CITATION: Stern v. Moeinifar, 2025 ONSC 1315
COURT FILE NO.: CV-22-00679926
DATE: 20250227

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
SAMUEL STERN	)	*Paul Gribilas*, for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
MEHRAN MOEINIFAR	)	*Daniel Litsos and Howard Manis,* for the Defendant
	)	
Defendant	)	
	)	
	)	**HEARD:** February 26, 2025

REASONS FOR JUDGEMENT

PAPAGEORGIOU J.

Overview

[1] The Plaintiff seeks summary judgment on an unpaid loan in the amount of $1,000,000 plus prejudgment interest at the contractual rate of 8 % from January 15, 2018, to the date of judgment.

Decision

[2] For the reasons that follow I grant the judgment sought in the amount of $1,445,673.52 which is the amount due and owing with interest as of March 31, 2023, with pre and post judgment interest at the contractual rate of 8 %.

Issues

- Issue 1: Can the Defendant defeat this motion by raising a jurisdiction issue?
- Issue 2: Can the Defendant defeat this motion by arguing that Ontario is not the convenient forum?

Analysis

The Summary Judgment Test

[3] Before addressing the issues, it is important to set out a brief recitation of the summary judgment test as follows.

[4] In accordance with r. 20.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "*Rules*"), the court shall grant summary judgment if:

> (a) the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[5] In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and a judge may exercise any of the following powers under r. 20.04(2.1): (1) weighing the evidence; (2) evaluating the credibility of a deponent; and (3) drawing any reasonable inference from the evidence.

[6] The Supreme Court of Canada in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49, explained:

> 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.

[7] In order to defeat a motion for summary judgment, the responding party must put forward some evidence to show that there is a genuine issue requiring a trial. A responding party cannot rest solely on allegations in a pleading. Each side must "put their best foot forward" with respect to the existence or non-existence of material issues to be tried: *Mazza v. Ornge Corporate Services Inc.*, 2016 ONCA 753, at para. 9. Furthermore, "a summary judgment motion cannot be defeated by vague references as to what may be adduced if the matter is allowed to proceed to trial": *Diao v. Zhao*, 2017 ONSC 5511, at para. 18.

[8] I agree that proceeding by way of summary judgment is appropriate.

[9] I have been able to make the necessary findings of fact, and summary judgment is a proportionate, more expeditious and less expenses means to achieve a just result.

Uncontradicted Facts

[10] The Plaintiff gave a $1,000,000 loan to two individuals, Mr. and Mrs. Campbell, which loan was secured by a third mortgage over property located at 2194 Hampstead Road, Oakville, Ontario, L6H 6Y9 (the "Mortgage"). The mortgaged property was owned by the Defendant.

[11] The Defendant provided a personal full and unconditional guarantee (the "Guarantee") of the Mortgage which provided as follows:

> ... the Guarantor unconditionally guarantees all payments required to be made by the Chargors ... as well as the full, prompt and complete performance by the Chargors of each and every of the covenants, conditions and provisions to be observed and performed by the Chargors. This guarantee is given by the Guarantor as principal debtor and not as surety and it is the express condition of the parties hereto that the Guarantor shall be liable to the Chargee in the same manner and to the same extent as if the said Guarantor had executed this mortgage as Chargee.
>
> …
>
> In the event of any default under this mortgage, the Guarantor hereby waives any right to require the Chargee to proceed against the Chargors or to exhaust its rights and remedies against the Chargors. Upon breach or default by the Chargors, this guarantee shall be deemed to have been breached."

[12] Notably, the Guarantee specifies that it was given by the Defendant as a principal debtor and not as a surety.

[13] As well, as further security for the mortgage, the Defendant provided a collateral charge on property located in Florida at 517 Coconut Isle Drive, Fort Lauderdale, Florida, USA (the "Collateral Mortgage").

[14] The funds were advanced in three (3) tranches. The first advance of FOUR HUNDRED THOUSAND DOLLARS ($400,000.00) was made on the closing of the transaction on September 19, 2017. The second advance of THREE HUNDRED FIFTY THOUSAND DOLLARS ($350,000.00) was made on September 20, 2017. The third advance of TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000.00) was made on December 8, 2017. The first four (4) months of interest and legal costs were prepaid and deducted from each of the Mortgage advances. The first monthly payment after the four (4) months of prepaid interest was due on February 15, 2018.

[15] After the prepaid interest payments were exhausted, regular monthly payments became payable commencing on February 15, 2018, in the amount of SIX THOUSAND SIX HUNDRED SIXTY- SIX DOLLARS SIXTY-SEVEN CENTS ($6,666.67). No such monthly payment was ever made, nor was any other payment made by the Defendant and/or the Campbells following that date.

[16] Thus, the Mortgage and Collateral Mortgage have been in default since February 18, 2018, when the Campbells and the Defendant failed to make the first monthly interest-only payment then due and payable.

[17] Further, the Mortgage matured on September 15, 2018.

[18] The Plaintiff issued and served a Notice of Sale on March 6, 2020.

[19] The property secured by the Mortgage was sold by the first mortgagee on June 30, 2020, under power of sale. The Plaintiff did not receive any funds from this sale.

