CITATION: *IMAX Corporation v. Guzzo et al.*, 2026 ONSC 621
COURT FILE NO.: CV-25-00740258
DATE: 20260202

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: IMAX CORPORATION, Applicant

AND:

VINCENZO GUZZO and CINÉMAS GUZZO INC., Respondents

BEFORE: Schabas J.

COUNSEL: *Christopher J. Rae and Tina Cody*, for the Applicant

Jean Claude Rioux and Danielle J. Ralph, for the Respondents

HEARD: January 19, 2026

REASONS FOR JUDGMENT

Introduction

[1] This is an application to enforce a personal guarantee.

[2] Put briefly, the Applicant, IMAX Corporation ("IMAX"), entered into a series of agreements with the Respondent, Cinémas Guzzo Inc. ("Cinémas Guzzo"). IMAX agreed to, among other things, lease projection systems and films to Cinémas Guzzo for use in its cinemas. In return, Cinémas Guzzo had financial obligations to pay IMAX for the lease of those systems as well as sums associated with the films and a percentage of revenue generated by the IMAX films. Cinémas Guzzo failed to make payments as required by those agreements, and IMAX issued Notices of Default on at least three occasions in 2023 and 2024.

[3] IMAX granted indulgences and deferred enforcing the defaults. Among other things, the Respondent Vincenzo Guzzo (“Guzzo”), who is the CEO and co-owner of Cinémas Guzzo, provided a personal guarantee for all amounts due and owing (or which became due and owing in the future) to IMAX by Cinémas Guzzo (the "Personal Guarantee"). Guzzo provided the Personal Guarantee on July 22, 2024.

[4] Cinémas Guzzo continued to default on its payment obligations to IMAX following July 2024, and IMAX demanded payment from Guzzo on the Personal Guarantee in December 2024. No payment was made and IMAX retained counsel who made a further demand to Cinémas Guzzo and Guzzo in February, 2025. IMAX then commenced this Application to seek judgment against Cinémas Guzzo and against Guzzo on the Personal Guarantee. The amount outstanding as of January 15, 2026 was $2,094,842.25.

[5] There is no dispute about the amount owing, or that Guzzo signed the Personal Guarantee. Indeed, he chose to sign it rather than having Cinémas Guzzo enter into a new payment plan for its indebtedness which would have required new immediate and weekly payments. Guzzo is a sophisticated and successful businessman. He is well-educated, including holding degrees in economics and law. He had access to legal advice when he signed the Personal Guarantee. Indeed, the signed document was forwarded to IMAX by Cinema Guzzo's lawyer. Nor is there any dispute that the Personal Guarantee includes all the debts owing by Cinémas Guzzo to IMAX.

The alleged representation

[6] In responding to this Application, Guzzo filed an affidavit in August 2025 in which he asserted that, prior to signing the personal guarantee, he was told by Mark Welton, the Global President of IMAX, that the Personal Guarantee "was only to provide reassurance to IMAX's auditors (who happened to be PWC) so that the receivable on IMAX books would not be written off by PWC" and that the Personal Guarantee "was going to be treated the same way as the minimum margin of $15,000 and had no real enforceability."

[7] There are no contemporaneous emails, texts, or other records to support Guzzo's assertion, nor does Guzzo provide any details of where, when, or how this alleged side agreement was made.

[8] At no time prior to filing the affidavit had Guzzo asserted that Welton had made such a representation. Guzzo did not do so, for example, when IMAX wrote to enforce on the Personal Guarantee on December 6, 2024, when IMAX counsel sent a demand letter to Guzzo enforcing the Personal Guarantee on February 19, 2025, or when Guzzo was served with the Notice of Application on April 2, 2025. Nor did Guzzo refer to this alleged side agreement in any of the text messages Guzzo exchanged with Welton, including the message he sent Welton when he was served with the Notice of Application in April 2025.

[9] Welton categorically denies making any such a representation to Guzzo. He did so in an affidavit and when confronted with the allegation on cross-examination. IMAX is a large international public company. As counsel for IMAX notes, it would create enormous jeopardy for Welton and provide no benefit to him or to IMAX to have given such an assurance, which would be incompatible with his and the company's obligations to the shareholders.

