

**CITATION:** Rail v. 2014284 Ontario Limited, 2025 ONSC 4540  
**COURT FILE NO.:** CV-22-00000834-0000  
**DATE:** 20250805

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** The Estate of Karen Rail, by its Estate Trustee, Brian Rail, Plaintiff

**AND**

2014284 Ontario Limited and Interra Management Group Limited, and Patrick J. Cronin, Defendants

**BEFORE:** Justice Spencer Nicholson

**COUNSEL:** C. Vegso for the Plaintiff

K. Cook for the Defendants

**HEARD:** March 12, 2025

**REASONS ON SUMMARY JUDGMENT MOTION**

**NICHOLSON J.:**

[1] This is a summary judgment motion with respect to two promissory notes.

[2] The first promissory note dated January 12, 2012 (“the January 2012 note”) is for the sum of \$100,000 plus interest (\$134,586.83 remains owing as of April 26, 2022). This note was made in favour of Karen Rail by Interra Management Group Limited (“Interra”).

[3] The second promissory note is dated December 8, 2017 (“the December 2017 note”) and is also for the sum of \$100,000 plus interest (\$156,481.07 remains owing as of April 26, 2022). That note was made in favour of Karen Rail by 2014284 Ontario Limited (“284 Ont”).

[4] The Plaintiff Estate also seeks to pierce the corporate veil so that Patrick Cronin is personally liable for these promissory notes. Mr. Cronin is the principal of both 284 Ont and Interra (collectively “the defendant corporations”).

**The Facts:**

[5] Karen Rail (“Mrs. Rail”) and the defendant corporations were involved in several commercial transactions dating back to at least 2010. These commercial transactions related to various private loans and mortgages over real estate property.

[6] Mr. Cronin is the sole director, officer and shareholder of both 284 Ont and Interra.

[7] Mrs. Rail died of cancer on May 6, 2021. Her husband, Brian Rail (“Mr. Rail”), as her Estate Trustee, has brought this action on behalf of her Estate to recover the amounts owing under the promissory notes.

[8] As part of their business dealings, Mr. Rail deposes that he and his wife were friends with Mr. Cronin and relied on him for his advice on various investment opportunities that he presented to them. He would provide them with details of available opportunities and advise on mortgages, rates and properties that were available.

[9] On January 12, 2012, 284 Ont signed the January 2012 note to repay an existing \$100,0000 loan owing to Mrs. Rail. On its face, the loan was to be repaid by January 12, 2014. The note was originally signed in 2010 but was renewed. It bears interest at 8% per annum, compounded quarterly, commencing on January 12, 2012. Thus, quarterly payments of \$2,000 were made on this note.

[10] According to Mr. Rail, the last payment on the January 2012 note was made on April 12, 2018. The next payment was due to be made in July of 2018 but was not made. These dates were not disputed by Mr. Cronin.

[11] The January 2012 note contains a “Due Date” of January 12, 2014. It also contains a clause such that upon default of payment, the holder of the note could accelerate the whole of the unpaid balance. Furthermore, a clause provided that any extension of the time of payment would not release any party from its obligations to pay. Specifically, “the Maker waives demand and presentment for payment, notice of non-payment, protest and notice protest of this Promissory Note.”

[12] The January 12, 2012 note is signed by Mr. Cronin on behalf of 284 Ont.

[13] The December 2017 note was signed by Mr. Cronin on behalf of Interra on December 8, 2017 to repay a separate \$100,000 loan made by Mrs. Rail. This was to be repaid within 6 months. The December 2017 note bears interest at the rate of 12% per annum, compounded monthly such that the monthly payments were \$1,000.

[14] Pursuant to the December 2017 note, Interra waived presentment for payment and waived “any defences based on indulgences, which may be granted by the Lender to any party liable herein”.

[15] The last payment made under the December 2017 note was on July 8, 2018. The payment due on August 8, 2018 was not made. Again, Mr. Cronin does not dispute these dates.

[16] According to Mr. Rail, Mrs. Rail gave ongoing indulgences to the defendants. Mr. Rail also deposes that Mr. Cronin repeatedly told Mrs. Rail, and later Mr. Rail, that he would repay the two notes.

