). HSBC eventually required Guido to sign an unlimited demand guarantee of the indebtedness of RCB in connection with the Credit Facilities. Guido signed that Guarantee on January 10, 2017. Additional security documents in the form of a Master Lease Agreement between RCB and the Bank and a General Security Agreement granted by RCB to the Bank ("GSA") were also executed. These security documents together with the Credit Facility Letter and Guarantee are collectively referred to as the "Loan Documents".

[28] For context, I pause here in the chronology of undisputed facts to note that Guido alleges (and Campoli denies) that Campoli made the following oral representations to him at the time he executed the Loan Documents, including the Guarantee (the "Alleged Representations"):

- a. the Bank would not demand repayment of the Credit Facilities if RCB remained in good standing;
- b. the Bank would work cooperatively with Mr. Guido if any issues arose with the Credit Facilities; and
- c. the Bank would not enforce the Guarantee.

[29] No HSBC employee was present when the Loan Documents were signed or when any of the Alleged Representations were made to Guido by Campoli.

[30] RCB defaulted under the Loan Documents in the following respects ("Loan Defaults"):

- a. on March 6, 2018, HSBC received Requirements to Pay from the CRA on RCB's account with the Bank (the "Requirements to Pay") for an aggregate amount of \$380,539.57 relating to RCB's unpaid tax obligations (a default under s. 5(g) of the GSA);
- b. a Receiver was appointed over certain assets of RCB upon application by another creditor, Kooy Brothers Lawn Equipment Ltd., in September 2018 (the "Kooy Receivership") (a default under section n(ii) of the Credit Facility Letter s. 9(e) of the GSA);
- c. in March 2018, the Bank discovered that RCB had not maintained its day-to-day operating accounts with the Bank only (a default under section 6(f) of the Credit Facility Letter);

- d. after July 2018, RCB stopped providing the Bank with its required monthly financial reporting in respect of the Credit Facilities, including its 2018 annual financial statements (a default under section 8 of the Credit Facility Letter); and
- e. RCB's indebtedness exceeded the applicable margin requirements under the terms of the Credit Facilities (a default under sections 4, 6(b), 8(a)(iv), 2.4 and 3.4 of the Credit Facility Letter).

[31] It is not disputed that these Loan Defaults occurred. Guido says that they were just "technical" defaults. It is not disputed that HSBC worked with Guido and RCB to bring the loan back into good standing for a period of time after the initial Loan Default in March 2018. This cooperation ended when HSBC issued its demands for payments in October 2018.

[32] Guido is a licenced Chartered Professional Accountant. While he claims to have been given certain assurances from Campoli about the Guarantee that he signed, he knew he was signing a Guarantee and even asked questions about it at the time. This is not a case of *non est factum*.

[33] Eoghan Brennan ("Brennan") was the HSBC relationship manager for RCB who dealt with Guido and Campoli beginning in August 2016. He continued in that role until the HSBC loan management unit became involved at the end of August 2018 after most of the Loan Defaults had occurred. After that, O'Coin took over the management of this loan at HSBC. At least some of the Loan Defaults persisted after the transfer of responsibility for this loan within HSBC and the Kooy Receivership occurred after this transfer.

[34] On October 17, 2018, the Bank issued a formal Notice of Default to RCB, addressed to Guido's attention (the "Notice of Default"). RCB failed to remedy the defaults. On October 26, 2018, the Bank demanded payment of the Credit Facilities from Guido pursuant to the Guarantee in the amount of \$2,039,043.84 plus interest and costs (the "Demand"). The Bank also demanded payment from RCB for the same amount.

[35] Nothing has been paid to the Bank since the Demand, and interest has continued to accrue since that date.

[36] In November 2018, Guido requested a formal forbearance agreement with the Bank, but the parties were not able to agree upon its terms. On December 6, 2018, the Bank obtained an Order appointing Deloitte Restructuring Inc. as Receiver of all assets, undertakings and properties of RCB (the "Bank's Receivership Proceedings"). The Receiver took possession and carried out a sale of RCB's assets. The Bank recovered \$80,000 from the auction proceeds, which it applied to arrears owing on one of the outstanding RCB Credit Facilities.

#### *Disputed Facts*

[37] Campoli denies making the Alleged Representations to Guido. That will be an issue that likely will require a trial if Guido's counterclaim proceeds against Campoli and MTA. The court does not need to decide whether the Alleged Representations (or any other representations) were

made by Campoli to Guido or purposes of this motion. The Alleged Representations would only be relevant to the claim by and counterclaim against the Bank if Guido can prove his assertion that Campoli was an agent for HSBC when he made the Alleged Representations (the "Agency Assertion"). Guido now seeks to add to the Agency Assertion that Deleo was an agent of HSBC.

[38] There is no evidence to corroborate Guido's Agency Assertion in respect of either Campoli or Deleo. Campoli and HSBC both deny that either Campoli or Deleo were at the time, or ever, employees or agents of HSBC. For purposes of this summary judgment motion, the court must decide whether the Agency Assertion is an issue that requires a trial.

