

CITATION: *CENTRE DE SERVICE À L'EMPLOI PRESCOTT-RUSSELL INC. v. FORAGE M3 DRILLING SERVICES INC. et al.*, 2025 ONSC 2047
COURT FILE NO.: CV-2022-62-00A1
DATE: 2025/04/02

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:)
)
)
Centre de Service à l'emploi Prescott-Russell)
Inc.)
Plaintiff) Jean-François Lalonde, for the Plaintiff
– and –)
)
Forage M3 Drilling Services Inc., 8978514)
Canada Inc. cob Forage Grenville Drilling,)
Tyler Baccardax, Stéphane Chartrand,)
Matthew MacTavish and Forage Fusion)
Drilling Ltd.)
Defendants) Edward C. Conway, for the Defendants
– and-)
)
Luc Corbeil and Corbeil Family Trust and)
Matthew Holding Inc.)
Third Parties) Allan Snelling, for the Third Parties
)
)
)
)
HEARD: March 11, 2025

REASONS FOR DECISION
MOTION FOR SUMMARY JUDGEMENT

FLAHERTY J.

[1] This is a motion for summary judgement, brought by three defendants, 8978514 Canada Inc., Tyler Baccardax, and Stéphane Chartrand (“Moving Parties”). The action concerns the enforceability of an indemnity agreement.

[2] The Moving Parties submit that Luc Corbeil and the Corbeil Family Trust (“Responding Parties”) are required to indemnify them in the amount of \$80,000 plus legal costs, which is what the Moving Parties paid to the Centre de services à l’emploi Prescott-Russel (“CSEPR”) in settlement of the main action.

[3] For the reasons that follow, there is no genuine issue for trial. Based on the evidence, I find that the Moving Parties did not provide the personal guarantees required to trigger Mr. Corbeil’s obligation to indemnify them. In addition, the Corbeil Family trust is not a party to any of the relevant agreements and has no legal obligation to indemnify the Moving Parties. The Moving Parties’ motion is denied and summary judgement is granted in favour of the Responding Parties.

Overview

[4] On June 17, 2016, CSEPR agreed to loan \$350,000 to Forage M3 Drilling Services Inc (“Forage M3”). Paragraph 9 of the Loan Agreement states:

Le centre prendra un cautionnement (General Security Agreement) sur 8978514 Canada Inc Forage Grenville Drilling au montant de trois cent cinquante mille (\$350,000.00). Un cautionnement sur 974686-2 Canada Inc Forage M3 Drilling Services Inc au montant de trois cent cinquante mille (\$350,000.00). Une garantie personnelle de Stéphane Chartrand au montant de trois cent cinquante mille dollars (\$350,000.00). Une garantie personnelle de Tyler Baccardax au montant de trois cent cinquante mille dollars (\$350,000.00). Une garantie personnelle de Matthew MacTavish au montant de cent mille dollars (\$100,000.00).

[5] A form entitled “Borrower Acceptance” was attached to the Loan Agreement. It contains the following text:

I (we) the undersigned The Borrower or the Borrower's representative(s) (in the case of a legal entity which declares that it has the power to do so) acknowledge having read and understood this offer of financing and accept all its terms and conditions.

[6] The Borrower Acceptance is signed by a representative of CSEPR and by Matthew MacTavish and Stéphane Chartrand as “emprunteur ou représentant(s) de l’emprunteur.” The Borrower Acceptance contains no information to indicate whether Mr. MacTavish and Mr.

Chartrand are signing in their personal capacity as borrowers or whether they are signing on behalf of Forage M3. Mr. Baccardax did not sign the Borrower Acceptance or the Loan Agreement.

[7] In July, 2016, CSEPR entered into a General Security Agreement (“GSA”) with Forage M3, MacTavish, Chartrand, and Baccardax, who are referred to collectively as the “Debtor.” At paragraph 1(a) of the GSA, the Debtor granted CSEPR a security interest in all of their personal property of any kind. The GSA contains no reference to a guarantee. The GSA is signed by MacTavish, Chartrand, and Baccardax personally as well as in their capacity as principals of Forage M3.

[8] In 2019, Luc Corbeil purchased 50% of Forage M3 from Baccardax and Chartrand. At that time, Corbeil, Chartrand, Baccardax, MacTavish and Forage M3 entered into an indemnity agreement. The Indemnity Agreement is at the heart of this dispute.