[17] The Estate has produced a series of text messages between July 2020 and July 2021. These include the following (all messages are *(sic)*):

- A text dated July 21, 2020 in which Mr. Cronin states “Good morning Karen. Sorry I have almost no service here. I’m just finishing with a sale transaction that is to close one week today. From that I can pay the 100k and interest for sure and put a serious dint in the other amount. I may have better tonight when I get back to Raleigh and I will call.”
- This text is followed by texts from Mrs. Rail inquiring as to when the money will be available.
- On August 7, 2020, Mr. Cronin texted Mrs. Rail, stating “Hi Karen, just got an update from the lawyer closing my US sale. He believes it should close in the next 5 business days (could still happen today yet). It’s being dragged out simply because of the size of the transaction 500 billion dollars US”.
- This was again followed by requests for updates by Mrs. Rail.
- On August 18, 2020, Mr. Cronin texted “Hi Karen, sorry I just got my phone back on here although text only till I get a new SIM card again. I emailed the lawyers and they still have not closed as of last night and are still saying it’s a go but it’s day by day as they get through all of the issues. I’m hoping to be back in London next week. The minute I get some indication it’s closed I will contact you asap to get banking info to wire funds.”
- On August 31, 2020, Mr. Cronin texted “High Karen sorry I was hoping for an update email last night but still don’t have. I’m hoping to have some idea as to the status of the money in the next 24 hours. Once I receive I will call”.
- After further inquiries from Mrs. Rail, the next text from Mr. Cronin was dated September 12, 2020, where he stated “Sorry Karen have to text have WiFi only. Had to sign more docs Thursday and his morning. Looks like I will have a firm date mid week for the closing now that they have agreed on the currency exchange rate. Got message on Olympia cheque. I have a new mortgage ready to go to pay everyone out and the taxes and 3 buyers will try to get payments covered this week. Lawyers had discoveries Thursday to enforce settlement agreement so I can buy my partner out but he won’t sign so I guess it’s court next if and when I can get a date.”
- On September 23, 2020, Mr. Cronin texted “Hi Karen I have WiFi at the moment so text and email only. These fires have made the service in California even worse than it was before. I am waiting everyday on pins and needles for the news it’s good to close. They still working out delivery of goods schedule apparently. I am still hoping to get an indication of a closing date this week as both parties want this done now it’s just their damn lawyers running the bill up from what I can see. I hope to have a firm update by Friday. I have money ready to go into the account for the mortgage payment but need approval from my disjointed partner to advance

and he is holding out. Hope to have resolved yet this week and then sell the damn place.”

- On September 30, 2020, Mr. Cronin texted, in response to a request for “any update?”, “Not yet suppose to have a zoom call tomorrow at some point to get this damn thing closed.”
- On October 14, 2020, Mr. Cronin texted “Hi Karen sorry I just got your text messages. Im on the WiFi at the airport. Heading home tomorrow. Have a final court fate Oct 28 and then I should be done with Interra and can make payments. Credit Union put a hold on my wire for B2B for 10 days (makes no sense it’s a wire I do the same thing every month) will have payment cleared up by first of next week when hold off.”
- On October 20, 2020, Mrs. Rail asked Mr. Cronin “what happened to that multi billion dollar sale? Its been 3 months”.
- On November 4, 2020, Mr. Cronin texted “Good morning Karen. Sorry for the delays. Interracial is not done yet hopefully by Friday. I haven’t had my phone for over two weeks as its been taken as evidence (long story) I allowed last night to get an alternate SIM card. My partner in Interracial was shot on the labour day weekend. Apparently he told the police it was me! No I did not shot him! If we can get a sign off today or tomorrow it will close Friday and then I can get the mortgage current and accept the offer on the plaza and have sold by 1<sup>st</sup> of December. Will let you know Monday the outcome”.
- Mrs. Rail continues to inquire as to updates. I note that she asked him to call her several times, but he does not appear to have done so.

[18] By email dated November 26, 2020, Mr. Cronin wrote Mrs. Rail and told her that he had a signed offer on Ridgetown and it should close no later than January 20. “Once this is sold you will be paid out on your Olympia mortgage and the \$100k to Interra will be paid in full. Still working on the other with no clear time line yet on my other closings”.