[39] All documented payments from Guido to HSBC were in connection with the Credit Facilities. Guido has established that he also paid some fees to Campoli. Campoli admits that he received fees from Guido, including pursuant to the MTA Agency Agreement, and that some of those fees were passed on to Deleo. Guido alleges that unidentified bank executives also received some of the fees he paid to Campoli (the "Alleged Fee Payments to HSBC Executives"). No such Bank executives have been identified.

[40] Campoli admitted on cross-examination that he misled Guido into believing that fees he received were being paid to an HSBC executive who he referred to as "Kevin". Campoli says in fact no payments were ever made to HSBC executives and has now identified "Kevin" to be Deleo, an executive at Desjardins, who may have been included as a "partner agent" under the MTA Agency Agreement (which the Bank was not party to).

[41] The only persons identified to have received fees from Guido (directly or indirectly) are Campoli and Deleo. There is no evidence that either of them are, or were at any relevant times, employees of HSBC. For purposes of this summary judgment motion, the court must decide whether the Alleged Fee Payments to HSBC Executives is an issue that requires a trial.

[42] Guido identifies these same two fundamental issues to be at the heart of this proceeding, stating that:

The most fundamental issues in the within proceeding include (a) the extent to which Mr. Campoli was acting as an agent of HSBC in the context of negotiating various credit facilities for [RCB] ..., which Credit Facilities were personally guaranteed by Mr. Guido; and (b) the extent to which Mr. Campoli was receiving and remitting various unlawful Fees to HSBC in connection with the Credit Facilities.

### **Summary Judgment Analytical Framework**

[43] Rule 20.04(2) of the *Rules of Civil Procedure* allows a plaintiff to move for summary judgement with supporting affidavit material or other evidence after the defendant has delivered a statement of defence. The court shall grant judgment if it is satisfied that there is no genuine issue requiring a trial with respect to the claim.

[44] There will be no genuine issue requiring a trial when the summary judgment 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”: see *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at paras. 49 and 66.

[45] According to the Supreme Court of Canada in *Hryniak* (at para. 4): “a trial is not required if a motion for summary judgment can achieve a fair and just adjudication ... and is a proportionate, more expeditious and less expensive means to achieve a just result than going to trial.” The procedure must give the judge confidence that they can find the necessary facts and apply the relevant legal principles so as to resolve the dispute (*Hryniak*, at paras. 28 and 50).

[46] On a motion for summary judgment, the judge should first determine if there is a genuine issue requiring a trial based on the evidence before him or her without using the fact-finding powers in subrule 20.04 (2.1). If there appears to be a genuine issue requiring a trial, Rule 20.04 (2.1) permits the motion judge, at his or her discretion, to: (1) weigh the evidence, (2) evaluate the credibility of a deponent, or (3) draw any reasonable inference from the evidence unless it is in the “interest of justice” for these powers to be exercised only at trial: *Hryniak*, at para. 66. The motion judge is also permitted to use the expanded powers under Rule 20.04(2.2) to direct a procedure such as a mini-trial to allow for oral evidence to be presented.

[47] The goal of the second stage of the analysis is to determine whether the need for a trial can be avoided by using the enhanced fact-finding powers under Rule 20.04 (2.1) and (2.2). At para. 66 of *Hryniak*, the Supreme Court of Canada emphasized that the focus must always be on whether the evidence permits a fair and just adjudication of the dispute and cautioned that judges should not use the enhanced powers where their use would be against the interests of justice.

[48] There will be no genuine issue requiring a trial if the summary judgment process provides the evidence required to fairly and justly adjudicate the dispute, and is timely, affordable and proportionate in light of the litigation as a whole.

[49] The responding party cannot rely on the prospect that additional evidence may be tendered at trial; the respondent must put its best foot forward in response to a motion for summary judgment: *Sweda Farms Ltd. v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 26, aff'd 2014 ONCA 878, leave to appeal refused, [2015] S.C.C.A. No. 97.

[50] It has long been recognized that:

- a. A responding party cannot create a genuine issue for trial by claiming that more and better evidence will emerge, or by relying on a self-serving affidavit ... or denial in the absence of supporting evidence.
- b. A responding party has an evidentiary burden to set out, by way of affidavit or otherwise, detailed facts and coherent evidence to show that his or her claim has a real chance of success.

- c. There must be some meaningful support for the assertions made.

See *Wong v. Toronto Police Services Board*, 2009 CanLII 66385 (ON SC), at paras. 46-47.

[51] These principles, and the need to take a hard look at the evidence for a summary judgment motion to determine whether there is a genuine issue requiring a trial based on the evidence before the court on the motion (and not simply the prospect of some additional evidence at trial), have been reinforced in recent cases: see e.g., *Badawy v. TD Bank Group*, 2022 ONSC 5445, at para. 28.