[10] Moreover, Article 8.1 of the Personal Guarantee provides that "there are no representations which have been made to Guarantor affecting the liability of the Guarantor under this Guarantee", other than as set out in the Personal Guarantee. Thus, even in the unlikely event that Welton had made the representation to Guzzo, such a representation would not affect the enforceability of the document: see *Soboczynski v. Beauchamp*, 2015 ONCA 282, 125 O.R. (3d) 241, at para. 43; *Oldcastle BuildingEnvelope Canada, Inc. v. Antamex Industries ULC et al*, 2025 ONSC 4751, at para. 49.

[11] Counsel for Guzzo submits that the assertion of a representation raises a contested issue of fact which should only be decided at a trial, not on an application which is determined without hearing evidence or assessing credibility. Mr. Rioux stated that there should be a one-day trial at

which Guzzo and Welton will testify so that the judge can "look the witnesses in the eye" and decide who is telling the truth.

[12] I note that Mr. Rioux's argument that the matter should go to trial is inconsistent with the position the respondent took at a case conference on September 15, 2025. At that time, Chalmers J. canvassed with the parties whether the matter could proceed by way of application. All parties agreed that an application was the appropriate procedure. In his Endorsement dated September 15, 2025, Justice Chalmers noted that the "[r]espondents do not object to the matter proceeding by way of application."

[13] Pursuant to Rule 14 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the application procedure may be used "where it is unlikely that there will be any material facts in dispute requiring a trial." This language is similar to the test for summary judgment, which is available where "there is no genuine issue requiring a trial." However, a judge hearing a summary judgment motion has, pursuant to Rule 20.04(2.1), enhanced powers to weigh evidence, evaluate credibility and draw reasonable inferences in determining whether there is a "genuine issue requiring a trial." These powers are not available to a judge on an application. However, this does not mean that the application process can be defeated simply by a party disputing a fact, even a material fact.

[14] The application process, like summary judgment, provides a more efficient and expeditious process to resolve disputes than the trial process. As Rule 1.04(1) directs, the *Rules of Civil Procedure* "shall be liberally construed to secure the just, most expeditious and least expensive determination of every civil proceeding on its merits.

[15] Here, the fact in dispute is whether Welton made a representation that makes the Personal Guarantee unenforceable. In my view, that disputed fact is not a material fact. As noted, Article 8.1 of the Personal Guarantee provides that "there are no representations which have been made to Guarantor affecting the liability of the Guarantor under this Guarantee" other than those set out in the Personal Guarantee. Thus, any representation Welton made before the Personal Guarantee was signed that is inconsistent with the Personal Guarantee does not affect its enforceability. If such a representation was made, it would be a fact, but not a material fact.

[16] Further, to the extent the alleged representation might be considered a material fact, it is not a material fact requiring a trial.

[17] The words "requiring a trial" were added to Rule 14.05(3)(h) in 2018: O. Reg. 537/18, s. 2. Prior to the amendment, the rule provided that the application process was not available where there were "material facts in dispute." In my view, the amendment to Rule 14.05(3)(h) is similar in purpose to the same words in Rule 20, which were added in 2010. As Karakatsanis J. noted in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87 at para. 43, "[t]he Ontario amendments changed the test for summary judgment from asking whether the case presents 'a genuine issue for trial' to asking whether there is a 'genuine issue requiring a trial'" (emphasis in original). This change, she noted "demonstrates that a trial is not the default procedure."

[18] I reach the same conclusion with respect to Rule 14.05(3)(h). The amendment changing the words from "in dispute" to "requiring a trial" grants a judge the power to consider whether

material facts need to be resolved at a trial; the rule no longer provides a bar, if there was one, to determining a case on an application where there are "material facts in dispute."

[19] I say "if there was one" because the application process is regularly used where material facts are in dispute. For example, *Charter* applications brought under Rule 14.05(3)(g.1) frequently have facts in dispute which are resolved by the judge hearing the application: see e.g. two recent examples, *Mathur v. His Majesty the King in Right of Ontario*, 2023 ONSC 2316, 480 D.L.R. (4th) 444, rev'd 2024 ONCA 762, 173 O.R. (3d) 81, leave to appeal refused [2025] S.C.C.A. No. 534; *Cycle Toronto et al. v. Attorney General of Ontario et al.*, 2025 ONSC 4397, 177 O.R. (3d) 341, appeal heard and reserved January 28, 2026.

