CITATION: Waddell (Re), 2026 ONSC 387
COURT FILE NO.: BK-24-00208693-OT31
DATE: 20260120

ONTARIO

SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF HUGH WADDELL	*C. Haddon Murray, Grace Li & Carly Rossi*, for the Applicant, Peoples Trust Company *Hugh Waddell*, Self-represented Respondent *Maya Poliak*, for Albert Gelman Inc., in its capacity as Court-Appointed Interim Receiver *Rebecca Kennedy & Derek Harland*, for Deloitte, the Receiver of Velocity Asset and Credit Corporation and 926749 Ontario Ltd. *Demetrios Yiokaris*, for Jill Fraser, Witness

HEARD: December 2, 4, & 5 2025 (Subsequent Written Submissions dated December 14 and 18, 2025)

REASONS FOR JUDGMENT

KIMMEL J.

The Bankruptcy Trial

[1] People's Trust Company (the "Applicant" or "Creditor") asks that Hugh Waddell ("Waddell" or the "Debtor") be adjudged bankrupt, that a Bankruptcy Order be made in respect of his property, assets and undertaking and that Albert Gelman Inc. be appointed to act as trustee (the "Trustee").

[2] The Applicant's claims against Waddell are predicated on his guarantees (the "Guarantees") of the obligations of Velocity Asset and Credit Corporation ("Velocity") and 926749 Ontario Ltd., a.k.a. Clonsilla Auto Sales and Leasing ("926" or "Clonsilla" or the "Dealer"), collectively the "Corporate Debtors". Waddell was a principal of the Corporate Debtors before they went into receivership and Deloitte Restructuring Inc. was appointed as their receiver (the "Corporate Receiver"[1]).

[3] The obligations of the Corporate Debtors arise out of loans they received from Enlightened Funding Corporation ("Enlightened") in May of 2022 (the "Loans") that were assigned, together with all of the supporting security, to the Applicant in December of 2023.

[4] The bankruptcy application (the "Application") was issued on April 4, 2024. The Debtor delivered a Notice Disputing the Application dated April 17, 2024 (the "Notice of Dispute"). This was the trial of the contested bankruptcy application ("Bankruptcy Trial").

[5] Various arguments were raised in opposition to the requested Bankruptcy Order, but the point most strenuously argued at the Bankruptcy Trial from the Notice of Dispute is that the Applicant is fully secured for the debt owed to it by the Corporate Debtors through recourse to their assets and other security, and there should be no deficiency owing that would require recourse to the Guarantees that Waddell provided for the corporate debt. Waddell is critical of the conduct of the Corporate Receiver and contends that, if there is a shortfall, it is because of actions or inactions of the Corporate Receiver in the context of that receivership (the "Corporate Receivership"). Although not an explicit ground of dispute indicated in his Notice of Dispute, Waddell also strenuously argued at the Bankruptcy Trial that the Guarantees are not valid or enforceable because he did not personally sign them and did not authorize the person who did sign them to do so on his behalf.

[1] On May 16, 2024, the Corporate Receiver filed assignments in bankruptcy in respect of the Corporate Debtors and Deloitte Restructuring Inc. was also appointed as trustee in bankruptcy of the Corporate Debtors (the "Corporate Trustee"). For consistency in this endorsement, Deloitte will be referred to throughout as the Corporate Receiver.

[6] After the Notice of Dispute was delivered, the Bankruptcy Trial was scheduled for a one-day hearing on November 4, 2024 by a June 12, 2024 endorsement. By that time, Albert Gelman Inc. had already been appointed Interim Receiver (the "Interim Receiver") over the assets and property of Waddell pursuant to s. 46(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "BIA") by order of this court dated May 3, 2024.

[7] The Bankruptcy Trial was adjourned following case conference attendances on July 7 and 22 and September 11, 2024, due to concerns that Waddell raised about his health. It was eventually rescheduled for two non-consecutive days on December 2 and 4, 2025 as an accommodation to Waddell. The trial could not be completed on the scheduled dates and extended into a third day.