### **Issues to be Decided**

[52] The court must decide whether any of the following claims or defences/counterclaims raise a genuine issue requiring a trial:

- a. Has the Bank made a demand in accordance with the terms of the Guarantee?
- b. Was Campoli an agent of HSBC such that any Alleged Representations made by him to Guido could bind the Bank? This is the "Agency Assertion".
- c. Could any of the Alleged Representations, even if made by an agent of the Bank, defeat the express wording of the Guarantee?
- d. Was HSBC part of a conspiracy to extract unlawful fees from Guido by virtue of the Alleged Fee Payments to HSBC Executives?
- e. Is there a basis for a finding of unconscionability or unjust enrichment on the part of HSBC?

[53] The court must also decide whether "partial summary judgment" is appropriate, where the counterclaim will continue against other defendants, and if so, whether judgment, if granted in favour of the Bank, should be stayed.

### **Analysis**

[54] The court must first determine whether the Bank has satisfied its burden to demonstrate that there is no genuine issue requiring a trial in respect of its claims against Guido under the Guarantee. Then the court must determine whether Guido has raised any genuine issues requiring a trial in respect of his defences and counterclaims.

[55] If it is determined that there are no genuine issues requiring a trial before the use of the court's fact-finding powers, then no further inquiry is needed and the motion should be granted. If an issue is identified that could require a trial, then the court must engage in the further inquiry to ascertain whether there is still a genuine issue requiring a trial after resorting to the additional tools available under r. 20.04: see *Hryniak*, at para. 66.

*The Claim Against Guido on The Guarantee*

[56] Under the terms of the Guarantee, Guido agreed to unconditionally guarantee RCB's obligations to the Bank. The following facts are undisputed:

- a. The Bank extended the Credit Facilities to RCB, which were payable on demand;
- b. Guido executed the Guarantee which guaranteed the obligations of RCB;
- c. the demand Credit Facilities did not require a default, but the Loan Defaults have been established;
- d. the Bank demanded repayment of the Credit Facilities from RCB and from Guido in accordance with the terms of the Guarantee; and
- e. the Credit Facilities were not, and still have not been, repaid.

[57] The Bank made demand for repayment in accordance with the terms of the Guarantee. The unpaid amounts remain outstanding and the Guarantee is valid. There is no genuine issue requiring a trial regarding HSBC's compliance with the requirements for its demand for payment of the amount claimed under the Guarantee. There is no need to resort to the court's enhanced fact-finding powers under r. 20.04 (2.1) to reach this conclusion. The evidence establishes that the Bank is entitled to judgment under the Guarantee.

[58] The summary judgment process provides the evidence required to fairly and justly adjudicate the Bank's claim against Guido on the Guarantee in a timely, affordable and proportionate manner. Unless there is found to be a genuine issue requiring a trial in respect of Guido's defences/counterclaims, Rule 20.04 mandates that the court shall grant summary judgment in favour of the Bank.

*The Defences and Counterclaims*

[59] Guido attempts in his defences and counterclaims to raise a multitude of factual issues to see if something might rise to the level of a genuine issue for trial. None of them do. Given the fact-specific nature of his attempts to avoid summary judgment, the allegations will each be addressed. By engaging in this exercise I do not condone this approach to attempting to defeat a summary judgment motion, nor do I accept that this level of analysis is required in every case where the allegations are, for the most part, unsupported.

a) Loan Defaults and Enforcement

[60] Guido argues that there is a genuine issue requiring a trial of his defences and counterclaims that go to the conduct of the Bank in its enforcement of the Guarantee predicated on the Loan Defaults.

[61] Guido complains about actions taken by HSBC in response to the CRA Requirements to Pay (the first of the Loan Defaults). However, he acknowledges that the Requirements to Pay were received by HSBC, and does not suggest that HSBC had any choice but to honour them until they were withdrawn or satisfied.

[62] Guido asserts that the Bank breached its duty of good faith in the performance (and enforcement) of its contractual rights by not agreeing to continue to extend credit to RCB, or by eventually making a demand for repayment in October 2018 after having worked with Guido and RCB starting in March of 2018 to see if the Loan Defaults could be remedied. Guido alleges that because of these alleged breaches of the Bank's duty of good faith in the performance (and enforcement) of its contractual rights, the Bank should not be permitted to act upon or enforce the Loan Defaults and its security. However, Guido provides no legal foundation for these assertions. The Bank had no obligation to continue to extend credit to RCB in the face of the Loan Defaults. The Bank was asked in December 2018 to (and did not) agree to a forbearance agreement.

[63] Furthermore, for any of these assertions to fall within the framework of the duty of honest performance and good faith in the exercise of contractual discretion there would need to be some assertion and foundation for concluding that HSBC exercised a contractual discretion in a manner that was unconnected to the purpose for which the discretion was granted: see *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, [2021] 1 S.C.R. 32, at paras. 57-63 and 69. Here, even if this framework applies (an issue that need not be decided because it does not impact the outcome of this motion) the exercise of enforcement remedies in the face of the Loan Defaults is entirely on point: it is directly connected to the purpose of the Loan Default remedies to seek repayment of the Credit Facilities.

