

CANADA / JUDGMENT

Winroc Corp. v. K&P Insulation

2001 BCSC 255

COURT

Supreme Court of British Columbia

DECIDED

12 February 2001

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

Source record

2001BCSC0255

Citation: Winroc Corp. v. K&P Insulation Date: 20010212

2001 BCSC 255 Docket:

45959

Registry: Kelowna

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

THE WINROC CORPORATION
PLAINTIFF

AND:

K & P INSULATION LTD.
And RICHARD PITT
DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE BROOKE

Counsel for the Plaintiff: Andrew J.M. Elliot

Counsel for the Defendant: David H. Stoller

Date and Place of Hearing: January 12, 2001

Kelowna, B.C.

- [1] The plaintiff seeks summary trial and judgment pursuant to Rule 18A in an action against the defendant Richard Pitt on a guarantee given by him of the obligations of the defendant K & P Insulation Ltd. to the plaintiff. Default judgment has been entered against K & P Insulation Ltd.

- [2] The guarantee, the subject of the plaintiff's claim, is set out on the two sides of a single piece of paper folded in half such that four "pages" are created. The first two pages are titled "Application for Credit" and "Credit Agreement" respectively and the second two pages are titled "Personal Guarantee" and "An Applicant for Credit who is not a Corporation Shall Provide the Following Additional Information:". The first page, the Application for Credit, bears the signature of the defendant "Richard Pitt, President", and on the third page titled "Personal Guarantee" is the signature "Richard Pitt" and both are dated the 4th of August, 1996.
- [3] The plaintiff says that the Personal Guarantee is a separate and discrete contract and by its terms it is a continuing guarantee of all monies the customer (K & P Insulation Ltd.) owes to the plaintiff for goods supplied. The guarantee goes on to authorize the plaintiff to extend any amount of credit to the customer and to provide that the guarantee is a continuing guarantee to cover the total liability of the customer to the plaintiff.
- [4] The defendant says that the guarantee must be read with the Application for Credit and the validity of the guarantee depends upon there being a concluded contract for credit between K & P Insulation Ltd. and the plaintiff. The defendant also says that the guarantee is unenforceable as ambiguous and that an alteration of the contract for credit (if one exists) occurred without the consent of the guarantor and the guarantor is thereby discharged or alternatively, that his obligation is limited to \$10,000.00.
- [5] Two aspects of the Application for Credit are relied upon by the defendant. The first is on the line which reads "amount of credit requested (based on two months' purchases)" where the amount \$10,000.00 has been written in and the second a paragraph which reads:

It is understood that The Winroc Corporation has no obligation to grant credit for this, or any subsequent application. Approval of this application shall be set out in a Credit Approval Letter to the Customer. Use of the account by the Customer shall constitute its acceptance of the terms of the attached Credit Agreement and the terms of the Credit Approval Letter as amended from time to time.

- [6] The amount of credit extended was in fact more than \$14,000.00 and no credit approval letter was delivered by the plaintiff to the defendant.
- [7] For the defendant to succeed on the argument that the enforceability of the guarantee depends upon the conclusion of a contract between K & P Insulation Ltd. and the plaintiff requires that the Application for Credit be read together with or as part of the guarantee. While clearly the guarantee depends upon the existence of a principal debt of the customer to the plaintiff, it does not depend upon the existence of a particular form of contract. The guarantee itself does not refer to the Application for Credit or the credit agreement and can stand independently. The defendant says that because the four "pages" I have previously referred to are serially numbered "1 of 4" and "2 of 4" and so forth, that this is evidence of an intention that these four pages must be read together as a single document. I do not agree. The question is whether they can be read independently and if so should they be so read. I

am satisfied that they can and should be read independently. The first page is simply an application in which the customer is asked to provide certain particulars. The second page sets out as an agreement the terms and conditions upon which goods will be sold on credit. The third page is the guarantee; it neither refers to the application for credit nor the agreement upon which goods will be sold for credit. The fourth page (which is unsigned) requests an applicant who is not a corporation to provide additional information including a social insurance number. All of this leads me to conclude that the guarantee gathers its force and effect from within its four corners and neither invites nor requires any further enquiry. I find that the guarantee has full force and validity independently of the particular form of contract entered into between the plaintiff and the customer whose debts to the plaintiff have been guaranteed by the defendant.

