SUPREME COURT OF NOVA SCOTIA
Citation: *Taylor v. Taylor*, 2017 NSSC 240

Date: 20170912
Docket: Hfx. No. 439331
Registry: Halifax

Between:

Julia Marcia Taylor

Applicant

v.

Geoffrey Mark Taylor, Patrick Thomas Reilly and Dartmouth Surplus Limited

Respondents

Judge: The Honourable Justice James L. Chipman

Heard: July 25, 2017, in Halifax, Nova Scotia

Counsel: Matthew J. D. Moir, for Julia Marcia Taylor
Ian R. Dunbar, for Geoffrey Mark Taylor and Dartmouth Surplus Limited
Mark J. Charles, for Patrick Thomas Reilly (not appearing)

By the Court:

Overview

[1] This decision concerns the characterization of a $900,000 loan advanced by the Applicant in the spring of 2010. Julia Marcia Taylor claims that she provided the loan personally to her son, Geoffrey Mark Taylor and his business associate, Patrick Thomas Reilly. Mr. Taylor and Mr. Reilly say that the $900,000 was advanced to a company in which they were shareholders. The distinction is critical because if the loan is determined to be a company loan then the Applicant is only entitled to what she has been receiving; i.e., re-payment of monthly interest on the $900,000. On the other hand, if the loan is found to be a personal loan then in addition to monthly interest payments, Mr. Taylor and Mr. Reilly will be responsible to pay Ms. Taylor ongoing principle payments.

Background

[2] By Notice of Application in Court last amended September 14, 2016, the Applicant seeks to enforce the $900,000 loan against two of the Respondents, Mr. Taylor and Mr. Reilly. In particular, Ms. Taylor claims in the Notice at paras. 6 - 9:

> On or about May 1 , 2010, the Applicant lent $900,000.00 to Mr. Taylor and Mr. Reilly (the "Loan"). The funds were used by Mr. Taylor and Mr. Reilly as part of the purchase price for the Company [Dartmouth Surplus Limited], which they acquired through their existing Nova Scotia company, Gereco Incorporated ("Gereco"), which was amalgamated with the Company immediately after closing.
>
> As part of the security for the Loan, Mr. Taylor, Mr. Reilly and Gereco executed a Share Pledge Agreement dated May 1 , 2010, pledging the Shares to the Applicant in security for the debt. The Company assumed the obligations of Gereco pursuant to the Share Pledge Agreement upon amalgamation.
>
> Although there were documents evidencing the Loan including the Share Pledge Agreement, no express financial terms as to, *inter alia*, the term of the Loan were set out in writing. The Applicant says, therefore, that the Loan was payable on demand.

> On April 15, 2015, the Applicant delivered a demand to the Respondents, demanding repayment of the outstanding principle of $900,000.00 on or before the close of business on April 27, 2015, failing which the Applicant expressed that she would avail herself of all remedies available to her in enforcement of the Loan, including without limitation seizure of the Shares and transfer to herself of the Shares on the books of the Company.

[3] By Notice of Contest filed August 4, 2015, Mr. Taylor takes the position that the share purchase loan was a company debt such that neither he or Mr. Reilly are personally obligated to pay the loan. He adds that the Share Pledge Agreement dated May 1, 2010 (SPA) is not enforceable as there has been no "Event of Default" as defined in the SPA.

[4] Mr. Reilly did not file a Notice of Contest. By letter dated July 20, 2017, his counsel advised:

> We have been representing Mr. Reilly in the circumstances of a "Watching Brief". We have not made any submissions and do not intend to call any evidence or make any submissions at the Trial [Application].
>
> Further to our previous discussions and correspondences [sic] we advise that we and our client will not be present at the [Application].

[5] By Notice of Contest filed July 18, 2017, Dartmouth Surplus Limited (DSL) states that as of May 3, 2010, it assumed all obligations of Gereco Incorporated, the company which it says was loaned the funds by the Applicant. DSL says that it has complied with its loan obligations by making interest payments in a full and timely manner.