[8] The pre-filed witness affidavits and reports of the Corporate Receiver and Interim Receiver that formed part of the evidence in the Bankruptcy Trial include:

a. Two affidavits of Michael Lombard, sworn April 2 and July 19, 2024;

b. Affidavit of Peter Daniel Tessaro, sworn October 14, 2025;

c. Special Report of the Corporate Receiver, Deloitte Restructuring Inc., dated October 28, 2024;

d. Special Report of the Corporate Receiver, Deloitte Restructuring Inc., dated October 14, 2025 ("Second Special Report");

e. First Report of Interim Receiver, dated October 28, 2024;

f. Second Supplementary Third Report of the Interim Receiver, dated September 10, 2025;

g. Responses to Written Interrogatories of the Corporate Receiver, dated November 3, 2025;

h. Responses to Written Interrogatories of the Interim Receiver, dated November 6, 2025;

i. Two affidavits of Hugh Waddell, sworn April 29, 2024, and September 7, 2025; and

j. Affidavit of Maryanne Jacobs, sworn September 9, 2025 (in the Corporate Receivership proceeding).

[9] In addition to the pre-filed affidavit evidence, seven witnesses appeared to testify at the trial, including the affiants Michael Lombard, Hugh Waddell and Maryanne Jacobs ("Jacobs"). At the request of the court, Jordan Sleeth, the representative of the Corporate Receiver, also testified at the trial. Three further witnesses testified under subpoena:

a. Jill Fraser, partner of Aird & Berlis[2];

b. Adam Mounzer, principal of National Auto Finance; and

c. Helen Zhung, former accounting employee of Enlightened.

[10] 184 exhibits were marked at the trial (including the above referenced pre-filed evidence). Given the volume of the pre-filed evidence, the court confirmed, and the parties agreed, that the court would only consider and have regard to those exhibits referred to during the live testimony of a witness or in the closing submissions of the parties, as reflected in the trial transcripts.

Procedural Orders Made During the Bankruptcy Trial

Production of Aird & Berlis Files

[11] At the outset of the Bankruptcy Trial, an order was made requiring Aird & Berlis to produce unredacted copies of its files (previously produced in redacted form because of concerns about potential privilege). Jill Fraser ("Fraser"), a partner at Aird & Berlis, acted for Velocity and the Dealer on the loan transactions in May of 2022 (the "Loan Transactions") and the subsequent forbearance agreement signed in December of 2023 (the "Forbearance Agreement"). The Corporate Receiver confirmed its agreement to the Aird & Berlis files relating to those transactions and that engagement being produced without redactions.

[12] Fraser testified that she (and Aird & Berlis) also acted for Waddell when he signed the Guarantees and the Forbearance Agreement. Waddell denies that Aird & Berlis acted for him and asserts no privilege over the law firm's files. He indicated that he had no objection to the Aird & Berlis files being produced without redactions.

[13] Aird & Berlis had organized its files and had them ready to produce at the Bankruptcy Trial, but requested a court order before doing so. Since the Corporate Receiver waived privilege for the Corporate Debtors and Waddell did not assert any privilege, the court ordered and directed at the outset of the Bankruptcy Trial that Aird & Berlis produce its files relating to Loan Transactions and the Forbearance Agreement and the related guarantees, so that those files would be available for Fraser to be questioned about when she testified. Aird & Berlis did so, with the exception of one document that contained redactions relating to a different matter over which privilege was not waived.

[2] Ms. Fraser invoked all rights available to her under s. 9 (1) and (2) of the *Evidence Act*, R.S.O. 1990, c. E.23 prior to giving her compelled testimony, upon having asserted her objection on the ground that her answers may tend to establish her liability to a civil proceeding. It is her intention to rely upon this to oppose any future attempt to use or enter into evidence any answer she gave to questions asked of her during her trial testimony in this proceeding.

[14] Various exhibits marked at the Bankruptcy Trial came from the Aird & Berlis files.

Waddell's Adjournment Requests

[15] Waddell twice requested that the Bankruptcy Trial be adjourned after it had started.

