

CANADA / JUDGMENT

LBEL Inc. v. Gee Force Logistics Inc.

2022 BCCA 210

COURT

British Columbia Court of Appeal

DECIDED

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2022 BCCA 210 LBEL Inc. v. Gee Force Logistics Inc.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

LBEL Inc. v. Gee Force Logistics Inc.,

2022 BCCA 210

Date: 20220614

Docket: CA46680

Between:

LBEL Inc.

Respondent

(Plaintiff)

And

Gee Force Logistics Inc. and Kulwinder Singh Heer

Appellants

(Defendants)

Before:

The Honourable Madam Justice Bennett

The Honourable Madam Justice Fenlon

The Honourable Mr. Justice Grauer

On appeal from: An order of the Supreme Court of British Columbia, dated January 8, 2020 (CIT Financial Ltd. v. Gee Force Logistics Inc., 2020 BCSC 18,

Vancouver Docket S145763).

Counsel for the Appellants:

J. Virk

Counsel for the Respondent:

C. Dayan

Place and Date of Hearing:

Vancouver, British Columbia

February 14, 2022

Place and Date of Judgment:

Vancouver, British Columbia

June 14, 2022

Written Reasons by:

The Honourable Mr. Justice Grauer

Concurred in by:

The Honourable Madam Justice Bennett

The Honourable Madam Justice Fenlon

Summary:

The appellants appeal from a judgment finding the appellant Gee Force liable to the respondent under a commercial truck lease financing agreement, and finding Gee Force's principal, the appellant Kulwinder Singh Heer, liable on a personal guarantee. As to the agreement, Gee Force maintained that the judge erred in finding that one of its employees had ostensible authority to sign two bills of sale on its behalf. As to the guarantee, Mr. Heer alleged that the judge erred in concluding that he was bound as a personal guarantor when the evidence indicated that he signed as corporate guarantor. Held: Appeal dismissed. The judge's finding of ostensible authority was supported in the evidence and entitled to deference. The judge's finding that the parties intended the guarantee signed by Mr. Heer to be personal was also entitled to deference.

Reasons for Judgment of the Honourable Mr. Justice Grauer:

1 INTRODUCTION

- [1] In the proceeding below, CIT Financial Ltd., a national financing company based in Ontario, sought to enforce the terms of a commercial truck lease financing agreement with the appellant Gee Force Logistics Inc. CIT also claimed against Gee Force's sole shareholder and director, the appellant Kulwinder Singh Heer, on what it claimed was a personal guarantee. After starting the litigation, CIT was acquired by the respondent, LBEL Inc., but I will refer to the lessor/respondent as CIT throughout these reasons.
- [2] There was no dispute that Gee Force never made a single payment under the agreement, but Gee Force argued that it was not bound to pay. It maintained that it never in fact received possession of the trucks, and never signed the bills of sale that would have allowed it to do so. Mr. Heer denied that he had given a personal guarantee, asserting that the guarantee he signed was a corporate guarantee, not a personal one. He pleaded non est factum, and Gee Force counterclaimed for fraudulent misrepresentation and civil conspiracy.
- [3] Following a six-day trial, Madam Justice Russell found Gee Force liable and held that Mr. Heer had personally guaranteed Gee Force's obligations under the agreement. Consequently, Justice Russell found Gee Force and Mr. Heer jointly and severally liable to pay CIT/LBEL the amount of \$170,313.44, plus prejudgment interest and special costs. Her reasons for judgment are indexed at 2020 BCSC 18.
- [4] In her reasons, the judge rejected the appellants' counterclaims. She further rejected the plea of non est factum in relation to the lease documents and guarantee Mr. Heer signed. These conclusions are not challenged on appeal.
- [5] Gee Force and Mr. Heer do challenge the judge's determinations both that Mr. Heer was personally liable for Gee Force's obligations and that Gee Force was obligated to make its payments at all. They raise two issues.
- [6] First, as to Gee Force's liability, they say the judge erred in law when she found that the person who signed bills of sale for the trucks in question had ostensible authority to do so on behalf of Gee Force.
- [7] Second, as to Mr. Heer's liability, they say the judge erred in law and in fact in finding that Mr. Heer's guarantee was personal notwithstanding that his signature appeared on the "corporate guarantor" line.
- [8] For the reasons that follow, I would dismiss the appeal.
2. BACKGROUND
- [9] As it did in this case, CIT occasionally provided funding to commercial truck lessees by purchasing trucks and then leasing them out to the lessees. At the end of the lease term, the lessees had an option to purchase the trucks at a nominal rate.