[6] In terms of remedies, the Applicant asks for the following (paras. 10, 11 and 14 of the Amended Notice of Application in Court):

> …to avail herself of all remedies available to her under the Share Pledge Agreement and legislation, including:
>
> a. seizure of the Shares;
>
> b. sale of the Shares by commercially reasonable means and application of the proceeds of sale towards the arrears of the Loan;

> c. registration of the Shares in the name of the Applicant or her nominee in lieu of disposing of the shares;
>
> d. voting the shares; and
>
> e. compelling the resignation of a director and officer of the Company.
>
> Alternatively, if the Loan was not defaulted upon. the Applicant may nevertheless avail herself of the remedies because the terms of the Share Pledge Agreement were violated, …
>
> The Applicant claims:
>
> b. an order for the resignation of Mr. Taylor as an officer and director of the Company; and
>
> c. transfer of the Shares on the books of the Company, in regard to which the Applicant specifically pleads section 44 of the *Companies Act*.

Evidence Received

[7] The Applicant relied on her amended affidavit deposed September 13, 2016, along with her rebuttal affidavit sworn January 26, 2017. She was cross-examined by counsel for Mr. Taylor and DSL.

[8] Mr. Taylor relied on his affidavit sworn January 13, 2017, and was cross-examined. Mr. Taylor also relied on a November 4, 2016, affidavit of James Taylor (no relation), a Royal Bank of Canada (RBC) loans officer. As well, James Taylor attended an out of Court cross-examination on March 20, 2017. The transcript was provided to the Court with the consent of Applicant's counsel. James Taylor was not cross-examined during the Application in court.

[9] During the hearing one exhibit was entered. By consent, the Applicant's (heavily redacted) Last Will and Testament dated May 31, 2011, became Exhibit 1.

Further Background

[10] The evidence reveals that in the fall of 2009, Ms. Taylor and Mr. Reilly incorporated Gereco Incorporated. Mr. Taylor received 70% of the common shares of Gereco, while Mr. Reilly held the remaining 30%.

[11] In the spring of 2010, Gereco purchased DSL for $3,300,000, plus the cost of DSL's inventory. The shareholder percentages remained as before; the Respondents Taylor and Reilly are 70% and 30% respective shareholders of DSL.

[12] Gereco arranged the majority of its financing for the purchase of DSL through RBC. James Taylor was the RBC commercial banking account manager in charge of financing Gereco's purchase of the DSL shares. RBC provided a secured term loan of $2,100,000, an additional secured term loan of $500,000 and a revolving line of credit of $500,000 to Gereco, which were all secured by a mortgage of $3,000,000.00 against the property owed by DSL at 41 Akerley Boulevard, Dartmouth, Nova Scotia.

[13] In early 2010, the Applicant advanced a $900,000 loan so that the purchase of the DSL shares could be completed. Perhaps incredibly, given the large amount of money involved, there is no loan agreement or other documentation with respect to the $900,000. The Applicant characterizes the loan as "…financing for my son to be able to purchase the business." On the other hand, Mr. Taylor says that the loan was to Gereco, "…which it used to fund its purchase of the shares of DSL".

[14] Given that this matter was heard as an Application in Court, it is not surprising that the parties' affidavits extensively deal with their versions of the circumstances surrounding the $900,000 loan. For example, Ms. Taylor deposes as follows at paras. 10 – 13 of her September 13, 2016, affidavit:

> In order to purchase into any business, we – that is, my son, my husband, Patrick Reilly and I – knew that I would have to lend some of the purchase price. Neither my son, my husband nor Mr. Reilly had the financial wherewithal to purchase a business of the size we had in mind. I have significant net worth, having received a sizeable inheritance from the estate of my late father.
>
> While I took little part in the discussions involving the acquisition of the business, which took place largely between my son and my late husband,

