

CITATION: 2848895 ONTARIO INC. et al v. Modellista Auto Accessories Inc. et al,
2026 ONSC 3101
COURT FILE NO.: CV-19-00000971-0000
Date: 2026 05 26

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: 2848895 ONTARIO INC.
2848899 ONTARIO INC., **Plaintiffs**

AND:

Modellista Auto Accessories Inc.
Zhao, Jiyue, **Defendants**

BEFORE: Justice McGEE

COUNSEL: Dhaliwal, Monty, for the **Plaintiffs**
Email: mdhaliwal@pallettvalo.com

Self-Represented, for the **Defendants**
Email: jyzhao09@yahoo.ca

HEARD: May 12, 2026, in attendance

REASONS FOR DECISION

Result

- [1] This trial determines the narrow issue of whether a Personal Guarantee (“PG”) given by the defendant Jiyue Zhao on January 25, 2018 should not be given effect on the basis that it was unconscionable.
- [2] For the reasons set out below, I find that the PG was not unconscionable and is fully enforceable. I restore paragraph 2 of the Default Judgment dated October 2, 2019, requiring Mr. Zhou to personally pay \$243,313.97, with pre-judgment and post-judgment interest at the rate of 18% per annum.

Relevant Facts and Background

- [3] The Plaintiffs, 2848895 Ontario Inc. and 2848899 Ontario Inc., (“Techlantic”) are Canadian corporations who took an assignment of this claim on August 30, 2021. Techlantic as an operating company consists of eight persons, the owners of which fund the company through their own personal means, backed by personal guarantees with their financial institution.
- [4] The Defendant, Modellista Auto Accessories Inc. (“Modellista”) is an Ontario corporation carrying on business as an exporter of automobiles to China. Mr. Zhao is an individual residing in Markham, Ontario. He is a professional engineer and the principal of Modellista. Prior to operating Modellista, he operated a business that imported/exported automotive parts.
- [5] Modellista used Techlantic’s services to facilitate the exportation of luxury vehicles to China during the period relevant to this Claim. In brief, Techlantic provided services for the financing, shipping and storing of vehicles sourced in and shipped from Canada until they were released by customs at the Chinese port of entry. Over the course of their relationship, Modellista sold more than 800 vehicles to its customers in China using Techlantic’s services.
- [6] In a May 2017 Agreement, Modellista was required to pay the amount of service fees (shipping, handling, incidentals and financing) within 40 days of the date of order. Interest on overdue amounts were charged at 1.5% per month, being 18% per annum.
- [7] The vehicles were exported from Canada for the sole purpose of being sold to Modellista's clients. Modellista and Techlantic agreed that their shipping agent, C-Motion would not release the vehicles in China until informed to do so by Techlantic. In this manner, Techlantic would have the ability to insure payment of its fees.

- [8] Modellista soon fell into a pattern of non-payment. By mid-2017, payment from Modellista was taking 60 days. By late 2017, the outstanding balance was approximately \$240,000.
- [9] To track the arrears of shipping, handling, and other fees, Techlantic created an online “dashboard” to which all parties had access. Techlantic amended the dashboard amounts from time to time if Modellista provided correcting information.
- [10] The delays in payment were generally accommodated by Techlantic, but in the fall of 2017 the outstanding balance began to exceed workable limits. On November 14, 2017, Mr. Zhao verbally agreed that Modellista would immediately reduce its outstanding balance with two payments totalling \$60,000.
- [11] Modellista made no payment. Instead, in an email sent November 21, 2017, Mr. Zhao proposed that Techlantic hold three vehicles for security pending his efforts to make a further payment.
- [12] Discussions continued. Mr. Zhao assured Techlantic that he was arranging for financing to discharge the whole of the balance owing. Specifically, he advised that he was looking into a \$260,000 mortgage with TD Bank and that, in the interim, he would make two payments of \$70,000. Neither the mortgage nor the payments materialized.
- [13] Discussions came to a head during the week of January 22, 2018. Mr. Zhao was most anxious to have two vehicles held by C-Motion released by Friday, January 26, 2018.
- [14] On Tuesday, January 23, Techlantic confirmed their agreement to release the vehicles upon two payments of \$70,000. Later that day Mr. Zhao emailed that he was arranging to pay \$40,000. His email was answered by Tom van Essen on behalf of Techlantic who reminded Mr. Zhao that he owed \$240,000, and that he had not paid the promised \$70,000, or obtained a mortgage.