[19] There are also text messages to Mr. Rail from Mr. Cronin, dated July 22, 2021. He states “Hey Brian Molly said you were by yesterday. Sorry missed you and she didn’t ask for your contact info or I would have called you last night. Just getting my phones, computer and cameras back from Chatsworth OPP that they have had since labour day weekend when Colin Jackson got shot. I should have outgoing phone service tomorrow. I will call once it’s back on. I have an offer on Ridgetown that should close late August and from that I will be paying out Olympia, your B2B and the 100k Interra owes. Little prick told the police I shot him!! I didn’t but what a nightmare”.

[20] Mr. Rail also deposed that in July of 2021 he travelled to Port Franks and met with Mr. Cronin and at that time, Mr. Cronin promised to repay the January 2012 note and would then work on repaying the December 2017 note. Mr. Cronin denies that he made such a promise to Mr. Rail.

[21] On August 16, 2021, counsel for the Estate wrote to Mr. Cronin about the debts owing under the promissory notes.

[22] On October 4, 2021, there were emails exchanged between Mr. Rail and Mr. Cronin. Mr. Rail advised Mr. Cronin what he believed was owed on the notes, including his interest calculations. In response, Mr. Cronin described that there were further delays with the closing but concluded his email with “So this should mean cash for Christmas my friend!”.

[23] With no payments forthcoming, the Estate issued the Statement of Claim in this matter on June 13, 2022.

**Evidence and Examination of Mr. Cronin:**

[24] Mr. Cronin swore an affidavit dated September 6, 2024. He was also examined for discovery on July 17, 2023.

[25] In his affidavit, Mr. Cronin acknowledged that for several years, Mrs. Rail and the two defendant corporations engaged in a number of commercial transactions relating to various private loans and mortgages over real property.

[26] Mr. Cronin further acknowledges that Mrs. Rail loaned to 284 Ont the sum of \$100,000 on January 12, 2010 as set out in the January 2012 note. He also acknowledges that on December 8, 2017, Mrs. Rail loaned a further \$100,000 to Interra, resulting in the December 2017 note. According to Mr. Cronin, the parties were similarly sophisticated and mutually understood investment risks.

[27] Mr. Cronin thereafter indicates that the action is statute barred by the expiration of the applicable limitation periods.

[28] In his affidavit, Mr. Cronin explains that the text messages do not refer to the funds secured by the promissory notes. He claims that the text messages are referencing other mortgages (“B2B”, “Ridgetown” and “Olympia”) that have been paid out in full.

[29] The remainder of his affidavit is dedicated to the issue of whether he should be personally liable for the corporations’ obligations.

[30] As noted, Mr. Cronin was examined under oath approximately one year earlier.

[31] Importantly, he confirmed in that examination that at the time of the text messages that he nor the corporate entities that he controlled owed any amounts to Mrs. Rail aside from the amounts provided for in the two promissory notes. He specifically and unequivocally agreed that the July text message he sent was referring to the January 2012 note and the December 2017 note (Q. 164). He was advising Mrs. Rail that he intended to repay the loans but he had to complete transactions of sales to generate the cash in order to do so.

[32] Of note, Mr. Cronin testified that there was no transaction involving \$500 Billion USD.

**Reply Evidence of Brian Rail:**

[33] Mr. Rail deposes in a Reply Affidavit that his primary job was installing cabinets and Mrs. Rail was a home daycare provider. They had done “arms length mortgages” with Mr. Cronin in the past and he asserts that they believed that their investments had mortgages attached to them, and thus, the loans had collateral backing them up. Mr. Rail states that “we were unaware of what a promissory note was”.

[34] According to Mr. Rail, Mr. Cronin provided Mrs. Rail with the promissory notes as a form of collateral. They relied upon Mr. Cronin for investment advice and believed that the promissory notes protected them.

[35] Mr. Rail states that he and Mr. Cronin had a verbal conversation in July of 2021 in which Mr. Cronin promised to repay the December 2017 note and then would work on repaying the January 2012 note. Mr. Cronin advised Mr. Rail that he was broke and behind on his mortgage payments and was behind payments with the CRA.