[64] Guido has also advanced a "theory" that the aggressive enforcement action taken by the Bank after O'Coin took over the management of the Credit Facilities in the fall of 2018 was to cover up the Bank's discovery of wrongdoing by its employees. This "theory" was not put directly to O'Coin on cross-examination, but O'Coin did testify that he asked the people involved with the RCB Credit Facilities (including Brennan and his immediate superior) about the Alleged Fee Payments to HSBC Executives referred to in the Amended Defence and Counterclaim and that they advised that they were not aware of what Guido alleges.

[65] These assertions in the Amended Defence and Counterclaim regarding the Bank's conduct in its enforcement of the Guarantee are wholly unsubstantiated in law and fact. Without any evidentiary foundation, they do not give rise to a genuine issue requiring trial. They are mere assertions, without any meaningful support from detailed facts or coherent evidence to show that the defences have any real chance of success. See *Wong*, at paras. 46-47.

b) The Alleged Representations and the Agency Assertion

[66] If it is determined that there is no genuine issue requiring a trial with respect to the Agency Assertion, then there can be no genuine issue requiring a trial of Guido's allegation in the Amended Defence and Counterclaim of misrepresentations by HSBC. All of the Alleged Representations

were made by Campoli so the misrepresentation claim is dependent upon Campoli being found to be an agent of HSBC. The Alleged Conspiracy in the Amended Defence and Counterclaim (discussed in the next section of this endorsement) is also dependent upon the Agency Assertion.

[67] For the Agency Assertion to be a genuine issue requiring a trial there would need to be some evidentiary foundation for Guido's assertion that Campoli had actual or apparent authority to act on the Bank's behalf.

[68] There is no evidence of Campoli having actual authority to act on HSBC's behalf. Both he and the Bank deny that he was doing so.

[69] Apparent authority requires that the Bank represented, or permitted Campoli to represent, that he had authority to act on behalf of the Bank: see *Vanbiesbrouck v. Missere*, 2006 CanLII 27875 (ON SC), at paras. 19-22. Some evidence that the Bank "clearly and unequivocally" held Campoli out as its agent at the time of the Alleged Representations made when the Loan Documents were executed is needed: see *Accursi v. Hongkong Bank of Canada*, 1997 CanLII 12413 (ON SC), at para. 36; aff'd on appeal *Accursi v. Hongkong Bank of Canada*, 1999 CanLII 2923 (ON CA).

[70] There is no such evidence in the record. The only evidence about the Agency Assertion is that Guido says Campoli told him that he was representing the Bank or was the Bank's agent when he made the Alleged Representations. Campoli denies that he said this or held himself out to Guido as the Bank's agent. However, even if Campoli said what Guido alleges he did, that did not come from the Bank. There is no evidence that the Bank represented or permitted Campoli to represent that he had authority to act on behalf of the Bank. Thus, there is no genuine issue requiring a trial of the Agency Assertion.

[71] Even if the Agency Assertion could pass the initial threshold of an evidentiary foundation for a genuine issue for trial based on what Guido says Campoli told him, the weight of the evidence when fully considered under Rule 20.04 (2.1), overwhelms any initial suggestion of a genuine issue requiring a trial of the Agency Assertion:

- a. Under the express terms of the MTA Agency Agreement (to which HSBC was not a party), Campoli and MTA were acting as the exclusive agent of RCB and Guido and were hired specifically to negotiate credit facilities on behalf of RCB, such as the Credit Facilities that were eventually put in place for RCB at HSBC.
- b. Campoli worked out of RCB's offices from time to time.
- c. Campoli had an RCB email address that he used in his communications with HSBC.

[72] Even if Campoli had told Guido that he was the HSBC's agent (something that Campoli adamantly denies, but that can be left to be determined as between them and does not need to be decided on this motion), it would not be enough to raise a genuine issue about whether Campoli

was, in fact, the Bank's agent when he had been hired as the exclusive agent for RCB and Guido to negotiate the Credit Facilities, including with HSBC, and that is precisely what Campoli did.

[73] Guido also points to two other references in the Bank's documents that he argues support the assertion that Campoli was the Bank's agent. First, Campoli was identified in HSBC's internal documents to be someone who was considered to have influence in introducing clients to HSBC (a "Center of Influence" or "COI"). Second, Campoli was part of the HSBC Hub which connected HSBC customers and businesses with each other. These descriptions of Campoli are equally or more consistent with an inference that Campoli was a customer or representative of Bank customers, rather than an HSBC employee or representative.

[74] There is no direct or inferential evidentiary foundation for a finding of any agency relationship between Campoli/MTA and the Bank and no genuine issue requiring a trial of the Agency Assertion. The Agency Assertion is no more than that, an assertion without any meaningful support from detailed facts or coherent evidence to establish a defences that has any real chance of success. See *Wong*, at paras. 46-47.

[75] Guido's latest assertion (in the newly proposed Amended Defence and Counterclaim) is that Deleo was HSBC's agent. It too is just that: an assertion, that is equally unsupported. In any event, it is not alleged that Guido ever spoke to Deleo so there could not have been any representation made to Guido by Deleo that could be binding on the Bank.

