

CITATION NO.: Canadian Imperial Bank of Commerce v. 12509237 Canada Inc. et al.,
2026 ONSC 5591

COURT FILE NO.: CV-24-86804

DATE: October 2, 2026

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Canadian Imperial Bank of Commerce, Plaintiff

- and -

12509237 Canada Inc. o/a WingsUp! Brantford, and Ankitkumar Patel a.k.a.
Ankitkumar Natvarlal Patel, Defendants

- and –

Chooch's Inc. a.k.a. WingsUp!, Chooch's (Brantford) Inc., Chooch's (Brantford 2)
Inc., 2310685 Ontario Inc. and Ryszard Witulski, Third Parties

BEFORE: MacNeil J.

COUNSEL: *Melanie Van Vliet* – Lawyer for CIBC

Vidit Deswal – Lawyer for the Defendants

HEARD: March 30, 2026

REASONS FOR DECISION

[1] The plaintiff, Canadian Imperial Bank of Commerce (“CIBC”), made this motion for summary judgment seeking payment from the defendants pursuant to a loan agreement and a guarantee agreement, plus interest and costs.

[2] The defendants oppose the motion. More specifically, the personal defendant, Ankitkumar Patel a.k.a. Ankitkumar Natvarlal Patel (“Mr. Patel”), disputes that the agreements are enforceable given the circumstances in which they were obtained. It is submitted on Mr. Patel’s behalf that he was called to the branch on short notice; told that the financing could be withdrawn if he did not sign immediately; denied a fair opportunity to obtain independent legal advice; not given a proper chance to review the operative documents; not provided with a plain-language explanation; told that the documents were standard and in his best interests; and discouraged from asking questions.

[3] There is a related third-party action. However, none of the Third Parties, Chooch’s Inc. a.k.a. WingsUp!, Chooch’s (Brantford) Inc., Chooch’s (Brantford 2) Inc., 2310685 Ontario Inc. and Ryszard Witulski, took a position on this summary judgment motion and they did not participate in the hearing of same.

FACTS

[4] On June 9, 2022, CIBC offered to the corporate defendant, 12509237 Canada Inc. o/a WingsUp! Brantford (“125”), a loan made under the *Canada Small Business Financing Act*, S.C. 1998, c. 36 (“the CSBF Loan”) in the amount of \$349,640.00, plus interest (“the Loan Agreement”). The offer expired on July 8, 2022. The CIBC Relationship Manager of Business Banking who had been assisting 125 and Mr. Patel with the loan application, J. Singh (“Mr. Singh”), signed the offer on behalf of the CIBC. On June 10, 2022, Mr. Patel accepted the offer on behalf of 125.

[5] The Loan Agreement, signed by Mr. Patel on June 10, 2022, indicates that 125 started on November 19, 2020 and that Mr. Patel has owned the business since that date. He has 100% ownership interest. The document indicates that Mr. Patel subsequently signed the “Certification and Consent of Guarantor(s)” portion on June 13, 2022. It reads as follows, just above the signature line:

Certification and Consent of Guarantor(s) – *Please sign in presence of CIBC staff*

If this application is approved, I certify that the information in this CIBC Small Business Credit Application in relation to me in my capacity as Guarantor is correct and I agree that I will personally (jointly and severally) (in Quebec solidary) guarantee the obligations of the Business to CIBC in accordance with the terms of the CIBC Small Business Credit Agreement and Guarantee and the CIBC Small Business Credit Terms and Conditions booklet if CIBC agrees to extend credit to the Business.

[6] Below the line where Mr. Patel signed, the document states: “CIBC will not extend any credit to the Business without the personal guarantee of each Key Principal/Principal listed above as a Guarantor of the Business’ Credit facilities.”

[7] The Loan Agreement provides that, in the event of default, CIBC shall notify 125 and give it at least 10 days to remedy the default, except for a failure to pay any amount when due in which case 125 will have three days to remedy the default. If the event of default is not fully remedied at the end of the notice period given, the outstanding amount of the CSBF Loan becomes due and payable without further notice.