[36] Mr. Rail indicates that the B2B mortgage was paid out in March of 2022 and the Ridgetown mortgages were paid out in December of 2021. Accordingly, he indicates that the text messages between Mrs. Rail and Mr. Cronin could not have been referring to these mortgages, but rather did refer to the amounts owing under the two promissory notes.

**Legal Issues to be Resolved:**

[37] The defendants do not concede that this is a proper case for summary judgment. Accordingly, I must first determine whether this is an appropriate case to grant summary judgment. Would granting summary judgment result in a fair and just result, keeping in mind the goals of timeliness, affordability and proportionality in light of the litigation as a whole? (*Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 SCR 87).

[38] The second issue to be determined is whether the Estate is out of time to pursue recovery under the promissory notes. This involves a determination of whether the notes constitute demand notes or term notes, and whether the limitation period had expired prior to the issuance of the Statement of Claim.

[39] The plaintiff argues that the January 2012 note is a demand note and that the demand for payment occurred within two years of the date that the claim was commenced. It is also argued that for both promissory notes, there was a specific waiver of defence for indulgences, which Mrs. Rail granted.

[40] During oral arguments, counsel for the plaintiff conceded that if those arguments failed, the *Limitations Act, 2002*, SO 2002, c. 24 Sched. B., (“the *Act*”) applies and the claims are statute barred because any acknowledgments would have occurred more than two years after the last payment. I only agree with half that concession.

[41] The third issue is whether Mr. Cronin is personally liable for the corporate obligations.

**Issue 1: Summary Judgment:**

[42] Rule 20.04 (2) of the *Rules of Civil Procedure* provides that the court *shall* grant judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[43] In *Hryniak*, Karakatsanis J. described that a trial is not necessary if a summary judgment motion can achieve a fair and just adjudication, allowing the judge to make the necessary findings of fact, apply the law to those facts and is a proportionate, more expeditious and less expensive means to achieve a just result than proceeding to trial.

[44] First, the motions judge should determine if there is a genuine issue requiring a trial based only on the evidence before her, without using the fact-finding powers in Rule 20.04(2.1). If there does appear to be a genuine issue requiring a trial, the motions judge should then determine whether a trial can be avoided by using the enhanced powers found in subrule 20.04 (2.1) and (2.2). The use of such powers will not be against the interests of justice if they will lead to a fair and just result and will serve the goals of timeliness, affordability and proportionality in light of the litigation as a whole.

[45] A number of principles have emerged and are frequently referenced in summary judgment motions. A party may not rest on allegations in its pleadings on a motion for summary judgment but instead must “put its best foot forward” or “lead trump or risk losing”. Furthermore, the court is entitled to assume that the record on a motion for summary judgment contains all the evidence the parties would present at trial. It is not open to a party resisting summary judgment to rely on the prospect that additional evidence may be tendered at trial to justify the necessity of proceeding to trial (see: *James v. Chedli*, 2021 ONCA 593 at para. 31).

[46] It must be kept in mind that despite Karakatsanis J’s. comments regarding summary judgment motions being used expansively to improve access to justice, there is no imperative for courts to use such motions in every case. The overarching goal remains to have a fair process that results in a just adjudication of disputes (see: *Royal Bank of Canada v. 1643937 Ontario Inc.*, 2021 ONCA 98, at para. 25). As noted by Nordheimer J.A. in *Mason v. Perras Mongenais*, 2018 ONCA 978, at para. 44, “nothing in *Hryniak* detracts from the overriding principle that summary judgment is only appropriate where it leads to a ‘fair process and just adjudication’”.

[47] The onus is on the moving party to establish that on a balance of probabilities, there is no genuine issue requiring a trial. However, this onus may shift once the moving party discharges its burden to the responding party to provide admissible evidence and substantiate that there is a genuine issue requiring a trial.

[48] In the present case, the defendants argue that summary judgment is not appropriate because there are two issues of credibility that require a trial. The first is whether or not a conversation between Mr. Rail and Mr. Cronin ever took place in which Mr. Cronin promised to repay the loans. The second issue of credibility is the interpretation to be placed on the text messages.

[48] However, I reject the defendants arguments that credibility issues prevent me from dealing with this matter on a summary judgment motion. As will be seen from the remainder of these Reasons, I find that nothing turns on the alleged conversation that took place between Mr. Rail and Mr. Cronin. That conversation, on its own, would have fallen outside the time for commencing an action unless a prior text message constitutes an acknowledgment in this case.

