COURT OF APPEAL FOR ONTARIO

CITATION: Bank of Montreal v. Ieradi, 2026 ONCA 311
DATE: 20260504
DOCKET: COA-25-CV-0642

2026 ONCA 311 (CanLII)

Tulloch C.J.O., Lauwers J.A., and O’Marra J. (*ad hoc*)

BETWEEN

Bank of Montreal

Plaintiff (Respondent)

and

Joseph Ieradi

Defendant (Appellant)

Kris Borg-Olivier, for the appellant

Allyson Fox, for the respondent

Heard: March 16, 2026

On appeal from the judgement of Justice Charles C. Chang of the Superior Court of Justice, dated April 15, 2025, with reasons reported at 2025 ONSC 2349.

REASONS FOR DECISION

[1] The appellant, Joseph Ieradi, appeals from the judgment in this matter. After a five-day trial, the respondent, BMO, was awarded damages in the amount of $632,564.31, the amount owing on an unsecured loan, plus $105,000.00 in costs.

[2] The sole issue at trial was whether the appellant executed an unsecured line of credit agreement, personally, for which he is liable, or on behalf of his corporations.

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[3] The parties do not dispute that an agreement for an unsecured loan in the amount of $400,000.00 was entered in June 2007 but neither party could produce the agreement documentation. The trial judge held that the parties' failure to produce a copy of the agreement was not fatal in addressing whether it was a personal line of credit or corporate line of credit. Which of the two it was could be proven through other admissible evidence and post agreement conduct by the parties.

[4] The appellant raises four grounds of appeal. The trial judge erred:

(i) in failing to draw an adverse inference from BMO's failure to produce the line of credit agreement documents,

(ii) in overlooking evidence that a $400,000 unsecured personal line of credit was rare in 2007,

(iii) overlooking evidence that the funding decision was made on the basis the borrower had a recorded net worth more than $10,000,000,

(iv) in his assessment of the commercial reasonableness of an "umbrella" line of credit said to be available by the appellant to several of his corporations and future corporations added by choice of the appellant.

Review Considerations

[5] The trial judge's factual findings attract a high degree of deference from an appellate court. Absent palpable and overriding error, appellate interference with such findings is precluded: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 262, at para. 10.

[6] To displace a factual finding based on an alleged processing error by a trial judge it is necessary to demonstrate that the error occurred and that it was both palpable and overriding: *K.K. v. K.W.G.*, 2008 ONCA 489, 90 O.R. (3d) 481, at paras. 88-89.

[7] A palpable error is an obvious one that is plain to see on the evidence. An overriding error is one that is sufficiently significant to vitiate the challenged finding of fact: *Benhaim v. St-Germain*, 2016 SCC 48, 402 D.L.R. (4th) 579, at para. 38. Overall, a palpable and overriding error it is one that is "clearly wrong, unreasonable, or unsupported by the evidence.": *Billimoria v. Mistry*, 2022 ONCA 276, 470 D.L.R. (4th) 406, at para. 22; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401, at para. 4.

[8] The Appellant submits that the trial judge committed several critical "processing errors" by failing to consider evidence relevant to a factual issue and as such, appellate intervention in this case is warranted.

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[9] The onus is on the appellant to demonstrate the trial judge failed to consider evidence or misapprehended it. The failure to consider relevant evidence can amount to a palpable error if the evidence was potentially significant to a finding of fact. The mere absence of any reference to evidence in a reasons for judgment does not establish that the trial judge failed to consider such evidence: *Waxman. v. Waxman* (2004), 186 O.A.C. 201 (C.A.), at para. 343, leave to appeal refused, [2004] S.C.C.A. No. 291.

[10] The trial judge is not required to refer to all the evidence or address every submission made. The reasons must disclose the evidentiary basis for the decision. The court is required to identify the path taken to reach its decision: *Clifford v. Ontario Municipal Employee Retirement System*, 2009 ONCA 670, 98 O.R. (3d) 210, at para. 29 leave to appeal refused, [2009] S.C.C.A. No. 461; *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at paras. 18-21.

