

COURT OF APPEAL FOR ONTARIO

CITATION: JPM Trade Capital Inc. v. Blanchard, 2024 ONCA 876

DATE: 20241204

DOCKET: COA-23-CV-1381

Pepall, Nordheimer and Zarnett JJ.A.

BETWEEN

JPM Trade Capital Inc.

Plaintiff (Respondent)

and

R. Paul Blanchard* and TEC International Corporation

Defendants (Appellant*)

Monty Dhaliwal, for the appellant

Dalkeith Palmer and Parul Ahluwalia, for the respondent

Heard: November 12, 2024

On appeal from the judgment of Justice Judy A. Fowler Byrne of the Superior Court of Justice, dated November 21, 2023.

REASONS FOR DECISION

[1] The appellant, Paul Blanchard, was the sole officer, director, and operating mind of TEC International Corporation (“TEC”) and of its sister corporation, Artex Environment Corporation (“Artex”). The appellant decided to sell Artex and refinance TEC. The plan was to keep TEC going until the Artex deal closed. TEC needed bridge financing until Artex was sold. TEC made a credit application to the respondent, JPM Trade Capital Inc. The principal of the respondent was familiar

with the appellant and TEC because he had handled TEC's loans for a previous lender who was no longer lending to TEC.

[2] In November 2017, the respondent agreed to lend \$150,000 to TEC. At the time, there was no signed deal for the sale of Artex nor any closing date. The respondent and TEC entered into a loan agreement dated November 22, 2017. It had a four-month term. The agreement was signed by the respondent and by the appellant in his capacity as President of TEC. TEC agreed to provide the respondent with the security contemplated in Schedule A. Schedule A to the agreement entitled 'Additional Loan Terms and Conditions' described the appellant as the guarantor and included terms of a general security agreement to be given by TEC to the respondent. The appellant initialed each page of the loan agreement as well as Schedule A which described him as the guarantor. His initials were placed in a signature box for the 'borrower'. The appellant signed the guarantee in his personal capacity, and the general security agreement on behalf of TEC which was then registered under the *Personal Property Security Act*, R.S.O. 1990, c. P.10.

[3] TEC was failing and the appellant was unable to sell Artex. Throughout 2018, TEC continued to require bridge financing. The respondent made six more advances, each subject to a new loan agreement in terms substantially similar to the first loan agreement. Again, in each agreement, the appellant was described as the guarantor and he initialed each page including that describing him as

guarantor. In cross-examination, he acknowledged that he saw this description but did not wish to alert the respondent to his belief that the guarantee had expired.

[4] With each new advance and agreement, there was no new credit application, GSA, or discharge of the PPSA registration and the appellant did not execute any additional guarantee nor did he seek any return of the guarantee.

[5] Although Artex was sold on October 26, 2018, by January 2019, TEC was in default. On January 31, 2019, the respondent gave notice and made demand for payment. It subsequently sued the appellant on his guarantee.

[6] Before the trial judge, the appellant took the position that his guarantee only applied to the first loan agreement and not to any of the subsequent agreements.

[7] The trial judge disagreed. She reasoned that she was to apply the principles in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633 to discover the objective intentions of the parties as expressed in the words of the contract and to give those words their ordinary and grammatical meaning consistent with the surrounding circumstances known to the parties at the time of formation of the contract. She acknowledged that the surrounding circumstances should not overwhelm the words of the agreement. She also recognized that a guarantor “is a favoured creditor in the eyes of the law whose obligation should be strictly examined and strictly enforced”: *Manulife Bank of Canada v. Conlin*, [1996] 3 S.C.R. 415, at para. 10.