> Bill Taylor, who was an accountant, and with the late Bill Shellnutt, a chartered accountant with whom my late husband had been partners, I was involved with all, or at least almost all, of the discussions involving financing. Steve Hatcher (whom I later married after my late husband passed) was with the RBC and he referred me to Rick Wilson with the same bank, who in turn referred us to James Taylor in the same bank, who drew up the financing for the purchase.
>
> We did not spend a great deal of time discussing the specific terms of the loan that I was making. Our focus was on obtaining financing for my son to be able to purchase the business. After extensive dealings with RBC it became clear that I would need to loan $900,000.00 plus deposit and closing costs to have the purchase of Dartmouth Surplus take place.
>
> Our discussions concerning the terms of repayment of my money were not thorough. We did discuss that I was taking out a loan secured against investments of mine to cover the $900,000, and I was to be repaid interest monthly at 3.75% *per annum*, the same rate as would apply to the loan that I had borrowed. We also discussed at RBC while negotiating the financing that I expected that principle payments to me would begin at some point within about four or five years, when the $500,000 non-revolving term facility forming part of the RBC refinancing had been repaid. That credit facility was amortized over four years (although in early discussions with RBC a five-year amortization was discussed) and secured against investments of Geoffrey Taylor's.

[15] As for Mr. Taylor, he deposes as follows at paras. 27 – 30 of his affidavit:

> Ms. Taylor and I discussed the terms of the Dartmouth Surplus Loan around the time that it was made. We had also discussed the terms earlier, when the subject of financing was first raised. I cannot recall the specific words of each of our many discussions, which typically also involved my father. However, I can confirm that prior to Ms. Taylor advancing the funds we discussed and agreed on the following arrangement:
>
> - Ms. Taylor would obtain the necessary funds for the Dartmouth Surplus Loan from RBC by pledging a portion of the securities she had inherited from my grandfather as collateral for a personal loan from RBC to her;
>
> - Ms. Taylor would then loan the funds that she had been loaned by RBC to my company Gereco;

- the Dartmouth Surplus Loan would be used by Gereco to purchase the shares of Dartmouth Surplus;

- the Dartmouth Surplus Loan would be secured by a second mortgage over the Property in favour of Ms. Taylor;

- Ms. Taylor would hold a pledge of my shares in Gereco as well as the shares of Mr. Reilly. We discussed that the share pledge was to place Ms. Taylor in a more favourable position to other creditors in the event Gereco was to enter receivership or bankruptcy;

- the Dartmouth Surplus Loan to Gereco would be postponed, which would permit Gereco to pay other creditors and secure other financing;

- the Dartmouth Surplus Loan was to be repaid on an interest-only basis, or in other words Gereco would pay all of the interest payments Ms. Taylor incurred on her personal loan from RBC. At the time, her interest rate was 3.75%; and

- the capital balance of the Dartmouth Surplus Loan would not be repaid by Gereco until the company was in a financial position to do so. We agreed initially that we would review the issue in four years' time and determine at that point whether Gereco was in a financial position to make any principal payments.

Ms. Taylor also stated to me that the Dartmouth Surplus Loan would be considered an offset against my inheritance of the family money she had received from my grandfather. If Gereco could not repay her, my inheritance would be reduced to reflect the money that had been lost. My mother, father and I discussed that my mother may very well outlive me therefore this may be the only opportunity for me to make use of my inheritance.

I relied on the above discussions with Ms. Taylor, and our agreement on the terms of the loan, when deciding to proceed with the business opportunity presented by the purchase of Dartmouth Surplus.

Ms. Taylor did not advise me at any time that she believed I would be personally liable to her for the amount of the loan, or that the loan would be payable on demand. I would not have proceeded with the business opportunity if she had said that. At no point did I have sufficient assets to repay the amount she had loaned, and would not have agreed to such terms.