[49] I do agree that there is a modest issue of credibility with respect to the July 21, 2020 text message and whether it constitutes an acknowledgment. However, I find that I may utilize the powers granted to me pursuant to rule 20.04 (2.1), specifically to evaluate the credibility of Mr. Cronin to resolve that issue to avoid the need for a trial. Further, I find that by doing so, I can resolve this dispute fairly, in a less expensive and more proportionate manner than having a full trial, or even a mini-trial pursuant to rule. 20.04(2.2).

[50] The inconsistency with respect to the July 2020 text message has been created solely by Mr. Cronin providing two inconsistent version of events. Under oath, in July of 2023, he testified that there were only two outstanding amounts owing to Mrs. Rail and he specifically testified that in his July 2020 text he was referring to the two promissory notes.

[51] While in his subsequent affidavit Mr. Cronin is walking back those admissions, I find that his initial evidence is binding upon him, and consistent with the context of the text messages. He cannot create an inconsistency in the evidence and then rely upon that inconsistency to argue that there is a genuine issue requiring a trial.

[52] I have concluded, therefore, that this is an appropriate matter for summary judgment on all the outstanding issues.

### **Issue 2: The Limitation Issue:**

[53] The issue of whether or not the limitation period expired prior to the commencement of this action turns on the characterization of the promissory notes.

[54] Under s. 4 of the *Act* “a proceeding shall not be commenced in respect of a claim after the second anniversary of the day on which the claim was discovered”.

[55] Section 5 of the *Act* sets out when a claim is “discovered”. Section 5 (3) of the *Act* deals specifically with demand obligations and reads as follows:

5(3) For the purpose of subclause (1)(a)(i), the day on which injury, loss or damage occurs in relation to a demand obligation is the first day on which there is a failure to perform the obligation once a demand for the performance is made.

[56] Section 13 of the *Act* provides as follows:

13 (1) If a person acknowledges liability in respect of a claim for payment of a liquidated sum, the recovery of personal property, the enforcement of a charge on personal property or relief from enforcement of a charge on personal property, the act or omission on which the claim is based shall be deemed to have taken place on the day on which the acknowledgement was made.

...

(8) Subject to subsections (9) and (10), this section applies to an acknowledgment of liability in respect of a claim for payment of a liquidated sum even though the person making the acknowledgment refuses or does not promise to pay the sum or the balance of the sum still owing.

(9) This section does not apply unless the acknowledgment is made to the person with the claim, the person's agent or an official receiver or trustee acting under the Bankruptcy and Insolvency Act (Canada) before the expiry of the limitation period applicable to the claim.

(10) Subsections (1), (2), (3), (6) and (7) do not apply unless the acknowledgment is in writing and assigned by the person making it or the person's agent.

(11) In the case of a claim for payment of a liquidated sum, part payment of the sum by the person against whom the claim is made or by the person's agent has the same effect as the acknowledgment referred to in subsection (10).

[57] In *Bank of Nova Scotia v. Williamson*, 2009 ONCA 754, [2009] O.J. No. 4507 (C.A.) the Court of Appeal held that for demand obligations the limitation period does not commence to run until there is a demand for payment made.

[58] In *T.O. Estate v. D.O.*, 2024 ONCA 603, it was reiterated that for a demand loan, a demand is a condition precedent for the commencement of the limitation period. In the absence of a demand, the limitation period does not commence simply because it appears unlikely that there will be repayment without an action.

[59] In *Skuy v. Greenough Harbour Corporation*, 2012 ONSC 6998, the plaintiffs moved for summary judgment with respect to unpaid promissory notes. The defendants relied upon only a limitation period defence. Perell J. provided a thorough analysis of the law about limitation periods and demand obligations at paragraphs 29-43.

[60] He noted that demand obligations can include promissory notes, demand mortgages and demand guarantees, citing *Bank of Nova Scotia v. Williamson*, *supra*. A debt obligation expressly payable on demand is a demand obligation. A debt obligation that does not specify a date for repayment is a demand obligation. However, where a debt obligation is payable on a fixed date, it is not a demand obligation, even where it is stipulated that the lender must give notice or make a demand for payment before enforcing the debt obligation.