[15] On Wednesday, January 24, 2018, Mr. Zhao assured Mr. van Essen that he was anxious to clear the balance owing and was working on a mortgage but had not yet received approval.

[16] Mr. van Essen suggested that Techlantic's mortgage broker assist. Mr. van Essen pointed out to Mr. Zhao that his insistence on paying only 3% interest was below the current market interest of 7-9% (as the mortgage would be second on title) and was hampering his ability to obtain financing. He again offered the use of his mortgage broker to arrange for a 7% mortgage for six months to give Mr. Zhao time to collect on his overdue accounts.

[17] On Thursday, January 25 Mr. Zhao declined the mortgage assistance and again promised payment of \$40,000. He stated in his email sent at 3:55 pm that his mortgage approval was "in the queue" and that if it did not come in over night, that he would "sign or make any promise with the payment." Mr. van Essen agreed with this proposal. He self-drafted a PG using online standardized forms and attached it to an email to Mr. Zhao, sent at 4:32 pm which read:

"I understand that the mortgage with the TD Bank for \$260,000 takes more time and you need a solution to release the two vehicles now. I drafted a document for Modellista regarding the balance owed and a personal guarantee from you as you suggested per attached.

Can you please review and comment.

Please also supply a copy of your driver's licence and passport so it matches your name on the attached documents.

If the documents are finalized and signed, we will release the two vehicles at issue."

[18] To Mr. van Essen's surprise, Mr. Zhao returned the signed PG with his driver's licence and passport at 6:01 pm. He asked for no changes and testified at trial that he did not consult with anyone, including the other director of Modellista.

He also confirmed at trial that he understood the terms of the PG and that he could have obtained legal advice prior to signing it.

- [19] The PG provides, among other things that: (a) Mr. Zhao personally guarantees performance of Modellista's obligations up to \$240,000; (b) Principal and interest of the debt accelerates on default; (c) Mr. Zhao waives defences, counterclaims and offsets relating to guaranteeing Modellista's debt; (d) Techlantic is under no obligation to collect or protect its security vis-à-vis Modellista; (e) Techlantic may proceed in the first instance against Mr. Zhao.
- [20] The amount of the outstanding debt as of January 25, 2018 was confirmed in a letter attached to the PG to be \$240,830.13. The amount is not in dispute.
- [21] The two vehicles were released, and pursuant to the other terms of the parties' agreement, Modellista paid \$40,000 to Techlantic by Friday, January 26, 2018, and pledged a BMW X5 as security. Relevant to my finding that Mr. Zhao was not a vulnerable person, Techlantic later learned that the BMW X5 had been financed, was already sold to a Canadian buyer, and its actual value was approximately \$20,000, not the \$80,000 represented by Mr. Zhao.
- [22] When confronted with this information, Mr. Zhao wrote on February 7, 2018 "I have signed the agreement and [am] responsible for 200k remaining SH balance. What did I do wrong?"
- [23] Mr. Zhao never obtained a mortgage. Instead, he continued the pattern of making promises to pay and then not fulfilling his promises. On August 7, 2018, Mr. Zhao promised to pay \$20,000 per month toward the outstanding balance. He made one payment in August, then paid nothing in September.
- [24] The failure to pay \$20,000 in September 2018 was the last straw. By email correspondence dated October 1, 2018, Techlantic demanded repayment from Modellista and notified Mr. Zhao that the PG would be triggered if no payment was made by October 31, 2018.

