

**CITATION:** Techlantic Ltd. v. Zhao, 2024 ONSC 1391  
**COURT FILE NO.:** CV-19-0971-0000  
**DATE:** 2024 04 05

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Techlantic Ltd.

Plaintiff

)  
)  
)  
) *Monty Dhaliwal*, for the Plaintiff  
) Email: [mdhaliwal@pallettvalo.com](mailto:mdhaliwal@pallettvalo.com)  
)  
)  
)

**- and -**

Modellista Auto Accessories Inc. and  
Jiyue “Jay” Zhao

Defendants

)  
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)  
) *Self Represented*  
) Email: [ijzhao09@yahoo.ca](mailto:ijzhao09@yahoo.ca)  
)  
)  
)

) **HEARD:** December 6, 2023, at  
) Brampton

**REASONS FOR DECISION**

**Emery J.**

[1] Techlantic Ltd. is a service provider to customers in the import/export business. In this action, Techlantic seeks to enforce the Personal Guarantee (the “Guarantee”) given by the defendant Jiyue “Jay” Zhao for the obligations of Techlantic’s customer, the defendant Modellista Auto Accessories Inc. (“Modellista”). Techlantic brings this motion to amend the statement of claim, and for summary judgment on the amended statement of claim against Mr. Zhao on the Guarantee for \$240,000.

[2] Modellista is in the business of exporting motor vehicles from Canada to its customers in China. Techlantic provides services for the financing, shipping, and storing of those vehicles until they are released by customs at the port of entry. Mr. Zhao gave the Guarantee to Techlantic limited to \$240,000 for obligations owed by Modellista for Techlantic's financing, shipping or the storing of vehicles pursuant to the arrangement between them.

[3] Techlantic brought this action against Modellista on its outstanding accounts and against Mr. Zhao personally under the Guarantee and obtained default judgment against both in the amount of \$269,381.01 on October 2, 2019. Modellista and Mr. Zhao brought a motion to set aside the default judgement. On that motion, Petersen J. made an Order on February 1, 2021 dismissing the motion as against Modellista to allow the default judgment to remain against Modellista, but granting the motion to set default judgment aside as against Mr. Zhao (the "Petersen Order"). The default judgment of Mr. Zhao was set aside on the narrow basis that he only be permitted to defend the action on the basis that the guarantee was an unconscionable contract. See *Techlantic Ltd. v. Modellista Auto Accessories Inc. and Jiyue Zhao*, 2021 ONSC 746.

[4] Neither of the defendants have appealed any part of the Petersen Order.

[5] Mr. Zhao has now defended the action and opposes the motion for summary judgment. He contests Techlantic's claim alleging that it has caused its own loss, and pleads that the Guarantee is an unconscionable agreement and should not be enforced.

[6] On August 30, 2021, Techlantic assigned its right, title and interest in the Modellista debt to 2848895 Ontario Inc. and 2848899 Ontario Inc. (together, "the 284 plaintiffs"). Techlantic's motion included a request for an Order amending the

statement of claim to substitute the 284 plaintiffs in the title of proceeding of the statement of claim for itself. Mr. Zhao did not raise any prejudice to himself as a reason to oppose the motion to amend.

[7] Under the mandatory language of Rule 26.01, leave is granted to Techlantic to amend the statement of claim accordingly. However, given that Techlantic was a party to the facts in evidence, I shall refer to it in these reasons as the plaintiff for the purposes of this motion.

### **The Case for Techlantic**

[8] Wouter Van Essen swore the affidavit in support of Techlantic's motion. Mr. Van Essen was the Chief Financial Officer of Techlantic and is now a consultant for both Techlantic and the 284 plaintiffs.

### ***Litigation history***

[9] Mr. Van Essen states in his affidavit that Techlantic brought this action for payment of \$265,712 from Modellista as the primary debtor and against Mr. Zhao under his guarantee. The statement of claim was issued on March 5, 2019 and served on the defendants by substituted service on July 29, 2019 pursuant to an Order granted on July 12, 2019.

[10] The defendants failed to defend the action within the prescribed time. Techlantic obtained default judgment against them both on October 4, 2019.

[11] After efforts extending more than one year after judgment and motions to obtain information to effect a sale of Mr. Zhao's property under a writ of seizure and sale, the defendants brought a motion to set aside the default judgment on January 27, 2021. Justice Petersen ordered that the judgment be set aside only as against Mr. Zhao, leaving the judgment against Modellista undisturbed.