[8] The trial judge considered the language of the guarantee and the surrounding circumstances of what was objectively known to the parties when the guarantee was signed and determined that further advances were contemplated when the first loan agreement and guarantee were signed. Amongst other provisions, she found that the subordination and change authorization paragraphs in the guarantee supported her interpretation. She also did not find any ambiguity in the wording of the guarantee. The guarantee was continuing in nature and binding on the appellant for all advances made by the respondent to TEC. Although the appellant's initials did not create a new guarantee for each new loan, he was acknowledging an existing, continuing guarantee. She granted judgment in favour of the respondent in the amount of \$1,100,000 plus interest and costs.

[9] On appeal, the appellant submits that the trial judge erred in finding that the guarantee was a continuing guarantee.

[10] In *Sattva*, the Supreme Court changed the law on the applicable standard of review for interpretation of a contract. Rothstein J. explained at para. 47:

[T]he interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine “the intent of the parties and the scope of their understanding”.... To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at

words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed.... In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

(*Reardon Smith Line*, at p. 574, *per* Lord Wilberforce)

[11] Just this year, in *Earthco Soil Mixtures Inc. v. Pine Valley Enterprises Inc.*, 2024 SCC 20, 492 D.L.R. (4th) 389, the Supreme Court reminded courts that ascertaining the objective intention of the parties to a contract is the prevailing goal of contractual interpretation and is an “inherently fact specific” exercise: at para. 28. The Court stated at para. 27: “This Court’s jurisprudence firmly establishes that questions of contractual interpretation, which involve questions of mixed fact and law, are ordinarily afforded deference on appellate review.”

[12] On this appeal, neither party takes the position that the guarantee in this case is a standard form contract. The guarantee was negotiated by the parties and although some of the terms use familiar language, the guarantee reflects the unique circumstances of the parties’ contract. Both parties agree that the applicable standard of review is palpable and overriding error. We agree.

[13] Consistent with that position, the appellant does not suggest that the trial judge made any error in her detailed articulation of the applicable law. Rather, the

appellant submits that the trial judge made numerous palpable and overriding errors in her interpretation of the guarantee. We do not agree.

[14] The appellant challenges the trial judge's treatment of certain words and phrases in the guarantee and proposes alternative interpretations. The trial judge's interpretation was open to her and these arguments simply invite us to engage in a reinterpretation of the sort criticized by the Supreme Court. Nor did the trial judge rely on a subjective review of the surrounding circumstances as alleged by the appellant. The first loan agreement and the guarantee were made against the backdrop of TEC's long history of loans and the reality that until Artex was sold, TEC would need working capital. These were circumstances that the trial judge found to be known to both parties at the time the guarantee was signed. It was open to her to use this factual matrix to inform her determination of the mutual and objective intentions of the parties and to find that the guarantee was, as it said, a continuing one.

[15] The appellant also challenges two of the factual findings made by the trial judge: her finding that the original amount under the first loan agreement was readvanced under the second loan agreement dated February 12, 2018; and that TEC acknowledged that the appellant continued to act as guarantor when the subsequent loan agreements were signed and initialed. We see no palpable and overriding error. On the first alleged error, the record before the trial judge on the mechanics of the advances supported her finding. On the second alleged error, all

of the subsequent loan agreements described the appellant as the guarantor; it was the appellant who signed them on behalf of TEC. This evidence served to confirm the interpretation the motion judge had given to the guarantee. See also *Earthco*, at para. 107. Lastly, the trial judge did address the jurisprudence relied upon by the appellant. There are no “hard and fast rules” that must be satisfied before a guarantee may be interpreted as a continuing one: see *Intercap Equity Inc. v. Bellman*, 2022 ONCA 61, 160 O.R. (3d) 536, at para. 41. We also agree with the trial judge that, without a finding of ambiguity, case law that applies the *contra proferentem* rule is inapplicable. In conclusion, we see no palpable and overriding errors.

[16] For these reasons, the appeal is dismissed. As agreed, the appellant shall pay the respondent’s costs fixed in the amount of \$24,000 inclusive of disbursements and applicable tax.

“S.E. Pepall J.A.”
“I.V.B. Nordheimer J.A.”
“B. Zarnett J.A.”