

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bank of Montreal v. Khan*,
2025 BCSC 1545

Date: 20250812
Docket: S244174
Registry: Vancouver

Between:

Bank of Montreal

Plaintiff

And

Mohammed Shaheed Khan

Defendants

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

Counsel for Plaintiff:

M. Gargaro

Counsel for Defendants:

H. Singh
K. Atwal

Place and Date of Hearing:

Vancouver, B.C.
June 19, 2025

Place and Date of Judgment:

Vancouver, B.C.
August 12, 2025

[1] This summary trial application is brought in respect of a claim by the plaintiff, Bank of Montreal, against the defendant, Mohammed Shaheed Khan, for repayment of overdue loans.

[2] Mr. Khan is the sole director and officer of two companies that borrowed just under \$435,000 from Bank of Montreal. Mr. Khan provided personal guarantees as security for the loans. The companies failed to repay the loans on demand and have since gone into receivership. Bank of Montreal therefore seeks repayment of the balance owing on the loans by Mr. Khan, pursuant to the personal guarantees. The amount owing is just under \$438,000, plus interest.

[3] There is no dispute that Mr. Khan signed the guarantees and that the companies defaulted on the loans. There is no dispute as to the amount owing under the loans. Bank of Montreal says this is a straightforward debt claim that is suitable for determination on summary trial. It says there is no conflict of evidence or issue of credibility that would prevent the Court from deciding its claim on a summary basis, nor would it be unjust to do so.

[4] Mr. Khan disagrees. He does not deny that he signed the guarantees, but pleads that they are not enforceable because the bank did not ensure he received independent legal advice before signing. He also alleges that the Bank of Montreal representative never explained that he was providing a personal guarantee. He says he believed he was signing guarantees in his capacity as director of the companies, and relies on the defence of *non est factum*. He says these issues can only be determined after examination and cross-examination of witnesses at trial.

[5] I may only determine the Bank of Montreal's claim by summary trial if I can find the facts necessary to decide the issues of fact or law, and if I believe that summary determination would not be unjust: Rule 9-7(15).

[6] For the reasons set out below, I have concluded that this case is not suitable for summary trial. I am not able to find the necessary facts, and I am of the opinion that it would be unjust to decide the issues on a summary basis.

[7] The Bank says this case involves a straightforward business loan arrangement between Mr. Khan's companies and the Bank, with Mr. Khan's personal guarantees being a usual and routine element of such transactions. In the main, the Bank relies on affidavit evidence from a representative who was not involved in the transactions at issue in this case. Instead, the representative describes the Bank's usual practice regarding these types of transactions, including that loan applicants are made aware that they will have to provide a personal guarantee as loan security and are given the opportunity to review documents before signing.

[8] Mr. Khan's affidavit describes events that depart from the usual practice described by the Bank. He says he was not given time to review the loan documents, was not advised he could seek independent legal advice, and was not told that he was providing a personal guarantee for his companies' loans. He says he understood a personal guarantee was not necessary. In that regard, he relies in part on an email he says he received from the Bank employee he dealt with in relation to the first of the two loans, Mr. Cheung, which states that a personal guarantee is not required.

[9] It was only after receiving Mr. Khan's affidavit that the Bank located Mr. Cheung and obtained affidavit evidence from him regarding the matters at issue in this proceeding. Mr. Cheung's affidavit provides evidence of his communications with Mr. Khan about the loan documents, including the personal guarantee. Mr. Cheung's evidence is that he never advised Mr. Khan that he could obtain a commercial loan without providing a personal guarantee. Mr. Cheung does not believe he authored or sent the email attached to Mr. Khan's affidavit.

[10] Bank of Montreal does not dispute there is a conflict in the evidence about the circumstances surrounding Mr. Khan giving the personal guarantees. The conflicting evidence goes to the heart of Mr. Khan's defences to the Bank's claim.

[11] Issues of fact or law should not be decided on a summary trial solely on the basis of conflicting affidavits, even if one version is preferred to another: *Inspiration*

Management Ltd. v. McDermid St. Lawrence Ltd. (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.) at para. 56; *Cory v. Cory*, 2016 BCCA 409 at para. 10. The Court may weigh evidence and resolve conflicts in affidavit evidence in a summary trial, but there must be some basis—in evidence or otherwise—for preferring the evidence of one affiant over that of another such that the Court can find the facts necessary to decide the issues: *Inspiration Management* at para. 56; *Cory* at para. 10.

