

ONTARIO
SUPERIOR COURT OF JUSTICE

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| BETWEEN: |) | |
| |) | |
| Royal Bank of Canada |) | |
| |) | Natalie Marconi, for the Plaintiff |
| Plaintiff |) | |
| |) | |
| – and – |) | |
| |) | |
| Precision Markings Inc. and Isabell Helene Sickinger |) | Emerson Wargel, for the Defendant, Precision Markings Inc. |
| |) | |
| Defendants |) | Douglas Spiller, for the Defendant, Isabell Helene Sickinger |
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| |) | HEARD: October 25, 2024 |

2025 ONSC 169 (CanLII)

REASONS FOR DECISION

DE SA J.:

Overview

- [1] The Plaintiff seeks summary judgment on liquidated debts against the Defendants on a loan.
- [2] The Plaintiff claim against the Defendants is on Loan # 12621679001 (the “2018 Loan”) where the Defendants jointly and severally agreed to pay the balance outstanding under a line of credit with interest on the outstanding principal and any accrued interest at the Plaintiff’s prime rate plus 3.71 per cent per annum (the “Loan Agreement”).
- [3] No payment has been made on this loan since November 9, 2022.
- [4] Precision Markings Inc. (hereinafter “Precision”) has admitted liability.
- [5] Ms. Sickinger disputes liability for the 2018 Loan and submits that the defence of *non est factum* remains a genuine issue for trial.

- [6] I disagree. Having reviewed the matter and after hearing the submissions of counsel, I am satisfied that there is no genuine issue for trial.
- [7] Judgment is granted in favour of the Plaintiff against Ms. Sickinger on the 2018 Loan for \$212,421.80 plus interest at RBC's prime rate plus 3.71% per annum.
- [8] The reasons for my decision are outlined below.

Summary of Facts

Background

- [9] Isabell Helene Sickinger has been a joint owner and shareholder of Precision, the company she started with her son Ryan, as far back as 2014. Ms. Sickinger looks after the bookkeeping and all office work - out of her Precision office in her own home at 2110 Southview Avenue, Innisfil, Ontario (the "Sickinger Home"). Her son, Ryan's duty was limited to performing the field and labour work for Precision.
- [10] While she was listed as the sole owner of the company in 2014, Ryan became a 50% owner of the shares in January 2015.

The 2018 Loan

- [11] Victoria Ptasiuk ("Victoria") was a Senior Business Account Manager at RBC who personally handled the 2018 Loan in this action. She has worked for RBC for the last 16 years.
- [12] The 2018 Loan was the fourth such loan signed personally by Ms. Sickinger for the line of credit for her corporation, Precision. Prior to the 2018 Loan, Ms. Sickinger signed a total of three other such loans on similar pre-printed forms, each one increasing in amount and each replacing the prior loan (the "Predecessor Loans").
- [13] According to Victoria, the process followed for the 2018 Loan was the same as the process that was followed for each of the Predecessor Loans.
- [14] Victoria asked Ms. Sickinger to confirm and provide her personal assets, debts and income and Income Tax information to qualify her personally as a borrower who would be personally liable for the 2018 Loan. She also explained to Ms. Sickinger that it was a requirement for her, if she qualified, to agree to be personally liable on the loans.
- [15] Ms. Sickinger herself provided all of these documents confirming her personal assets, debts and personal income: her personal Notice of Assessment dated May 9, 2017; May 1, 2017 cover letter from accountant attaching complete 2016 Income Tax Return also containing her 2015 Income Tax information; the MPAC Report for the Sickinger Home for the years 2016 to 2020.
- [16] Victoria also requested a CIBC document to confirm the value of Ms. Sickinger's Home. Victoria asked for Precision's most recent financials which were also provided for the year

ending in February 2017. She also obtained a Credit Bureau check on Ms. Sickinger on February 15, 2018. All this information was included in the Application.