[12] In the Order setting aside the judgment against Mr. Zhao, Petersen J. expressly directed that Mr. Zhao must limit his defence to the doctrine of unconscionability.

[13] In accordance with the Petersen Order, Mr. Zhao served his statement of defence on March 3, 2021. In his statement of defence, Mr. Zhao pleaded, among other things, that the Guarantee was an unconscionable contract.

***Circumstances behind the Guarantee***

[14] According to Mr. Van Essen, there was no inequality in bargaining power between Techlantic and Mr. Zhao. He states that Techlantic and Modellista were both relatively small businesses. He describes Techlantic as a closely held corporation having eight employees at the time, including his son, Eric, and himself as Chief Financial Officer.

[15] To understand how the relationship of the arrangement between the parties evolved, it is important to understand the nature of Modellista's business. Mr. Zhao has been examined for discovery in the course of this action. At his examination, he described the business model Modellista followed prior to its arrangement with Techlantic. Modellista would:

- a. receive an order from a customer in China for a specific motor vehicle, with requirements specified down to the minute detail;
- b. Modellista would source the vehicle from a Canadian dealer or private seller;
- c. The Chinese customer would wire Modellista with payment for the vehicle in full based on an invoice from Modellista;

- d. Modellista would then use those funds to purchase the vehicle. The vehicle would be registered in the name of a nominee, usually Modellista's accountant;
- e. The vehicle would be delivered to Modellista which would then deliver it to the shipper for export to the customer in China; and
- f. The Chinese customer would pay Modellista its fees for shipping and handling, and pay the shippers fees directly.

[16] In or around 2014, Modellista began its business relationship with Techlantic. Initially, Techlantic would engage with Modellista and Mr. Zhao on a vehicle-by-vehicle basis. The Chinese customer would pay Modellista for both its shipping and handling, as well as Techlantic's fees, which Modellista would remit to Techlantic. Over time, Modellista began to ship vehicles to Chinese clients on credit to expand its business without requiring the upfront payment for the vehicle.

[17] As part of this new arrangement, Modellista would borrow money from Techlantic to purchase vehicles for its Chinese clients based on letters of credit from financial institutions in China. Techlantic would require Modellista to pay a financing fee for this credit, which Modellista would collect from the Chinese customer. Modellista would therefore owe Techlantic funds for shipping and handling fees, including storage charges at the port of arrival in China. Modellista would also owe Techlantic a financing fee, if not the purchase price of the vehicle itself.

[18] While Modellista made an effort to stay current with its payments, the balance on its running account with Techlantic gradually increased.

[19] Techlantic and Modellista conducted business under this arrangement without a written agreement. Mr. Van Essen states that Techlantic did not deal directly with the Chinese customers at any time. Instead, Mr. Zhao dealt with those customers on behalf of Modellista as they were Modellista's customers.

[20] Mr. Van Essen also describes how Modellista had grown to be Techlantic's largest client, representing over 25% of its business. Modellista's failure to pay its accounts caused significant loss to Techlantic's entire business.

[21] Justice Peterson found there to be compelling circumstantial evidence of the existence of an unwritten agreement between Techlantic and Modellista. She also found that Mr. Zhao gave a personal written guarantee to Techlantic for Modellista's obligations which contain the following terms:

- a. Mr. Zhao signed as guarantor;
- b. Mr. Zhao agreed to probably pay the full amount of principle and interest of the debt (being the amount he agreed to acknowledge on the same date);
- c. as guarantor, Mr. Zhao waived all defences, counterclaims, or offsets in respect of the payment of the debt owed by Modellista;
- d. Mr. Zhao acknowledged that the guarantee was for the use and benefit of Techlantic;
- e. in the event that the guarantee must be enforced, Mr. Zhao agreed to pay all of Techlantic's reasonable costs and expenses, including attorney's fees; and

- f. Mr. Zhao agreed that he would pay \$40,000 by January 26, 2018 to provide security over two motor vehicles.

[22] There is no evidence on the record that Mr. Zhao did not understand the guarantee, or that he disagreed with its contents before signing it.

[23] Techlantic takes the position that the guarantee is enforceable in its totality. However, in the event that any term is unenforceable in whole or in part, the guarantee reads at paragraph 18 as follows:

“18. The invalidity or unenforceability of any one or more phrases, sentences, clauses, or sections in this guarantee will not affect the validity or enforceability of the remaining portions of this guarantee or any part of this guarantee.”