[20] Furthermore, even prior to the amendments, it was recognized that courts should consider a number of factors before converting an application to an action. For example, in *Collins Barrow Toronto LLP. v. Selectcore USA, LLC*, 2016 ONSC 3826 at paras. 17 -19, Pollak J. stated:

> To determine whether I should exercise my discretion to convert the application to an action and direct a trial, I must consider: (a) whether there are material facts in dispute; (b) the presence of complex issues; (c) whether there is a need for the exchange of pleadings and discovery, and (d) the importance and the nature of the relief sought by application.
>
> I should also consider whether the affidavits and transcripts of cross-examination are enough to decide any credibility issues or a trial is required.
>
> Finally, I should consider whether, if the application had been brought as an action and a party moved for summary judgment, the Court would be satisfied that there is no genuine issue requiring trial. [Citations omitted]

[21] Similarly, in *Sekhon v. Aerocar Limousine Services Co-Operative Ltd.*, 2023 ONSC 542 at para. 50, Perell J. observed that the overarching principle in determining whether an application should be converted into an action is procedural fairness:

> If the application cannot fairly be determined by the summary process of affidavits and cross-examinations, then the application should proceed to trial and a hearing of witnesses. However, if the determination of the issues, including issues of credibility can properly be made on the application record, then the application should not be converted into an action with a trial. [Citations omitted.]

[22] In *2516216 Ontario Ltd. o/a NUMBRS v. AbleDocs Inc*., 2023 ONSC 4713. R.B. Reid J. cited Collins *Barrow* and *Sekhon* with approval. Although he did not refer to the 2018 amendment to Rule 14, Reid J. proceeded "on the basis that in this application, as with a summary judgment motion, the parties will have put their best foot forward as to evidence of the claim and any available defences." (para. 18)

[23] Accordingly, where an application judge is able to reach a fair and just determination, which may include resolving a material fact in dispute without the need for a trial, then that is preferable in order to secure the just, most expeditious, and least expensive determination of the case. This does not mean an application judge should exercise the enhanced powers set out in Rule

20.04(2.1) which are limited to summary judgment motions, although I note that some judges have done just that and have taken the position that the enhanced fact-finding powers should be used on applications: see, e.g., *Rubner v. Bistricer*, 2018 ONSC 1934 at paras. 105-107.

[24] As set out in *Hryniak* at para. 66, on a summary judgment motion a judge "should first determine if there is a genuine issue requiring trial based only on the evidence before her, *without* using the new fact-finding powers" (emphasis in original). Further, "[t]here will be no genuine issue requiring a trial if the summary judgment process provides her with the evidence required to fairly and justly adjudicate the dispute and is a timely, affordable and proportionate procedure" under the summary judgment rule.

[25] The same approach should be taken in applications. In my view, this is such a case. To the extent that the respondent's assertion that Welton somehow promised that the Personal Guarantee was not enforceable puts a "material fact" in dispute, that assertion does not require a trial.

[26] A judge does not need to look witnesses "in the eye" to believe or reject Guzzo's assertion. It is well-accepted that demeanour of a witness can be a poor guide to assessing credibility and reliability: see e.g. *R. v. Rhayel*, 2015 ONCA 377, 334 O.A.C. 181, at para. 85; *R. v. Reimer*, 2024 ONCA 519, 173 O.R. (3d) 412, at para. 93. While *viva voce* may be helpful, there are many factors that should be considered in determining disputed facts and in assessing the credibility and reliability of a person's evidence.

[27] In this case, Guzzo simply asserts that Welton made a representation to him. It is not corroborated by any documentary or digital evidence; indeed, the email Guzzo refers to in support of his assertion makes no reference to any such representation. Guzzo did not raise this alleged representation in a timely way. No explanation has been provided for why Guzzo waited nine months following IMAX's numerous steps to enforce the Personal Guarantee, including commencing this application, to raise this assertion. No rationale has been given for why Welton would have made such a representation, which is contrary to the interests of IMAX and which, had it been made, would have jeopardized Welton's position. Welton adamantly denies making such a statement.