Background

[11] In June 2007 the Bank of Montreal issued an unsecured line of credit (LOC) with a limit of $400,000.00 to the appellant. At the time the line of credit was established the appellant was the director of several separate corporations involved in property development. In its statement of claim, the respondent, BMO, alleges that the line of credit was a personal line of credit (PLOC) for which the appellant is personally liable. The appellant alleged he executed the line of credit on behalf of the three unrelated corporations in which he was involved at the time,

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as joint borrowers, as well as for any future corporations he was involved with and chose to add.

[12] He claimed to have added a fourth corporation two years after entering what he described as the "umbrella" line of credit. He had arranged the umbrella line of credit in 2007 with a BMO lender, who collected the credit-worthiness assessment information submitted for approval that reflected a net worth of his corporations, of $10,000,000. At trial, the appellant's witness, Steve Fabian, a former employee of the respondent, testified he had no knowledge of the approval process after the documentation was submitted to the bank's credit approval system. The appellant argued the documentation indicated the LOC was for his corporations, not personal, because the net worth of his corporations far exceeded his personal net worth at the time. In 2007 his personal net worth was noted to have been less than $400,000. Further, there was evidence from the testimony of witnesses for both parties that an unsecured $400,000 personal line of credit would have been very rare at the time.

[13] The respondent submitted it never provided unsecured lines of credit to corporations: personal guarantees would have been required. Further, each of the corporations with different shareholders and directors would have required a separate line of credit.

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[14] At trial, the appellant did not produce any corporate records showing that the corporations had authorized the borrowings, or any accounting or tax documentation showing the treatment by each corporation of indebtedness to the respondent from the line of credit. The appellant claimed accounting documentation was lost when the accounting firm he used split up.

[15] The respondents called evidence that there had been an extensive records search, but the agreement documentation could not be located.

[16] The trial judge rejected as making no commercial sense the appellant's claim that he entered an "umbrella line of credit" from which the three original corporations and any future corporation he chose to add, all with different shareholders and directors, could use funds from the line of credit account.

> I do not accept the defendant's argument that the LOC was an "umbrella" facility for Westmount, OMLD, Lombard, and any other corporations he later chose to add. He has failed to adduce any evidence to corroborate his testimony on this point, including, without limitation, corporate records showing that those corporations authorized the applicable borrowings, and accounting or tax documentation showing the corporations' treatment of the applicable indebtedness. This lack of evidence is particularly concerning because Westmount, OMLD, and Lombard have different shareholders and directors.

[17] The trial judge found it would have been impossible to attribute payments, loan balances, and interest accrued to the corporate entity that made use of funds,

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from the monthly line of credit statements addressed and sent to the appellant's home address. The monthly account statements showed only his name as the holder of the account. Each statement referred to the line of credit account as "YOUR PERSONAL LINE OF CREDIT" (capitalization in original).

[18] In addition, the respondent provided documentation from its credit adjudicated system, CCAPS, that referred to the loan as a PLOC, a personal liability of the appellant.

[19] The respondent's "Customer Snapshot" for the appellant described the line of credit as a PLOC.

[20] The trial judge concluded, after considering the evidence of the documentation and post agreement conduct of the parties, that the appellant had executed a personal line of credit. He was the only one to draw funds from the line of credit. He drew the funds by issuing cheques that showed only his name as the issuer, and with his home address on the cheques. He also drew funds from the line of credit by making electronic transfers between the line of credit account and his personal bank account. He used funds personally drawn from the line of credit. Further, the line of credit was set up to protect the appellant's personal chequing account against overdrafts. Funds would be withdrawn automatically from the line of credit and transferred to his personal account to prevent an overdraft.

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[21] The appellant was the only person to draw funds from the account and who directed funds to be paid to himself, the various corporations, his wife, and others as set out in the judgment.

