CITATION: Royal Bank of Canada v. American Haulage Inc., et al, 2024 ONSC 4755
COURT FILE NO.: CV-23-14305
DATE: 2024/08/29

2024 ONSC 4755 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
Royal Bank of Canada Plaintiff/Moving Party	Robert Budgell for the Plaintiff/Moving Party
– and –	
American Haulage Inc., Harsimran Singh Gill and Lakhwinder Dhindsa aka Lakhwinderpal Dhindsa Defendants/Responding Parties	Sukhjinder Bhangu, for the Defendants/ Responding Parties
	HEARD: August 21, 2024

REASONS FOR JUDGMENT

JUSTICE L. SHEARD

Overview

[1] The plaintiff, Royal Bank of Canada, ("RBC"), brings this motion for summary judgment ("SJM"). RBC seeks judgment against all defendants for amounts owing pursuant to a credit agreement accepted on June 12, 2019 (the "Credit Agreement"), which established credit facilities in favour of the corporate defendant, American Haulage Inc. ("American"). The individual defendants, Harsimran Singh Gill ("Gill") and Lakhwinder Dhindsa aka Lakhwinderpal Dhindsa ("Dhindsa") signed the Credit Agreement as Directors and as Vice-President and President, respectively, of American.

[2] RBC asserts that it is entitled to judgment against Gill and Dhindsa pursuant to the guarantee and postponement of claims in the amount of $1,980,000, (the "New Guarantee") which, RBC alleges, was signed by Gill and Dhindsa. RBC asserts that the New Guarantee replaced an existing guarantee dated August 27, 2018 (the "Original Guarantee") in the amount of $1,300,000. RBC asserts that under the New Guarantee Gill and Dhindsa guaranteed repayment of the monies loaned to American pursuant to the Credit Agreement.

2024 ONSC 4755 (CanLII)

Preliminary Issue: Defendants' Adjournment Request

[3] Gill and Dhindsa have been represented by counsel throughout this litigation. However, on August 19, 2024, two days prior to the hearing of the SJM, a Notice of Change of Lawyer was filed whereby Mr. Sukhjinder Bhangu was appointed to replace the defendants' prior counsel, Jagteshwar Singh Chahal.

[4] Gill and Dhindsa sought an adjournment of the SJM on the basis that Mr. Bhangu had not had an adequate opportunity to review the motion materials and to prepare for the SJM.

[5] Mr. Bhangu also submitted that an adjournment was required so that his clients could cross-examine RBC's representative, Natalia Naraine ("Naraine"), on her affidavits sworn August 10, 2023 and October 18, 2023.

[6] The plaintiff opposed the adjournment.

[7] The plaintiff advised the court that by consent order dated October 16, 2023, Valente J. set out the timetable to be followed by the parties (the "Timetable Order")[1].

[8] The Timetable Order directed:

(1) the defendants to deliver their responding materials by September 27, 2023;

(2) the plaintiff to deliver its reply materials, if any, by October 18, 2023;

(3) the parties to deliver factums in accordance with the *Rules of Civil Procedure*;

(4) cross-examinations, if any, to be conducted in November, 2023; and

(5) that the hearing of the SJM was to proceed on a date to be set in the week of January 15, 2024, to be heard remotely.

[9] Gill and Dhindsa served responding affidavits dated September 25, 2023, meeting the deadline set in the Timetable Order. They were unable to attend in November 2023 to be cross-examined and were cross-examined on their affidavits on December 8, 2023.

[10] The defendants did not cross-examine Naraine on her affidavits. It appears that the defendants did not request to cross-examine her until Mr. Bhangu's retainer on or about August 19, 2024.

[11] RBC submits that Gill and Dhindsa failed to exercise their right to cross-examine with reasonable diligence and that pursuant to r. 39.02(3)[2] the court may (and should) refuse to grant an adjournment.

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[1] The Timetable Order had not been uploaded to CaseLines nor to SharePoint or Frank.
[2] *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194

[12] RBC counsel identified a second reason to deny the adjournment request: this hearing date had been agreed by the defendants' previous counsel, Mr. Chahal who, by email of May 14, 2024, confirmed that he and his clients were agreeable to the SJM proceeding on this date.[3]

Disposition of Adjournment Request

2024 ONSC 4755 (CanLII)

[13] The defendants' adjournment request was denied on the basis that:

i) they had not acted diligently to cross-examine Naraine;

ii) the hearing date for the SJM was agreed to by defendants' counsel as confirmed in his email of May 14, 2024, more than three months prior to the hearing date; and

iii) to adjourn the SJM would result in an unfair delay to RBC, which had initially brought the SJM in August 2023, almost one year ago.

[14] The SJM proceeded on August 21, 2024.