[24] Mr. Zhao had access to professionals that could provide him with legal and accounting advice on Modellista’s business. Those advisors included Mr. Zhao’s friend, Jayson Lin, who was Modellista’s accountant. Mr. Lin was also Mr. Zhao’s personal accountant at the time he executed the Guarantee. Despite having professional advice available to him, Mr. Zhao admitted at his examination for discovery that he did not discuss the guarantee with a financial advisor.

[25] Mr. Zhao was not an unsophisticated businessman. In addition to Mr. Zhao’s experience in the world of finance and the import/export trade, Mr. Van Essen provided evidence that:

- a. Mr. Zhao was a university graduate with an engineering degree from McMaster University;
- b. At the time of his examination in August 2021, he was a structural steel engineer with Prostruct Inc.;
- c. Modellista started its business in 2009 as a motor parts wholesaler. Through Modellista, Mr. Zhao, with a partner, Bruce Liu, would import

- parts from China, Hong Kong, Taiwan, and the United States to sell to customers in Canada. Mr. Zhao would interact with manufacturers and with shipping agents directly in this business;
- d. Mr. Zhao conducted business with Mr. Liu until 2012. In 2014, Mr. Zhao directed Modellista's business dealings to Techlantic.
  - e. Mr. Van Essen expressed his belief based on his experience that Mr. Zhao has no limitations in reading, writing, or speaking in the English language.
  - f. Modellista carried on an active business in 2017 and participated in 350 import/export transactions in that year alone.
  - g. At all material times, Mr. Zhao had access to professionals including accountants and lawyers who could, and did, advise him on Modellista's business.

[26] Despite having access to professional advisors, Mr. Zhao admitted that he did not ask Mr. Lin about mortgaging his property as security for the Modellista obligations owed to Techlantic, or about the personal guarantee before he signed it. Mr. Zhao also admits that he did not discuss the guarantee with any other financial advisor or friend on whom he would rely for advice.

[27] Mr. Zhao admits that he would consult with lawyers whenever Modellista had difficulties with one of its nominees in a transaction. These consultations included seeking advice from the law firm Borden Ladner Gervais.

[28] Mr. Zhao has disputed that the debt agreement referenced in the personal guarantee existed at the time. However, Mr. Zhao admitted at his examination for discovery that Modellista owed \$240,830.13 to Techlantic as of January 25, 2018.

[29] Mr. Van Essen states that, by 2018, Modellista owed Techlantic over \$265,000. Modellista promised to pay Techlantic \$40,000 on account, but that payment was never made. Techlantic therefore asked Mr. Zhao to sign a personal guarantee which he negotiated to be limited to \$240,000.

[30] After Mr. Zhao signed the Guarantee, Techlantic continued to conduct business with Modellista. This business included the extension of credit by Techlantic to Modellista for the export of numerous vehicles to China until approximately October 2018. Techlantic relied on the Guarantee to release vehicles to Modellista customers in China before Techlantic had been paid for those vehicles.

[31] This business continued for a further time until Mr. Zhao asked Techlantic to release vehicles at the port facilities in China to Modellista's customers without having reduced its indebtedness.

### **The Case for Mr. Zhao**

[32] Mr. Zhao describes the business of Modellista as being a locator of specific motor vehicles in Canada on behalf of Chinese customers, and for the delivery of those vehicles in China. He states that Modellista does not sell or finance motor vehicles, nor transport or store those vehicles in either country. He states that a typical transaction would have Techlantic purchase the motor vehicle located by Modellista for the customer in China, and make arrangements for the sale or financing of the vehicle directly with the customer. Techlantic would arrange for the shipment of the vehicle to China, and would store the vehicle until it was released from the shipping yard at the port of entry with Techlantic's consent. According to Mr. Zhao, the Chinese customer would then pay Modellista a fee or commission for introducing them to Techlantic and for locating the appropriate vehicle.

[33] In his evidence, Mr. Zhao explained that the relationship for the purchase, financing, transportation and storage of the motor vehicle was therefore between the Chinese customer and Techlantic in any transaction. He describes in his factum how the financial transactions between Techlantic and Modellista were governed by an Irrevocable Letter of Credit. This Letter of Credit would ensure that Techlantic was paid by the Chinese customer prior to the release the vehicle.