[61] I note that the *Bills of Exchange Act*, RSC 1985, c B-4, also provides a definition of a demand obligation. In s. 22, a bill payable on demand is one that (a) is expressed to be payable on demand or on presentation or (b) in which no time for payment is expressed.

[62] In *Skuy*, Perell J. concluded that under s. 5(3) of the *Act*, the limitation period only begins to run once a demand is made, even if the creditor knows that the demand obligation is unlikely to be paid. This is obviously consistent with the appellate decisions.

[63] At para. 43, Perell J. noted that where the debt obligation is not a demand obligation, the commencement of the limitation period will depend upon the date when the lender is aware or ought to have been aware that he or she may sue to enforce the loan because there has been a breach of the lending contract.

[64] In *Skuy*, Perell J. held that the promissory notes under consideration did provide a time for payment and thus they were not demand obligations. Accordingly, he found that the limitation period for all the notes began to run from their maturity date subject to partial payments and acknowledgments that might extend the limitation period.

[65] Accordingly, if the promissory notes in the case before me are demand obligations, the limitation period does not commence to run until a formal demand is made. If they are term notes, then the limitation period commences to run following the last payment on the notes.

[66] I find that the January 2012 note is not a demand note. It is not expressly payable on demand. Rather, it contains an express “due date” of January 12, 2014. Therefore, similar to the promissory notes in *Skuy*, the January 12, 2012 note is a term note. The limitation period in relation to that note began to run from its maturity date of January 12, 2014, subject to any partial payments and/or any acknowledgments.

[67] The last partial payment with respect to the January 2012 note is agreed to have been on April 12, 2018. The two-year limitation period began to run at that time, unless there was an acknowledgment that reset the limitation period.

[68] Similarly, the December 2017 note is not a demand note. It had an express time for payment, being six months from December 8, 2017. Accordingly, I find that the limitation period would have begun to run from June 8, 2018, subject to partial payments or acknowledgment.

[69] The last payment with respect to the December 2017 note was on July 9, 2018. Accordingly, subject again to any acknowledgment, the limitation period began to run at that time.

[70] Thus, for the January 2012 note, the limitation period would have expired on April 12, 2020 and for the December 2017 note, the limitation period would have expired on July 9, 2020.

[71] Despite the concession by the plaintiff Estate, the text messages which may still be found to constitute acknowledgments were not all sent after the expiration of the limitation period. I have considered whether by rejecting this unfortunate concession I am being unfair to the

defendants. I conclude that I am bound to follow and apply the law even if one of the parties has misstated the law to their detriment.

[72] It must be recalled that limitation periods were suspended effective March 16, 2020 as a result of COVID, specifically the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*, S.O. 2020, c.17. The limitation periods did not resume running until September 14, 2020.

[73] Accordingly, although the acknowledgment must occur prior to the expiration of the limitation period to reset the clock, the limitation period had not expired for the January 2012 note until October 9, 2020. The limitation period for the December 2017 note had not expired until January 2021.

[74] Accordingly, if any of the text messages constitute acknowledgments in relation to the promissory notes, then the limitation periods would have been refreshed as of the date of the text(s).

[75] Again, I recognize that neither party raised the COVID issue but as a matter of law, the limitation periods had not expired.

[76] With respect to acknowledgments, Perell J., at para. 56 of *Skuy*, described that prior to the expiration of the limitation period, the *Act* requires the person to acknowledge, in writing, with a signature, liability in respect of a claim for payment. For the purposes of the *Act*, he found that the acknowledgment must, at minimum, confirm and concede the amount that remains owing.

[77] Appellate cases have held that the acknowledgment must be clear and unequivocal (see: *Middleton v. Aboutown Enterprises Inc.*, 2009 ONCA 466) although it need not confirm the precise amount of the amount owing. In *1702108 Ontario Inc. v. 3283313 Canada Inc.*, 2016 ONCA 420, the Court of Appeal noted, at paras. 5-6:

[5] The language of the statute sets out the applicable test: s. 13 (1) is engaged when a person acknowledges liability in respect of a claim for payment of a liquidated amount. In *Middleton v. Aboutown Enterprises Inc.*, [2009] O.J. No. 2415, 2009 ONCA 466, this court held, at para. 1, that s. 13 (1) requires a “clear and unequivocal acknowledgment of the debt claimed”. In that case, the court upheld the motion judge’s finding that a mere offer to settle a claim, without acknowledging that any amount remained owing, did not amount to an acknowledgment of liability for the purposes of s. 13 (1).