[8] The CSBF Loan agreement indicated that it was for “equipment/leasehold improvements”. It provided that, unless the loan became due and payable under its terms, 125 would pay 120 regular monthly payments of \$2,913.66 each, plus interest, to CIBC. Before making the loan funds available, CIBC required, among other things, a first security interest in all assets purchased with the funds and a guarantee and postponement of claim from Mr. Patel in an amount that was limited to \$87,410.00. Mr. Patel signed the CSBF Loan agreement on June 10, 2022 as the Key Principal for 125. Above the line where he signed, it is written:

Business Acceptance

Additional terms on page 3 and the terms and conditions in the CIBC “Small Business Credit Terms and Conditions” booklet** form part of this offer and this Canada Small Business Financing Loan (CSBFL) Credit Agreement.

The Business accepts the offer above and agrees with CIBC, as of the Offer Effective Date, to the terms of this Canada Small Business Financing Loan (CSBFL) Credit Agreement. Each person who signs on the Business’ behalf below, acknowledges, on behalf of the Business, having received and read the CIBC “Small Business Credit Terms and Conditions” booklet.**

[9] On June 10, 2022, Mr. Patel also signed an agreement to guarantee the indebtedness of 125 under the Loan Agreement to the capped amount of \$87,410.00, plus interest from the date of demand (“the Guarantee Agreement”). The document states that Mr. Patel acknowledged having received a copy of the Guarantee Agreement.

[10] Paragraphs 9 and 10 of the Guarantee Agreement read, in part:

9. **Exhausting Recourse.** CIBC does not need to exhaust its recourse against the Customer or any other Person or under any Security CIBC may from time to time hold before being entitled to full payment from me under this Guarantee.

10. **Absolute Liability.** My liability under this Guarantee is absolute and unconditional. It will not be limited or reduced, nor will CIBC be responsible or owe any duty (as a fiduciary or otherwise) to me ...

[11] On June 10, 2022, as required by the loan process, 125 granted CIBC collateral security in the form of a charge over all of its present and after-acquired property and in respect of certain personal property more particularly described in the two signed security agreements (“the Security Agreements”). Pursuant to the *Personal Property Security Act*, R.S.O. 1990, c. P.10, CIBC registered a financing statement against 125 as it relates to the Security Agreements.

[12] Mr. Patel was the sole owner and director of 125 at the time of entering into the Loan Agreement, the Guarantee Agreement, and the Security Agreements.

Default

[13] 125 defaulted under the Loan Agreement by failing to remit payment in accordance with the payment terms. The last payment made was on March 21, 2024. 125 continues to be in default.

[14] In the first week of April 2024, Mr. Singh telephoned Mr. Patel to discuss a missed payment under the Loan Agreement. Mr. Patel advised that he intended to make the payment in the near future.

[15] On April 30, 2024, Mr. Singh again telephoned Mr. Patel to discuss the continued non-payment under the Loan Agreement. Among other things, Mr. Patel advised Mr. Singh that, due to

a dispute between 125 and its franchisor and its landlord, he would not be able to make any further loan payments until the dispute was resolved.

[16] On May 15, 2024, CIBC wrote to 125 demanding repayment of the indebtedness under the Loan Agreement in the amount of \$302,842.24, as at May 14, 2024. That same day, CIBC also sent to Mr. Patel a letter regarding the indebtedness of 125 and demanded payment of the \$87,410.00 in accordance with the Guarantee Agreement.

The Motion

[17] On August 26, 2024, CIBC issued a statement of claim to recover the amounts owed by the defendants. The defendants served a statement of defence on October 17, 2024.

[18] The plaintiff filed the summary judgment motion on July 21, 2025.

[19] On September 26, 2025, Mr. Singh attended for cross-examination on his affidavit, affirmed on July 17, 2025, filed in support of CIBC's motion.