Issues to be decided

[15] There are three issues to be decided on the SJM:

Issue #1: Can the issues be decided on a summary judgment motion?

Issue #2: Is RBC entitled to judgment against American in the amount claimed?

Issue #3: Is RBC entitled to judgment against Gill and Dhindsa on the New Guarantee?

Disposition of SJM

[16] For the reasons to follow, I have concluded that there is no genuine issue requiring a trial and that judgment should be granted as against all three defendants.

Issue #1: Can the issues be decided on a summary judgment motion?

[17] Pursuant to r. 20.04(2), the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[18] Pursuant to r. 20.04(2.1), in determining whether there is a genuine issue for trial, the court is to consider the evidence submitted by the parties and the motions judge may exercise the following powers for that purpose, unless it is in the interest of justice for those powers to be

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[3] The Timetable Order and the aforementioned email were marked, respectively, as Exhibits 1 and 2, on the SJM.

exercised only at trial: 1. weighing the evidence. 2. evaluating the credibility of a deponent. 3. drawing any reasonable inference from the evidence.

[19] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process:

(1) allows the judge to make the necessary findings of fact;

(2) allows the judge to apply the law to the facts; and

(3) is a proportionate, more expeditious and less expensive means to achieve a just result:

Hryniak v. Mauldin, 2014 SCC 7, at para. 49:

[20] *Hryniak* also directs that on a motion for summary judgment, the motions judge should determine if there is a genuine issue requiring trial based on the evidence presented, without using the fact-finding powers under r. 20.04(2.1). However, those powers may be exercised, "provided that their use is not against the interest of justice" in that using those powers "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."

Disposition of Issue #1

[21] Based on the record before me, I am satisfied that on the SJM, I will be able to reach a fair and just determination on the merits and that there is no genuine issue requiring a trial. In reaching that conclusion, to a limited extent only, I have exercised my power under r. 20(2.1) to draw reasonable inferences from the evidence, in accordance with the principle set out under that subrule. In particular, I infer that Gill and Dhindsa did, in fact, sign the documents presented to them by RBC, including the Original Guarantee and the New Guarantee.

Issue #2: Is RBC entitled to judgment against American in the amount claimed?

[22] To answer this question, I must make findings of fact. My factual findings are, based, in part, on the following evidence put forth on the SJM:

(a) the admissions made by the defendants with respect to American;

(b) that RBC's evidence has not been challenged by the defendants, who did not cross-examine Naraine within the timelines directed by the Timetable Order; nor did they express any intention to cross-examine her until on or about August 19, 2024;

(c) the evidence given by Gill and Dhindsa, both in their affidavits and on their cross-examination on those affidavits, that RBC had presented documents to them for signing to establish the credit facilities and that they had signed the Credit Agreement as directors of American;

2024 ONSC 4755 (CanLII)

(d) on page one, the Credit Agreement clearly states that the security for the borrowings and other obligations of the borrower, American, shall include the Original Guarantee (in the amount of $1,300,000) and the New Guarantee, in the amount of $1,980,000, which was intended to replace the Original Guarantee;

(e) respecting whether it is their signatures on the Guarantee, in their affidavits, Gill and Dhindsa stated in the alternative that:

   i) they did not sign any guarantee document; or

   ii) they did not have knowledge of signing any documents in relation to personal guarantees; or

   iii) if they *did* sign the Original Guarantee and the New Guarantee, the nature of the documents was not explained to them;

   iv) they did not have a chance to review the documents with a person with financial background or a lawyer or obtain independent legal advice and did not understand the full extent of their liability or the nature of the legal and financial risk that they were assuming; and

   v) despite the foregoing assertions, on cross-examination, Gill confirmed that he and Dhindsa attended the RBC together to sign the "paperwork" pursuant to which American was provided with credit facilities of over approximately $2.5 million;

(f) Gill confirmed that the New Guarantee was not the first time RBC had provided American with a loan, but when confronted with the Original Guarantee signed in 2018, he was ambivalent or unsure about whether the Original Guarantee bore his signature;

(g) notwithstanding Gill's and Dhindsa's assertions that they really did not understand what they were signing, each confirmed that RBC provided the credit facilities, which included a Visa credit card that allowed each of Gill and Dhindsa a credit limit of $25,000, for a total of $50,000, on the strength of the documents signed;

(h) Gill acknowledged that when the documents were signed in RBC's offices, the bank officer explained the documents to them. For example, at question 112, of the transcript of his cross-examination, Gill stated:

> The [bank] officer explained it to me and that was all I – like there was no question about what is there. They were pretty open in telling me like what was in the document, so – and I agreed to them.