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Assessment

[22] With respect to the appellant's assertion that the trial judge erred in failing to draw an adverse interest against the respondent for failure to produce the agreement documentation, the trial judge noted specifically that both parties had failed to produce a copy of the agreement and neither party "advanced a claim of spoliation."

[23] Drawing an adverse inference from a party for failing to call or produce evidence is discretionary: *SS&C Technologies Canada Corp. v. The Bank of New York Mellon Corporation*, 2024 ONCA 675, 174 O.R. (3d) 410, at para. 164, leave to appeal granted and appeal heard and reserved December 10, 2025, [2024] S.C.C.A. No. 501. See also: *Parris v. Laidley*, 2012 ONCA 755, at para. 2. It requires a case specific inquiry into the circumstances – was the evidence in the exclusive control of the party against whom the adverse inference is sought to be drawn, or equally available to both parties?

[24] In this instance, both parties failed to produce the agreement documentation that was equally available to both. Thus, an adverse inference could have been equally applicable to both parties for failure to produce that documentation.

[25] Despite this, the appellant submits that he offered a legitimate explanation for the loss of the documentation but the respondent failed to do so.

[26] Even if this submission were accepted and an adverse inference was warranted with respect to the respondent having failed to produce the agreement documentation, it was unclear in the appellant's submissions as to how it should have been applied in these circumstances. There was no suggestion that the failure to produce was strategic non-disclosure. Rather, the appellant's position was it was an issue that should have at least been addressed by the trial judge and that his failure to grapple with it is a reversible error.

[27] I reject this submission. Failure to draw an inference against the respondent was not a palpable and overriding error because the factual finding made by the trial judge that the appellant entered a personal line of credit was based on and amply supported by the evidence of the bank records produced by the respondent.

[28] The trial judge's failure to address the issues as to the rarity of unsecured loans in the amount involved in this matter, and the net worth of the borrower noted in the respondent's credit worthiness documentation as more than $10,000,000 around the same time that its records listed the appellant's total personal assets as much lower in support of his claim the line of credit was corporate, are palpable errors. The evidence of these issues relates to the nature of the loan and should have been addressed. However, they were not overriding errors sufficiently

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significant to vitiate the factual finding grounded in the respondent's documentation as accepted by the trial judge as to the nature of the line of credit.

[29] Not having taken these issues into account did not contradict or undermine the factual finding, based on the documentary evidence and use of the line of credit accepted by trial judge, that the appellant entered a personal line of credit. Documentation that referenced the $400,000 line of credit amount and $10,082,867 net worth relied on by the appellant as supporting the claim the line of credit was corporate, repeatedly referenced the product as a PLOC.

[30] The trial judge's failure to accept the flexible arrangement of the loan under an "umbrella facility theory," which according to the appellant permitted him to unilaterally amend and add corporate entities without the respondent's involvement or concurrence, was not a misapprehension of the evidence in this case. The umbrella facility concept was rejected due to the absence of evidence one would expect in a facility dealing with separate corporate entities.

[31] The trial judge noted the lack of corroborative evidence, such as corporate records that authorized borrowing, or accounting and tax records that reflected the indebtedness of each corporation through the line of credit. In this instance, the concept advanced by the appellant was commercially unreasonable.

[32] Here, any palpable errors in failing to address potentially relevant evidence were not sufficiently significant to override the challenged finding of fact that the

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loan entered in 2007 was a personal line of credit. The trial judge in his reasons identified the path through the documentary evidence to his making the factual finding the appellant entered a personal line of credit. The reasons reflect that the trial judge had seized the substance of the matter based on the evidence available and lack of evidence. There was no misapprehension of the evidence requiring appellate intervention.

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Disposition

[33] In the result, the appeal is dismissed.

[34] Costs of the appeal are awarded to the respondent fixed in the amount of $10,000, inclusive of HST and disbursements.

"M. Tulloch C.J.O."
"P. Lauwers J.A."
"A. O'Marra J. (*ad hoc*)"