[16] The first request was made on the morning of the second day of the trial, shortly after the hearing resumed at 10:00 a.m. on December 4, 2025, without any advance warning being given to the Applicant. Waddell stated that the adjournment was necessary to protect his substantive and procedural rights because there has been no litigation to determine the validity and enforceability of the Guarantees and whether any amounts are owing by the Corporate Debtors to the Applicant. Waddell claimed to have just learned since the end of the day on December 2, 2025, that he was being deprived of the ability to properly defend the Applicant's claims against him under the Guarantees. The premise of his argument was that this Bankruptcy Trial should not be used as a substitute for ordinary litigation to determine his liability under the Guarantees.

[17] The court ruled that the trial should proceed, although it was noted that the request would be taken under advisement and considered again at the end of the trial. Waddell made a further request at the outset of his closing submissions for the trial to be adjourned. The request was denied.

[18] Waddell's responsibility to the Applicant under the Guarantees is precisely what this Application and the Bankruptcy Trial are all about. The BIA contemplates a summary procedure for the determination of issues raised by the Application and Notice of Dispute. However, that summary procedure does not mean that the court will not give due consideration to substantive issues raised in respect of the Guarantees that must be decided for the requested Bankruptcy Order to be made.

[19] This bankruptcy petition has been advanced within the procedural safeguards of an application, in the same manner as many claims (including claims on guarantees) are adjudicated and factual findings are made in the Commercial Court. This Bankruptcy Trial has not, as Waddell argued, been weaponized to avoid ordinary civil scrutiny. That civil scrutiny has been applied by the court in making the required determinations in this case.

[20] Further, the Bankruptcy Trial had already been once adjourned (from the originally scheduled hearing date of November 4, 2024) and then significantly delayed over the course of the following year to accommodate Waddell's health concerns. Waddell has had more than a year to gather the evidence and arguments to defend the claims against him predicated on the Guarantees. Dating back to his Notice of Dispute, Waddell had been asserting that: "The applicant is using the bankruptcy system as a clearing house for debts and has not pursued its account in the ordinary course of business". The arguments raised in support of the mid-trial adjournment request were not based on new issues raised by the Applicant and are not a reason to grant a mid-trial adjournment.

[21] Waddell also referred to a motion that he had served in the Corporate Receivership proceeding the week before the Bankruptcy Trial, seeking production from the Corporate Receiver of essentially all of the books and records of the Corporate Debtors, which he claims he needs to defend himself on the question of whether any debt is actually owing (the "Production Motion"). Waddell himself acknowledges that he had been dealing with the Corporate Receiver about access to corporate records for two years, since December 2023. The Corporate Receiver has a different account of what has transpired regarding access to corporate records and requests for documents, which is set out in its Second Special Report. The motion for production of these corporate records was not before the court to be decided at this Bankruptcy Trial. In fact, as of the date of the trial, the Production Motion had not been scheduled, although the Corporate Receiver indicated that it had offered to have it scheduled before the end of 2025.

[22] As already noted, this issue about production of corporate records is not new. This has been an ongoing issue for years. So too have Waddell's complaints about the conduct of the Corporate Receiver. Yet Waddell waited until the week before this Bankruptcy Trial to serve his Production Motion and then sought to rely upon the need for this motion to be determined, despite having waited years to pursue it, as a basis for requesting an adjournment mid-way through the trial. Although Waddell was self-represented at the Bankruptcy Trial and for a period of time leading up to it, he had counsel representing him when the Notice of Dispute was delivered, and the when the original trial date was scheduled and pre-trial steps were timetabled.

[23] Waddell's failure to raise his concerns about the Bankruptcy Trial proceeding before various other disputes (about the Guarantees and the conduct of the Corporate Receiver said to require the corporate records that are the subject of the Production Motion) have been adjudicated, over the preceding almost eighteen months while the Bankruptcy Trial was scheduled, adjourned, and re-scheduled, were significant factors considered in the exercise of my discretion not to grant Waddell's mid-trial adjournment request.

Summary of Outcome

[24] For the reasons that follow, the bankruptcy application and requested Bankruptcy Order are granted.

[25] Waddell was at the time this application was issued on April 4, 2024, and remains, indebted to the Applicant under the Guarantees for more than $1,000. It is not necessary for the precise amount owing under the Guarantees to be determined, as long as the court is satisfied that the amount was in excess of $1,000, which is the case here. A formal judgment against Waddell for a specified amount owing under the Guarantees is not required for the requested Bankruptcy Order against Waddell to be made.