Evidence of Julia Taylor

[16] On cross-examination Ms. Taylor was referred to a "Postponement And Assignment Of Claim" in favour of RBC, which she signed on April 30, 2010. She acknowledged that she had independent legal advice when she signed this document, the text of which reads, in part:

> FOR VALUABLE CONSIDERATION, receipt whereof is hereby acknowledged, all debts and liabilities present and in future (the "Liabilities") of GERECO INCORPORATED (hereinafter called the "Borrower") to the Undersigned, or any them, are hereby deferred and postponed by the Undersigned, and each of them, to the debts, liabilities and advances, present and future (the "Obligations"), of the Borrower to the Royal Bank of Canada…

[17] Accordingly, the postponement agreement specifically refers to the borrower as "Gereco Incorporated" and not either Mr. Taylor or Mr. Reilly. Given that the postponement agreement was signed on April 30, 2010, it was in very close proximity to when Ms. Taylor actually loaned the money.

[18] Further, during her testimony Ms. Taylor agreed that the purpose of the postponement agreement was to place RBC ahead of debt owed by Gereco to her. She confirmed that on May 3, 2010 (four days after she executed the postponement agreement) the $900,000 advance was made. On further questioning, Ms. Taylor again acknowledged that she received independent legal advice prior to signing the postponement agreement. She conceded that there is nothing in the postponement agreement saying Geoffrey Taylor or Patrick Reilly personally owe the funds. Ms. Taylor agreed that the wording of the postponement agreement was never amended.

[19] During her cross-examination, Ms. Taylor was referred to para. 16 of her affidavit where she states:

> I did tell Geoffrey that if he lost this money, it would be coming out of his inheritance. I had one other child beside Geoffrey and I did not want her to have to pay for Geoffrey's debts out of her inheritance.

The Applicant agreed that she revised her Will to reflect the above sentiment.

[20] Ms. Taylor was shown Exhibit 1, a (largely redacted) copy of her May 31, 2011, Last Will and Testament. She was referred to page 2 and clause "C" which reads:

> In the event that I should die while my assets act as collateral for the loan taken for my son's business, I direct my Trustee to take that factor into account in determining how to equalize my estate between my two children. I do not wish my daughter to be disadvantaged, or to receive less than one-half of the true value of my estate, because of said loan.
>
> [emphasis added]

[21] Accordingly, the Will specifically refers to a loan for Mr. Taylor's "business" and not him (or Mr. Reilly), personally.

[22] Ms. Taylor was taken to Exhibit "U" of her affidavit, an email sent to her son on October 31, 2014. In particular, she was directed to this part of her email:

> I understand that a condition of the approval is that I continue to postpone my $900,000 loan to the company in favour of the new lenders.
>
> [emphasis added]

[23] Next, Ms. Taylor was directed to Exhibit "R" of her affidavit, a "Postponement Of Debt Agreement" dated December 15, 2014, between herself, Business Development Bank of Canada (BDBC) and DSL. Ms. Taylor confirmed that she signed this document and had independent legal advice prior to doing so. She confirmed that the first recital states:

> Whereas the Borrower is indebted to the Creditor in the sum of $900,000.00 (the "Debt").

On further questioning, she acknowledged that the "Borrower" in the postponement of debt agreement is DSL and that she is the "Creditor". Ms. Taylor agreed that neither Geoffrey Taylor or Patrick Reilly are referred to as the "Borrower(s)" in the postponement of debt agreement.

[24] On the basis of the above and when I consider the entirety of Ms. Taylor's evidence, I am left with grave doubts about her position that the loan was personal. In contrast, as the below section will reveal, I was left with a

favourable impression of Mr. Taylor's evidence such that it causes me, in the final analysis, to make the finding that $900,000 loan must be considered a business loan to Gereco.

Evidence of Geoffrey Taylor

[25] During Mr. Taylor's cross-examination, he acknowledged the law firm of Boyne Clarke was retained to incorporate Gereco. Mr. Taylor was referred to Boyne Clarke's May 5, 2010, letter which starts out as follows:

> **Re: Geoffrey Taylor and Patrick Reilly** (collectively, the "**Borrower**")
>
> We have acted on behalf of the Borrower and Dartmouth Surplus Limited ("**DSL**") in connection with certain security delivered to Julia Taylor (the **Lender**").