[17] According to Victoria, she would have followed her standard practice on the 2018 Loan. She would have provided a copy of the 2018 Loan to Ms. Sickinger and would have read the Loan Agreement to Ms. Sickinger as she pointed to and explained each of the items below:

- a. that the Customer is her corporation, Precision, and she is referred to as the Owner in the 2018 Loan;
- b. both Precision and she personally are each requesting the sum of \$200,000;
- c. the words “jointly and severally” mean that she, personally, is responsible to repay the \$200,000 all on her own and the Royal Bank can sue her personally and enforce against her and her assets for the full amount and her personal responsibility is not in any way affected by Precision’s responsibility to repay the \$200,000;
- d. the amount being borrowed for which she is personally responsible is \$200,000;
- e. the minimum revolvment amount is \$250;
- f. the interest is RBC prime plus 3.71% payable on the 21st of each month, and
- g. Victoria points to and reads the personal liability clause above the signature line and explained to Ms. Sickinger again that it is very important that she understands and agrees that she will be personally responsible to repay the Loan in full. She explains that Precision’s obligation to repay the Loan does not in any way affect her personal obligation to repay the Loan.

[18] According to Victoria, she would have given Ms. Sickinger all the time she required to read and review the Loan Agreement. At no time, did Ms. Sickinger indicate she was not willing to be personally responsible for 2018 Loan.

[19] Victoria maintained that if Ms. Sickinger or anyone had indicated that she/he did not wish to be personally responsible to repay a loan in full, then Victoria would not have proceeded further with the signing of the Loan Agreement.

Ms. Sickinger’s Evidence

[20] Ms. Sickinger maintains that she was unaware that in signing the 2018 Loan Agreement for Precision that she could be held personally liable for the debt.

- [21] Ms. Sickinger acknowledges she signed the Loan Agreement twice, both as a signing officer and owner of the corporation. According to Ms. Sickinger, she understood that she was being asked to sign twice simply to confirm the Loan. If RBC intended that by signing, she would be personally liable for the loan in the amount of \$200,000, this was not properly explained to her. If she was told she would be personally responsible for the debt, Ms. Sickinger maintains she would not have signed the document.
- [22] The wording of the Loan Agreement is clear and unambiguous. Ms. Sickinger does not dispute that. However, Ms. Sickinger maintains that she only read the top part of the Loan Agreement (regarding the amount and interest) and relied on the assurances made by the loan officer (Victoria) that she would not be liable.
- [23] According to Ms. Sickinger, before signing, she even asked Victoria if the bank could take her house or anything like that and Victoria, the loan officer, replied “no”, and that Precision would be responsible for the loan.

Analysis

Test: Motion for Summary Judgment

- [24] Pursuant to Rule 20.04(1) of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194, the court shall grant summary judgment if it is satisfied there is no genuine issue requiring a trial. Animating the interpretation of Rule 20.04(1) is Rule 1.04 which requires that the rule be liberally construed to secure the just, most expeditious and least expensive determination of a proceeding on its merits having regard to the complexity of the issues and the amounts involved.
- [25] The judge in deciding whether to grant summary judgment must ask: can the full appreciation of the evidence and issues that is required to make dispositive findings be achieved by way of summary judgment, or can this full appreciation only be achieved by way of trial?
- [26] A trial is not required if the judge on the motion can: 1) achieve a fair and just adjudication; 2) make the necessary findings of fact; 3) apply the law to those facts; and 4) if the motion is a proportionate, more expeditious and less expensive means to achieve a just result rather than going to trial.
- [27] As the Supreme Court explained in *Hryniak v. Mauldin*, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, at para. 50:

These principals are interconnected and all speak to whether summary judgment will provide a fair and just adjudication. When a summary judgment motion allows the judge to find the necessary facts and resolve the dispute, proceeding to trial would generally not be proportionate, timely or cost effective. Similarly, a process that does not give a judge confidence in her conclusions can never be the proportionate way to

resolve a dispute. It bears reiterating that the standard for fairness is not whether the procedure is as exhaustive as a trial, but whether it gives the judge confidence that she can find the necessary facts and apply the relevant legal principals so as to resolve the dispute. [Emphasis added.]