- [25] On the date of demand, the amount due and payable under the loan was \$265,712.00, calculated as \$160,744.00 in principal, plus \$28,360.00 of interest to October 31, 2018, plus \$76,608.00 costs on the BMW X5 which had been given as unrealizable security. To this day, no payment has been made by either Modellista or Mr. Zhao.
- [26] From October 22, 2018 until November 2020, a period of approximately 33 months, Mr. Zhao did not assert that the PG was unconscionable.
- [27] This Statement of Claim was issued on March 5, 2019. Neither of the defendants contested the proceeding. On October 2, 2019, Techlantic obtained a Default Judgment in the amount of \$269,381 against the defendant Modellista and against the defendant Mr. Zhou personally in the amount of \$243,313.97. The amount payable by Mr. Zhao was limited to the amount of the PG and interest. Both defendants were to pay the plaintiff's costs of \$1,668.42.
- [28] On October 28, 2019, a Writ of Seizure and Sale was filed against Mr. Zhou's personal property in Newmarket. An examination in aid of execution was scheduled for January 17, 2020, which was ignored by Mr. Zhou. When neither he nor counsel for the corporate defendant appeared, it was rescheduled to January 31, 2020. Again, no one appeared.
- [29] It was only during the summer of 2020 that Mr. Zhou finally acted, because it was at that time that he discovered that a Writ had been registered against title to his home.
- [30] He retained counsel and brought a motion to set aside the default judgment on his and the corporation's behalf, which was heard January 27, 2021. In his supporting affidavit he raised for the first time the issue of unconscionability with respect to the PG.
- [31] In reasons released February 1, 2021, Justice Petersen found that there was no basis upon which to set aside the default judgment against Modellista, but that

Mr. Zhou had met the threshold standard necessary to set aside the default judgment against him based on the PG; writing at paragraph 71 that “[a]lthough Mr. Zhou has not presented a valid explanation for his default and did not act promptly to set aside the default judgment, justice would best be served by giving him an opportunity to defend against the claim on the merits at trial.”

- [32] Justice Petersen permitted Mr. Zhou to file a Statement of Defence within 30 days and pursuant to Rule 19.08 of the *Rules of Civil Procedure* (“the Rules”) limited this trial, ultimately¹ heard May 12-15, 2026, and ordered that:

Mr. Zhao must limit his defence to the doctrine of unconscionability. He shall not plead or argue duress and shall not challenge Modellista's liability for the debt that he personally guaranteed in January 2018.

- [33] The Order of February 1, 2021 was not appealed. In accordance with its terms, Mr. Zhao served his Statement of Defence on March 3, 2021. Examinations were conducted, a pre-trial was conducted on June 23, 2025 for a trial originally set for four days commencing on October 3, 2025. The trial date was not reached. It was again pre-tried on October 6, 2025, and came before Justice Trimble on April 23, 2026 in anticipation of a trial during the May 2026 sittings.

The Terms of the Personal Guarantee Are Not Unconscionable

The Uber Framework

- [34] The governing test for unconscionability as set out by the Supreme Court of Canada at para. 65 of *Uber Technologies Inc. v. Heller*, 2020 SCC 16, [2020] 2 S.C.R. 118, consists of two elements: a) an inequality of bargaining power and b) a resulting improvident bargain. An inequality in bargaining power exists where

¹ The plaintiffs were unsuccessful in obtaining Summary Judgment in a long Motion, heard December 6, 2023 with reasons released April 5, 2024.

one party is unable to adequately protect their interests during the contracting process. It may arise from disparities in knowledge, experience, bargaining strength, dependence, necessity, or cognitive asymmetry, including circumstances in which only one party can fully understand the contractual terms or consequences.

- [35] A bargain is improvident where it unduly advantages the stronger party or unduly disadvantages the more vulnerable party. Improvidence must be assessed contextually and at the time the contract was formed, having regard to the surrounding commercial circumstances and the parties' relative positions.
- [36] Proof of deliberate exploitation is not required for a finding of unconscionability. While knowing exploitation may constitute evidence of inequality of bargaining power, the doctrine focuses on the protection of vulnerable parties rather than the stronger party's subjective intent.
- [37] An improvident bargain occurs when, at the time the contract is formed, "it unduly advantages the stronger party or unduly disadvantages the more vulnerable" see *Uber*, at para. 74.
- [38] Independent legal advice is relevant only to the extent that it mitigates the inequality of bargaining power. Even where advice is obtained, it may not cure circumstances of dependence, desperation, or practical inability to bargain freely.