Referring to the letter, Mr. Taylor said that he was "not sure why it was phrased that way". I would add that I regard this subject line of Boyne Clarke's reporting letter to be rather inconsequential absent any corroborating documents demonstrating the loan was intended to be personal. Scrutiny of the affidavits reveals just two other references to Mr. Taylor and Mr. Reilly as being personally liable:

1) Reference to unspecified past or future "Obligations" in the SPA; and

2) Corporate resolutions referring to non-specific past or future "indebtedness".

[26] Mr. Taylor was also referred to para. 37 of his affidavit where he states:

> The funds advanced by Ms. Taylor for the Dartmouth Surplus loan were paid in trust to Boyne Clarke, the corporate counsel for Gereco…

Mr. Taylor answered that he was, "just…the signing authority for the company".

[27] Mr. Taylor was shown para. 27 of his affidavit and asked about the discussions he had with his (late) father and Ms. Taylor. He said he could not be sure if Mr. Reilly was involved in any of the discussions with his parents.

[28] During Mr. Taylor's cross-examination he was vigorously challenged with respect to a number of assertions contained in his affidavit; for example, paras. 40, 50 – 55, 59, 63 and 65. Whenever it was put to Mr. Taylor that his version was inaccurate (in contrast to his mother's assertions), he calmly, convincingly held to his position.

[29] Accordingly, in the final analysis, Mr. Taylor's cross-examination evidence did not cause me to question any of his earlier affidavit evidence. Indeed, on the basis of the parties' affidavits (inclusive of exhibits) and their cross-examinations, I find on a balance of probabilities that the $900,000 loan was a company loan made by the Applicant to Gereco.

Evidence of James Taylor

[30] I would add that unchallenged affidavit and out of court cross-examination of James Taylor adds to my finding that $900,000 loan ought to be characterized as a company loan as opposed to a personal share purchase loan. In this regard, Exhibit "A" of James Taylor's affidavit consists of an RBC "Business Banking Transaction Request" for the financing of Gereco. Scrutiny of this document reveals James Taylor's typewritten notes which offer the following:

> Repayment of the principal of this private loan will only commence once the $500M Term Loan has been retired in full which has a 48 month amortization.

Once again, the postponement agreement (signed by Julia Taylor and James Taylor) designates Gereco (and not the individual Respondents) as the "Borrower".

[31] From James Taylor's cross-examination transcript, the following is revealed at p. 10:

> **Q**. Do you see that? And does that mean that the borrower of money from the Royal Bank of Canada was Jericho [sic] Incorporated, from the bank's perspective?
>
> **A**. At the origin of the transaction, our financing was to Jericho [sic] Incorporated.
>
> …

> **MR. DUNBAR:** Sorry, yes. "Borrower Details" and there's a heading "Borrower".
>
> **A.** Yes.
>
> **Q.** And that's Jericho [sic] Incorporated. And so, it's correct, is it not, that Jericho [sic] was borrowing money from the Royal Bank of Canada to purchase shares of Dartmouth Surplus Limited?
>
> **A.** Yes.
>
> [emphasis added]

The May 1, 2010 Share Purchase Agreement (SPA)

[32] Having determined the $900,000 share purchase loan to be a corporate loan, the question remains whether the Applicant's reliance on the SPA can avail her any of the remedies she seeks.

[33] As set out in para. 5 of this decision, the Applicant sought a number of remedies and alternative remedies. The chief remedy sought by the Applicant is a transfer of shares and resignation of directors under the SPA. The SPA states its purpose at Clause (b) of the preamble:

> **WHEREAS**:
>
> …
>
> (b) The Pledgor [Geoffrey Mark Taylor and Patrick Thomas Reilly] has agreed to pledge the Current Shares and other Pledged Collateral as general and continuing collateral security for the Obligations.