- [28] The Court is to assume the evidence in the record is all the evidence the parties would rely on if the matter proceeds to trial: *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 (CanLII), t, at para 56; *Royal Bank of Canada v. Tie Domi*, 2011 ONSC 7297, at para. 5; *Byfield v. Toronto Dominion Bank*, 2012 ONCA 49 (CanLII) , at paras. 8-10.
- [29] Rules 20.04(2.1) and (2.2) expand the number of cases in which there will be no genuine issue requiring a trial by permitting motion judges to weigh evidence, evaluate credibility and draw reasonable inferences: *Hryniak v. Mauldin, supra*, at para. 44.
- [30] Although any sworn statement, in one sense, may be called an issue of credibility and a trial Judge may believe it, it may not constitute a “genuine” issue, in the face of overwhelming evidence to the contrary: *Rogers Cable TV Ltd. v. 373041 Ontario Ltd.*, 1994 CanLII 7367 (ON SC), at para. 6.

Application to the Facts of the Case

- [31] Ms. Sickinger submits that the defence of *non est factum* remains a genuine issue for trial.
- [32] Ms. Sickinger maintains that she was unaware that in signing the 2018 Loan Agreement for Precision that she could be held personally liable for the debt.
- [33] The defence of *non est factum* 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: *Marvco Colour Research Ltd. v. Harris*, 1982 CanLII 63 (SCC), [1982] 2 S.C.R. 774.
- [34] The Supreme Court of Canada has made clear that the defence of *non est factum* will not succeed if one is careless or reckless in failing to read or makes no effort to understand the contract. The defence of *non est factum* cannot succeed if one is careless or reckless in failing to read or makes no effort to understand the contract: *Marvco Colour v. Harris, supra*, at paras. 24 and 25.
- [35] This principle of law is based not only upon the principle of placing the loss on the person guilty of carelessness, but also upon a recognition of the need for certainty and security in commerce. In *Muskham Finance. Ltd. v. Howard*, [1963] 1 Q.B. 904, [1963] 2 W.L.R. 87, [1963] 1 All E.R. 81 (C.A.) at p. 912, Donovan L.J. stated:

Much confusion and uncertainty would result in the field of contract and elsewhere if a man were permitted to try to disown his signature simply by asserting that he did not understand that which he had signed.

- [36] The wording of the Loan Agreement here is clear and unambiguous. Ms. Sickinger does not dispute that. However, Ms. Sickinger maintains that she only read the top part of the Loan Agreement (regarding the amount and interest) and relied on the assurances made by the loan officer that she would not be liable.
- [37] When a party signing documents is a - shareholder, officer, or former president of the borrower – then his failure to read the document(s) is beyond mere carelessness, it is indeed – indifference: *Guarantee Co. of North America v Ciro Excavating & Grading Ltd.*, 2015 ONSC 4465, at paras. 14, 20-22 and 25; See also *Bulut v. Carter*, 2014 ONCA 424.
- [38] While Ms. Sickinger maintains she was misled by Victoria into believing she would not be liable, I do not accept her evidence in this regard. I accept Victoria's evidence that she made it clear to Ms. Sickinger that she would be personally liable for the amounts borrowed. Indeed, Ms. Sickinger has signed similar loan agreements multiple times prior to the 2018 Loan (the Predecessor Loans).
- [39] Having regard to the record before me, I am satisfied that there is no genuine issue for trial.
- [40] Judgment is granted in favour of the Plaintiff against Ms. Sickinger on the 2018 Loan for \$212,421.80 plus interest at RBC's prime rate plus 3.71% per annum.
- [41] I will receive costs submissions from the Plaintiff within 3 weeks of the release of this decision. The Plaintiff will have 2 weeks thereafter to respond.

Justice C.F. de Sa

Released: January 8, 2025

CITATION: RBC v. Precision Markings Inc., 2025 ONSC 169

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Royal Bank of Canada

Plaintiff

– and –

Precision Markings Inc. and Isabell Helene Sickinger

Defendants

REASONS FOR DECISION

Justice C.F. de Sa

Released: January 8, 2025