[9] In essence, Luc Corbeil and Matthew MacTavish agreed to indemnify the Moving Parties. The Indemnity Agreement states:

AND WHEREAS M3 is indebted to the following creditors:

Royal Bank of Canada;
Business Development Bank of Canada;
Fonds Régional de Solidarité FTQ;
and Centre de Services à L'emploi de Prescott-Russel Inc. (the "Creditors")

AND WHEREAS Indemnitees have provided personal guarantees to the Creditors (the "Guarantees");

AND WHEREAS it is the intention of the Indemnifiers to either pay off the Creditors (thereby extinguishing the Guarantees) or obtaining a release of the Guarantees from the Creditors;

AND WHEREAS the Indemnifiers have agreed to indemnify the Indemnitees on the following terms and conditions.

[10] Paragraph 2 of the Indemnity Agreement provides:

The parties hereto agree that the obligation of the Indemnifiers to indemnify and save harmless shall be: (i) subject to the requirement that the Indemnifiers shall be afforded an opportunity

at their sole expense, to resist, defend and compromise the same; and (ii) subject to the requirement that Indemnitees shall participate and fully co-operate in the exercise by the Indemnifiers of their recourses herein, at the sole cost and expense of the Indemnifiers.

[11] At some point, CSEPR allowed the registration of their GSA under the *Personal Property Security Act*, R.S.O 1990, c. P.10 to expire. As such, any GSA in favour of CSEPR was unperfected.

[12] Beginning in April 2021, Forage M3 defaulted on the loan to CSEPR. In October 2022, the main action was commenced by CSEPR against the Moving Parties. In its claim, CSEPR did not assert that any of the Moving Parties had provided a personal guarantee.

[13] Forage M3 became bankrupt a few months later, on December 9, 2022. On December 15, 2022, Mr. Corbeil executed a sworn statement listing CSEPR as an unsecured creditor of Forage M3.

[14] The Moving Parties served Mr. MacTavish with their Defence and Cross-Claim in March of 2023. They did not assert a defence based on the GSA being unperfected.

[15] The parties to this summary judgement motion disagree as to whether the conditions at paragraph 2 of the Indemnity Agreement were met. In particular, there is a factual dispute as to when Mr. Corbeil was served with the Third-Party Claim, when he knew or ought to have known that the indemnity was triggered, and whether this afforded him with an opportunity to resist the claim.

[16] While the Moving Parties say he knew or ought to have known about the Third-Party Claim much sooner, Mr. Corbeil seems to acknowledge receiving a copy of the Third-Party Claim sometime in mid to late May 2023.

[17] On May 29, 2023, a full and final mutual release was executed between the Moving Parties and CSEPR, settling the action and providing each other with releases.

Legal Principles Regarding Summary Judgement

[18] Rule 20.04(2)(a) of the Rules of Civil Procedure provides that the court shall grant summary judgement if it is satisfied there is no genuine issue requiring a trial. The burden is on the moving party to prove on a balance of probabilities there is no genuine issue requiring a trial. In determining this issue, the court relies on the evidentiary record on the motion. The motions judge may weigh the evidence, evaluate the credibility of the deponent and draw any reasonable inference from the evidence, unless it is in the interests of justice for such powers to be exercised only at a trial: *Travelers Insurance Company of Canada v. LCL Builds Corporation*, 2018 ONSC 1805 (CanLII) at para. 30.

[19] There will be no genuine issue requiring a trial where the judge can reach a fair and just determination on the merits of a motion for summary judgement. This will happen where the summary judgement process: a) permits a judge to make necessary findings of fact; b) permits a judge to apply the law to the facts; and c) is a more proportionate, more expeditious, and less expensive means to achieve a just result than a trial.

[20] Both parties are required to put their best foot forward in a motion for summary judgement. In this case, the parties filed an extensive record, which includes affidavits from Mr. Baccardax and Mr. Corbeil; agreements and correspondence between the parties and their counsel; and transcripts of Mr. Corbeil and Mr. Baccardax's cross-examinations.

[21] Based on the record before me, I can make the necessary findings of fact in relation to the personal guarantees, and I can apply the law to these facts. The issue of personal guarantees turns largely on the documentary evidence in the record. Moreover, neither party pointed to any further evidence about the alleged personal guarantees that could be lead at trial. As I describe in more detail below, these circumstances are an appropriate case for summary judgement.