[20] On behalf of the defendants, an affidavit sworn on August 29, 2025 by Mr. Patel was filed. The plaintiff submits that the defendants did not attend for cross-examination on that affidavit. In his responding affidavit, Mr. Patel made the following material admissions of fact:

- (a) He was the sole director of 125.
- (b) He signed the Loan Agreement and the Guarantee Agreement.
- (c) There is no dispute that 125 received the loan amount of \$349,640.00.

ISSUES

[21] The issues to be determined are:

- (a) Is summary judgment under Rule 20 appropriate in the circumstances of this case?
- (b) Are the defendants liable to CIBC under the Loan Agreement and the Guarantee Agreement?

SUMMARY JUDGMENT LEGAL PRINCIPLES

[22] Pursuant to Rule 20.04(2)(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the court shall grant summary judgment if it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[23] Rule 20.04(2.1) sets out the court's powers in determining whether there is a genuine issue requiring a trial. It provides that the court shall consider the evidence submitted by the parties and, where the determination is being made by a judge, the following powers can be exercised for this purpose, unless it is in the interest of justice for such powers to be exercised only at a trial: (i) weighing the evidence, (ii) evaluating the credibility of a deponent, and (iii) drawing any reasonable inference from the evidence.

[24] In *Pastink et al. v. 1190393 Ontario Limited et al.*, 2023 ONSC 6037, at para. 6, Fowler Byrne J. identified the following summary judgment principles, which I accept and adopt for present purposes:

- a. There will not be a genuine issue requiring a trial if I am able to reach a fair and just determination on the merits of the motion. This will be the case when I can make the necessary findings of fact, apply the law to those facts, and this is a proportionate and more expeditious means to achieve a just result: *Hryniak*, at para. 49;
- b. I should first determine if there is a genuine issue requiring a trial based only on the evidence before me, without resorting to my enhanced fact-finding powers as set out in r.20.04(2.1). If, after this step, it appears that there is a genuine issue requiring a trial, I should then determine if a trial can be avoided utilizing my powers under r.20.04(2.1) and (2.2). Again, this is as long as their use is not against the interests of justice. Their use will not be contrary to the interests of justice if they lead to a fair and just result, and serve the goals of timeliness, affordability, and proportionality, in light of the litigation as a whole: *Hryniak*, at para. 66;
- c. The moving party bears the onus of showing that there is no genuine issue requiring a trial. It cannot rely on mere allegations or pleadings. When it has satisfied the court that there is no genuine issue requiring a trial, the burden shifts to the responding party to prove that their defence has a real chance of success. The responding party cannot rely on allegations or denial. They must set out, in affidavit material or other evidence, specific facts showing there is a genuine issue requiring a trial: *New Solutions Extrusion Corporation v. Gauthier*, 2010 ONSC 1037, at para.12, aff'd 2010 ONCA 348;
- d. A party must put their best foot forward on a motion for summary judgment with respect to the existence or non-existence of material issues to be tried: *Broadgrain Commodities Inc. v. Continental Casualty Company (CNA Canada)*, 2018 ONCA 438, at para. 7; *New Solutions*, at para. 12; *Sweda Farms v. Egg Farmers of Ontario*, 2014 ONSC 1200, at para. 32, affirmed 2014 ONCA 878, leave to appeal refused, 2015 CanLII 5860 (S.C.C.); and
- e. The court is entitled to assume that the record contains all the evidence which the parties will present if there was a trial: *New Solutions*, at para. 12; *Canada (Attorney General) v. Lameman*, 2008 SCC 14, [2008] 1 S.C.R. 372, at para. 11; *Broadgrain* at para. 7.

