CITATION: Migsim Holdings Inc. v. HQ Financing Inc., 2026 ONSC 6124
COURT FILE NO.: CV-25-12974
DATE: 2026-10-30

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Migsim Holdings Inc. and Jean-Robert Paquette	)	G. Marcuccio agent for James P. Reynolds, for the Plaintiffs
	)	
Plaintiffs	)	
– and –	)	
	)	
HQ Financing Inc. and Ryan Kirwan	)	Ethan Miazad as agent for the Defendant HQ Financing Inc.
Defendants	)	
	)	Stuart Gordon, for the Defendant Ryan Kirwan
	)	
	)	**HEARD in Sudbury in person:**
	)	October 19, 2026

DECISION ON MOTION FOR SUMMARY JUDGMENT

R. D. GORDON J.

Overview

[1] Ryan Kirwan ("Kirwan") was a mortgage broker. For several years he operated his mortgage brokerage business through the defendant HQ Financing Inc. ("HQ"). The Plaintiffs loaned money to HQ from time to time for use in its mortgage brokerage business. Eventually, HQ found itself unable to repay the funds it had borrowed.

[2] This action ensued. The plaintiffs seek summary judgment against the defendants. They say there is no genuine issue requiring a trial – that HQ has acknowledged the debt and has filed no materials to dispute the claims, and that Kirwan is liable for these debts because he guaranteed them, or in the alternative because he has conducted the affairs of HQ in a manner which is oppressive towards them.

Background Facts

[3] Jean-Robert Paquette ("JRP") is a businessman. Migsim Holdings Inc. ("Migsim") is a corporation of which JRP is the sole shareholder, director and officer. Migsim was incorporated primarily to hold JRP's investments for use in retirement.

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[4] Kirwan was a licensed mortgage broker. He incorporated HQ and operated his mortgage brokerage through it. HQ would loan funds to various borrowers who would be expected to repay the loans with interest.

[5] In order to lend money to borrowers, HQ required funds to lend. One of the sources of those funds came to be JRP and Migsim. According to JRP, he was approached by Kirwan in 2014 with a proposal for the investment of funds and was told the following:

1. Kirwan knew of several individuals who needed mortgages and bridge financing;

2. He was president and director or a company called e-Money Solutions Group Inc.

3. If Migsim loaned funds to e-Money, e-Money would then loan those funds to persons requiring mortgages and bridge financing.

4. From his experience as a mortgage broker, he had identified loans and bridge financing that were safe investments delivering a high rate of return. Any loans Migsim made to e-Money would be safe and profitable.

5. The loans from Migsim to e-Money would be secured by promissory notes which Kirwan, as shareholder of e-Money, would guarantee personally.

[6] Kirwan denies having ever guaranteed repayment of any money personally. Kirwan does not otherwise deny having approached JRP and having conveyed this information.

[7] Between 2014 and 2016, Migsim loaned money to e-Money and the loans were repaid with interest as had been agreed.

[8] In 2016, Kirwan advised JRP that he would be using HQ as his lending vehicle instead of e-Money and that future loans from Migsim would be to HQ. JRP says Kirwan told him that in every respect, including his personal guarantee of the loans, everything would be the same as the previous loans. This is not denied by Kirwan, save for his denial that he would personally guarantee anything.

[9] Between 2016 and 2024, Migsim made a series of loans to HQ. JRP says each loan was made at an annual interest rate of 12.5%; that interest was to accrue at the rate of 2% per month compounded monthly in the event of default; and that payment of the loan by HQ was personally guaranteed by the shareholders of HQ. JRP says each loan was evidenced by a promissory note encompassing these terms.

[10] In 2018, JRP loaned $90,000 to HQ from his personal funds. He says it was under the same terms and conditions as the loans from Migsim.

[11] In late 2024, HQ largely ceased making payments on the loans. Regular inquiries by the plaintiffs resulted in regular promises of payment. Promises that were not met.

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[12] On September 30, 2025, HQ provided a loan statement to Migsim showing a breakdown of six loans with a total balance due of $618,539.06. The amount owing to JRP was stated to be $49,037.50 in a statement dated August 31, 2025.

[13] There can be little doubt that summary judgment is appropriate against HQ for the amounts set out in the statements issued to the plaintiffs along with accrued interest. The debts are specifically acknowledged. Default in payment is not denied.

[14] The bigger issue is whether summary judgment ought to issue against Mr. Kirwan personally.

Analysis

Is Kirwan Personally Liable as a Guarantor?

[15] The plaintiffs say that on every occasion they advanced money to HQ there was a promissory note signed to reflect the loan amount, interest to be paid, and the guarantee by Mr. Kirwan. Attached to the affidavit of JRP are several samples of such notes, some signed others not. The evidence is that the notes were prepared by Kirwan. Each note indicates HQ as the borrower and each note contains the following provision in bold: "**The Borrower and all shareholders corporately and personally guarantee the principal amount owing under this promissory note.**"

[16] The notes that are signed are signed by JRP and by HQ under the signature of Kirwan with the descriptor: Ryan Kirwan, President. There is no line for signature by a shareholder in his personal capacity and no other signature by Kirwan.