[12] As I understand it, Mr. Khan's position is that the conflict between his affidavit evidence and that of the Bank gives rise to credibility issues that cannot be resolved without cross-examination, making this case unsuitable for summary trial. Bank of Montreal disagrees. The Bank argues I can resolve the conflicting evidence by rejecting all of Mr. Khan's evidence as not credible or reliable, because he falsified the email that purports to be from Mr. Cheung.

[13] I agree there are concerns with Mr. Khan's evidence about the email he says he received from Mr. Cheung. The content of email that purports to be from Mr. Cheung is unusual. It contains overly casual phrasing, unusual punctuation, and other typographical errors that are surprising to see in an email from a Bank representative. Mr. Cheung's evidence is that the content of the email does not match the standard to which he drafts his professional correspondence. Also unusual is that the printout of the email chain starts with the oldest message at the top, rather than the bottom.

[14] Mr. Cheung's evidence is that the email address is one that he has never used—the expression of his name is different from his official work email address. His evidence is that the signature block misspells his name, specifies an incorrect job title, and does not include his professional designations. Mr. Cheung attaches four emails to his affidavit that he says he sent to Mr. Khan; these emails all have the characteristics Mr. Cheung describes, which are missing from the email attached to Mr. Khan's affidavit.

[15] Mr. Cheung swears that he has no recollection of drafting the email attached to Mr. Khan's affidavit, and has no record of having sent it. The Bank submits the only explanation is that the email was falsified by Mr. Khan.

[16] Mr. Khan denies that he falsified the email but provided no evidence or explanation to support that denial. He does not suggest that Mr. Cheung's evidence about the discrepancies in the email is incorrect, unreliable, or not credible.

[17] Even assuming, without deciding, that Mr. Khan falsified the email attached to his affidavit, I am not persuaded that I should reject Mr. Khan's affidavit evidence in its entirety as not credible or reliable, as the Bank of Montreal urges. The Bank's submission ignores that determining credibility and reliability is not an "all or nothing" proposition; the Court "may believe all, part or none of a witness's evidence, and may attach different weight to different parts of a witness's evidence": *Radacina v. Aquino*, 2020 BCSC 1143 at para. 96. In my view, something more than credibility concerns about one aspect of Mr. Khan's evidence—no matter how serious those concerns might be—is necessary for me to outright reject his evidence in its entirety on a summary trial application.

[18] I acknowledge that there is some evidence that might allow me to weigh parts of Mr. Khan's affidavit evidence; for example, other email correspondence between Mr. Cheung and Mr. Khan regarding loan documents. However, I am unable to weigh other parts of Mr. Khan's evidence about his dealings with bank representatives, which is simply left unanswered by the Bank. While Mr. Cheung describes in detail *some* of the circumstances surrounding Mr. Khan signing the first guarantee, he does not provide his version of the meetings Mr. Khan describes. Mr. Cheung swears that he did not tell Mr. Khan that a personal guarantee was not required, but he does not give any evidence about what, if anything, he did tell Mr. Khan about the personal guarantee. Even if Mr. Cheung simply has no memory of these facts, I would expect him to say as much in his evidence and, at minimum, describe his usual practice.

[19] Bank of Montreal has also not provided any evidence from the other bank employees with whom Mr. Khan interacted, including the employee who dealt with Mr. Khan in relation to the second guarantee. Mr. Khan says that employee also did not advise him that he was providing a personal guarantee. Evidence of the Bank's standard practices is not helpful to determining whether the standard practices were followed with Mr. Khan on this occasion. There is no explanation of why the other employees who dealt directly with Mr. Khan have not given evidence explaining their version of events.

[20] For the above reasons, I am unable to weigh the conflicting evidence and find the facts necessary to decide the issues of fact and law in this matter.

[21] In any event, I do not consider this to be a case where it would be just to determine the issues by way of summary trial. Credibility is a critical factor in determining the Bank's claim. There are unexplained gaps in the Bank's evidence. Neither party has yet had the opportunity to conduct examinations for discovery. There is no evidence of any particular urgency to resolving the claim. Proportionality weighs against summary trial—the amount at issue is significant for an individual debtor. While a conventional trial will involve greater time and expense, it should be possible to conduct the trial in a cost-effective and expeditious manner given the nature of the issues.

[22] In summary, given the conflicting evidence between the Bank and Mr. Khan as to the circumstances surrounding each of the guarantees, I am unable to make findings of fact that are necessary to determine the Bank's claim. In any event, I conclude it would be unjust to proceed by way of summary trial in the circumstances before me. For these reasons, this matter is not suitable for summary trial.

[23] The Bank of Montreal's summary trial application is dismissed with costs in the cause.

“Ramsay J.”