- [10] The lease agreement between CIT and Gee Force provided for a lease term of 48 months, with the first of the monthly rental payments due April 26, 2013. It pertained to two trucks that had undergone a number of changes in ownership prior to the parties entering into the agreement.
- [11] In 2011, the two trucks--along with three other trucks which were not at issue in this litigation--were owned by Harbour International Trucks Ltd, a commercial truck dealer based in Langley, BC. Harbour International had provided these five trucks to Royal City Trucking Ltd ("Royal City"), a long-haul trucking company wholly owned and operated by Mr. Sukhdev Bains. Mr. Bains is Mr. Heer's brother-in-law.
- [12] Mr. Heer, of course, owned Gee Force. Nevertheless, the judge described Mr. Bains as the "operating mind" of Gee Force (at para 69).
- [13] While Mr. Bains's Royal City was a long-haul trucking company, Mr. Heer's Gee Force was a short-haul trucking company. In 2013, Mr. Bains decided to transfer the two trucks to Gee Force because he was experiencing maintenance difficulties arising out of long-haul use. It was anticipated that these difficulties would not interfere with short-haul use. Mr. Bains asked Harbour International to facilitate the transfer.
- [14] To achieve this transfer, the parties entered into a "flow through" transaction, by which CIT paid Harbour International the full price of the trucks (\$203,251.24), and in turn, Harbour paid out the two existing title-holders to the trucks: General Electric Canada Equipment Finance GP and Mr. Bains's Royal City. In return for facilitating the transaction, Harbour International would receive a sales assistance fee paid by CIT. CIT would then enter into the lease agreement with Gee Force, who would acquire possession of the trucks.
- [15] On March 26, 2013, the parties met at Harbour International's office to sign the lease agreement and related documents, including a guarantee. Mr. Bains did not attend this meeting because he had been banned by Harbour International from attending at its office due to certain disagreements that had arisen between them.
- [16] At trial, Gee Force and Mr. Heer asserted that there had also been an earlier meeting resulting in a supplementary oral agreement. The judge rejected this evidence, and her finding is not challenged on appeal.
- [17] The people who did attend the March 26 meeting were the following:
- [18] Mr. Heer attended on behalf of Gee Force to sign the lease agreement and related documents, one of which was a guarantee. Mr. Heer's ability to speak English was very limited, and he could not read English. His language of origin was Punjabi.
- [19] Mr. Milad Towers brought Mr. Heer to the meeting and had some association with Gee Force. His exact role and authority were significantly contested both at trial and on appeal. The judge found that it was Mr. Towers who later signed the bills of sale in question, and that he had ostensible authority to do so on behalf of Gee Force.

- [20] Ms. Karen Coombes attended as the finance manager of Harbour International.
- [21] Mr. Jay Cassels attended on behalf of CIT where he was a financial account executive.
- [22] Mr. Kartar Lakhesar, a salesperson at Harbour International, attended to assist by translating the documents from English to Punjabi for Mr. Heer.
- [23] What happened at this meeting of March 26 is key. There is no dispute that Mr. Heer did not sign all of the documents on March 26. In particular, he did not sign two bills of sale that were necessary to obtain insurance on the two trucks, and he signed the guarantee on the "corporate guarantor" signature line rather than the "individual guarantor" signature line.
- [24] As CIT would not normally advance funding until insurance was in place and title had been transferred, Ms. Coombes and Mr. Lakhesar took steps to get the bills of sale signed. And shortly after the March 26 meeting, they were signed--but not by Mr. Heer. The judge found that it was Mr. Towers who signed the bills of sale on behalf of Gee Force. The judge further found that Mr. Towers had ostensible authority from Gee Force to sign the documents on its behalf. The first issue turns on whether the judge erred in finding ostensible authority.
- [25] In the result, the insurance was obtained, title was transferred, and CIT provided the funding on April 5, 2013.
- [26] Mr. Heer did sign the guarantee on March 26, but, as noted, he signed this boilerplate document on the line for "corporate guarantor" rather than the line for "individual guarantor". The second issue turns on whether this matters.
- [27] As Gee Force made no payments under the lease, CIT ultimately repossessed the trucks (which remained on Harbour International's premises) and sold them in 2014 for \$58,836.80. It then commenced this action for the balance owing of \$170,313.44. Mr. Bains's Royal City, of course, no longer owed anything for the two trucks.
- [28] I now turn to consider the issues. In doing so, I note the importance of credibility to the judge's findings. Each of the witnesses gave differing accounts both of what happened on the March 26, 2013 meeting and what happened afterwards, when the bills of sale were ultimately signed. The judge ultimately preferred the evidence of CIT's witnesses--Ms. Coombes, Mr. Lakhesar, and Mr. Cassels--over that of Mr. Heer and Mr. Bains:
- [39] I agree with the plaintiff on the issues of credibility. The evidence of each of the plaintiff's witnesses largely corresponds with that of the other two. Mr. Heer's language barrier must be taken into account when considering his evasive demeanour on the stand. However, the issues with Mr. Heer's testimony go much further than his inability to speak English. Mr. Heer's recollection of the March meeting is highly selective to the point of suspicion. Mr. Heer's testimony at trial deviated from his affidavits and was contradictory on several occasions. It seemed apparent that Mr. Heer's self-interest, or interest in protecting Mr. Bains influenced his testimony. In consideration of the relevant *Bradshaw v. Stenner* [2010 BCSC 1398] factors, I must find that where Mr. Heer's evidence contradicts that of the other