- [8] For the same reason, the defendant's argument that a term of the underlying contract or agreement between the customer and the plaintiff having been altered without the consent of the defendant (i.e. the failure to deliver a credit approval letter) that the defendant must be discharged must also fail. In my opinion, it is not necessary to read the Application for Credit with the guarantee and the guarantee stands independently of the Application for Credit even though both are within a single piece of paper. Even if I am wrong in this opinion, it cannot be said that the amount of credit requested of \$10,000.00 set out in the Application for Credit is a term or condition of the obligation of the customer nor is it a limitation on the obligation of the guarantor nor is it a representation upon which the defendant relied.
- [9] The Application for Credit and the Personal Guarantee were both given by the defendant on the same day for the purpose of enabling the customer to acquire goods from the plaintiff on credit. The customer clearly used the account established for it by the plaintiff. The defendant Richard Pitt as guarantor is identified on the Application for Credit as the President of the customer and, as appears by the affidavit filed in support of the plaintiff's claim, he is also a director of the customer.
- [10] The plaintiff relied upon *Horsman Bros. Holdings Ltd. v. Dolphin Electrical Contractors Ltd.* (1984), 52 B.C.L.R. 334 (Co. Ct.). In that case, the Application for Credit was on the back of the same piece of paper as the guarantee and the Application for Credit had a figure filled in which was significantly less than the debt which the plaintiff pursued. There too, the guarantors were directors of the corporate debtor and the plaintiff was a supplier. It is also noted that the guarantee was expressed to be a continuing guarantee and included a waiver by the guarantor of the right to protest a variation of the terms of the agreement between the creditor and the principal debtor. In *Horsman*, Oppal, J. held that the guarantee could be viewed as a separate document from the credit application. He also held that despite the ultimate indebtedness exceeding the credit applied for, the guarantor was bound by the language of the guarantee which provided that the liability of the guarantor was "a continuing liability and shall not be limited but shall include the full indebtedness ...".

[11] The plaintiff also relies upon *C.I.B.C. v. Idanell Korner Ranch Ltd.* (1989), 40 B.C.L.R. (2d) 328 (C.A.) where in an action by the bank against the guarantors of a corporate obligation, the guarantors argued that the bank had fiduciary duties towards them and that the bank knew or should have known of the misconduct of the managing director. At page 342, Mr. Justice Taylor says this:

There is, I think, much significance in the distinction made ... between the "classic" guarantor, who has given his pledge so that another may borrow money, and the sort of guarantor - perhaps more commonly found today - who guarantees the obligations of a company through which he himself intends to carry on business, either alone or, as in the present case, with others.

In the latter case ... the guarantor will, of course, generally have far better knowledge of the company's business than the bank.

[12] The defendant here is clearly identified as a President and director of the customer.

[13] The defendant also says that if the guarantee is read separately or if read together with the Application for Credit it is found that a concluded contract between the customer and the plaintiff came into existence then in any event the liability of the defendant is limited to \$10,000.00. I find that the defendant is bound by the terms of the guarantee which extends to "the due and regular payment of all monies the Customer owes ..." and which authorizes the plaintiff "to extend any amount of credit to the Customer ... without discharging or in any way affecting the liability of the Guarantor".

[14] In his argument, counsel for the defendant characterized the reference to the amount of credit requested of \$10,000.00 found on the Application for Credit as a representation or misrepresentation. Counsel for the plaintiff relies upon *C.I.B.C. v. Trapp* (1987), 12 B.C.L.R. (2d) 35 (C.A.) where a similar argument was accepted by the trial court but rejected by the Court of Appeal on the basis that the evidence at trial did not support such a characterization. There, the guarantee was not limited in amount and absent convincing evidence of a representation that the obligation would be limited, the guarantor was found liable for the full amount of the debt.

[15] The defendant relies upon the judgment of the Supreme Court of Canada in *Manulife Bank of Canada v. Conlin*, [1996] 3 S.C.R. 415. There, the issue was whether a guarantor or surety was discharged from an alleged obligation under a mortgage as "principal debtors and not as sureties" when the mortgagor had renewed the mortgage at the expiry of a three year term but the guarantor had not executed the form of renewal. In my opinion, this judgment is distinguishable on the basis that the guarantor was within the class of "accommodation sureties" being those who enter into the guarantee in the expectation of little or no remuneration and who are seen as favoured in the eyes of the law and whose obligations should be strictly examined and strictly enforced. Here, the defendant is an officer and director of the principal debtor and bound according to the terms of his engagement.

[16] In the result, there will be judgment against the defendant Richard Pitt for \$14,866.66 together with court order interest and costs at Scale 3.

"T.R. Brooke, J."

The Honourable Mr. Justice T.R. Brooke

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/01/02/2001bcsc0255.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/winroc-corp-v-k-and-p-insulation-2001>

Prepared on 28 October 2026 · Esheria