2024 ONSC 4755 (CanLII)

(i) on his cross-examination, Dhindsa asserted that there were so many papers signed by him at RBC, he did not know what he had signed – including that he had signed the Original Guarantee in 2018 for $1.3 million;

(j) similar to the evidence given by Gill, when shown what RBC says is Dhindsa's signature on the documents signed in RBC's offices, Dhindsa acknowledged that it "looked like" his signature, however, he was not sure. He also confirmed that he had no evidence to suggest that it was not his signature;

(k) again, similar to the evidence given by Gill, Dhindsa asserted that he did not read any of the documents he was asked to sign, nor did he ask for time to have the documents reviewed by anyone else before he signed or tell RBC that he did not understand the documents that he signed;

(l) Dhindsa claimed that he relied on Gill to tell him what he was signing and that he agreed to sign whatever Gill told him to sign;

(m) notwithstanding the foregoing, at question 101 of the transcript of his cross-examination, when asked if anyone at RBC explained the documents that he was signing, Dhindsa replied that RBC's officer *did* explain the documents and that he chose to sign the paperwork without reading it, and without telling RBC that he did not understand what he was signing;

(n) with respect to his alternative assertion that the signature on the New Guarantee was not his, Dhindsa confirmed that he did not know of any evidence that his signature was forged;

(o) the defendants admit that American entered into the Credit Agreement, the terms of which provided for repayment of $1,380,000, together with interest, calculated at RBC's prime rate, plus 2%, per annum (Gill and Dhindsa affidavits at para. 6). Mr. Gill also states that American experienced financial difficulties, which made it impossible for it to meet its obligations to repay the RBC and that default occurred on February 10, 2023 (Gill and Dhindsa affidavits at paras. 7, 9).

(p) again, notwithstanding the positions taken by Gill and Dhindsa that they are not liable to repay American's debts to the RBC, at para.16 of his affidavit, Gill states that he was planning to resolve this matter "by ways of settlement and out-of-court. Therefore, in good faith, I started making payments" (sic) [to RBC] on April 5 and 19, 2023;

(q) Dhindsa's affidavit sworn September 25, 2023, is, essentially, a carbon copy of Gill's affidavit.

2024 ONSC 4755 (CanLII)

Analysis of the evidence

[23] Based on the record before me, I am satisfied that the process followed on this SJM allows me to make the necessary findings of fact to which I will be able to apply the law and that this process will be fair and just and will avoid the unnecessary expense and delay of a trial.

[24] It is trite law that on a summary judgment motion, the parties are required to put their best foot forward. In this case, RBC's evidence is that the Credit Agreement, the Original Guarantee and the New Guarantee were all signed by Gill and Dhindsa. Naraine's evidence on behalf of RBC stands unchallenged.

[25] Gill and Dhindsa acknowledge that:

(i) they are (or were) directors and officers of American;

(ii) they attended at RBC's offices to sign documents required by RBC as a condition of providing American with the credit facilities that are the subject of RBCs claim; and

(iii) RBC accepted the signed documents and extended credit to American in accordance with the Credit Agreement.

[26] Had Gill and Dhindsa sought to establish that their signatures had been forged on the Guarantees put forth by the RBC, it was incumbent upon them to lead that evidence on this SJM, which they did not.

[27] RBC's evidence is compelling. It is undisputed that the Credit Agreement was signed by Gill and Dhindsa as directors of America. The Credit Agreement itself is only a three-page document and at page one, makes clear reference to replacing the Original Guarantee with the New Guarantee. The relevant paragraph reads, in part, as follows:

> SECURITY
>
> Security for the Borrowings and all other obligations of the Borrower to the Bank, including without limitation any amounts outstanding under any Leases, if applicable, (collectively, the "Security"), shall include:
>
> a) Guarantee and postponement of claim on the Bank's form 812 in the amount of $1,300,000.00 signed by Lakhwinder Dhindsa and Harsimran Singh Gill:
>
> b) Guarantee and postponement of claim on the Bank's form 812 in the amount of $1,980,000.00 signed by Lakhwinder Dhindsa and Harsimran Singh Gill;
>
> Upon receipt of the security described in paragraph b) above, in form and substance satisfactory to the Bank, together with such legal opinions and any other supporting documentation as the Bank may reasonably require, to the full satisfaction of the Bank, such security will replace the security described in paragraph a) above.

2024 ONSC 4755 (CanLII)

. . .

[28] The signatures on the Original Guarantee and the New Guarantee, copies of which were included in the documents put forth by RBC on the SJM, appear identical to signatures on the Credit Agreement that Gill and Dhindsa acknowledge were theirs.