[76] Guido asks the court to draw an adverse inference from the O'Coin and Campoli Refusals to produce additional records about their dealings with each other, or about Deleo's dealings with HSBC. He argues that their refusal to undertake these searches should be interpreted by the court as them "vigorously resisting the production of any records that would more fulsomely detail their relationship".

[77] The Bank and Campoli produced their affidavits of documents in the spring of 2023. Despite having the Bank's confirmation that all the originally requested searches for documents in the Bank's records were completed and all relevant documents were produced, Guido has asked for further searches to be conducted. These searches were refused. The Bank refused on the basis that comprehensive searches of its records had already been undertaken and all relevant documents had already been produced. Without any basis for suggesting that the Bank's original search for records and its production was incomplete or deficient in some respect,<sup>2</sup> its refusal to undertake further searches is not a sufficient foundation for the adverse inference Guido seeks.

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<sup>2</sup> Guido's suggestion that the Bank's redaction of parts of emails originally produced on grounds of privilege is evidence of incomplete or deficient production is equally misguided. Those privilege assertions could have been challenged at the time the productions were made. They were not challenged in a timely manner and Guido now seeks

[78] During oral argument Guido's counsel quite properly acknowledged that it would be a bridge too far for him to ask the court to infer, from the O'Coin Refusals made on an examination on a motion that the Bank maintains was answered by its original documentary discovery and production in the spring of 2023, that documents exist that would corroborate that Deleo (or Campoli) was HSBC's agent.

[79] There were various stated grounds for the Campoli Refusals, including that they fell outside of the scope of the issues on this motion (a determination made at an earlier case conference). In any event, a refusal by Campoli who was examined under Rule 39.03 on this motion cannot give rise to an adverse inference against the Bank.

[80] Guido has had every opportunity to put his best foot forward to establish a genuine issue requiring a trial of the Agency Assertion, but has not done so. There is no reasonable evidentiary foundation, based on either direct evidence of this assertion or indirect evidence from which a reasonable inference could reasonably be drawn, to provide any meaningful support for this aspect of his defence and counterclaim.

[81] Based on the evidence before the court and the application of the law of agency I am able to conclude that there is no genuine issue requiring a trial in respect of the Agency Assertion. This is a fair and just adjudication that is a proportionate, more expeditious and less expensive means to achieve a just result, in contrast with going to trial to adjudicate the Agency Assertion that has not been shown to have any reasonable chance of success.

c) The Alleged Representations and the Express Provisions of the Guarantee and Loan Documents

[82] Even if the Agency Assertion had been found to give rise to a genuine factual issue requiring a trial, the Bank argues that it could be fairly and justly resolved on this motion as a matter of contract law given the express provisions of the Guarantee.

[83] When he signed the Guarantee, Guido confirmed that he in no way, "directly or indirectly, sought, received, or relied upon" any representations from the Bank or any agents or employees of the Bank. The existence of such a clause "is considered to be indicative of an intention of parties to be bound only by those terms that are included in a written agreement and to exclude liability for any pre-contractual representations": see *The Toronto-Dominion Bank v. Fares*, 2018 ONSC 6512, at para. 30.

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to suggest that there is something untoward about them as a basis for denying summary judgment. Afterthoughts are not foundations for adverse inferences to be drawn.

[84] The express provisions of the Guarantee also override any prior drafts of term sheets presented. It is the executed Loan Documents, including the Guarantee, that govern the contractual relationship between the Bank and RCB and Guido.

[85] Nor does the fact that HSBC initially tried to work with Guido and RCB to allow them to remedy the defaults necessarily lead to the inference that there had been a representation made that the Guarantee would not be enforced or relied upon. It makes common sense and is good practice for a bank to try to work with its customers before taking more aggressive enforcement steps.

[86] The Loan Documents (including the Guarantee) expressly prohibit any term or condition from being waived or varied by any course of conduct of any officer, employee or agent of the Bank. The Guarantee also provides that no alteration or waiver of the Guarantee or of any of its terms, provisions or conditions shall be binding on the Bank unless made in writing and signed by the Bank. Such provisions are enforceable: see *Gutierrez v. Tropic International Ltd.*, [2002] 63 OR (3d) 63 (C.A.), at paras. 24-25.

[87] The non-reliance and non-waiver provisions reinforce the conclusion already reached, that there is no genuine issue requiring a trial in respect of the Agency Assertion.

d) The Alleged Fee Payments to HSBC Executives: Conspiracy Claims

[88] To demonstrate the existence of a genuine issue requiring a trial about the alleged conspiracy to extract unlawful fees from Guido, there would need to be some evidence of an agreement between two or more parties to do something, explicitly or implicitly, that is wrong or illegal. *Goldentuler v. Mercedes-Benz*, 2013 ONSC 4150, at para 17.