[25] A responding party to a motion for summary judgment must do more than simply assert uncorroborated facts. As explained by the court in *Canadian Imperial Bank of Commerce v. Mitchell*, 2010 ONSC 2227, at paras. 18-19:

18. ... The responding party may not simply restate mere allegations contained in its pleadings. He must instead set out in affidavit material coherent evidence of specific facts showing that there is a genuine issue requiring a trial. It is not sufficient

to say that more and better evidence will or might be available at trial. While there is an onus on the moving party to establish that there is no genuine issue requiring a trial, the case law also resolutely establishes that the respondent must “lead trump or risk losing”: Rule 20.02(2); *Pizza Pizza Ltd. v. Gillespie et al* (1990), 1990 CanLII 4023 (ON CTGD), 75 O.R. (2d) 225 (Ont. Ct.); *Irving Ungerman Ltd. v. Galanis* (1994), 1991 CanLII 7275 (ON CA), 4 O.R. (3d) 545 at 552 (C.A.); *High-tech Group Inc. v. Sears Canada Inc.* (2001), 2001 CanLII 24049 (ON CA), 52 O.R. (3d) 97 (C.A.).

19. Unless he or she is successful in that task, the court may simply decide against the responding party on the ground that it failed to provide the court with the required evidentiary material, as a result of which the court would be entitled to draw adverse inferences. ...

[26] A bald allegation denying execution or understanding of a document is not sufficient to create an issue for trial: *Rogers Cable TV Limited v. 373041 Ontario Limited*, 1994 CarswellOnt 166, (1994), 22 O.R. (3d) 25 (Ont. Gen. Div.), at para. 6.

[27] In considering the evidence of a witness, a trier of fact need not believe or disbelieve the evidence in its entirety. A trier may believe none, part, or all of a witness’s evidence, and attach different weight to different parts of it: *R. v. R.(D.)*, 1996 CanLII 207 (SCC), [1996] 2 S.C.R. 291 (S.C.C.), at para. 93. Further, as was stated by O’Halloran J. in *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), 1951 CarswellBC 133 (B.C.C.A.), when discussing how a court should approach gauging the credibility of interested witnesses, especially in cases where there is conflicting evidence (at para. 10):

... The test must reasonably subject [the witness’s] story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions. ...

ANALYSIS

(a) *Is summary judgment appropriate in the circumstances?*

[28] I find that there is no genuine issue requiring a trial in this case and that proceeding by way of summary judgment is appropriate in the circumstances.

[29] The evidence presented on the motion, including the affidavits of Mr. Singh and Mr. Patel and the transcript of Mr. Singh’s cross-examination, is sufficient to permit the necessary findings of fact to be made. The court is able to apply the law to those facts. I am satisfied that, given the nature of the issues, a fair and just determination on the merits can be reached without the need for a trial.

(b) *Are the defendants liable to CIBC under the Loan Agreement and the Guarantee Agreement?*

[30] For the reasons that follow, I conclude that CIBC has proven its case, on a balance of probabilities, that the Loan Agreement and the Guarantee Agreement are valid and enforceable contracts, that the defendants have breached their terms, and that CIBC is entitled to judgment.

[31] Mr. Patel is a businessman. He incorporated 125 on November 19, 2020, and he is the sole shareholder and director of the company. 125 entered into a franchise agreement and sublease agreement to operate a WingsUp! franchise restaurant. In light of these events, I do not find it plausible that Mr. Patel would sign an agreement unless he understood its terms or that he would sign the Loan Agreement and Guarantee Agreement if they did not reflect the terms agreed upon by the parties.

[32] The Loan Agreement, the Guarantee Agreement, and the Security Agreements signed by Mr. Patel are written in clear and unambiguous language, and use the terms “loan”, “credit” and “payment” throughout. After the loan documents were signed, CIBC forwarded the loan funds to 125. As per the terms of the Loan Agreement, monthly payments were then made by 125 to CIBC from June 15, 2022 to March 21, 2024. However, the last payment made was on March 21, 2024 and the loan remains in default and unpaid. Throughout this time period, Mr. Patel did not question or raise concerns about the agreements or CIBC’s lending process, and Mr. Patel continued to deal (sporadically) with Mr. Singh. The first formal objection made by Mr. Patel to the Guarantee Agreement was made only after CIBC demanded repayment of the loan funds after 125’s default under the Loan Agreement.