Did the Moving Parties Provide Personal Guarantees?

[22] The Indemnity Agreement explicitly applies to personal guarantees, if any, provided by the Moving Parties. To trigger a requirement to indemnify, the Moving Parties must first establish that they provided personal guarantees to CSEPR.

[23] A guarantee is a collateral promise to answer for the debt or default of another. It relates to a legally enforceable obligation to which another person is subject. The primary obligation is that of the principal, while the guarantor's obligation is of a secondary nature: *Ostroff v. Ramnarine*, [2003] O.J. No. 3818 (S.C.) at para. 27.

[24] In this case, there are no contracts of guarantee. Instead, the Moving Parties submit that personal guarantees were provided in both the Loan Agreement and the GSA.

[25] In my view, however, neither of those documents amounts to a personal guarantee. This is the case whether the documents are considered separately or read together.

The Loan Agreement

[26] The Loan Agreement refers to personal guarantees from MacTavish, Chartrand, and Baccardax. However, the Loan Agreement uses the future tense, stating that CSEPR “prendra” or will take a personal guarantee. As noted, there is no information to indicate whether the signatories were signing in their personal capacity as borrowers or whether they signed on behalf of Forage M3. At least one of the individuals did not sign at all.

[27] Given the language of the Loan Agreement and the ambiguity regarding its execution, I cannot conclude that it creates personal guarantees on behalf of MacTavish, Chartrand, and/or Baccardax.

The GSA

[28] The execution of the GSA is unambiguous. It contains six signature lines. Chartrand, MacTavish, and Baccardax each signed the GSA twice: first as corporate officers and, second, in

their personal capacity. However, unlike the Loan Agreement, the GSA makes no reference to personal guarantees.

[29] The Moving Parties state that the creation of personal guarantees should be inferred from Chartrand, MacTavish and Baccardax's signatures on the GSA. I cannot agree.

[30] First, counsel for the Moving Parties has not identified any provision of the GSA that incorporates the Loan Agreement into the GSA. In this respect, this case is factually different from *Ferraro v. Neilas*, 2023 ONCA 297, where the Court of Appeal found that the plain language of a loan participation agreement explicitly incorporated the terms of the loan commitment.

[31] Second, the GSA is silent as to any personal guarantees. Given this, I cannot infer from that document that the parties' objective intention in signing the GSA was for Chartrand, MacTavish and Baccardax to make personal guarantees.

[32] Third, there is a another, more plausible explanation for why the individuals signed the GSA in their personal capacity. The GSA establishes a security interest, which is granted to CSEPR by the Debtor (collectively Forage M3, Chartrand, Baccardax and MacTavish.) The security interest includes the Debtor's personal property.

[33] In these circumstances, there is no basis to conclude that the GSA creates personal guarantees from Chartrand, Baccardax, and MacTavish.

The Loan Agreement and the GSA: Considered Together

[34] Finally, I have considered whether the two documents – read together – should be interpreted as creating personal guarantees.

[35] The principles of contract law focus on determining the objective intentions of the parties, as expressed by the language of an agreement, understood in light of the surrounding circumstances or factual matrix: *Ferraro, supra* at para. 29. On a plain language reading of the Loan Agreement and the GSA, it is clear that the parties' objective intention was for the Moving Parties to provide some form of assurance to CSEPR in respect of the repayment of the loan. The

Loan Agreement refers to that assurance as personal guarantees. The GSA refers to it as personal security.

[36] On their face, the two documents seem inconsistent. My role is to attempt to discern and give effect to the objective intention of the parties, having regard to the language of the agreements and the surrounding circumstances. In this respect, I found the following two points instructive:

[37] First, given that the subsequent GSA provides personal security over all of the Debtor's personal property, it is not clear what would be achieved by any personal guarantees. Under the GSA, the three individuals were already personally liable for the repayment of the loan, as primary debtors. The Indemnity Agreement was signed almost three years later. There is no evidence that the Indemnity Agreement or the sale of Forage M3 was contemplated in 2016.

[38] Second, although the GSA does not incorporate the Loan Agreement, its language links the three individuals' personal security to the parties' obligations under the Loan Agreement. The parties seem to have agreed that the Moving Parties' obligations in the Loan Agreement were satisfied by the security interest subsequently set out in the GSA. In this respect, the GSA states:

WHEREAS the Debtor and Secured Party entered into a Loan Agreement dated the 17th day of June 2016 (the "Loan Agreement"); and

WHEREAS to induce the Secured Party to enter into the Loan Agreement with Debtor, the Debtor agreed to give to the Secured Party the Security Interest set out herein;

[...]

