

1609102 Ontario Ltd. v. Big Land Management Ltd.

1609102 ONTARIO LTD. c.o.b. M & S QUALITY PRODUCE (Plaintiff) and BIG LAND MANAGEMENT LTD., BIG LAND FARM LTD., BIG LAND FARM (MCCOWAN) LTD., BIG LAND FARM (KENNEDY) LTD., BIG LAND FARM (BURNHAMTHORPE) LTD. and KIET LAM (Defendants)

Ontario Superior Court of Justice

E. Macdonald J.

Heard: December 3-5, 2007
Judgment: December 13, 2007
Docket: 05-CV-286363PD3

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Counsel: Stephen A. Edell for Plaintiff
Bois Wilson, **Sue Chen** for Defendant, Kiet Lam

Subject: Corporate and Commercial; Contracts; Property

Guarantee and indemnity --- Guarantee — Contract of guarantee — Consideration — General principles.

E. Macdonald J.:

1 In this case, the only remaining Defendant is Kiet Lam. All other Defendants have made assignments in bankruptcy. The issue is whether the Defendant Kiet Lam personally guaranteed or promised payment for deliveries of vegetable produce made by the Plaintiff to the Big Land Farm Chain, of which Kiet Lam was a director. The theory of the Plaintiff's case is that Kiet Lam gave his personal guarantee in October 2004 in order to induce the Plaintiff to continue to supply produce to the Defendants. The Plaintiff supplies vegetable produce in the GTA to the Asian community.

2 The amount that is now being sought on the basis of the alleged personal guarantee is for the amount of \$129,921.75. This sum is the total value of unpaid invoices for produce delivered to the Defendant by the Plaintiff. It is alleged that Kiet Lam breached his personal guarantee to pay this amount.

3 The document on which the plaintiffs rely is Exhibit 1 which one of a series of invoices. The invoice which bears Mr. Lam's signature is numbered 007422 and is dated December 27, 2004.

4 The evidence is that in the fall of 2004, payments to the Plaintiff for produce to the Big Land Farm Defendants started to slow with the result that the Plaintiff stopped supplying produce to the Big Land Defendants Kiet Lam had then taken over the day to day management of the Big Land Defendants. He approached Mr. Wan Tang Ye, a salesman and representative of the Plaintiff, for a meeting to discuss whether the Plaintiff would agree to continue to supply produce to the Big Land Defendants.

5 The Plaintiff alleges that Mr. Lam made an oral personal guarantee to pay the 10 invoices which are Exhibit 1. In the original statement of claim dated March 23, 2005, there is no mention of Mr. Lam's personal guarantee. However, the statement of claim was amended on May 4, 2006 to plead that Mr. Lam gave his personal guarantee for all deliveries of produce the Plaintiff made to the Big Land Defendants.

6 It is the theory of Mr. Lam's defense that the "so called guarantee" never existed and that it is a new invention on the part of the Plaintiff to try to collect some money now that the corporate defendants are bankrupt. In his evidence, Mr. Lam vehemently denied that he gave a personal guarantee or that he said to the Plaintiff's representative that he would pay for the deliveries personally if the Big Land Defendants did not pay.

7 While the Plaintiff's representatives acknowledge that there was no written agreement respecting the guarantee, they emphasized that the Chinese business tradition is one based on trust. It is not fatal to the Plaintiff's position, that the alleged guarantee or the alleged promise to pay was not reduce to writing. It is for this reason that I have carefully considered the evidence at trial of the Plaintiff's representatives and the evidence of Mr. Lam.

8 I accept Mr. Lam's evidence that he did not give an oral guarantee to pay personally. I accept his evidence that he did not make an oral promise to make payments of the invoices contained at Exhibit 1. Mr. Lam was adamant that he would not give a personal guarantee even in circumstances where he was concerned that supplies from the Plaintiff would be cut off which is eventually what happened.

9 Accordingly, the Plaintiff's claim is dismissed with costs to the Defendant Mr. Lam. The trial record is endorsed accordingly.

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