[89] The allegation is that Campoli and unidentified Bank executives (and now Deleo) conspired to enter into unlawful agreements to extract unlawful fees or payments from Guido ("Unlawful Fees"). These fees were allegedly paid in exchange for the HSBC executives agreement not to demand early repayment of the demand Credit Facilities and to afford RCB and Guido some leniency and to forbear on enforcement (the "Alleged Conspiracy").

[90] Guido asserts that throughout August, September and October of 2016, he provided Campoli and HSBC with payments (in cash and cheques) totalling approximately \$89,650. After the execution of the Loan Documents, between January and March of 2017, Guido says he then paid more than \$168,000 to HSBC and Campoli. By the end of March of 2017, Guido asserts he had paid HSBC and Campoli over \$250,000 in connection with the Credit Facilities. Guido asserts that he further paid approximately \$65,000 in cash and two luxury watches collectively valued at approximately \$40,000 throughout the rest of 2017.

[91] Despite these assertions, Guido has no evidence that he made any direct payments to HSBC, aside from amounts that were paid in accordance with the written Loan Documents in respect of the Credit Facilities (specified interest and other amounts). All alleged cash payments were made by Guido to Campoli. The watches that Guido claims he was asked to provide so they

could be given to an HSBC executive are still in Campoli's physical possession (Campoli says they were given to him by Guido in lieu of fees payable under the MTA Agency Agreement).

[92] Like the Agency Assertion, there is no evidence that there was any Bank employee or representative involved in the flow of funds from Guido to Campoli.

[93] Although Brennan (the RCB relationship manager until August 2018) no longer works for the Bank, he was asked if he had received any fees in connection with the RCB Credit Facilities (outside of those payable to the Bank under those facilities) and denied that he did. Brennan's last known contact information was provided to Guido's counsel. No request was made by Guido to examine Brennan, nor is there any evidence that Guido attempted to contact Deleo for information despite his identity having been disclosed during the Campoli Examination in May 2024. Yet Guido is now suggesting that summary judgment should not be granted because Guido needs evidence from Brennan and Deleo about Alleged Fee Payments to HSBC Executives.

[94] Campoli testified that he shared some of the money he received in fees under the MTA Agency Agreement with Deleo as a fee for Deleo's referral to Brennan. However, he denies that any such fees were shared with the Bank. Despite the Bank having no record of any payments of cash from Campoli to its executives, Guido asks the court to either deny summary judgment pending the continued pursuit of "missing" records or to draw an adverse inference against the Bank from Campoli's refusal to produce a full accounting of what he did with the fees Guido paid him. This inference is not properly drawn against the Bank for Campoli's Refusal. Further, it is rebutted by the fact that the Bank already searched its records for any record of payments to its executives and found none.

[95] Much earlier in the litigation, the Bank produced relevant documents after searching its databases and the custodians involved with the RCB Credit Facilities. It produced its affidavit of documents in the spring of 2023. There is no evidence from the Bank's productions, or any other direct source, that any HSBC executive or employee having conspired with Campoli to extract Unlawful Fees from Guido or RCB under any false pretext, or that any HSBC executive or employee received any of the fees that Guido paid to Campoli.

[96] Campoli admits to paying fees to Deleo, but there is no evidence that Deleo is or ever was an employee of HSBC. The only evidence about any connection between Deleo and HSBC is that he was friends with Brennan. Deleo was given some documents by Campoli relating to the HSBC Credit Facilities and Loan Documents to give to Brennan at a soccer game. Campoli testified that when he was engaged under the MTA Agency Agreement, it was Deleo who had put him in contact with Brennan to negotiate the Credit Facilities for RCB and he knew Deleo and Brennan were friends. Making an introduction and acting as a conduit for the delivery of documents is not a sufficient evidentiary foundation for an inference that Deleo was receiving Unlawful Fees in any representative capacity on behalf of HSBC.

[97] Aside from the absence of evidence of the Alleged Improper Fee Payments to HSBC Executives, Guido has not even asserted or proffered any direct evidence about the agreement that

would have to be at the core of the Alleged Conspiracy. He has presented no evidence about what was agreed to, when it was agreed to, among whom, who was present and what was discussed: see *Goldentuler*, at paras. 17, 18, and 20.

[98] The Alleged Conspiracy is entirely based upon speculation, inuendo and the prospect that something might be uncovered at trial. Guido's responding factum (at paragraph 47) make this clear. It describes "the alleged improper agency relationships among Mr. Campoli, Mr. Deleo and HSBC which resulted in Mr. Guido paying more than \$300,000 in improper fees *which he believed were being paid to HSBC Executives through Mr. Campoli, and possibly were*". These types of allegations do not amount to a genuine issue requiring a trial of the Alleged Conspiracy: see *Wong*, at paras. 46-47 and *Badawy*, at para. 28.