[34] Mr. Zhao states that the payment of shipping and handling fees were the responsibility of Modellista's customer, and that those fees would be settled within a month of delivery. He states that the withholding of vehicle releases in China was never part of the accepted business practice with Techlantic. He refers to Techlantic's departure from established norms of doing business with Modellista over the years as evidence of the circumstances in which he signed the Guarantee.

[35] It is conceded by Mr. Zhao that the principal amount of the debt for which Techlantic has obtained judgment against Modellista arose from late payments owed by Modellista in July and August, 2017. However, he attributes that debt to the difficulty Modellista experienced to catch up to payments owed to Techlantic. The balance owing had grown to an exaggerated amount based on "overstated fees", "unfair calculations" and "compound interest".

[36] Mr. Zhao goes on to state in his affidavit that exhibit "U", being the Modellista Order and Payment Record for July 2017 to June 2018, shows that Modellista paid \$144,183 up to June 2018 against \$43,459 in accounts rendered for orders and fees with Techlantic. He concludes from this analysis that Modellista had overpaid \$103,407, as of that point. Despite this overpayment and the discrepancies in the financial accounting between them, Techlantic still claims that Modellista owes \$265,712 in the statement of claim. Exhibit "U" is not actually a report but rather the compilation of records showing Incoming Wires within certain

date ranges, and various emails acknowledging receipt of funds, with confirmation requested from the originating payors.

[37] Mr. Zhao states in his affidavit that he executed the Guarantee at a time when Techlantic was holding two vehicles having a value of \$150,000 at the shipping yard in China it would not consent to release as leverage for unpaid charges. He further states that Techlantic had been paid by the Chinese customers for these vehicles. Mr. Zhao argues that Techlantic was using these circumstances to pressure him into signing the Guarantee. He states that the vehicles did not belong to Techlantic, and had been held in storage at the Chinese port for 10 months because of the dispute. Mr. Zhao described the sequence of events leading up to the signing of the Guarantee in his factum this way:

a) On January 23, 2018:

- i) I sent an email to Techlantic requesting that two vehicles owed by Modellista be released once they arrived in China.
- ii) Techlantic responded and advised that the vehicles would not be released unless it received security for the debt owed to it.
- iii) Under duress, I advised Techlantic on January 23, 2018, that I would be making a payment of \$40,000 on Thursday, January 25, 2018 and not to hold onto the two vehicles as that would only incur additional fees.
- iv) Techlantic advised of the amount outstanding and demanded security for the debt and suggested obtaining a second mortgage on a property that I owned personally as a solution.

b) On January 24, 2018:

i) I advised Techlantic that I had been working on obtaining a second mortgage, which was still being processed by the bank, and inquired if Techlantic knows of an individual who is able to assist in obtaining a second mortgage.

ii) Techlantic provided two options, seek a mortgage with a credit union or have Techlantic provide the second mortgage.

iii) I inquired what the Techlantic's process was for a second mortgage and advised that, at this time, I would be able to make payment of \$40,000 this week.

c) On January 25, 2018:

i) I informed Techlantic that I would be making a payment of \$40,000 the next day, which coupled with the two vehicles being held by Techlantic, would provide security for the debt. I urged Techlantic not to hold the vehicles in port as it would only increase costs.

ii) Techlantic wrote that I needed a solution that would allow the vehicles to be released immediately and attached a draft of the Personal Guarantee for my review. Techlantic noted that the vehicles would be released once the document was signed.

d) Approximately 1.5 hours later, I emailed Techlantic a signed copy of the Personal Guarantee and requested that the vehicles be released that evening.

[38] Mr. Zhao then attaches the email chain between himself and Techlantic, from January 23-25, 2018 as exhibit "D" to his affidavit.

[39] Mr. Zhao deposes that he felt pressured to sign the Guarantee in order to avoid incurring further storage fees for vehicles at the Chinese shipping yard. He states that he believed he had no choice but to sign the Guarantee if the vehicles were to be released. He states that he did not have the opportunity to obtain independent legal advice about signing the Guarantee or to make amendments to it. He signed the Guarantee because he felt the continued viability of his company rested on the release of the vehicles. He states that, if unresolved, the ongoing dispute would have irreparably damaged and ultimately destroyed his business.