[17] It is to be noted that Kirwan does not deny that each of the promissory notes alleged by the plaintiffs exist. In fact, he admits that he signed each of the notes relied upon by the plaintiffs. What he denies is having signed them in his personal capacity.

[18] Whether Kirwan provided a personal guarantee to the plaintiffs is not a question of contractual interpretation – the guarantee provision is clear on its face. The question is whether the manner in which Kirwan signed the promissory note is sufficient to bind him personally.

[19] Kirwan relies on s. 51(1) of the *Bills of Exchange Act*. It provides that a person who signs a promissory note and adds words to his signature indicating that he signed for or on behalf of a principal is not personally liable on it. He argues that Kirwan signed below the name of the corporation with an indication that he was signing as President and therefore cannot be held personally liable. He cites the cases of *Allprint Co. Ltd. v. Erwin,* 1982 CanLII 1917 (ONCA) and *H.S.C. Aggregates Ltd v. McCallum,* 2014 ONSC 6214 in support of his position. He says they stand for the proposition that where a person's signature appears immediately below the name of his corporation with a clear indication that he was signing as a representative of the corporation only, the instrument should be deemed to be unambiguous such that no personal liability can attach.

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[20] The plaintiffs' position is that s. 51(1) of the *Bills of Exchange Act* might be determinative absent the words in the promissory notes engaging the personal guarantee. However, the use of those words included in bold in a document prepared by Mr. Kirwan requires a different analysis – one guided by the principle set out by the Court of Appeal for Ontario in *Madison Joe Holdings Inc. v. Mill Street & Co. Inc.*, 2021 CaswellOnt 4552 (C.A.) that courts must interpret a guarantee so that the protection or security it affords to a creditor is rendered real rather than illusory; that guarantees should be read so as to give effect to the apparent intention of the parties, so as to afford fair protection to the creditor in accordance with that apparent intent.

[21] Mr. Kirwan's evidence with respect to the promissory notes and the guarantee clause is as follows:

> The notes I signed on behalf of HQ were prepared from template documents I located and adapted myself. Some of these templates contained the clause purporting to bind the "Borrower and all shareholders corporately and personally." This clause was never discussed between Paquette and me, and it did not form part of our discussions when entering into any of the loans. I did not obtain independent legal advice before using these templates or before signing any note that contained that clause.

[22] In my view, not only was Kirwan aware of guarantee clause, but it was also specifically inserted by him. I come to this conclusion for the following reasons:

1. Aside from the guarantee clause, the promissory notes are comprised of standard provisions one would expect to find in instruments such as these and in templates for a standard promissory note.

2. The guarantee clause is anything but standard in that it, among other things, has the Borrower guarantee payment when the Borrower's obligation to pay is already set out in paragraph one of each note.

3. The guarantee clause is the only substantive provision in bold print.

4. Kirwan does not provide evidence that he was unaware of the clause.

5. Kirwan does not provide evidence that he did not understand the clause.

6. Kirwan does not specifically deny having added the clause.

7. Kirwan prepared the promissory notes.

8. There had been an obvious concern by the plaintiffs that their investments would be safe and a representation by Kirwan that they would be. The guarantee accords with that representation.

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[23] Obviously, Kirwan signed on behalf of the corporation. The question is whether he also signed as a shareholder of the corporation so as to be bound by the guarantee. The answer to this must be yes. He was a shareholder of the corporation. He has not denied this. There is no separate place for a shareholder to sign the promissory notes that he himself prepared. The wording of the guarantee clause would lead a reasonable person to conclude that the person signing on behalf of the corporation was also signing in his capacity as a shareholder: "The Borrower and all shareholders corporately and personally guarantee…" connotes a single signature binding both the corporation and Mr. Kirwan as its shareholder. To interpret the signature otherwise would render the guarantee clause ineffective.

[24] In my view there is no genuine issue requiring a trial on the issue of Mr. Kirwan's personal liability as a guarantor.

The Extent of Kirwan's Guarantee

[25] The guarantee contained in the promissory notes is specific to the principal amount owing under the notes.

[26] HQ provided a statement of loans in Migsim's account as of September 30, 2025 with outstanding principal of $549,812.50. The plaintiff has adopted this as correct. Kirwan has provided no evidence to suggest it is incorrect. Kirwan owes Migsim $549,812.50

[27] HQ provided a statement of loans in JRP's account as of August 31, 2025 with outstanding principal of $44,350.00. The plaintiff has adopted this as correct. Kirwan has provided no evidence to suggest it is incorrect. Kirwan owes JRP $44,350.00.