For value received, the Debtor hereby grants to Secured Party a security interest (the "Security Interest") in all of the Debtor's personal property of any kind [...]

[39] In sum, the parties' intention was that the Moving Parties would provide some form of assurance that the loan would be repaid. When the Loan Agreement and the GSA are considered together, I find that, ultimately, the parties intended that this assurance would take the form of personal security over Forage M3 as well as MacTavish, Chartrand and Baccaradax's personal

property. I am not satisfied that the Loan Agreement or the GSA, when read together or separately, amount to personal guarantees by these three individuals or any of them.

The Indemnity Agreement

[40] The Indemnity Agreement refers to the existence of personal guarantees in favour of CSPER. However, this is not determinative. The Indemnity Agreement may be evidence of the subjective understanding of Mr. Corbeil and the Moving Parties, three years after the Moving Parties entered into the GSA. Importantly, however, CSPER was not a party to the Indemnity Agreement and that document can have no bearing on the rights and obligations created by the Loan Agreement and the GSA.

The Statute of Frauds

[41] At the hearing, there was some discussion about whether s.4 of the *Statute of Frauds*, R.S.O. 1990 c. S.19 applies in the circumstances of this case. The Moving Parties submit that it does not apply, the Responding Parties take the position that it does. I asked that counsel provide jurisprudence in support of their respective submissions, and we agreed on a timetable for doing so.

[42] However, having reviewed their submissions and upon reflection, I find that the case does not turn on s.4 of the *Statute of Frauds*. The Moving Parties did not point to any evidence in the record or any evidence that might be provided to show that they gave personal guarantees verbally. Even if I assumed (without finding) that the *Statute of Frauds* does not apply, the evidence does not establish that the Moving Parties provided any personal guarantees to CESPR, whether verbal or in writing.

Corbeil Family Trust

[43] In addition to the above, there is no basis to require the Corbeil Family Trust to indemnify the Moving Parties. The Corbeil Family Trust is not a party to the Loan Agreement, the GSA or

the Indemnity Agreement. The Moving Parties have provided no evidence to show that the Corbeil Family Trust has any obligation to indemnify the Moving Parties.

Boomerang Order for Summary Judgement

[44] The Responding Parties have not brought a motion for summary judgement. However, they seek an order dismissing the Moving Parties request for summary judgement and granting it in their favour. This has been referred to as a “boomerang order”: see, for example, *Saxberg v. Seargeant Picard Incorporated*, 2024 ONCA 931 (CanLII). At the summary judgement hearing, I canvassed this issue with the parties and specifically invited submissions from them on whether summary judgement should be granted to the Responding Parties.

[45] As noted, neither party pointed to any further evidence about the alleged personal guarantees that could be lead at trial. Moreover, counsel for the Moving Parties acknowledged that if I found that no guarantees exist, their case would fail.

[46] In these circumstances, there is no genuine issue for trial. In the absence of personal guarantees, it is appropriate to grant summary judgement in favour of the Responding Parties.

Disposition

[47] For the reasons set out, above, I find that there were no personal guarantees. As a consequence, the requirement to indemnify was not triggered. There is no genuine issue for trial and summary judgement is granted to the Responding Parties.

[48] If the parties are unable to agree on costs, they may each submit a cost outline, attaching a draft bill of costs and any authorities, within 30 days of the release of these reasons. The cost outline submitted by each party shall not exceed three pages in length, exclusive of the bill of costs.

Justice Flaherty

Released: April 2, 2025

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SUPERIOR COURT OF JUSTICE

BETWEEN:

Centre de Service à l'emploi Prescott-Russell Inc.

Plaintiff

– and –

Forage M3 Drilling Services Inc., 8978514 Canada Inc. . cob Forage Grenville Drilling, Tyler Baccardax, Stephane Chartrand, Matthew MacTavish and Forage Fusion Drilling Ltd.

Defendants

– and-

Luc Corbeil and Corbeil Family Trust and Matthew Holding Inc.

Third Parties

REASONS FOR DECISION ON MOTION FOR SUMMARY JUDGMENT

Flaherty J.

Released: April 2, 2025