COURT OF APPEAL FOR ONTARIO

CITATION: Bank of Montreal v. Utility Engineers Corporation, 2025 ONCA 311
DATE: 20250425
DOCKET: COA-24-CV-1007

Lauwers, Favreau and Dawe JJ.A.

BETWEEN

Bank of Montreal

Plaintiff (Respondent)

and

Utility Engineers Corporation and
Pegman Meleknia and Shahin Songhorigakien*

Defendants (*Appellant)

Yigal Rifkind, for the appellant

Shahin Songhorigakien, acting in person

Ian Klaiman and William Onyeaju, for the respondent

Heard: April 14, 2025

On appeal from the judgment of Justice Myrna L. Lack of the Superior Court of Justice, dated September 3, 2024.

REASONS FOR DECISION

A. OVERVIEW

[1] The respondent, Bank of Montreal, granted a $500,000 overdraft facility to Utility Engineers Corporation (“Utility”). Utility’s loan was secured by a General

Security Agreement and was also personally guaranteed by Mr. Meleknia and his mother, the appellant, Ms. Songhorigakien. The Bank obtained default judgment against Utility and Mr. Meleknia, and moved for summary judgment against Ms. Songhorigakien. The motion judge granted summary judgment, and ordered Ms. Songhorigakien to pay the Bank $500,000, pre-judgment interest of $98,662.33, and costs of $51,598.91. Ms. Songhorigakien appeals.

[2] For the reasons that follow, we dismiss the appeal.

B. ISSUES ON APPEAL

[3] Ms. Songhorigakien raises the following issues:

1. Did the motion judge err in determining that this was a proper case for summary judgment?
2. Did the motion judge err in finding that the Bank was under no duty to ensure Ms. Songhorigakien understood the consequences of the personal guarantee?
3. Did the motion judge err in finding that Ms. Songhorigakien's defence of *non est factum* did not raise a serious issue requiring trial?
4. Did the motion judge err by denying the self-represented Ms. Songhorigakien procedural fairness?

[4] Before addressing these issues, we set out the facts.

C. FACTUAL BACKGROUND

[5] Both Mr. Meleknia and Ms. Songhorigakien were officers of Utility, and Ms. Songhorigakien was a 50% shareholder in the business.

[6] Utility went into default under the provisions of the overdraft facility, and on August 19, 2022, the Bank made a formal demand for payment of the entire outstanding indebtedness under the facility. On November 8, 2022, the Bank issued a statement of claim against Utility, Mr. Meleknia, and Ms. Songhorigakien. Neither Utility nor Mr. Meleknia ultimately defended the action, though they initially retained counsel jointly alongside Ms. Songhorigakien. The Bank obtained default judgments against Utility and Mr. Meleknia on January 9, 2023. No payments had been made on either judgment at the time the judgment under appeal was made.

[7] Ms. Songhorigakien served a statement of defence on December 1, 2022. She later discharged her counsel and represented herself for the remainder of the proceedings in the Superior Court. The Bank moved for summary judgment on June 23, 2023, arguing that there was no genuine issue requiring trial.

[8] The motion judge considered Ms. Songhorigakien's arguments that the Bank was required to explain the loan instruments to her, that she did not know she was signing a personal guarantee, and that the Bank had forced Utility into default by failing to approve a government guaranteed HASCAP loan under the

Highly Affected Sectors Availability Program introduced to help businesses impacted by the COVID-19 pandemic.

[9] Finding that the Bank had made out a *prima facie* case, and that Ms. Songhorigakien's defences did not raise a serious issue requiring trial, the motion judge granted the motion for summary judgment.

(1) Did the motion judge err in determining that this was a proper case for summary judgment?

[10] Under rr. 20.01 and 20.04(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court will grant a plaintiff's motion for summary judgment if there is no genuine issue requiring a trial. The Supreme Court laid out a three-step process in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 4, for assessing the propriety of determining the dispute without a trial. This will be the case where the existing record: "allows the judge to make the necessary findings of fact, apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result".

[11] The motion judge's decision to exercise these powers is discretionary and attracts appellate deference, absent an error in law: *Hryniak*, at paras. 80-84, and *Singh v. Khalill*, 2024 ONCA 909, at para. 9.

[12] The motion judge held that there was an adequate evidentiary record before her to decide the motion, because there were no factual disputes properly before her that: the Bank had granted Utility the overdraft facility; Ms. Songhorigakien had

signed the personal guarantee; Utility was in default under the facility; and the Bank had made a written demand for payment.

[13] We see no error in this conclusion and the motion judge's findings attract deference.

(2) Did the motion judge err in finding that the Bank was under no duty to ensure Ms. Songhorigakien understood the consequences of the personal guarantee?

[14] The appellant argues that the special, mother-son relationship she had with Mr. Meleknia gave rise to a duty for the Bank to inquire. She further claims that there was no prospect of financial gain for her flowing from the overdraft facility.

[15] The motion judge noted that Ms. Songhorigakien did not plead in her statement of defence or contend on the evidence that there was any special relationship between Mr. Meleknia and her. She nevertheless considered this argument and concluded that there was no special relationship between Ms. Songhorigakien and Mr. Meleknia, and in the absence of a special relationship, "a lender owes no duty to a borrower in connection with the making of a loan and has no obligation to explain the loan instruments to a guarantor."