[6] In the present case, Mr. Durrani’s March 14 e-mail did not acknowledge liability for the liquidated sum of \$296,700 demanded by the appellant in its March 14, correspondence. At most, the respondent’s March 14 e-mail proposed negotiating a settlement plan, without acknowledging that any amount remained owing. When the appellant subsequently pressed for an acknowledgment of liability for the liquidated sum, the respondent refused to give one. Accordingly, we see no basis to interfere with the motion judge’s conclusion that the March 14, 2013 e-mail was not an acknowledgment. We would not give effect to this ground of appeal.

[78] Courts have held that text messages can meet the “in writing” requirement of s. 13(10) of the *Act* under certain circumstances: *1475182 Ontario Inc. o/a Edges Contracting v. Ghotbi*, 2021 ONSC 3477, 155 O.R. (3d) 272, at paras. 37-50. In that case, it was argued that s. 13(10) of the *Act* requires (i) clear and unequivocal language; (ii) the absence of a dispute regarding the amount owing; and (iii) a signature.

[79] This argument was rejected. It was held that it was sufficient that the debtor acknowledge that the debt claimed is owing, even if the precise amount of the debt is disputed. With respect to the necessity for a signature, the court held that if there is no question with respect to the authenticity of a text message, the text will be considered to meet the signature requirement.

[80] In this case, Mr. Cronin has raised no issue with respect to the authenticity of the text messages.

[81] However, that does not end the matter. I must still accept that the text messages are in fact acknowledging the two promissory notes in issue. As noted earlier, Mr. Cronin argues that it is not clear that the texts refer to those two loans. However, as I alluded to earlier, I reject Mr. Cronin’s affidavit evidence given its inconsistency with his evidence on his examination for discovery. He has not explained what steps he did “on review” that made him change his position.

[82] I find that the July 21, 2020 text does constitute an acknowledgment. It clearly refers to repaying the “\$100k plus interest for sure and put a serious dint in the other amount”. Mr. Cronin’s evidence when discovered on this issue was clear. He was asked whether in July of 2020 he or any of his entities owed any amounts to Mrs. Rail aside from the two promissory notes and he responded “no”. Accordingly, the July 21, 2020 text can only refer to the two promissory notes in question.

[83] As between Mr. Cronin and Mrs. Rail there could be no ambiguity regarding what he was talking about repaying. Furthermore, Mr. Cronin agreed on discovery that the text message was referring to the \$100,000 “Interra note” and the \$100,000 “2014 note” (I find that this refers to be the first four digits of the corporate defendant not a date).

[84] In his affidavit, Mr. Cronin describes that the “other amount” referenced in the July 2020 email refers to a mortgage called B2B, which was paid out in full. However, this evidence in his affidavit completely contradicts his answer under oath that there were only two outstanding amounts as of that time and that he was specifically referring to the “Interra note” and the “2014 note”. A defendant providing two inconsistent answers under oath cannot create an inconsistency requiring a trial. Rather, it demonstrates that his evidence is unreliable and can be rejected.

[85] I note that there is no denial of any amount owing in that text message, or refusal to pay. Rather, Mr. Cronin makes a promise to repay the amounts when a certain transaction is completed. He also specifically refers to the sum of \$100,000 plus interest. That is, in my view, sufficient to constitute an acknowledgment for the purpose of s. 13(10) of the *Act*. A similar finding was made by Lemay J. in *Anderson Sheet Metal Ltd. v. Contract Air Compressors Inc.*, 2023 ONSC 6099.

[86] As the Statement of Claim was issued on June 13, 2022, my finding with respect to the July 21, 2020 text message is sufficient. The limitation period in respect of both notes reset at that time since the text, on Mr. Cronin’s own evidence, clearly references repaying both notes. Therefore, I find that the limitation defence fails in respect of both notes.