[33] I prefer and accept Mr. Singh’s evidence over that of Mr. Patel where their evidence does not align. Mr. Singh was subject to cross-examination and his evidence was not successfully challenged in any meaningful manner. Mr. Patel’s evidence is only that as set out in his affidavit. It is minimal and vague and it consists of bald allegations and statements only, lacking important particulars concerning what he alleges happened.

[34] I accept Mr. Singh’s uncontroverted evidence that he took over carriage of the defendants’ loan application file in or around January 2022, and that the application had not yet been submitted for approval as additional documents were required from the defendants.

[35] I also accept Mr. Singh’s evidence that he contacted Mr. Patel in or around February 2022 to discuss the loan application and confirm if he wanted to proceed with it. The evidence establishes that Mr. Singh then engaged with Mr. Patel, along with D. Quance (“Mr. Quance”) and R. Reynolds (“Mr. Reynolds”) who were both representatives of the WingsUp! franchisor, in completing the CSBF Loan application and getting it submitted for approval. I accept that Mr. Singh understood that Mr. Patel wanted the franchisor to be informed and have the loan documents initially routed through Mr. Quance and Mr. Reynolds. This is reflected in the various emails contained in the motion and responding records filed with the court, emails that span the period March 2, 2022 to June 9, 2022. While it is difficult to clearly ascertain exactly who sent what to whom and when, as there are gaps in the email chains as reproduced, Mr. Patel did write certain of the emails and he was forwarded or copied on other of the emails exchanged between Mr. Singh and Misters Quance

and/or Reynolds. I am satisfied that Mr. Patel was kept apprised of what communications were passing between Mr. Singh and Misters Quance and Reynolds, and that he responded to same when needed.

[36] I also accept Mr. Singh's evidence that, in mid-May 2022, Mr. Patel and Mr. Reynolds attended in person at his office to discuss the status of the loan application and that, on that occasion, Mr. Singh provided an update that a principal approval with certain terms and conditions had been received. Mr. Singh's uncontroverted evidence was that, during the May 2022 meeting, he also explained to Mr. Patel that he was personally guaranteeing the corporate loan.

[37] Mr. Singh's evidence that he discussed the terms and conditions of the loan documents with Mr. Patel over the telephone during the application and approval process was also uncontroverted.

[38] The CSBF Loan application was approved on June 8, 2022. I accept the evidence of Mr. Singh that he telephoned Mr. Patel to advise him of the approval and that they again reviewed the terms of the loan and the guarantee. I further accept Mr. Singh's evidence that it was Mr. Patel who asked to sign the loan documents at a CIBC branch in Brantford, as opposed to attending at Mr. Singh's office in Mississauga.

[39] I find that the defendants approached CIBC for a loan, that they participated in the loan application process, that they understood documents would have to be signed in relation to the loan, that Mr. Patel had the opportunity to review the documents when he physically attended the Brantford CIBC branch in person, and that he understood the nature of the documents when he signed them.

Independent Legal Advice

[40] Mr. Patel submits that he was entitled to have received independent legal advice prior to him executing the loan documents. I do not accept this argument. There is no evidence establishing that Mr. Patel requested from CIBC time to obtain independent legal advice concerning the loan documents or that such a request was denied.

[41] In *Meridian Credit Union Limited v. 2428128 Ontario Limited*, 2017 ONSC 4578, at para. 23, aff'd 2018 ONCA 201, it was held that, if the guaranteeing party is an officer and director of the corporation receiving the loan, independent legal advice is not required prior to the signing of a guarantee. Here, at all material times, Mr. Patel was the sole shareholder and director of 125.

[42] In any event, the lack of independent legal advice does not invalidate a guarantee in the absence of evidence of *non est factum*, unconscionability, fraud, misrepresentation or undue influence: *Business Development Bank of Canada v. ROC Ice Cream Inc. et al.*, 2022 ONSC 1945, at paras. 32-33. There is no such evidence in this case.