witnesses, the evidence of other witnesses must be believed.

[29] This Court will not interfere with a trial judge's credibility findings absent palpable and overriding error: *FH v McDougall*, 2008 SCC 53 at paras 70-73. This is because a trial judge is invariably in a much better position than this Court to assess the credibility of the witnesses who appeared at trial.

3. FIRST ISSUE: THE BILLS OF SALE

3.1 Overview and standard of review

[30] The judge found that it was Mr. Towers who signed the bills of sale, and that he had ostensible authority to do so on behalf of Gee Force. Both conclusions were hotly contested at trial, but only the second is contested on appeal. Also contested is whether it matters if Mr. Towers lacked authority to bind Gee Force.

[31] Gee Force submits that the finding that Mr. Towers had ostensible authority to sign the documents on behalf of Gee Force raises a discrete issue of law, and is reviewable on the less deferential standard of correctness. Gee Force says that the judge incorrectly applied the law by finding ostensible authority in the absence of any representation from Gee Force to that effect (as opposed to indications from Mr. Towers himself).

[32] CIT argues that the finding of ostensible authority comprises a question of mixed law and fact, and therefore is reviewable on the heightened standard of palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33 at paras 36-37. As I explain below, I consider that CIT's position in this regard is correct.

[33] CIT submits that the judge made no error of law or fact. Moreover, CIT argues, even if the judge did err in coming to her conclusion, it was not a material error because the outcome would have been the same if Mr. Towers had not been authorized to sign the bills of sale. The judge found it unnecessary to consider this alternative position.

3.2 The judgment below

[34] After finding that it was Mr. Towers who signed the bills of sale, the judge summarized the law of agency and the positions of the parties (at paras 49-52). She relied on *Doiron v Manufacturers Life Insurance Company*, 2003 ABCA 336, for its articulation of the four requirements for establishing ostensible authority as set out in *Freeman & Lockyer v Blackhurst Park Properties (Mangal) Ltd.*, [1964] 1 All ER 630 (CA):

- a) that a representation that the agent had authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;
- b) that such representation was made by a person or persons who had actual authority to manage the business of the company either generally or in respect of those matters to which the contract relates;