Subsequent Applications Within Ontario Law

- [39] The Ontario Superior Court of Justice has applied the *Uber* framework throughout several decisions, emphasizing at para 72, in *Sanders v. Canada's Choice Investments Inc.*, 2023 ONSC 195, that the two elements: inequality of bargaining power and a resulting improvident bargain are interrelated, and that proof of a manifestly unfair or improvident bargain must support an inference that one party was unable to adequately protect their interests during the contracting process for the agreement to be set aside.

- [40] In *IMAX Corporation v. Guzzo et al.*, 2026 ONSC 621, at para. 31, the court set out that the burden of proof is on the party raising unconscionability and that it is a “high hurdle to clear.” Citing *Uber*, at para. 66, the court confirmed that demonstrating an inequality of bargaining power requires a moving party to show that he could not adequately protect his interests in the process of creating the contract.
- [41] In *ClearFlow Commercial Finance Corp. v. Trigger Wholesale Inc.*, 2021 ONSC 3421, at para. 68, the court held that the mere absence of independent legal advice is not, on its own, fatal to a claim on a personal guarantee. The lack of independent legal advice is relevant only in the context of whether the transaction was tainted by undue influence, unconscionability, fraud, misrepresentation, or similar improper conduct. The court must determine within a contextual inquiry whether the transaction was affected by inequality of bargaining power and whether the resulting bargain was improvident. Absent evidence of such circumstances or other improper tactics sufficient to put the lender on notice, the guarantee will be enforced.
- [42] Post-signing conduct is relevant to determining whether an agreement is unconscionable. In *Business Development Bank of Canada v. ROC Ice Cream Inc.*, 2022 ONSC 1945, at para. 42, the Court concluded that there was no evidentiary basis to find an inequality of bargaining power or any obligation on the lender to ensure that the guarantor obtained independent legal advice in circumstances in which the guarantor did not challenge the transaction until after the funds had been advanced, the loan had gone into default, and enforcement proceedings had commenced.

Analysis

- [43] Mr. Zhao acknowledges that Techlantic neither imposed a deadline on Mr. Zhao to sign the PG, nor prevented him from obtaining legal advice. He confirmed

during his cross-examination that he could have called his accountant, Jason Lin and proposed his own changes.

- [44] Mr. Zhou testified that he had read the PG, understood the terms at the time of signing, did not raise any concerns or suggest amendments to the PG, that he knew that he could have taken additional time to consult or obtain advice and that he executed the documents without objection. At no time did he communicate or display any discomfort with the PG. He agrees that he understood the terms of the PG. He was aware that if Modellista did not pay Techlantic, that he would be personally responsible for the outstanding amount. He acknowledges that Techlantic relied on the PG to continue to do business with Modellista.
- [45] Mr. Zhao anchors his argument for unconscionability on the pressure exerted on him by Techlantic to sign the PG on January 25, 2018 as a condition to releasing the two vehicles from the port. When asked on cross-examination why he signed the PG, he answered that “I had to get the car released as soon as possible. Due to port charges and unforeseen consequences.”
- [46] I do not accept that the business pressure felt by Mr. Zhou during the week of January 22, 2018 rises to a finding of unconscionability for the following reasons.
- [47] First, the terms of release were not a departure from the agreed procedure that had governed the parties’ relationship throughout: a vehicle would not be released by the shipping agent, C-Motion until Techlantic advised it to do so upon being paid by Modellista for the shipping, handling, and financing charges appertaining to the vehicle.
- [48] The fact that Techlantic had been relaxing this term from time to time, allowing vehicles to be released without full payment does not change this baseline operating premise.