Non est factum

[43] It is argued on behalf of the defendants that the defence of *non est factum* applies. Generally speaking, the defence of *non est factum* is available where a party establishes on a balance of

probabilities that the document signed is fundamentally different in nature from what they believed they were signing. The burden of proving *non est factum* rests upon the party seeking to set aside the document. The defence is not available, however, to a person who has signed a document without taking steps to determine the nature in fact and in law of the document before signing it: *Marvco Colour Research Ltd. v Harris*, [1982] 141 D.L.R. (3d) 577 (SCC), 1982 CarswellOnt 142 (S.C.C.), at paras. 24-25.

[44] In this case, none of the circumstances surrounding the signing of the Loan Agreement and the Guarantee Agreement are ambiguous or uncertain. The situation was such that 125 wanted to open a WingsUp! franchise and applied to CIBC for a loan in order to do so. Mr. Patel, with assistance from the franchisor, communicated with CIBC and applied for a loan. All of the impugned documents were signed within the context of seeking and obtaining a loan from CIBC.

[45] The evidence in this case does not establish any confusion on the part of Mr. Patel and what he was signing. In his affidavit, Mr. Patel does not state that he did not understand that he was signing loan or guarantee documents. Rather, he attests that he did not “fully understand the legal and financial terminology in the agreements”.

[46] A bank is entitled to rely on the fact that a director and officer of a corporation knows what they are doing: *Royal Bank of Canada v. 966566 Ontario Inc.*, [2000] O.J. No. 606, 2000 CarswellOnt 508 (Ont. S.C.J.), at paras. 16-17, aff’d 2000 CarswellOnt 4088 (Ont. C.A.). If 125 wanted to receive the CSBF Loan funds, the documents needed to be signed. The agreements are standard form documents and contain no ambiguities. The documents were clear and concise and they were clearly labelled as to what they were. There is no evidence to suggest that Mr. Patel thought he was signing some document that was fundamentally different from what he signed. I am satisfied that Mr. Patel intended on signing the Loan Agreement and the Guarantee Agreement in order to obtain the loan funds from CIBC that would enable 125 to open a restaurant, and that he understood the loan funds would have to be repaid by the defendants.

[47] Here, while Mr. Patel states that no one from CIBC explained the terms “in plain language or in a translated form”, he does not provide any evidence that he told Mr. Singh or anyone else that he could not read or understand the documents or that he needed any of the documents translated into another language. Mr. Patel also does not provide the name of who allegedly “discouraged” him from asking questions or indicate what questions he had that remained unanswered. As well, nowhere in his evidence does Mr. Patel state that he would not have signed the loan documents if they had been explained to him.

[48] I conclude that the defence of *non est factum* is not available to either of the defendants.

Duress

[49] With respect to Mr. Patel’s allegation of duress, I find that this is not supported by the evidence.

[50] The defendants had applied to CIBC for the loan before Mr. Singh became involved with the file in January 2022, after taking it over from another CIBC employee who went on leave. In

his affidavit, Mr. Patel does not dispute that Mr. Singh spoke with him on the telephone about the loan documents in early 2022 or deny that he met with Mr. Singh in May 2022. The loan was not approved until June 8, 2022 and then the documents were signed by Mr. Patel on June 10, 2022 and June 13, 2022. There is no indication of anyone from CIBC rushing or pressuring Mr. Patel to sign the documents. In fact, from the email exchanges filed, it was Misterys Quance and Reynolds, copied to Mr. Patel, who requested of Mr. Singh that the loan documents be executed as soon as possible.

[51] Mr. Singh's evidence is that, in or around June 2023, Mr. Patel asked for assistance in obtaining a second line of credit; and that, at some point subsequent in 2023, Mr. Patel also attended at Mr. Singh's office with a friend who was interested in obtaining a loan and asked Mr. Singh to explain the application process. I accept the submission of plaintiff's counsel that this would not have happened if Mr. Patel had felt unduly pressured by CIBC during his own loan process.

[52] I am satisfied that the contract between CIBC and the defendants, as reflected in the Loan Agreement, the Guarantee Agreement, and the Security Agreements, was "an ordinary commercial transaction carried out between the bank and an experienced businessman in the same manner and upon the same terms as are employed daily in such matters" and that the signed agreements "created no unusual or onerous burden in ordinary commercial terms": *Bauer v. Bank of Montreal*, [1980] 2 S.C.R. 102, 1980 CarswellOnt 141 (S.C.C.), at para. 13.