- c) that the contractor was induced by such representation to enter into the contract (i.e., that he in fact relied upon it); and
 - d) that under its memorandum or articles of association the company was not deprived of the capacity either to enter into a contract of the kind sought to be enforced or to delegate authority to enter into a contract of that kind to the agent.
- [35] Applying the law to the facts, the judge found that Mr. Towers had ostensible authority to sign the bills of sale:
- [54] On applying the law of agency to Mr. Towers, the defendants argue Mr. Towers had neither actual nor ostensible authority to sign on behalf of Gee Force. No conduct or representations to this effect had been evinced by Mr. Heer or Mr. Bains to Harbour International. As a result, even if Mr. Towers signed the Bills of Sale, he did not have the authority to do so and the Bills of Sale were never properly executed. However, based on Mr. Bains' testimony, the defendants concede that Milad Towers was intended to be the future General Manager for Gee Force if the company was able to acquire the five trucks and be successful, and if Mr. Towers was able to learn the business.
- [55] Conversely, the plaintiff argues Mr. Towers had ostensible authority to sign on behalf of Gee Force. He had been introduced as a Gee Force employee by Mr. Bains and drove Mr. Heer to the March meeting. They emphasize Mr. Bains' testimony that Mr. Towers was poised to be general manager. Additionally, they rely on Mr. Lakhesar's testimony that he corresponded with Mr. Towers multiple times through email and phone regarding the transaction, and that Mr. Towers was introduced to him as Mr. Heer's son-in-law on the day of the March meeting.
- [56] It is clear Mr. Towers did not have actual signing authority for Gee Force. This authority was held exclusively by Mr. Heer. However, I find the plaintiff's argument regarding the defendants' conduct to be persuasive. It was reasonable for CIT to infer from the conduct of Mr. Towers and Mr. Bains that he consented to an agency relationship. Therefore, I find Mr. Towers had ostensible authority to sign for Gee Force, and he executed this authority by signing the Bills of Sale.
- [36] As a result, the judge did not find it necessary to consider what would have happened if Mr. Towers had not been authorized to sign the bills of sale.

3.3 Discussion

- [37] In my view, the appellants have failed to demonstrate any error in the judge's conclusion that Mr. Towers had ostensible authority to sign the bills of sale.
- [38] I observe that Doiron concerned a claim against an investment advisor who had authority from Manulife to enter into various kinds of investment contracts on its behalf, but who was not acting as an agent for Manulife when he offered an investment to the claimant that was not a Manulife product. The claimant believed the investment was a Manulife product because of past dealings with the advisor, all of which involved Manulife investments.

- [39] In finding Manulife liable on the basis of ostensible authority, the court said this:
- [15] The law of ostensible authority does not require an explicit representation of authority. It is found where the principal has created a situation such that it is reasonable to infer and rely upon the apparent authority of the person. The appellant conceded in argument that Manulife had cloaked [the advisor] with ostensible authority in this case. However, it submits that there was no agreement made between [the advisor], on behalf of Manulife with the Doirons. The fact that the Doirons believed that they were contracting with Manulife is insufficient to bind Manulife to an agreement entered into between the Doirons and an entirely different entity.
- [17] We agree with the appellant that a mere belief on the part of the third-party that he or she is contracting with the principal, absent some representation to that effect, express or implied, cannot support a claim of ostensible authority so as to bind a principal.
- [19] The trial judge appears to have concluded from all of the surrounding circumstances that what [the advisor] did was purport to contract on behalf of Manulife. Given the misrepresentation as to who the principal really was the ostensible authority conveyed by Manulife to [the advisor], his finding that Manulife was bound by virtue of ostensible authority is supportable. We find no palpable and overriding error warranting appellate intervention.
- [Emphasis added.]
- [40] I would apply the same analysis to this case. The appellants argue that the judge erred because the law requires there to have been a representation from Gee Force that Mr. Towers had the authority to sign the bills of sale. But in my view, the law does not go quite that far. In Doiron, there had been no representation from Manulife that the advisor had authority in relation to the specific investment.
- [41] What the judge found here on the basis of all of the surrounding circumstances was that Gee Force, particularly through its operating mind, Mr. Bains, had created a situation such that it was reasonable for Ms. Coombes and Mr. Lakhesar to infer and rely upon the apparent authority of Mr. Towers, who purported to sign on behalf of Gee Force even though he did not have actual signing authority.
- [42] The appellants complain that the evidence did not support such a conclusion. They say, for instance, that although the judge found that Mr. Towers had been introduced as Mr. Heer's son-in-law, in fact he was not Mr. Heer's son-in-law. They say as well that Mr. Bains's testimony that Mr. Towers was poised to be general manager of Gee Force was something he said at trial, not a representation made at the time in question.

- [43] But whether or not it was true that Mr. Towers was Mr. Heer's son-in-law is not relevant to the question of ostensible authority. In Doiron, it was not true that the agent had authority from Manulife, but the Doirons reasonably believed that he did. And Mr. Bains's testimony at trial was indicative of his state of mind at the time in question. It was accordingly open to the judge to consider it as informing the nature of the situation that Mr. Bains and Gee Force had created.
- [44] In my view, the judge applied the correct legal principles, and the appellants have failed to demonstrate any palpable and overriding error in her finding that Mr. Towers had ostensible authority so that Gee Force was bound.
- [45] In view of this conclusion, like the judge, I find it unnecessary to consider the respondent's alternative argument that the appellants are liable under the lease even if Mr. Towers lacked authority to sign the bills of sale.
- [46] I would not accede to this ground of appeal.