[99] I have reached the conclusion that there is no genuine issue requiring a trial in respect of the Alleged Conspiracy based on the evidence before me without using the fact-finding powers in subrule 20.04 (2.1). This conclusion is based on an absence of any direct evidence of this allegation or indirect evidence from which a reasonable inference could be drawn. The Alleged Conspiracy is wholly unsubstantiated. Without any evidentiary foundation, the mere assertion of a conspiracy, without any meaningful support from detailed facts or coherent evidence to show that this aspect of the counterclaim has any real chance of success does not give rise to a genuine issue requiring trial. See *Wong*, at paras. 46-47.

e) Unconscionability and Unjust Enrichment Claims

[100] The claims of unconscionability and unjust enrichment depend upon the Alleged Fee Payments to HSBC executives or employees. It has already been determined that there is no genuine issue requiring a trial in respect of the Alleged Fee Payments to HSBC Executives, due to an absence of any direct evidence of this allegation or indirect evidence from which a reasonable inference could be drawn. These claims are part of the Alleged Conspiracy that is entirely based upon speculation, inuendo and the prospect that something might be uncovered at trial. These types of allegations do not amount to a genuine issue requiring a trial.

*Partial Summary Judgment and the Requested Stay of Enforcement*

[101] Guido asks the court to exercise its discretion as part of the "interest of justice" inquiry under the summary judgment test to decline to grant partial summary judgment where Guido's counterclaim will continue against Campoli, MTA and Deleo (if leave is granted for Guido's proposed amendments to his proposed Defence and Counterclaim). In this regard, he points to the following passage in *Hyrniak* (at para. 60):

The "interest of justice" inquiry goes further, and also considers the consequences of the motion in the context of the litigation as a whole. For example, if some of the claims against some of the parties will proceed to trial in any event, it may not be in the interest of justice to use the new fact-finding powers to grant summary judgment against a single defendant. Such partial

summary judgment may run the risk of duplicative proceedings or inconsistent findings of fact and therefore the use of the powers may not be in the interest of justice. On the other hand, the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate, timely and cost effective approach.

[102] In a decision upholding the grant of summary judgment in which concerns about partial summary judgment were raised, Brown J.A. writing for the court helpfully outlined what the Superior Court of Justice should be mindful of when deciding whether to hear a summary judgment motion (which must equally be considered on the motion itself), in *Malik v. Attia*, 2020 ONCA 787, 29 R.P.R. (6th) 215, at para. 62:

When faced with a request to hear a motion for partial summary judgment, a motion judge should make three simple requests of counsel or the parties:

- (i) Demonstrate that dividing the determination of this case into several parts will prove cheaper for the parties;
- (ii) Show how partial summary judgment will get the parties' case in and out of the court system more quickly;
- (iii) Establish how partial summary judgment will not result in inconsistent findings by the multiple judges who will touch the divided case.

See also *Hayles et al. v. Durham College*, 2021 ONSC 3585, at para. 26, citing *Malik*.

[103] The Bank's claim against Guido for payment under the terms of his Guarantee is discrete and unconnected to Guido's claims against MTA and Campoli. It is even unconnected to the new claims that Guido seeks to advance against Deleo arising from whatever dealings may have occurred between Guido and Campoli on the one hand and Campoli and Deleo on the other.

[104] If the Bank is successful on this motion, Guido can pursue his claims against Campoli and MTA (and Deleo subject to being granted leave for the Proposed Amended Counterclaim). The issues in the claims against them are distinct from the issues in the Bank's claim against Guido and Guido's counterclaim against the Bank which are dependent upon the Agency Assertion and Alleged Conspiracy that have already been held not to raise genuine issues requiring a trial: see *Hayles*, at paras. 39-44.

[105] Unlike in the case of *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2016 ONCA 922 (at paras 37-38 and 71-72) relied upon by Guido, I do not find there to be a real risk of duplicative or inconsistent findings at trial, nor a reasonable risk that the factual matrix could materially change at trial.

[106] Extricating the Bank's claims not only allows for an earlier resolution of those claims in a more cost effective and proportionate manner than through a trial, but also allows for a more focused and streamlined pursuit of the claims against the other defendants to the counterclaim should Guido decide to pursue them.

[107] The concern identified by the Court of Appeal for Ontario that: “Summary judgment might not be in the interest of justice where there is a ‘risk of duplicative proceedings or inconsistent findings of fact’”, must be balanced against the consideration of whether “the resolution of an important claim against a key party could significantly advance access to justice, and be the most proportionate and cost-effective approach.” *Heliotrope Investment Corporation v. 1324789 Ontario Inc.*, 2021 ONCA 589, 462 D.L.R. (4th) 731, at para. 32; *Hryniak*, at para. 60.

[108] I concur with the sentiment recently expressed by Centa J. in *The Toronto-Dominion Bank v. 2275518 Ontario Inc.*, 2023 ONSC 1050, aff'd 2275518 *Ontario Inc. v. The Toronto-Dominion Bank*, 2024 ONCA 343, (at para. 84):

The summary judgment process is tailor-made to enforce liquidated claims by creditors against debtors and guarantors. Unless there is a genuine issue for trial, the court should be reluctant to delay a creditor's access to this summary procedure to enforce its legitimate contractual claims against debtors and guarantors.