The Oppression Remedy Sought under S. 248 of the Business Corporations Act

[28] As Kirwan's obligation under the terms of his guarantee is for principal only, it is appropriate to consider the plaintiffs' oppression remedy claim to determine if he is also personally liable for outstanding interest.

[29] The required analysis for an oppression remedy claim was summarized by the Court of Appeal for Ontario in *FNF Enterprises Inc. v. Wag and Train Inc.*, 2023 ONCA 92 as follows:

> [31] There are two requirements for an oppression remedy claim under s. 248 of the OBCA to succeed. First, the complainant must identify the expectations it claims have been violated by the conduct at issue and show that those expectations were reasonably held. Second, the complainant must show that these reasonable expectations were violated by corporate conduct that was oppressive or unfairly prejudicial to or that unfairly disregarded the interests of any security holder, creditor, director or officer. *Wilson v. Alharayen*, 2017 SCC 39, [2017] 1 S.C.R. 1037, at para. 24.
>
> …

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> [33] The Supreme Court held that personal liability may be imposed on a director for oppressive conduct if two criteria are met: (1) the director has the requisite degree to involvement in the oppressive conduct so that it is attributable to them, and (2) personal liability is fit in the circumstances. An order against a director personally will be fit where it is a fair way of dealing with the situation, the order goes no further than necessary to rectify and oppression, the order serves only to vindicate the reasonable expectations of the complainant, and other forms of statutory and common law relief are not more fitting in the circumstances: *Wilson*, at paras 47-55.
>
> [25] In *Wilson*, the court identified the obtaining of a personal benefit by the director, or the director misusing a corporate power, as situations in which it would typically be fair to impose personal liability on the director: at para. 49.

What Were the Plaintiffs' Expectations?

[30] The plaintiffs expected their investments to be safe – that HQ would be loaning money to others with sufficient security to ensure the repayment to them of, at a minimum, the amounts loaned by them.

Were Those Expectations Reasonable?

[31] Those expectations were reasonable. Aside from the issue of whether a personal guarantee would be provided, Kirwan does not dispute that he, as an experienced mortgage broker, identified loans and bridge financing that were safe investments delivering a high rate of return, and that any loans made to HQ by the plaintiffs would be safe and profitable.

Were These Expectations Violated?

[32] A significant amount of both principal and interest remain owing by HQ to the plaintiffs. Clearly the investments made by HQ were not safe. The plaintiffs' expectations were violated.

Was the Corporate Conduct Oppressive to, Unfairly Prejudicial to, or Unfairly Disregard the Interests of the Plaintiffs?

[33] The actions of the Corporation, in providing unsecured loans when it had represented that its investments were safe, unfairly disregarded the interests of the plaintiffs as creditors. It left their investment monies at risk when they ought to have been secure.

Should Kirwan be Held Personally Liable as a Director?

[34] There is no doubt that Kirwan has the requisite degree of involvement in the oppressive conduct such that it is attributable to him. He is president of HQ and its sole shareholder. He both made the representations to the Plaintiffs and conducted the affairs of the corporation in a manner that violated those representations.

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Is Personal Liability Fit in the Circumstances?

[35] In *Wilson*, the court explained that the appropriateness of an order for personal liability turns on equitable considerations, in which personal benefit and bad faith remain hallmarks of conduct properly attracting personal liability. Although the possibility of personal liability in the absence of both of these elements is not foreclosed, one of them will typically be present in cases in which it is fair and fit to hold a director personally liable for oppressive corporate conduct. In all cases, the role of the judge is to determine whether it is fair to hold the directory personally liable having regard to all of the circumstances.

[36] In the case before me there is virtually no evidence of whether Kirwan acted in bad faith or whether he derived any personal benefit from the conduct in question. There were no questions directed to these issues in his cross-examination.

[37] A consideration of all of the circumstances lead me to find that the issue of personal liability as an oppression remedy requires a trial. The fairness or fitness of such an order cannot be made on the record before me.

Conclusion

[38] There shall be summary judgment in favour of Migsim as follows:

1. Against HQ in the amount of $702,211.91 with post-judgment interest at 12.5 % per annum.

2. Against Kirwan in the amount of $549,812.50 with post-judgment interest at the rate prescribed by the *Courts of Justice Act.*

[39] There shall be summary judgment in favour of JRP as follows:

1. Against HQ in the amount of $56,177.50 with post-judgment interest at 12.5 % per annum.

2. Against Kirwan in the amount of $44,350.00 with post-judgment interest at the rate prescribed by the *Courts of Justice Act.*

[40] If the parties are unable to agree on costs they may make written submissions to me, not to exceed 3 pages plus attachments each, within 45 days.

The Honourable Mr. Justice R. D. Gordon

Released: October 30, 2026

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