[26] Further, Waddell had, at the time this Application was commenced, ceased to meet his liabilities as they came due to the Applicant and other creditors to whom he provided his personal guarantees, despite demands having been made of him for payment. Waddell had thus committed an act of bankruptcy. Even if Waddell's obligations to the Applicant are considered in isolation,

the amount claimed by the Applicant is significant and Waddell's conduct with respect to his Florida property in late 2023 and early 2024 that formed the basis of the appointment of the Interim Receiver over his property and assets (described in more detail later in this endorsement) was suspicious and that further reinforces the court's finding that Waddell had committed an act of bankruptcy.

[27] The Applicant does not have other security from Waddell. It noted at the outset of the Bankruptcy Trial that its Notice of Application makes reference, in error, to the estimated value of the other security that it holds, of $8,451,543. That was a reference to the estimated value of the security held in respect of the underlying indebtedness of the Corporate Debtors that the Corporate Receiver is attempting to realize upon in the Corporate Receivership. However, that security is not security for Waddell's indebtedness under the Guarantees (in fact, the Guarantees are themselves part of the security for the indebtedness of the Corporate Debtors). The Applicant has no security from Waddell that it would have to account for, or that it could give up for the benefit of Waddell's other creditors, under s. 43(2) of the BIA.

[28] However, even if the security for the underlying corporate debt is relevant to the determination of this Bankruptcy Trial, the Corporate Receiver estimates that the realizations on that security will be significantly less than the amount of Waddell's indebtedness to the Applicant under the Guarantees. Even accounting for the Assumed Credits representing amounts Waddell says have not been properly accounted for by the Receiver (defined below), a significant deficiency is forecast.

[29] Waddell's assertions of alleged failures and errors of the Corporate Receiver do not warrant a dismissal or stay of the Bankruptcy Application in the circumstances of this case.

[30] Irrespective of the outcome of this contested Bankruptcy Trial, the Interim Receiver will be eventually seeking approval of its reports, activities and fees and the fees of its counsel and for an order discharging it as such (the "Interim Receiver's Discharge Motion"). Its motion was returnable at the same time as the Bankruptcy Trial but was adjourned to a date to be scheduled after this decision has been rendered, since it does not expect to be asking to be discharged until after this decision becomes final.

Previous Orders Appointing Court Officers

[31] The Corporate Receiver was first appointed as receiver over the property of Velocity and certain property of 926 on October 26, 2023. On December 8, 2023, an Amended and Restated Receivership Order (the "ARRO") was made appointing Deloitte as receiver over all of the property, assets, and undertakings of both Corporate Debtors.

[32] Although no factual findings were made at the time, in the court's December 8, 2023, endorsement granting the ARRO to expand the Corporate Receiver's mandate, the court noted concerns that had been identified about the manner in which Waddell had been conducting the business and operations of the Dealer, concluding that:

> [6] I am satisfied that it is just and convenient to grant the ARRO in this case. As noted above, the record raises issues of duplicate funding, irregularities in lease documentation, transfer of Dealer Property following the Receivership Order, and misappropriation of lease proceeds to purchase additional vehicles. The appointment of the Receiver is necessary at this stage to preserve, protect, and ultimately realize on the Property subject to the security of secured creditors. Also as noted above, OMVIC has serious concerns about the harm to consumers from unremitted payments to Canada General Warranty.

[33] When the court granted the Applicant's request for the appointment of the Interim Receiver over Waddell's property on May 3, 2024, in the combined unreported endorsement *Enlightened Funding Corporation v. Velocity Asset and Credit Corporation et. al* / *Waddell Re* (3 May 2024), Toronto, CV-23-00707330-00CL / BK-24-00208693-OT31 (Ont. S.C.), part of the rationale for doing so was due to a concern about him dissipating his assets, having determined that:

> [13] There is evidence that Mr. Waddell attempted to dissipate his assets in the face of these insolvency proceedings. Specifically, on December 21, 2023, weeks after the full receivership was granted over the Debtors, he attempted to retroactively transfer his Florida property to his wife by filing a Corrective Warranty Deed stating that it was to be transferred to his wife and filing a Quit Claim Deed retroactive to February 2016. Those attempts were rejected.
>
> [14] Then, following correspondence from Peoples in January 2024 warning him about transferring his assets and the Florida property in particular, he continued to market the Florida property. Then, days after he received the bankruptcy application and on the eve of the hearing, he sold the property.
>
> [15] Peoples has met both parts of the test set out in *Konopny (Re)*, 2009 CanLII 44412. In light of Mr. Waddell's guarantee of the Debtors' indebtedness to Peoples (Velocity itself owes over $19 million), I am satisfied on a balance of probabilities that Peoples will succeed in obtaining a bankruptcy order against Mr. Waddell. Further, Mr. Waddell's conduct with respect to the Florida property poses a real risk that assets will disappear if a receiver is not appointed.

[34] Waddell's conduct in dealing with both his personal and the Corporate Debtors' assets that was the subject of the court's prior endorsements is noted because it is relied upon by the Applicant in support of certain aspects of the test for the requested Bankruptcy Order. The orders were not appealed or set aside after they were made. Waddell offers various alternative explanations and narratives for his conduct and involvement in the events and circumstances that led to those prior orders.

Alleged Misconduct of the Corporate Receiver and Assumed Credits

[35] Waddell suggests that it is the conduct of the Corporate Receiver, rather than his conduct, that the court should be concerned about. He is critical of the Corporate Receiver for having failed to properly account for and/or pursue certain recoveries for the Corporate Debtors, as well as for alleged accounting and tax errors. He says these would reduce the Applicant's claimed indebtedness from the Corporate Debtors (the "Corporate Indebtedness") by the following amounts (totaling a maximum of $9,375,000), as follows:

a. Improper accounting for an expired-lease receivable of approximately $888,000-$900,000, owed by Enlightened Capital;

b. an approximate $1.4 million HST refund lost due to a failure to file required HST returns;

c. approximately $875,000 in cancelled input tax credits ("ITCs") resulting from the same failure;

d. uncredited payments of $1.195-$2 million from National Auto Finance in 2023; and

e. a lease-runoff portfolio expected to generate $4.2 million over the next 3-4 years (an amount that Waddell asserts is underestimated).

[36] The Corporate Receiver's conduct is not on trial. The court makes no findings about its alleged failures and errors. Many of the activities of the Corporate Receiver that Waddell complains about have been approved by the court when its reports were approved. The Corporate Receiver has indicated that it will rely upon those approvals if need be. However, there is no need to make any further findings about the conduct of the Corporate Receiver to decide the issues in this Bankruptcy Trial. It can proceed on the basis that it will be assumed (for the purposes of this trial only) that these credits (the "Assumed Credits") should be applied in the analysis of whether the requirements for the requested Bankruptcy Order have been satisfied.

[37] Some of the trial evidence was directed at establishing the evidentiary foundation for these Assumed Credits. Since the credits will be assumed, that evidence need not be analyzed and findings need not be made. To the extent that the books and records of the Corporate Debtors that Waddell sought by his eleventh-hour Production Motion might have been relevant to the determination of whether these credits should be applied, there is also no need to review that evidence for the purposes of this trial.

[38] The evidence of the court officers for the purposes of the Bankruptcy Trial is contained in their reports and their answers to written interrogatories that were directed as part of the pre-trial procedure, all of which were marked as exhibits (noted above). Jordan Sleeth was also asked by the court to testify about a particular point of focus at the Bankruptcy Trial that Jacobs and Waddell testified about. This had to do with how the Corporate Receiver was accounting for the Corporate

Debtors' obligations to Enlightened. It also involved the alleged disconnect between those repayment obligations and the obligations of the customers under their individual car leases once they had expired or terminated.

[39] Waddell asserts, and attempted to prove through the evidence he elicited at the Bankruptcy Trial, that the Corporate Receiver was double counting amounts already paid to Enlightened by Velocity, or counting amounts that were not owing, because of the expiry or termination of customer car leases. This accounts for approximately $900,000 that is claimed as part of the current outstanding Corporate Indebtedness. It is part of the Assumed Credits, discussed above.