[34] The same purpose appears in the main body of the SPA in this clause:

> 2.01 **Pledge of collateral**. As general and continuing collateral security for the due payment and performance of the Obligations, the Pledgor hereby assigns, hypothecates and pledges to and in favour of the Pledgee, and grants to the Pledgee a security interest in, all of the Pledged Collateral.

[35] The term 'Obligations' is defined as follows:

> 1.01 **Defined terms**. In this agreement or any amendment to this agreement, unless context requires otherwise:
>
> (c) "Obligations" means all debts, obligations and liabilities, present or future, direct or indirect, absolute or contingent, matured or no, not or at any time hereafter owing by [Mr. Taylor and Mr. Reilly] to [Ms. Taylor]

[36] Accordingly, the SPA secures past and future debts, obligations and liabilities of Mr. Taylor and Mr. Reilly. The key question relates to what are the secured obligations? Given the earlier reviewed evidence, I am of the view that the obligations do not include personal liability for the $900,000 loan.

[37] All parties agree the share purchase loan is not the subject of a written agreement. Contractual terms must be determined objectively, from the perspective of a reasonable bystander. As Cromwell, J.A. (as he then was) stated in *United Gulf Developments Ltd. v. Iskandar*, 2008 NSCA 71 at para. 82:

> The judge sought, as he should, to determine from the perspective of an objective, reasonable bystander, in light of all the material facts, whether the parties intended to contract and whether the essential terms of that contract could be determined with a reasonable degree of certainty: see G.H.L. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Carswell, 2006) at p. 15…

[38] In my view, a reasonable bystander apprised of all the material facts would not find that Mr. Taylor or Mr. Reilly agreed to be personally liable for the $900,000 loan. In the result, it is my finding that the individual Respondents do not owe any secured "obligations" to the Applicant in relation to the SPA.

[39] Fundamentally, the law of contract requires offer, acceptance, and consideration. Accordingly, for a contract to give rise to personal liability the Applicant must prove on the balance of probabilities that there was an accepted offer including an express or implied term which would make Mr. Taylor and Mr. Reilly personally liable to her for $900,000. Having reviewed all of the evidence, I find that there exist no document containing any such term. Furthermore, there is no evidence of any such conversation or oral agreement. Indeed, Ms. Taylor has testified that she "cannot say" whether she

loaned the money to Mr. Taylor or his company (affidavit of Julia Taylor, para. 19) and her cross-examination did nothing to erase this admission. By contrast, Mr. Taylor was unshaken in his uncontroverted evidence that personal liability was never discussed between the parties, and that the only discussion was that the money would be loaned to the company. In the result, there is no evidence upon which an express term of personal liability could be found in any oral contract between Ms. Taylor and Gereco.

[40] This leaves only an implied term for consideration. Recognition of an implied term of a contract is determined on case-by-case basis, and requires a cautious approach. This was stated by Justice Cory at p. 403 of *G. Ford Homes Ltd. v. Draft Masonry (York) Ltd.* 1983 CanLll 1719 (ONCA), cited with approval in *Omega Formwork Inc. v. Pomerleau Inc*. 2012 NSSC 294:

> When may a term be implied in a contract? A court faced with that question must first take cognizance of some important and time-honoured cautions. For example, the courts will be cautious in their approach to implying terms to contracts. Certainly a court will not rewrite a contract for the parties. As well, no term wilt be implied that is inconsistent with the contract. implied terms are as a rule based upon the presumed intention of the parties and should be founded upon reason. The circumstances and background of the contract, together with its precise terms, should all be carefully regarded before a term is implied. As a result, it is clear that every case must be determined on its own particular facts.

[41] Here, the circumstances and background of the contract show that the loan was made by Ms. Taylor to Gereco so it could complete the purchase the shares of DSL. Once again, I have determined that there was no aspect of the loan or the transaction generally involving personal liability.