[20] In or around October 2020, the Campbells went bankrupt.

[21] The Plaintiff attempted to proceed with enforcement of the Collateral Mortgage in Florida. The Collateral Mortgage specified incorrectly that it was given to secure a guarantee of a promissory note executed in Canada in the amount of $1,000,000. This was incorrect as there is no evidence of any promissory note. The Plaintiff made demands on the Defendant in Florida, but his counsel objected to the validity and enforcement of the Collateral Mortgage because no promissory note exists between the Plaintiff and the Defendant. He asserted that in the absence of a promissory note, it is well-established in Florida law that a lender cannot seek recovery of amounts allegedly owed by a borrower.

[22] In April 2022, the Plaintiff commenced this action against the Defendant on the Guarantee in Ontario. The Plaintiff says that he has not abandoned enforcement of the Collateral Mortgage in Florida, but determined that he would proceed with its action on the Guarantee in Ontario and then proceed with its enforcement in Florida.

[23] The Plaintiff served its motion for summary judgment on January 20, 2023.

[24] On or about January 20, 2023, the Defendant then made an assignment in bankruptcy.

[25] On March 22, 2023, the Plaintiff obtained an order lifting the automatic stay.

[26] The Plaintiff's affidavit evidence sets out that the amount due and owing in respect of the Charges and therefore guaranteed by the Defendant is $1,445,673.52 as of March 31, 2023.

[27] This is uncontradicted by any evidence.

[28] The Defendant has admitted that he signed the Commitment, the Acknowledgment and Direction re the Charge and Collateral Charge and has not disputed that he signed the Acknowledgement re Standard Charge Terms.

[29] He has admitted that he understood the nature and effect of his personal Guarantee, that he was not coerced into entering into it, that the moneys were fully advanced, that the Mortgage went into default on February 18, 2018, and that he has made not payments on the Mortgage.

Issue 1: Can the Defendant defeat this motion by raising a jurisdiction issue?

[30] The Defendant argues that Ontario lacks jurisdiction because the Collateral Mortgage provides that it shall be governed and construed by the laws of the State of Florida.

[31] The Defendant's argument must fail for the following reasons:

- The Defendant has attorned to Ontario's jurisdiction by delivering a Statement of Defence. He does not even raise jurisdiction in his defence: *Wolfe v. Pickar*, [2011] OJ. No. 2035 at paras 43, 44, 53.

- The existence of a contract made in Ontario, is a presumptive connecting factor that on its face entitled the courts of Ontario to assume jurisdiction.

- This case is on all fours with *Neophytou v. Fraser*, 2015 ONCA 45. In that case, the defendant had properly brought a motion to stay an action on a debt. The defendant lived in the United States. The court held that a contract is made where the offeror receives confirmation of acceptance by the offeree. Here, although the Defendant signed the documents in Florida, he faxed them to Ontario. Thus, the acceptance was in Ontario.

- The Defendant has not provided any compelling arguments that would rebut the presumption: *Club Resorts Ltd. v. Van Breda*, [2012] 1 R.C.S. at paras 117 to 118.

- The choice of law clause referencing Florida is in the Collateral Mortgage. There is no similar provision in any of the documents related to the loan, the Guarantee or the Mortgage.

- The Defendant has not at any time brought any motion to stay the proceeding on the basis that Ontario does not have jurisdiction. It is simply too late to raise this argument.

Issue 2: Can the Defendant defeat this motion by arguing that Ontario is not the convenient forum?

[32] The Defendant also argues that Florida would be the more appropriate forum, but this argument must also fail for the following reasons:

- The Defendant has brought no motion to stay the Ontario proceeding.

- It is also too late to argue this at a summary judgment motion after litigating this matter for some time.

- In any event, the Defendant has not raised any compelling arguments as to why there would be any basis to stay this proceeding in favour of Florida, even if he had brought a motion. The Guarantee was made in Ontario. The loan was made in Ontario. The borrower and the lender are in Ontario. The only connection to Florida is that the Defendant lives there and

that the Collateral Mortgage specifies that it is governed by Floridian law. Even if the motion had been brought, the Defendant would have had to prove that Florida was clearly the more appropriate forum which it has failed to show.

[33] The Defendant also argues that there is something nefarious about the Plaintiff suing on the Guarantee in Ontario after the Defendant raised issues with enforcement of the Collateral Mortgage. I see nothing wrong with this. The only thing that this motion will decide is whether or not the Defendant is liable on the Guarantee. The Defendant can still raise arguments about whether or not the Collateral Mortgage can be enforced in the absence of a signed promissory note. As well, on this issue, I note that there is no expert evidence before me that supports what the Defendant says about a mortgage being unenforceable in the absence of a signed promissory note.

[34] Therefore, I accept the Plaintiff's evidence and award the Plaintiff judgment in respect of the Guarantee in the amount of $1,445,673.52 which is the amount due and owing with interest as of March 31, 2023, with pre and post judgment interest at the contractual rate of 8 %.

[35] There is no genuine issue for trial.

Papageorgiou J.

Released: February 27, 2025

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Plaintiff

– and –

MEHRAN MOEINIFAR

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