## **Analysis**

### ***Issues On This Motion***

[40] The questions on this motion are:

1. Is this case appropriate for summary judgment?
2. If so, is there no genuine issue requiring a trial for the court to determine that the personal guarantee given by Mr. Zhao was not unconscionable?

### ***Principles on summary judgment motion***

[41] The approach on a motion for summary judgment is set out in *Hryniak v. Mauldin*, 2014 SCC 7 and is well known. For the purposes of this motion, the principles most applicable are the requirements that each party must put their best foot forward on the motion, and that the motions court judge is entitled to presume that all evidence that would be available at trial from both parties is before the court. See *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753 at para. 9 (as to the best foot forward principle), and *2313103 Ontario Inc. et al. v. JM Food Services Ltd. et al.*, 2015 ONSC 4029 at para. 40 (as to the principle of assuming

that both parties have put all available evidence before the court). See also *1061590 Ontario Ltd. v. Ontario Jockey Club*, 1995 CanLII 1686 (Ont. C.A.).

[42] The key issue on a summary judgment motion is whether the motions judge can make a fair and just determination on the evidentiary record to resolve the dispute, even though the evidence is not equivalent to a full record at trial. The summary judgment procedure must be found to be a fair process to make these determinations. There will be no genuine issue requiring a trial where the process allows for the motions judge to make the necessary findings of fact, allows the judge to apply the law to the facts, and is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak*, at para 49.

[43] While the plaintiff always has the onus of proving its case, the evidentiary burden on a motion for summary judgment is on the moving party to show there is no genuine issue requiring a trial. As the Court of Appeal held in *Trotter Estate*, 2014 ONCA 841 at para. 73, bald assertions do not give rise to a genuine issue requiring a trial.

[44] A self-serving affidavit is not sufficient to create a genuine issue for trial in the absence of detailed facts and supporting evidence. See *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC) at para. 31, and *Grewal v. Khaira et al.*, 2021 ONSC 4908, at para 25.

[45] The Supreme Court in *Hryniak* recognised that the motions court judge in some cases may utilize the enhanced fact-finding powers set out in the amendments to Rule 20.04 when required. Where the written evidence filed on a motion for summary judgment does not satisfy the evidentiary burden to make the necessary determination, Rule 20.04 (1.2) provides the court with those enhanced fact-finding powers. Glustein J. summarized the process for accessing these

powers under *Hryniak* in *Mayers v. Khan*, 2017 ONSC 200 (aff'd at 2017 ONCA 524) as follows:

i) The judge must first determine if there is a genuine issue requiring a trial based only on the evidence before the judge and without using the judge's fact-finding powers. If there appears to be a genuine issue requiring a trial, the judge should then determine if the need for a trial can be avoided by using the powers under Rules 20.04(2.1) and (2.2) (*Hryniak*, at para. 66); and

ii) The standard for determining whether summary judgment will provide a fair and just adjudication is not whether the procedure is as exhaustive as a trial, but rather "whether it gives the judge confidence that [the judge] can find the necessary facts and apply the relevant legal principles so as to resolve the dispute" (*Hryniak*, at para. 50). A judge must be confident that he or she can fairly resolve the dispute (*Hryniak*, at para. 57).

[46] Even though Rule 20.04(2.1) provides the court on a summary motion with these further fact finding powers, the power to resort to those powers is within the discretion of a judge "unless it is in the interest of justice for such powers to be exercised only at a trial."

### ***Suitability for summary judgment***

[47] Upon setting aside the default judgment as against Mr. Zhao, Justice Petersen made the ancillary Order under Rule 19.08 as follows:

[72] 4. Mr. Zhao must limit his defence to the doctrine of unconscionability. He shall not plead or argue duress and shall not challenge Modellista's liability for the debt that he personally guaranteed in January 2018.

[48] The law for the sole defence permitted by the Petersen Order that the Personal Guarantee was unconscionable is set out in *Uber Technologies Inc. v. Heller*, 2020 SCC 16. Petersen J. applied specific paragraphs from the Supreme Court of Canada in *Uber v. Heller* as part of her analysis on what must be shown to be considered an unconscionable contract:

[54] It is important to note, however, that Mr. Zhao is not required to demonstrate duress in order to establish that the Personal Guarantee is unconscionable: *Uber Technologies Inc. v. Heller*, 2020 SCC 16, at para. 70. As the Supreme Court of Canada stated in *Uber*, at paras. 64-65, the defence of unconscionability requires proof of only two elements, namely an inequality of bargaining power and a resulting improvident bargain.