[40] According to the Corporate Receiver, the run-off of the lease portfolio will not result in over $13 million of realizations, as Waddell baldly asserts. The Sixth Report of the Corporate Receiver includes the Receiver's receipts and disbursements through August 31, 2025. As of that date, it had received $3,996,937 in lease proceeds and $606,814 from the sale of vehicles. It is anticipated that there will be 3-4 years of further collections and the estimated recovery from the run-off of the lease portfolio is approximately $4.2 million (including servicing fees but before estate administration costs).

[41] The Corporate Receiver estimates that the Applicant will suffer a significant shortfall on its debt, in excess of $15 million, and says that it is inaccurate to suggest that there will be sufficient funds to repay the Applicant. This will be so even if the Assumed Credits are applied to reduce the estimated shortfall. However, the record is not sufficient to allow even the Assumed Credits to be determined, if they had to be (which they do not).

[42] Waddell confirmed during his cross-examination that he had not asked the Corporate Receiver if he could take over the pursuit of the ITC's or HST refunds or other claims that he is critical of the Corporate Receiver for not pursuing or following up on. Waddell himself acknowledged during cross-examination that unless these pursuits could push the Corporate Debtors into a credit position with the Applicant, it would not be worth his while to invest in and pursue these claims if the proceeds will just go into the estates of the Corporate Debtors. Mathematically speaking, the Assumed Credits will not put the Corporate Debtors into a credit position.[3]

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[3] While not directly relevant to the issues to be decided on this motion, I note that, if Waddell is adjudged bankrupt, it will be up to his Trustee to decide if there are claims worth taking over and pursuing against third parties, or claims worth pursuing against the Corporate Receiver, to offset Waddell's liability under the Guarantees, or if his Trustee decides not to pursue those claims, for Waddell to exercise the remedies available to him in respect of those claims: see BIA, s. 30(1)(d) and *Esfahani v. Samimi*, 2017 ONSC 7167, 56 C.B.R. (6th) 164, at para. 17.

Analysis

[43] This Bankruptcy Application was filed in Toronto on April 2, 2024 and the Notice of Dispute filed on April 17, 2024 by Waddell's then counsel of record raised.

[44] The Applicant must satisfy the court that the requirements of s. 43 of the BIA have been met for Waddell to be declared a bankrupt. To do so, the bankruptcy application must allege and demonstrate that:

a. the debt owing to the applicant creditor amounts to at least one thousand dollars; and

b. the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

[45] Pursuant to s. 42(1)(j) of the BIA, a debtor commits an act of bankruptcy if he ceases to meet his liabilities generally as they become due. A debtor also commits an act of bankruptcy if he transfers property that amounts to a fraudulent preference (s. 42(1)(c)) or assigns, removes, secretes or disposes of his property (or attempts to do these) with intent to defraud, defeat or delay his creditors or any of them (s. 42(1)(g)).

[46] If the Applicant meets its onus, the court must then consider whether it should exercise its discretion not to grant the requested bankruptcy order. Section 43(7) provides that:

> If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[47] The court may also consider, if asked, whether it would be appropriate, for any reason, to stay the bankruptcy application under s. 43(11), on such terms as it considers just.

Issues to be Decided

[48] The requirements of the BIA for granting a bankruptcy order, and the issues raised by the Notice of Application and Waddell's Notice of Dispute, give rise to the following issues to be decided:

a. Does Waddell owe the Applicant at least $1,000?

   i. Are the Guarantees valid and enforceable?

   ii. Is Waddell liable under the Guarantees even if the final amount owing to the Applicant by the Corporate Debtors is not yet known, in other words, can the debt owing by Waddell be ascertained?

b. Did Waddell commit an act of bankruptcy in the six months preceding April 4, 2024?

c. Is there a reason for the court to exercise its discretion not to grant the bankruptcy order or to stay the bankruptcy Application?

a. Does Waddell Owe the Applicant at Least $1000?

i. *Are the Guarantees valid and enforceable*?

[49] Waddell's debt to the Applicant arises under the Guarantees, both dated May 26, 2022. Both Guarantees provide that payment is due on demand and both specify that there is no requirement to first exhaust recourse against either of the Corporate Debtors or their other guarantors or security. The Guarantees are stated to be absolute, unconditional and continuing Guarantees, unaffected by defences or set-offs and they specify that amounts may be recovered from Waddell as principal debtor, not only as guarantor.