4. SECOND ISSUE: THE GUARANTEE

4.1 Overview and standard of review

- [47] The Guarantee is in a standard boilerplate form, the essence of which provides as follows:
1. FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned (the "Guarantor") hereby irrevocably and unconditionally guarantees, as primary obligor and not merely as security, without offset or deduction, the full and prompt performance and payment by Gee Force logistics Inc ("Debtor") to CIT financial Limited ("CIT") of:

A. any and all present and future debts, liabilities and obligations, direct or indirect, absolute or contingent, mature or otherwise, ("Liabilities") incurred by the debt are without any limitations.

[Underlining original.]

- [48] The signature block provided a line for signature by a "Corporate Guarantor", and a line for signature by an "Individual Guarantor". Mr. Cassels had typed Mr. Heer's name below the line for signature by the corporate guarantor, and Mr. Heer signed that line, instead of the line for the Individual Guarantor. He also signed a Certificate of Corporate Secretary on the second page, certifying that the guarantee was approved and executed by (space left blank), and "authorized by a resolution of the board of directors of the Corporation duly adopted at a valid meeting". He did not sign the Statement of Guarantor on that same page, which would have been appropriate in the case of an individual guarantor.
- [49] In these circumstances, Mr. Heer argues that, on the face of the document, the parties clearly intended that the guarantee was to be corporate in nature. The documents were prepared by Mr. Cassels, and no objection was taken either by Mr. Cassels or by CIT upon review to the fact that Mr. Heer signed on the line for a corporate guarantor.

- [50] Mr. Heer says the judge erred in law in treating the placement of his signature as a "slip" when the "slip rule", being R 13-1(17) of the Supreme Court Civil Rules, had no application, and in rectifying the agreement when neither mistake nor rectification was pleaded. On this basis, he submits that the standard of review is correctness.
- [51] The respondents argue that to interpret the document as evidencing an intention that the guarantee was to be corporate in nature would make nonsense of the guarantee. It would be of no use whatsoever for the debt of Gee Force, as debtor, to be guaranteed by Gee Force as guarantor. In the respondents' submission, the inconsistencies to which Mr. Heer points were explained by Mr. Cassels' evidence that the judge accepted, and the question of whether the parties intended the guarantee to be individual or corporate raises a question of mixed law and fact reviewable only for palpable and overriding error.
- [52] As I explain below, it is my view that this issue turns on what the parties intended. That is a question of mixed law and fact that attracts a deferential standard of review: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at paras. 50-54.

4.2 The judge's reasons

- [53] The judge devoted most of her discussion of this issue to Mr. Heer's plea of non est factum, an issue that is not before us. Mr. Heer points, however, to the following passage as illustrating what he maintains is a legal error:
- [60] The defendants argue that interpreting the Guarantee as an individual guarantee would lead to an ineffective contractual provision, therefore this interpretation must be rejected: *Athwal v. Black Top Cabs Ltd.*, 2012 BCCA 107 at para. 42. In support, they cite the positioning of Mr. Heer's signature on the Guarantee, in addition to a clause in the Guarantee which compels the Guarantor to furnish financial statements annually based on generally accepted accounting principles. I find it difficult to conclude from a clause mentioning annual financial statements that a Guarantee must either be corporate or completely unenforceable. The signature being in the wrong position seems nothing more than a slip. I do not find this slip to be of any particular moment, or on its own, to interfere with the legal effect of the Guarantee.
- [54] I do not accept the contention of Mr. Heer that this indicates reliance by the judge on the "slip rule", which would admittedly be inapt. Properly understood in context, the judge's use of the word "slip" signifies no more than a finding that the location of the signature was not determinative of the parties' intentions. She made no reference to the Supreme Court Civil Rules.
- [55] I also reject Mr. Heer's contention that the judge effectively rectified the agreement though rectification was not pleaded. I agree with the respondent that the location of Mr. Heer's signature is not a term of the contract that requires rectification. As the Court of Appeal of Alberta noted in *Union Tractor Ltd v Horseshoe Contracting Ltd*, 2002 ABCA 259, albeit in a different context:

[6] In our opinion, compliance with the [Garagemen's Lien Act, RSA 1980, c G1] is achieved where it is determinable on accepted evidence that the signature provided relates to and was furnished for the purpose of acknowledging indebtedness in the specified amount. Failure to affix one's signature on the specified line does not result in automatic invalidation of the lien. The relevant inquiry will always be whether the signature represents an acknowledgment of indebtedness within the meaning of the Act. There are cases where substance must override form. This is one of them.