Undue Influence

[53] With respect to Mr. Patel's allegation of undue influence, I find that this is not supported by the evidence.

[54] During the period between March and June 2022, there were a number of emails exchanged between CIBC and Misterys Quance and Reynolds, along with Mr. Patel. While Mr. Quance and Mr. Reynolds were involved in emailing Mr. Singh directly in many of the emails, making arrangements for the submission of documents by Mr. Patel in support of the loan application, Mr. Patel was kept apprised of the communications by being copied on or forwarded emails exchanged. On occasion, Mr. Patel himself also emailed responses to Mr. Singh on his own. There is no evidence to establish that Mr. Patel was unaware of or not in agreement with the steps being taken by the franchisor or CIBC to complete and advance the loan application for 125.

[55] While counsel for Mr. Patel submitted at the hearing that Mr. Patel was told by CIBC that, if 125 defaults, the bank would first move on the security assets and that he would not have to pay the full amount owing under the Guarantee Agreement, there was no evidence led to support that submission at all.

Language

[56] With respect to Mr. Patel's allegation that he did not understand the loan documents or what he was signing due to a language barrier, I find that this is not supported by the evidence.

[57] As held in *BNS v Compas*, 2018 ONSC 3262, at para. 19, in the absence of detailed and supporting evidence, the case law has held that a self-serving affidavit does not create a triable

issue. There is nothing in the evidence to indicate that Mr. Patel requested the translation of any documents at any point in the process. Nor is there any evidence indicating that he required a translator in order to understand the documents. If Mr. Patel had required translation services, I find that he had ample time and opportunity to have requested same from CIBC.

[58] All of the documents found in the defendants' responding record, including Mr. Patel's affidavit, were prepared in English. The written communications exchanged throughout the loan process as found in the record before me were in English.

[59] Mr. Singh attests that Mr. Patel did not have difficulties with the English language. On cross-examination, Mr. Singh acknowledged that Mr. Patel was more fluent in Hindi than in English. Mr. Singh's uncontroverted evidence is that he also communicated with Mr. Patel in Hindi at times during their conversations and that he explained certain terms of the agreements to him in Hindi, as well as in English.

[60] If Mr. Patel did not understand what he was signing, he had an obligation to make that clear to CIBC. Where a party is careless or reckless in failing to inquire into the nature of the document, he will not be allowed to escape liability merely by showing that he did not know what he was signing: *Alar Foods v. Zakharov*, 2012 ONSC 6917, at para. 35.

No Fiduciary Relationship

[61] Counsel for the defendants submits that "the evidentiary record leaves room for a serious argument that CIBC's conduct may have created, at minimum, a duty of care, a duty of fair and complete disclosure, or equitable obligations arising from induced reliance". I do not agree.

[62] There is no live issue whether CIBC is a fiduciary to 125 or Mr. Patel. The relationship between the plaintiff and the defendants is a "purely commercial relationship of creditor and debtor". As such, CIBC owes no fiduciary duty to the defendants in connection with the making of the loan, including advising the customer not to undertake the loan: *Baldwin v. Daubney*, 2006 CanLII 32901 (ONCA), at para. 12.

[63] Further, there is no evidence of any negligent or fraudulent misrepresentations being made by CIBC or of CIBC refusing to disclose any information or documents to the defendants.

No Obligation on CIBC to Exhaust its Security

[64] It is submitted on behalf of the defendants that a core issue to be decided at trial is whether CIBC must first enforce against the security assets/PPSA charge before moving against Mr. Patel. I do not agree.