[50] Although the validity of the Guarantees was not part of Waddell's Notice of Dispute, he was permitted to advance this argument at the Bankruptcy Trial, over the Applicant's objection. A significant proportion of the evidence and argument at the Bankruptcy Trial ended up being directed to this "new" issue.

[51] The chronology of the origin of the Corporate Indebtedness and demands made under the Credit Agreement and the Guarantees is as follows:

a. Enlightened entered into a credit agreement dated May 26, 2022, with Velocity (the "Credit Agreement"), pursuant to which Enlightened agreed to provide, among other things, a Revolving Facility up to an aggregate principal amount of $20,000,000 (the "Revolving Facility").

b. In order to fund advances of the Revolving Facility in accordance with the Credit Agreement, Enlightened entered into a warehouse line of credit agreement made as of May 26, 2022, with the Applicant, Peoples Trust Company of Canada, (as amended and restated pursuant to the terms of an amended and restated warehouse facility line of credit agreement effective July 1, 2022).

c. Pursuant to a May 26, 2022, agreement (the "Dealer Guarantee"), the Dealer unconditionally guaranteed to Enlightened the payment of a portion of the obligations owing under the Credit Agreement. In the event of Enlightened's demand for repayment, the Dealer Guarantee provided for the payment of a Dealer Allocated Amount (as defined in the Dealer Guarantee) equivalent to the value of the Leases held by the Dealer. Prior to being put into receivership, the Dealer was the registered owner of approximately 680 vehicle leases and leased vehicles (the "Leases").

d. As general and continuing security for the payment and performance of Velocity's obligations under the Credit Agreement, Enlightened was granted various security by Velocity (the "Velocity Security") and the Dealer (the "Dealer Security" collectively and together with the Credit Agreement and Dealer Guarantee, the "Loan Documents").

e. Waddell's two Guarantees were included in the Loan Documents as part of the security package for the Credit Agreement.

f. The Dealer had also granted security interests to other creditors in its property.

g. Velocity defaulted on the Credit Agreement, including by failing to pay the Corporate Indebtedness when the Velocity loan matured. On May 29, 2023, demand letters and notices of intention to enforce security were sent on behalf of Enlightened to Velocity and similar demands and notices were also later sent to the Dealer.

h. At the request of Velocity, on May 30, 2023, Enlightened, the Dealer, Velocity, and Mr. Waddell, among others, entered into an acknowledgment and agreement (the "Emergency Draw Agreement") to extend to Velocity additional funds (collectively, the "Emergency Draw"). Under the terms of this Emergency Draw Agreement, Mr. Waddell and the Dealer agreed that the amounts advanced in connection with the Emergency Draws were to be added to the indebtedness of the Corporate Debtors. A second Emergency Draw Agreement was entered into on similar terms on June 28, 2023.

i. At the request of Velocity, on July 11, 2023, Velocity, the Dealer, Enlightened and Mr. Waddell entered into a forbearance, accommodation and transition agreement (the "Forbearance Agreement"). Pursuant to the Forbearance Agreement, Enlightened agreed to refrain from enforcing its rights and remedies under the Loan Documents and various guarantees until January 11, 2024, contingent on Velocity, the Dealer and Mr. Waddell, among other things: (i) delivering certain additional security; (ii) complying with certain additional reporting requirements; and (iii) making all payments to the Lender contemplated under the Credit Agreement.

j. The contingencies specified in the Forbearance Agreement were not satisfied.

k. As of October 6, 2023, when the original receivership application was initiated against the Corporate Debtors, the total Corporate Indebtedness owing under the Credit Agreement was $19,406,788.71 (excluding accruing fees, expenses and costs).

l. On December 8, 2023, the Applicant took assignment of all the debt and security of Enlightened in connection with loans made to Velocity, including the Guarantees.

m. On January 18, 2024, the Applicant's counsel delivered a demand letter to Mr. Waddell (the "Demand Letter"). The Demand Letter raised concerns about, among other things, possible fraudulent conveyances.

n. This Application was initiated in April of 2024.

o. For reasons indicated in the accompanying endorsement (referred to above), the Interim Receiver was appointed in May of 2024, pending the determination of this Application.