[Emphasis added.]

I agree with this reasoning and would apply it here.

[56] As I read the judge's reasons, she did not, as the appellants suggest, rectify the guarantee by replacing the words "corporate guarantor" with "individual guarantor" and deleting the certificate of corporate secretary. Rather, she inquired into Mr. Heer's intentions when he made that signature. As the respondent notes, Mr. Heer was unable to read English so the fact that he signed on the line for "corporate" rather than "individual" guarantor cannot signify that he intended for his corporation to guarantee the lease agreement rather than doing so himself.

[57] With respect to intention, the crux of Mr. Heer's argument is this: Mr. Cassels prepared the guarantee and explained it to Mr. Heer. Accordingly, when Mr. Cassels typed Mr. Heer's name on the "corporate" line and indicated that Mr. Heer needed to sign there, this demonstrated CIT's clear and unambiguous intention that Mr. Heer sign as a corporate guarantor.

[58] As I see it, however, this is merely an attempt to re-litigate an argument that was not accepted by the judge below. Mr. Cassels denied that he made any markings on the documents to indicate where Mr. Heer should sign, instead only pointing in the general direction on the page. He explained that the guarantee document was "awkwardly laid out", and so CIT's practice would have been to accept a signature anywhere in the area above or below where Mr. Heer's name was. He explained further that, if CIT had intended the guarantee to be enforceable against a corporation, the name of the corporation would be on the guarantee page--which did not occur in this case. As for the certificate of corporate secretary, Mr. Cassels testified that he did not specifically direct Mr. Heer to sign it but would have explained the document anyway, since people would frequently ask about it even when it was irrelevant. If it was signed but irrelevant, it would simply be ignored.

[59] Mr. Heer testified that the documents were not explained to him, though he agreed that he understood the difference between a personal and a corporate guarantee, and further testified that he understood he was giving a corporate guarantee. But, as discussed above, it would have made no sense for CIT to require Mr. Heer to give a corporate guarantee on behalf of Gee Force, and the judge rejected Mr. Heer's evidence where it conflicted with the evidence of others. Of crucial importance, the judge found that the documents were in fact explained to Mr. Heer by Mr. Cassels and Mr. Lakhesar at the meeting, and that Mr. Heer

would have known the personal nature of the guarantee he was signing (at para 40).

- [60] In these circumstances, the judge's findings are entitled to deference. Each of the appellants' arguments on appeal--the location of the signature, Mr. Cassels' preparation and explanation of the document, the signing of the certificate of corporate secretary, the acceptance of the document by the head office--was made before the trial judge and was canvassed in Mr. Cassels' testimony.
- [61] I do not see this Court's decision in *Athwal v Black Top Cabs*, 2012 BCCA 107, as being of assistance to Mr. Heer in the circumstances of this case. As that case confirmed, evidence of the factual matrix and the surrounding circumstances in which the contract was signed are admissible for the purposes of determining the intention of the parties. The judge did not have to rely on Mr. Cassels' subjective views of what was intended, but looked at the circumstances and the contract as a whole. These included what she found Mr. Cassels and Mr. Lakhesar told Mr. Heer when he signed the document (given that he could not read it), and the fact that Mr. Heer's position, if accepted, would render the guarantee nonsensical.
- [62] As I read the judge's reasons, she approached the question properly. Given the surrounding circumstances and the terms of the documents as a whole, what Mr. Heer's signature signified, regardless of where he signed, was that he agreed to guarantee Gee Force's debt personally. In this way, she appropriately focused on substance rather than form. No error has been demonstrated in this conclusion.
- [63] I would not accede to this ground of appeal.

5. DISPOSITION

- [64] For these reasons I would dismiss the appeal.

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Madam Justice Bennett"

I AGREE:

"The Honourable Madam Justice Fenlon"

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