[16] As this court found in *Rose-Terra Investments Inc. v. Chetti*, 2024 ONCA 427, at para. 16, citing *Bank of Montreal v. Duguid* (2000), 47 O.R. (3d) 737 (C.A.), at para. 16, a familial relationship does not automatically give rise to an actual or constructive presumption of undue influence. To ground such a presumption, the

transaction must be “manifestly disadvantageous”: *Rose-Terra Investments Inc*., at para. 16. Here, Ms. Songhorigakien was a director, officer, and 50% shareholder of the corporation whose loan she had guaranteed. She stood to either directly or indirectly benefit from the loan.

[17] We find no error in the motion judge’s conclusion. She understood the relationship between Mr. Meleknia and Ms. Songhorigakien, and the nature of the transaction was fully on the record before her. An ordinary lender and borrower relationship “does not involve or give rise to a fiduciary duty on the part of the lender towards the borrower”: *Baldwin v. Daubney* (2006), 83 O.R. (3d) 308 (C.A.), at para. 15, leave to appeal to S.C.C. refused, 31737 (May 3, 2007), and *Del Giudice v. Thompson*, 2024 ONCA 70, at para. 42.

(3) Did the motion judge err in finding that Ms. Songhorigakien’s defence of *non est factum* did not raise a serious issue requiring trial?

[18] The appellant argues that the motion judge erred in applying the test for the *non est factum* (not my act) defence, emphasizing that she is an immigrant, she has a limited proficiency in the English language, and she has spent the majority of her life as a stay-at-home mother, which bolsters her claim that she was careless in signing the guarantee and did not know what she was signing.

[19] The motion judge noted that Ms. Songhorigakien is a licensed real estate broker registered with Century 21 and obtained her licence about 15 years ago. She also noted that Ms. Songhorigakien admitted in her examination that she deals

regularly with standard forms of agreements relating to the purchase and sale of property in Ontario. The motion judge inferred that, in light of these facts, Ms. Songhorigakien had “a sufficient knowledge of the English language to read and understand contracts.” The motion judge also emphasized that anyone seeing the document would be aware that it was a guarantee; the top of the first page has the title in large print: “Guarantee for Indebtedness of an Incorporated Company."

[20] Ms. Songhorigakien was a relatively sophisticated party: she was a longtime real estate agent, and produced significant personal financial information to the Bank, including documents showing her net worth and income. She ought to have known that the guarantee documentation went beyond that required to open a bank account. Though she stated she did not read the document or seek legal advice, that was her failure, and in the circumstances the defence of *non est factum* had no air of reality.

[21] The motion judge applied the correct test, and we find no palpable or overriding error in her findings on the *non est factum* defence.

(4) Did the motion judge err by denying the self-represented Ms. Songhorigakien procedural fairness?

[22] Ms. Songhorigakien raised two procedural questions. The first was that the motion judge wrongly refused to allow her to file an Amended Statement of Defence. The second was that the motion judge refused to permit her to file and rely on the transcript from her examination for discovery.

[23] Ms. Songhorigakien served an Amended Statement of Defence on November 28, 2023. The Amended Statement of Defence deleted a defence in the earlier Statement of Defence that her son had misrepresented to her the nature of the personal guarantee. The Amended Statement of Defence instead alleged that: the Bank had had no communication with Ms. Songhorigakien; that it sent all communications to an unrelated address such that Ms. Songhorigakien had no knowledge of the existence of the loan; that the personal guarantee was unwitnessed by the Bank; and that Ms. Songhorigakien had not actually signed the document. Counsel for the Bank objected to the service of the Amended Statement of Defence and informed Ms. Songhorigakien that she would be required to bring a motion for leave to amend the statement. She did not bring a motion to amend.

[24] Rule 26.02 allows amendments only if pleadings have not closed, all parties involved have consented, or with leave of the court. In this case, the pleadings had closed almost a year earlier, and the amended statement of defence was delivered three weeks after her cross-examination and two weeks after the Bank had served its factum. Neither of the latter two requirements under r. 26.02 were satisfied.

[25] The motion judge made no reversible error in declining to consider the Amended Statement of Defence in her decision. The Bank's counsel informed Ms. Songhorigakien that she was required to bring a motion to amend her statement of defence, which she did not do. In her initial Statement of Defence, Ms. Songhorigakien did not plead that she did not sign the loan and security

agreements in question. In fact, she admitted to signing the documents. She is bound by those admissions. We see no error in the motion judge's refusal to allow her to resile from those admissions.

[26] Ms. Songhorigakien also served an affidavit on October 13, 2023, in response to the motion for summary judgment, appending her answers in examination for discovery. The Bank did not consent to Ms. Songhorigakien using her own answers in her examination for discovery as evidence.

[27] Under r. 39.04(2), transcripts on a motion from a party's own examination for discovery are inadmissible unless admitted on consent. The Bank refused to consent to the admission of Ms. Songhorigakien's examination. The motion judge did not err in refusing to let Ms. Songhorigakien use the transcripts in evidence. We observe that it was open to the Bank to rely on the transcript, as it did in establishing Ms. Songhorigakien's admissions: r. 30.04(1).

D. CONCLUSION

[28] We consider the motion judge's reasons to be clear, sound, and based solidly on the evidence before her. We find no reversible errors in her reasons.

[29] The appeal is dismissed, with costs payable by Ms. Songhorigakien to the Bank which we fix in the amount of $7,500, all-inclusive.

"P. Lauwers J.A."
"L. Favreau J.A."
"J. Dawe J.A."