[109] Granting summary judgment in favour of the Bank is in the interest of justice in this case. There is little or no risk of duplicative proceedings or inconsistent findings of fact as the court has not had to make any findings of fact that are relevant to the claims by Guido against Campoli, MTA or Deleo in order to determine that the Bank is entitled to summary judgement.

[110] Guido asks, in the alternative, that if the court grants the Bank summary judgment that a stay of execution be granted until the conclusion of the trial of the counterclaim, whether that trial involves HSBC or not.

[111] Rule 20.08 gives the court the discretion to stay the enforcement of summary judgment (if granted) pending the determination of any other issue in the action or a counterclaim, crossclaim or third-party claim, on such terms as are just. The exercise of this discretion may be influenced by the continuation of claims against other parties. The concerns about possible inconsistent findings or duplicative proceedings have not been convincingly established in this case. The evidence suggests that if even if the Alleged Representations were made and/or the Alleged Conspiracy existed, Campoli and possibly Deleo are the ones who were behind it. No findings need to be, or are being, made regarding their dealings with Guido to grant summary judgment.

[112] Neither Campoli nor Deleo have any established connection to the Bank. Deleo's acquaintance with the former HSBC account manager for RCB through recreational soccer is not a sufficient basis for the court to exercise its discretion to either deny summary judgment or stay

the enforcement of summary judgment granted in favour of the Bank against Guido on his Guarantee for the outstanding indebtedness of RCB.

[113] An interconnection between the claim for which summary judgment is granted and other continuing claims is one factor that might be considered in the exercise of the court's discretion under Rule 20.08. Another factor the court might consider is whether any steps have been taken to advance the counterclaim against the party in whose favour summary judgement is being granted: see *Jarmain v. Canadian Imperial Bank of Commerce*, 2012 ONSC 1625 at para. 11. Neither of those factors exist in this case for reasons previously indicated.

[114] The Bank claims it will suffer prejudice in the event of a stay if judgment is awarded in its favour and it is required to await the outcome of the counterclaims against the other parties. The Bank points to Guido's conduct to date and the delays it has faced in having this motion adjudicated until now, more than five years after this action was commenced. Conversely, even if Guido has a right to claim damages from Campoli, MTA, or Deleo, those damages would not give rise to a set off against the damages Guido owes to the Bank. While it might be more convenient for Guido to have access to funds from another source to pay the Bank, that is not a reason to make the Bank wait for its payment if and until that other source ever is ordered to, and provides, the funds.

[115] The concerns sometimes associated with partial summary judgment do not arise in this case. I find that it is in the interest of justice for summary judgment to be granted in favour of the Bank, granting judgment on its claim against Guido and dismissing Guido's counterclaim against it.

### **Final Disposition and Costs**

[116] The summary judgment process has provided the evidence required for me to fairly and justly adjudicate the dispute on the Bank's claims and Guido's defences and counterclaims against the Bank and to reach the conclusion that there are no genuine issues requiring a trial. Despite the delays in getting this summary judgment motion heard, the determination of the Bank's claim against Guido and the dismissal of his counterclaim now, as opposed to after a trial, is the most timely, affordable and proportionate procedure for resolving these claims, having regard to the litigation as a whole.

[117] Summary judgment is granted in favour of the Bank for its claim on the Guarantee and for the dismissal of Guido's counterclaim against it. Costs shall be determined either by agreement of the parties, or failing agreement, by the court following a brief exchange of written cost submissions. In light of the outcome of this motion, the Bank is entitled to its costs of the action, including this motion. The quantum and scale will need to be determined, with regard to the Rule 57 factors and any Rule 49 (or other) offers that may have been exchanged between the parties.

[118] If the parties are able to reach an agreement on the scale and quantum of costs to be paid by Guido to the Bank they may advise me of such by sending an email by October 31, 2024 to my assistant: [linda.bunoza@ontario.ca](mailto:linda.bunoza@ontario.ca)

[119] If no agreement is reached by that date, a case conference may be scheduled before me through the Commercial List scheduling office so that further directions may be provided regarding the timing, sequencing and length of any proposed written cost submissions that the parties may wish to make.

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Kimmel J.

**Released:** October 17, 2024

**CITATION:** HSBC Bank Canada v. Guido, 2024 ONSC 5750  
**COURT FILE NO.:** CV-19-00612709-0000  
**DATE:** 20241017

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

**BETWEEN:**

HSBC BANK CANADA  
Plaintiff/Defendant by Counterclaim

– and –

ANTONIO GUIDO, also known as ANTHONY GUIDO  
Defendant/Plaintiff by Counterclaim

– and –

HSBC BANK CANADA, MICHAEL THOMAS &  
ASSOCIATES LTD ., BRUNO CAMPOLI and JOHN  
DOE 1-X  
Defendants to the Counterclaim

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**PLAINTIFF'S MOTION FOR  
SUMMARY JUDGEMENT ON CLAIM  
AND TO DISMISS COUNTERCLAIM**

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Kimmel J.

**Released:** October 17, 2024