[28] Guzzo's claim is nothing more than a bald allegation that lacks credibility and reliability: *Wharton Holdings Limited v. Balletto*, 2022 ONCA 43, at para. 7. Further, the assertion that Welton would have made such a statement is implausible and improbable. As was stated long ago by the British Columbia Court of Appeal in *Faryna v. Chorny*, [1952] 2 D.L.R. 354, at 357:

> The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such cases must be its harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. [Emphasis added.]

[29] The Ontario Court of Appeal discussed this statement of law in *R. v. Kiss*, 2018 ONCA 184, noting at para. 30 that the passage from *Faryna* "is not about weighing the evidence to see whether it is more likely true than not, as the balance of probabilities standard requires. Instead, the passage offers advice on the importance of considering the probability or improbability of an account". In short, where, as here, the evidence lacks plausibility because it is not in "harmony with the preponderance of probabilities", it can be rejected without a trial or the need to "look the witness in the eye."

Unconscionability

[30] Guzzo also submits that the Personal Guarantee is unconscionable and therefore should be set aside. There is no merit to this submission.

[31] The defence of unconscionability requires proof of two elements: (1) unequal bargaining power; and (2) a resulting improvident bargain: *Uber Technologies Inc. v Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, at paras. 54 and 65. The burden is on the party raising unconscionability to establish it. This is a high hurdle to clear. Demonstrating an inequality of bargaining power requires parties to show that they could not adequately protect their interests in the process of creating the contract: *Uber*, at para. 66. An improvident bargain occurs when, at the time the contract is formed, "it unduly advantages the stronger party or unduly disadvantages the more vulnerable": *Uber*, at para. 74.

[32] Guzzo's evidence falls far short of establishing unconscionability. For example, there is no evidence that Guzzo's ability to freely negotiate the Personal Guarantee was impaired or that Guzzo did not understand or appreciate the meaning and significance of its contractual terms. Guzzo was invited to provide comments on the Personal Guarantee, which he chose not to do. He had the opportunity to obtain legal advice on the Personal Guarantee from in-house counsel for Cinémas Guzzo, who in fact returned the Personal Guarantee to IMAX. As noted, Guzzo is a well-educated and sophisticated businessman who was not a shrinking violet in his dealings with IMAX and with Welton in particular.

[33] Nor do I accept that the Personal Guarantee was an improvident bargain. As the Supreme Court stated in *Uber* at para. 74, "[i]mprovidence is measured at the time the contract is formed; unconscionability does not assist parties trying to 'escape from a contract when their circumstances are such that the agreement *now* works a hardship upon them'" (emphasis in original), citing John-Paul F. Bogden, "On the 'Agreement Most Foul': A Reconsideration of the Doctrine of Unconscionability" (1997), 25 Man. L.J. 187, at p. 202.

[34] The Personal Guarantee was not presented as an ultimatum, but as an alternative to IMAX requiring immediate and large payments from Cinémas Guzzo. As he put it in an email to IMAX, Guzzo chose the option of the Personal Guarantee to "prove" Cinémas Guzzo would comply with its obligations under the Lease Agreement and Amendments. But Cinémas Guzzo also benefitted from the Personal Guarantee as it reduced pressure on it to make large immediate payments and enabled Cinémas Guzzo to continue to receive films and earn revenue from the films in its theatres.

Conclusion

[35] Accordingly, I do not accept Guzzo's assertion that Welton made any representation to the effect that the Personal Guarantee was not enforceable or would not be enforced. In addition, even if such a representation had been made, it does not relieve Guzzo of liability under the Personal Guarantee. I find that the Personal Guarantee is not an unconscionable agreement and is enforceable against Guzzo.

[36] As the amounts owing by Cinémas Guzzo are not disputed, IMAX shall be granted judgment against Cinémas Guzzo and Guzzo as set out in the Notice of Application. The amounts owing as of the date of this judgment shall bear pre-judgment interest in accordance with the provisions of the Lease Agreement and amendments and shall bear post-judgment interest at the rate fixed under the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

[37] If the parties are unable to agree on costs, the applicant shall provide me with written submissions not exceeding three pages, double-spaced, not including attachments, within 30 days of the release of these Reasons. The respondents may provide responding submissions of the same length 15 days later.

Paul B Schabas J.

Date: February 2, 2026