**Issue 3: Piercing the Corporate Veil:**

[87] It is a fundamental principle of corporate law that a corporation is a distinct legal entity from its principals. The circumstances when it is appropriate to pierce that corporate veil were identified in *642947 Ontario Ltd. v. Fleischer*, 2001 CanLII 8623 (ON CA). Laskin J.A. described that piercing the corporate veil is appropriate in exceptional cases where not doing so would be “flagrantly opposed to justice”. Typically, the corporate veil is pierced when the company is incorporated for an illegal, fraudulent or improper purpose. It can also be pierced when “those in control expressly direct a wrongful thing to be done” (see: *Fleischer*, at paras. 67-68).

[88] In *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 1996 CanLII 7979 (ONSC), 28 O.R. (3d) 423 (Gen. Div.), aff’d [1997] O.J. No. 3754 (C.A.), it was stated “courts will disregard the separate legal personality of a corporate entity where it is completely dominated and controlled and being used as a shield for fraudulent or improper conduct.”

[89] In *Yaiguaje v. Chevron Corporation*, 2018 ONCA 472, 141 O.R. (3d) 1, at para. 70, it was stated as follows:

[70] The *Transamerica* test is consistent with the principle reflected in the various business corporation statutes in Canada that corporate separateness is the rule. Where the corporate form is being abused to the point that the corporation is not a truly separate corporation and is being used to facilitate fraudulent or improper conduct, the law recognizes an exception to this rule.

[90] For example, where a director of a corporation directs the misappropriation of corporate funds for his own purposes, it is appropriate to pierce the corporate veil (see: *6071376 Canada Inc. v. 3966305 Canada Inc.*, 2020 ONCA 428, at para. 14).

[91] Courts have also been prepared to pierce the corporate veil where the principal of the corporation did not make it clear to the other party that he was acting on behalf of a corporation instead of personally. When contracting on behalf of a corporation, it must be clear that it is being done on behalf of the corporation and not in a personal capacity (see: *Spoke v. Delinia Ltd.*, 2016 ONSC 1923, at para. 32).

[92] I find that neither of those two circumstances is met in the case at bar.

[93] There is insufficient evidence that Mr. Cronin was using either Interra or 284 Ont for a fraudulent or improper purpose. Rather, it appears that he was using these two corporations as investment vehicles.

[94] The Statement of Claim does not even allege any fraud in this case.

[95] The two companies were incorporated years apart and years prior to entering into these commercial transactions with Mrs. Rail. Furthermore, there is evidence that these corporations maintained separate bank accounts and there was a time at which Interra owned real property. While these companies may be judgment proof, they are still in existence. Thus, while Mr. Cronin may have been the dominating and controlling person in relation to these corporations, they were not being used for illegal, fraudulent or improper purposes.

[96] The mere fact that a company may be judgment proof does not justify piercing the corporate veil. Although I accept that Mr. and Mrs. Rail may not have been particularly sophisticated investors, and may well have placed considerable trust in Mr. Cronin, they were not under any legal disability. Parties that lend substantial sums of money should do so with caution and with the appropriate advice. To impose personal liability upon Mr. Cronin for these loans would be akin to making him a guarantor of the loans when no personal guarantee was sought or granted.

[97] Furthermore, the promissory notes are clear that they are being granted by corporations. In each of the notes the companies are clearly identified as such and it is also clear that Mr. Cronin is signing on behalf of the corporations, not personally.

[98] Accordingly, I find that this is not one of the exceptional cases that merits piercing the corporate veil.

**Disposition:**

[99] For those Reasons, I grant summary judgment on each of the promissory notes as against the corporate entity responsible for the note. If there is any issue with respect to the interest calculation, the parties may arrange to speak with me through the London trial coordinator.

[100] Mr. Cronin is not personally liable on either of the promissory notes. The action is dismissed as against him personally.

[101] I encourage the parties to resolve the issue of costs. Without foreclosing arguments to the contrary, it seems to me that there was divided success. However, if the parties are unable to resolve the issue of costs, the plaintiff Estate may serve and file written costs submissions no longer than three pages double-spaced by September 5, 2025 through the London trial coordinator, to my attention. The defendants shall have until September 16, 2025 to serve and file responding submissions within the same parameters.

---

Justice Spencer Nicholson

Date: August 5, 2025