[42] By way of conclusion, I feel compelled to address the argument set out in the Applicant's reply brief concerning the burden of proof:

> We do not bear the burden of proving which party or parties owe or owes the debt. However, Geoffrey Taylor bears the burden of proving that the company owes the debt. If the company does not owe the debt, then the postponement agreement could not even by invoked by the company, let alone by Geoffrey Taylor. The evidence simply does not bear out that the money was intended to be lent specifically to the company.

[43] Apart from finding to the contrary regarding the Applicant's submission on the evidence, I am of the view that she indeed bears the burden

of proof. As Roscoe, J. (as she then was) pointed out in *G.M. Kelly Contracting & Landscaping Services Ltd. v. Redden*, 1990 CanLII 4210 (NSSC) at p. 4:

> Whether a person contracts personally or as an agent is a question of fact that must be determined by the intention of the parties and the circumstances surrounding the contract, as indicated in *Wolfe Stevedores (1968) Limited v. Joseph Salter's Sons Limited* (1970), 2 N.S.R. (2d) 269 (C.A.) at page 275:…

[44] Justice Roscoe went on to quote from *Bowstead on Agency*, and approved of the following passage:

> Article 123 of *Bowstead*, supra, p. 390, reads:
>
> 'Where an agent makes a contract which is not reduced to writing, the question whether he contracted personally or solely in his capacity as an agent is a question of fact.' "
>
> And further at page 276:
>
> "The question therefore in this case is, what was the intention of the parties? In determining their intention I accept the words of Brandon, J. in *The Swan*, [1968] 1 Lloyd's Rep. 5 at p. 12 as applicable:
>
> 'The intention for which the Court looks is not the subjective intention of A or of B. Their subjective intentions may differ. The intention for which the Court looks is an objective intention of both parties, based on what two reasonable businessmen making a contract of that nature, in those terms and in those surrounding circumstances, must be taken to have intended?'
>
> The burden of establishing, on the balance of probabilities, that it contracted with the defendant personally rests on the plaintiff. This was established in *Errol B. Hebb & Associates Limited v. Carter* (1983), 58 N.S.R. (2d) 55.
>
> [emphasis added]

[45] *Hebb* is a decision of the Nova Scotia Supreme Court, Appeal Division. At para. 17, MacDonald, J.A. noted:

> I have reviewed the record in detail and in my opinion the respondent did not discharge the burden of establishing that it contracted with Mr. Carter personally. I would go further if it were necessary and find that the weight

> of the evidence supports a finding that it was the limited company and not Mr. Carter who is responsible for the fees of the respondent.

[46] In allowing the appeal, Justice MacDonald made it clear that when it concerns an oral contract, the party alleging that the other party is personally bound bears the burden of proof. In both *Hebb* and *G.M. Kelly* it was the plaintiff (at trial) and here it stands to reason that it is the Applicant in the Application in Court. For the reasons outlined herein, I have found that Ms. Taylor has fallen far short of proving her case.

[47] Given all of the evidence, it is my determination that the Applicant has failed to prove the unwritten loan of $900,000 was a personal loan. Furthermore, she has failed to convince me that the SPA avails her of any of the remedies she seeks.

Conclusion

[48] In all of the circumstances, I find on a balance of probabilities that the $900,000 loan ought to be considered as a corporate debt and not personal to Mr. Taylor or Mr. Reilly. Given the evidence, it is my finding that the debt is presently held by DSL and originally by Gereco. In this regard, it is apparent that the $900,000 was part of the overall purchase price paid by Gereco to purchase DSL. In my view, the evidence overwhelmingly demonstrates that Ms. Taylor took security in Gereco's property and not the property of the individual Respondents. The postponement agreements (initially RBC and later BDBC) buttress the Respondents' case because they clearly demonstrate that this was a company debt and not personal. Furthermore, the SPA in no way can be reasonably interpreted to foist personal liability on either Mr. Taylor or Mr. Reilly.

[49] In the result, I hereby dismiss the entirety of the Applicant's claim with costs to Mr. Taylor. If the Applicant and the Respondent Taylor cannot agree on costs, I will receive written submissions within 30 days of this decision.

Chipman, J.