- [49] Mr. Zhao attempts to confuse this relationship by suggesting that it was part of the parties' practise to have a "rolling credit" in the form of incoming vehicles acting as security for released vehicles. Alternatively, he attempts to infer a direct relationship between his customers and Techlantic, asking the court to conclude that Modellista cannot be held to account for the unpaid service fees.
- [50] I reject both arguments. Modellista's clients were unknown to Techlantic. At no time did Techlantic have any ability to enforce the payment of shipping and handling against the vehicle purchasers, hence the agreement that C-Motion would hold the vehicles in port until the amounts due to Techlantic were paid.
- [51] Moreover, Techlantic had no ownership interest in the vehicles and had no legal ability to realize on them as security for monies owed by Modellista, who collected the shipping and handling fees from their customers. On the one occasion in which Modellista specifically pledged a vehicle for security (the BMW X5 incident) it was later learned that Modellista had already sold the vehicle to a Canadian customer.
- [52] Second, I find that there was no inequality of bargaining power. Techlantic is a relatively small operation. Mr. van Essen testified that two of the principals of Techlantic: Robin Jones and Wouter Van Essen have given their own Personal Guarantees to the Royal Bank to secure Techlantic's operating line of credit. Modellista was Techlantic's largest customer. By 2018, approximately 25% of Techlantic's business depended on Modellista.
- [53] I view Techlantic's interactions with Mr. Zhao in the period leading up to the January 25, 2018 PG and the period thereafter as their genuine attempts to keep a major customer solvent, thereby preserving their own accounts receivable. They did not make a demand on the PG until their efforts to assist and work with Mr. Zhao had been exhausted through a series of broken promises to pay.

- [54] Techlantic did not unilaterally request that Zhao enter into the PG as a condition of continuing to do business with Modellista. It was Mr. Zhao's suggestion that he sign a promise for payment.
- [55] Third, the PG was not an improvident bargain. In truth, it was an arrangement that was economically advantageous to Mr. Zhao. In January of 2018, both Mr. Zhao and Techlantic understood the PG to be a temporary patch with which to continue their working relationship. Instead, Mr. Zhao treated it as a permanent solution that allowed him to continue operating on Techlantic's credit, eliminating the need to encumber his own property or to obtain his own financing with the commensurate obligation(s) to make monthly interest payments.
- [56] Mr. Zhao did not have the ability to discharge the agreed amount owing of \$240,830.13. On the strength of the PG, he could continue to make money on the margins of each exported vehicle without a) paying any out-of-pocket funds b) having to carry the full weight of the expenses necessary to earn the margin (including monthly interest charges) or c) pay the full amount owing to Techlantic.
- [57] Most importantly, the terms of the PG capped Mr. Zhao's liability at \$240,000, over which there was no ability for Techlantic to collect additional outstanding monies that were owing to Techlantic from Modellista.
- [58] I find that when viewed from this perspective, the January 25, 2018 PG was the best path available to a sophisticated commercial actor who was making the best available trade-off in the circumstances. I do not find that Mr. Zhao was a vulnerable party overborne by the contracting process.

Conclusion

- [59] A court will not lightly set aside an agreement on the basis of unconscionability.
- [60] In these circumstances, I find that the defendant Mr. Zhao has not met his onus of demonstrating that the PG dated January 25, 2018 was unconscionable.

- [61] Paragraph 2 of the Default Judgment dated October 2, 2019, requiring Mr. Zhou to personally pay \$243,313.97, with pre-judgment and post-judgment interest at the rate of 18% per annum is restored. Judgment to issue accordingly.

Costs

- [62] The plaintiffs have been the successful parties and are entitled to their costs. They have served, filed, and uploaded a Bill of Costs. If the amount of costs payable to them cannot be resolved, they may submit written submissions for costs no later than June 10th, 2026. Mr. Zhao's Bill of Costs and written submissions are due no later than June 24, 2026. No reply is permitted.
- [63] Written submissions are limited to three pages, and any caselaw cited is to be hyperlinked.

A handwritten signature in blue ink, appearing to read "Mahu J.", is centered on the page.