2024 ONSC 4755 (CanLII)

Factual findings

[29] Based on the evidence presented, I find the following facts:

(i) on June 12, 2019, American signed the Credit Agreement which provided for repayment of the following:

(a) Facility #1 – Revolving Demand Facility in the amount of $1,380,000, on which interest was payable at RBC's prime rate plus 2% per annum;

(b) Facility #2 – Revolving Lease Line of Credit in the amount of $550,000; and

(c) Credit Card debt to a maximum of $50,000.

(ii) American is in default of its obligations under the Credit Agreement and owes the amounts claimed by RBC in its Statement of Claim, as updated in the RBC's Notice of Motion on the SJM;

(iii) Gill and Dhinsa did, in fact, sign the New Guarantee, marked as Exhibit "F" on Naraine's affidavit of August 10, 2023.

Disposition of Issue #2:

[30] Based on the evidence before me, including the admissions made by the defendants, RBC is entitled to judgment against American as per RBC's Notice of Motion.

Issue #3: Are Gill and Dhindsa liable to the RBC under the Guarantee and Postponement of claim dated June 12, 2019?

Analysis

[31] Having found as a fact that the New Guarantee was signed by Gill and Dhindsa, I now address the arguments raised by Gill and Dhindsa that they are not liable under the New Guarantee because they signed it without reading it and/or without the benefit of independent legal advice.

[32] With respect to the former argument, I note that these defendants have not asserted the defence of *non est factum.* This defence is available to someone "who as a result of misrepresentation, has signed a document mistaken as to its nature and character and who has not been careless in doing so.": *Bulut v. Carter*, 2014 ONCA 424 (CanLII) at para. 18.

[33] The evidence of Gill and Dhindsa is that the RBC representative explained the documents that they signed. In addition, the unchallenged evidence is that, prior to signing the New Guarantee,

Gill and Dhindsa had signed the Original Guarantee. That is reflected in the Credit Agreement and is also apparent from looking at the Original Guarantee itself (marked as an exhibit to Naraine's second affidavit), which appears to bear the signatures of Gill and Dhindsa.

[34] The evidence is unchallenged that Gill and Dhindsa are directors and officers of American and that they attended RBC to sign all documents necessary to provide American with the credit facilities, following which, the credit facilities were provided by RBC.

[35] By their own evidence, I find that Gill and Dhindsa clearly understood that the documents they were asked to sign, and did sign, were related to the credit facilities provided by RBC to American. Even if the court were to accept the evidence that Gill and Dhindsa signed the New Guarantee without reading it or understanding it, that would not provide them with a defence: see, *Guarantee Company of North America v. Ciro Excavating & Grading Ltd.*, 2016 ONCA 125 (CanLII), at para. 4.

[36] With respect to independent legal advice, the law is clear that in circumstances similar to those in this case, independent legal advice is not required if the guarantor is an officer and director of the corporation receiving the loan: *Meridian Credit Union Limited v. 2428128 Ontario Limited*, *2017 ONSC 4578 (S.C.J.) at para. 23, aff'd 2018 ONCA 201 (Ont. C.A).*

[37] The law concerning claims on a guarantee is clear that the presence or absence of independent legal advice is relevant to whether the guarantor has a defence based on misrepresentation, fraud, mistake, duress, undue influence, or unconscionability, but apart from its relevance to a plea of those defences, the absence of independent legal advice, standing alone, provides no defence to a claim on a guarantee: *Trez Capital Limited Partnership v. Ontario International College Inc.,* 2018 ONSC 4978 (CanLII), at para. 42.

Disposition of Issue #3

[38] Based on my findings of fact and the application of the law to those facts, I conclude that Gill and Dhindsa are liable to RBC pursuant to the New Guarantee.

[39] RBC is entitled to judgment against Gill and Dhindsa on the New Guarantee in accordance with RBC's Notice of Motion on the SJM.

Costs

[40] Under the Credit Agreement, RBC is entitled to its costs on a full indemnity scale. Despite that, RBC seeks its costs of this action and of the SJM on a partial indemnity scale, fixed in the amount of $15,947.51.

[41] Having reviewed the Bill of Costs filed, and having invited submissions from counsel for the defendants, who declined to make submissions with respect to costs, I find that the amount claimed by RBC is not only fair and reasonable but is below the amount which RBC might be entitled pursuant to the Credit Agreement. As such, I fixed costs in the amount of $15,947.51 payable by the defendants.

2024 ONSC 4755 (CanLII)

ORDERS TO ISSUE:

[42] For the reasons set out, judgment is granted to RBC as against American, Gill, and Dhindsa in accordance with RBC's Notice of Motion on the SJM, together with costs, fixed in the amount of $15,947.51.

Justice L. Sheard

Released: August 29, 2024

2024 ONSC 4755 (CanLII)

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L. Sheard J.

Released: August 29, 2024