

CITATION: The Toronto-Dominion Bank v. Defenders Transport Inc. et al., 2024 ONSC 5689
COURT FILE NO.: CV-24-00001439-0000
DATE: 2024/10/11

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: THE TORONTO-DOMINION BANK, Plaintiff

AND:

DEFENDERS TRANSPORT INC., DEFENDERS LOGISTICS INC.,
MANJINDER SINGH and JASKARAN SINGH BAJWA, Defendants

BEFORE: Justice I.F. Leach

COUNSEL: N. Marconi, for the Plaintiff

No one appearing for the responding defendant Jaskaran Singh Bajwa, with Ms Marconi indicating that counsel of record for that defendant communicated that the plaintiff's motion for summary judgment vis-à-vis that defendant would be unopposed, and that no-one would be appearing for that defendant today.

HEARD: October 11, 2024

ENDORSEMENT

- [1] Having reviewed the plaintiff's material filed in support of its motion for summary judgment, I am satisfied that the substantive relief being sought should be granted.
- [2] Without limiting the generality of the foregoing, I find that there is "no genuine issue requiring a trial" within the meaning of Rule 20.04(2) of the *Rules of Civil Procedure*. The plaintiff's material clearly establishes the existence of the underlying guarantee agreement pursuant to which the responding defendant undertook to cover the relevant debt, which also has been clearly established. The responding defendant has filed absolutely no responding material to support its pleaded defences, or establish any genuine issue requiring a trial, despite the provisions of Rule 20.02(2).
- [3] Judgment as requested by the plaintiff therefore shall be granted.
- [4] As for costs, I am satisfied that the plaintiff should be entitled to a measure of costs in relation to the action and motion, as supported by the Costs Outline which has been filed.
- [5] However, in my view, the particular record before me, in this particular case, warrants limiting the plaintiff's cost recovery to partial indemnity costs, to reflect the court's ongoing concern about such actions and motions being brought in this venue in relation to

matters lacking any discernible connection between the underlying disputes and Middlesex County. In that regard:

- a. The broader interests of justice and resource concerns raised by that practice were outlined in *The Toronto-Dominion Bank v. The Other End Inc.*, 2024 ONSC 5377.
- b. In this case, the plaintiff's servicing bank branch involved in creation of the underlying financial obligations was located in Mississauga, Ontario. The first named defendant was based in Winnipeg, Manitoba, but is clearly affiliated with the three further defendants, (including the defendant respondent to this motion), all of which/whom are based in Brampton, Ontario. The underlying financial commitment contract was executed in Brampton, Ontario. All of the underlying indications therefore strongly suggest that the action to litigate the parties' resulting dispute, and motions therein, naturally and self-evidently should have been brought in Peel County, in the Central West Region.
- c. More to the point, for present purposes, in my view the action and motions therein should not have been brought here in London, in circumstances where there are absolutely no discernible connections between this matter and London, Middlesex County or the Southwest Region apart from the plaintiff having referred the matter to one of its debt collection officers in London. In my view, that latter consideration is not a factor connecting the underlying *dispute* with this venue, but really speaks only to how and where the plaintiff arbitrarily chose to pursue its debt collection efforts in relation to that dispute.
- d. While there currently is no mechanism in the existing *Rules of Civil Procedure* permitting the court to have such venue selection concerns formally addressed by way of an appropriate motion unless and until a responding party seeks or chooses to bring such a motion, in my view the court still retains a discretionary jurisdiction to express its disapproval of such litigation conduct via appropriate cost determinations, when the record in a particular case provides a justification for doing so. Without limiting the generality of the foregoing, in my view that jurisdiction is not negated by the authorities relied upon by the plaintiff, such as *Toronto-Dominion Bank v. Berthin*, [1994] O.J. No. 250 (Gen.Div.), and *Adelaide Capital Corp. v. Pretoro Developments Inc.*, 1999 CarswellOnt 1457 (C.A.), emphasizing that courts generally should award costs on an elevated scale where that has been agreed upon by the parties in underlying financial contracts, as it was in this case. Such authorities also emphasize that the court's practice in that regard is followed "except where there has been conduct that militates against it", (as per Justice Winkler, as he then was, in *The Toronto-Dominion Bank v. Berthin*, *supra*, at paragraph 6), or where "there is nothing in the record ... that would justify depriving the [claimant] of its contractual right to solicitor client costs", (as per the Court of Appeal in *Adelaide Capital Corporation v. Pretoro Developments Inc.*, *supra*, at paragraph 4).

- e. In my view, the clear “forum shopping” considerations and resulting concerns raised by the plaintiff’s conduct in this case warrant, at the least, (and despite the parties’ underlying contractual agreements regarding costs), limiting the successful plaintiff to its partial indemnity costs in order to express the court’s disapproval of the plaintiff’s inappropriate venue selection, and the corresponding detrimental impact on litigants whose disputes *do* have genuine connections with this city, county and region of the Superior Court of Justice.
- [6] For the above reasons, the draft judgment submitted by the plaintiff has been reviewed, finalized and signed, but with costs to the plaintiff awarded only on a partial indemnity basis, fixed in the all-inclusive amount of \$6,354.79.

Ian F. Leach

Justice I.F. Leach

Date: October 11, 2024