[55] The Plaintiff argues that the relative bargaining power of the parties in this case is not comparable to that of the food-delivery driver and multinational corporation involved in the *Uber* case. This is true, but the doctrine of unconscionability is not predicated on a David-and-Goliath scenario. Inequality of bargaining power exists whenever a party cannot adequately protect their interests in the contracting process: *Uber*, at para. 66. There are no rigid limitations on the types of inequality that fit this description. The inequality may relate to personal attributes or characteristics of the weaker party (e.g., illiteracy) or the stronger party (e.g., wealth, knowledge and experience), or it may arise from situational circumstances that impair the weaker party's ability to contract freely and autonomously: *Uber*, at paras. 67-69.

[56] Mr. Zhao is not suggesting that personal attributes rendered him vulnerable in the bargain with the Plaintiff. Rather, he relies on the circumstances surrounding the signing of the Personal Guarantee to assert that there was an inequality of bargaining power between him and the Plaintiff at that time.

[57] The evidentiary record establishes that Mr. Zhao did not have the benefit of legal advice prior to signing the Personal Guarantee. The guarantee was drafted by the Plaintiff, who was holding two vehicles as economic leverage to obtain security from Mr. Zhao for the monies owed by Modellista. The hold on the cars was causing Modellista to incur storage expenses in China that it could not afford. More importantly, Mr. Zhao feared his reputation with customers in China would be sullied and his business would be irreparably damaged if the cars were not released promptly to the Chinese purchasers. He deposed that the "continued viability" of his business was at stake. His evidence is that he was desperate to get the cars released and was having difficulty securing a second mortgage on his property to make a payment to the Plaintiff. He deposed that, in the circumstances, he felt he had no choice but to sign the Personal Guarantee.

[58] The Plaintiff elected not to cross-examine Mr. Zhao on his affidavit, so the above evidence is uncontested. Although the evidence may not establish an egregious case of unequal bargaining power, an "overwhelming imbalance of power" is not required to satisfy the doctrine of unconscionability: *Uber*, at paras. 81-82. The evidence in the motion record before me is sufficient to make out an arguable case that the first element of the doctrine has been met.

[59] The second element of the doctrine of unconscionability, namely the existence of an improvident bargain, is also arguable on the evidence before me. A bargain is improvident if it unduly advantages the stronger party or unduly disadvantages the more vulnerable party: *Uber*, at para. 74. It need not necessarily be "grossly

unfair": Uber, at paras. 81-82. Improvidence must be assessed contextually and measured at the time that the impugned contract is formed: Uber, at paras. 74-75.

[60] In this case, Mr. Zhao signed a Personal Guarantee that unduly disadvantaged him. Among other things, the terms of the Guarantee require him to waive "all defences, counterclaims or offsets that are legally available" to him with respect to the payment of Modellista's debt and "all rights, by statute or otherwise, to require the [Plaintiff] to institute suit against [Modellista], and to exercise diligence in enforcing this Guarantee". It also requires him not to mortgage, sell or transfer "any of [his] assets without prior written consent" of the Plaintiff (emphasis added). These and other draconian terms of the Personal Guarantee make out an arguable case for improvidence. Mr. Zhao's defence of unconscionability therefore has an air of reality.

[49] I agree with the views expressed by Petersen J. on the motion to set aside the default judgment. The record on the motion before me only highlights the evidentiary divisions between the parties.

[50] The evidence given by Mr. Van Essen on behalf of Techlantic on one hand, and Mr. Zhao on the other raises issues of credibility about how their business arrangement operated, and in particular what accounts with Modellista the Guarantee was intended to cover. Justice Petersen recognized this discrepancy in the evidence on the motion before her at paras. 3 to 5 of her decision. The evidence before this court deepens the divide between Techlantic's position that, by 2017, it was acting as a subcontractor or financier to Modellista to facilitate the purchase and delivery of vehicles to customers in China, and Modellista's position that it was essentially a broker and sometime locator of vehicles for which it would receive a finders fee.

[51] Mr. Zhao has given evidence that he felt pressured to sign the Guarantee or his business would irreparably suffer. He submits that he, as opposed to Modellista, was in an unequal bargaining position with Techlantic that left him little choice but to sign. He argues that this resulted in an improvident contract on which he is now being called on to pay.