[65] There is no duty on CIBC to mitigate by first moving against the assets and then only sue for what may remain owing. By the very terms of paragraph 9 of the Guarantee Agreement, CIBC was not bound to exhaust its recourse against 125 or any other person or under any security interest before being entitled to payment from Mr. Patel under the agreement: *Toronto-Dominion Bank v. 1503345 Ontario Ltd.*, 2006 CanLII 16373 (ONSC), at paras. 23-25; *966566 Ontario Inc.*, 2000

CarswellOnt 508, at para. 19. The terms of the Security Agreements also provide that it was within CIBC’s discretion whether it would realize on the assets in the event of default.

[66] It was also submitted by the defendants that there is a genuine issue requiring a trial because CIBC has not “submitted an interim or final claim to the Ministry” under the *Canada Small Business Financing Act* for the loan and it has not “recouped any of its losses under the Act”. However, the defendants did not identify any statutory provision that obligates CIBC to do so.

Electronic Documents

[67] With respect to the defendants’ submission regarding the fact that CIBC only retains an electronic copy of the signed agreements and no original hard copies, this is irrelevant. First, Mr. Patel admits signing the documents. And second, the defendants did not file any evidence that it was a requirement that CIBC retain a hard copy of the signed agreements in order for them to be enforceable.

Incomplete Log Notes

[68] The defendants rely on the fact that CIBC’s log notes relating to Mr. Singh’s handling of the loan application file appear to be incomplete. However, I find that this does nothing to assist 125 or Mr. Patel in their defence. Mr. Singh provided an affidavit setting out his interactions with Mr. Patel and what steps were taken by CIBC throughout the loan process, including the execution of the loan documents.

[69] Mr. Singh was the appropriate person to swear the affidavit on behalf of CIBC, as he was the person assigned to the loan application file and he had sufficient personal knowledge or otherwise informed himself of the relevant, material events and facts.

[70] The defendants have not established that there is a genuine issue requiring a trial in respect of anything that would be found in the missing log notes or that they are key documents that would, on a balance of probabilities, have assisted them in their defence of this action. The defendants have not been prejudiced from making full answer and defence to the allegations made in the statement of claim by reason of any missing log notes. The log notes, if made, would have related to Mr. Singh’s interactions with Mr. Patel but Mr. Singh was available to give that evidence himself. He provided an affidavit and was cross-examined on it. So, that information was available to the court even without the log notes.

CONCLUSION

[71] Based on the issues and the evidence before the court, I find that CIBC has met its burden of putting forward facts that entitle it to judgment. For the foregoing reasons, CIBC’s motion for summary judgment is granted.

DISPOSITION

[72] The following orders are made:

- (a) The defendant, 12509237 Canada Inc. o/a WingsUp! Brantford, shall pay to the plaintiff, CIBC, the principal sum of \$310,066.69, plus prejudgment interest from August 22, 2024 to date with postjudgment interest accruing thereon compounding monthly at the CIBC Prime Rate plus 2.5%; and,
- (b) The defendant, Ankitkumar Patel a.k.a. Ankitkumar Natvarlal Patel, shall pay to the plaintiff, CIBC, the principal sum of \$87,410.00, plus prejudgment interest from May 15, 2024 to date with postjudgment interest accruing thereon compounding monthly at the CIBC Prime Rate plus 2.5%.

COSTS

[73] CIBC was successful on this motion. As the successful party, it is presumptively entitled to costs. I would urge the parties to agree on costs. If they are unable to do so, then costs submissions may be made as follows and submitted to the Sopinka Judicial Assistants to my attention:

- (a) By October 23, 2026, CIBC shall serve and file its written costs submissions, not to exceed three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers; and
- (b) The defendants shall serve and file their responding costs submissions of no more than three pages, double-spaced, together with a draft bill of costs and copies of any pertinent offers, by November 6, 2026; and
- (c) CIBC's reply submissions, if any, are to be served and filed by November 13, 2026 and are not to exceed two pages.
- (d) If no submissions are received by November 13, 2026, the parties will be deemed to have resolved the issue of the costs and costs will not be determined by me.

[74] If the parties are able to settle the question of costs or if a party does not intend to deliver submissions, counsel are requested to advise the court accordingly.

MacNEIL J.

Released: October 2, 2026