[52] Techlantic has not shown there is no genuine issue requiring a trial to prove liability against Mr. Zhao for summary judgment. I do not consider the written record on this motion to provide the evidence necessary to make the necessary findings of fact on which to apply the law as a fair process to adjudicate the issues on their merits. The evidence on the record before me is disparate enough that I have difficulty with discerning whether Mr. Zhao is raising duress as a defence on the motion, which he is not permitted to rely upon under the Petersen Order, or to make findings whether or not Mr. Zhao was a vulnerable party when he signed the Guarantee. And if it is the latter, I cannot make any finding on the evidence whether those circumstances amounted to pressure short of Techlantic exerting duress but still depriving Mr. Zhao of the ability to adequately protect his interests in the contracting process.

[53] I consider that it would be in the interests of justice to have a trial of the issues rather than to use my enhanced fact-finding powers provided under Rule 20.04 (1.1) and (1.2) in this case. In my view, there is a genuine issue requiring a trial about whether the circumstances between the parties, the nature of the business they were engaged in and their respective roles in the enterprise were such that Mr. Zhao was in an unequal bargaining position to Techlantic within the meaning on *Uber v. Heller*. The evidence given by the principal parties is confusing and inconsistent, made especially so by the candid admission of both that there was no written contract, and Mr. Zhao's evidence that the responsibilities of the parties had changed over time. A trial is necessary to see and hear witnesses testify and to make credibility assessments, draw inferences and make findings of fact based on their evidence to properly adjudicate this case.

[54] There is also a genuine issue that the entering of the Guarantee was an improvident bargain given the state of accounts between the principal parties. The language of the Guarantee refers to the guarantee of "the prompt, full and

complete performance of any and all *existing* duties and obligations.....” [emphasis added]. It would seem the capitalization of the first letter of the term “Debt” that appears throughout paras. 1 to 10 of the Guarantee is not defined elsewhere in it. This element of the test requires a trial for the court to find what indebtedness of Modellista was in fact *existing* on January 25, 2018, and what “Debt” the Guarantee was intended to cover.

[55] The Petersen Order precludes Mr. Zhoa from challenging the amount of Modellista’s debt for which Techlantic has obtained judgment. However, Petersen J. did not set aside the default judgment against Modellista because she found it had not explained the delay in bringing the motion to set it aside, and also because it had not raised an arguable defence. There has been no explicit finding of the state of accounts between the corporate parties at the time Mr. Zhao gave the Guarantee.

[56] I therefore conclude that Techlantic’s claim against Mr. Zhao under the Personal Guarantee is not suitable for summary judgment. Consequently, I am not able to answer the second question to dispose of the action.

[57] In *Hryniak*, the Court suggested that the motions judge who has heard the unsuccessful motion for summary judgment remain involved with the case for trial because of the knowledge of the facts and issues. With respect, I do not consider myself seized to hear the trial of this matter given the tight scheduling of judicial resources in Brampton. The trial of this matter can be heard by any judge during a sittings convenient to the parties. I would also recommend that a pre-trial conference be arranged to discuss trial management matters and to canvas available trial dates in the near future.

## **Conclusion**

[58] The motion is dismissed. The action shall proceed to trial on the sole defence that the Personal Guarantee is unconscionable.

[59] Since Mr. Zhao did not upload a Costs Outline and given the limited circumstances in which a self-represented litigant can claim costs (see *Fong v. Chan*, 1999 CanLII 2052 (Ont. C.A.) at paras. 25 and 26), I would be inclined to award no costs on this motion. However, if Mr. Zhao feels differently about it, he may serve and file written submissions consisting of no more than three pages (not including a bill of costs or an offer to settle) by April 15, 2024. Techlantic would then have until April 22 to file responding submissions. If I have received no submissions by those dates, I shall consider the matter of costs resolved.

[60] Any written submissions on costs may be filed by email to my judicial assistant at [susan.pickles@ontario.ca](mailto:susan.pickles@ontario.ca)



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Emery J.

**Released:** April 5, 2024

**CITATION:** Techlantic Ltd. v. Zhao, 2024 ONSC 1391  
**COURT FILE NO.:** CV-19-0971-0000  
**DATE:** 2024 04 05

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Techlantic Ltd.

Plaintiff

- and -

MODELLISTA AUTO ACCESSORIES  
INC.

and

ZHAO, Jiyue,

Defendants

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**REASONS FOR DECISION**

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Emery J.