[52] The Guarantees are both dated May 26, 2022. The Notice of Application refers to a debt owing by Waddell to the Applicant of $10,000,000 as at April 2, 2024. This is the capped amount of Waddell's guarantee of Velocity's indebtedness. For simplicity, the court's analysis will focus on this portion of Waddell's Indebtedness.

[53] Waddell asserted at the Bankruptcy Trial that the signatures appearing above his name on the Guarantees were not placed there by him. His position now, as summarized in the factum he delivered on November 27, 2025 (at para. 14), is that:

> 14. The Respondent never received the guarantee, never saw it attached to any email, was never told that he personally was being bound, and never authorized anyone — including [Hollinsworth Auguste] or Ms. Jacobs — to bind him personally.

[54] The evidence of Waddell and Jacobs at the Bankruptcy Trial was that Jacobs had signed the Guarantees on Waddell's behalf, but she was not authorized to do so. They both testified that Waddell routinely authorized Jacobs to sign documents relating to the business on his behalf, but not personal documents. Waddell was a signing officer and Jacobs, as an employee of the business, would from time to time be delegated the authority to sign for Waddell. The Guarantees were being signed by Waddell in his personal capacity but because they were provided together with other corporate documents, Jacobs says she did not realize they were documents creating personal liability for Waddell and she signed them in error, on the understanding that they were corporate documents that she had the authority to sign. Waddell essentially said the same thing.

[55] The Corporate Receiver investigated these (and the other allegations regarding the Assumed Credits) based on available corporate records. The outcome of that investigation is described in its Second Special Report and summarized as follows:

a. On April 22, 2022 at 7:23 A.M., Waddell emailed Jacobs and stated that "I am having all the docs sent to you which I need printed signed. Witnessed by anybody. and returned to [Hollinsworth Auguste]. Don't identify the witness just have them put a signature there."

b. Hollinsworth Auguste ("Auguste"), one of the directors and officers of Velocity, emailed Jacobs, copying Waddell, asking Jacobs to have Waddell sign the Clonsilla

[Dealer] Guarantee. Auguste attached the signature page to the Clonsilla Guarantee to the email.

c. Auguste emailed Jacobs, copying Waddell, asking Jacobs to have Waddell sign the Velocity Guarantee and return the signed Velocity Guarantee to Auguste. Auguste attached the signature page to the Velocity Guarantee to the email.

d. On April 22, 2022, at 4:56 P.M., Jacobs received separate emails from Clonsilla's office printer attaching scanned copies of the Clonsilla Guarantee and the Velocity Guarantee with Waddell's signature applied.

e. On April 22, 2022, at 5:11 P.M., Jacobs forwarded the two emails received by Jacobs at 4:56 P.M. referred to in the above paragraph to Waddell and Auguste, which included the attached signed copies of the Clonsilla Guarantee and the Velocity Guarantee.

f. On June 28, 2023, Waddell emailed to Enlightened a copy of an acknowledgment contained in the Emergency Draw Agreement that he signed in his personal capacity and in which he is defined as one of the Guarantors (together with two dealers), all of whom acknowledged that the emergency draw request for further credit would be added to the then existing indebtedness of Velocity. Waddell had signed an earlier document containing the same acknowledgment in exchange for emergency funding, dated May 30, 2025.

g. In the context of discussions with counsel at Aird & Berlis about the additional security that was being sought by Enlightened as part of the Forbearance Agreement, Waddell said in a September 4, 2023, email: "In the meantime they have a 10,000,000 personal guarantee which is a s [*sic*] valid as it ever was."

h. On July 11, 2023, Waddell signed the Forbearance Agreement, which acknowledges the indebtedness owed by Velocity of $19.5 million as of that date and affirms the existence of Waddell's Guarantees.

[56] These are recorded instances directly involving Waddell in which the existence of the Guarantees is acknowledged. Furthermore, in the Notice of Dispute filed on Waddell's behalf by his counsel at the time, the $10 million Guarantee of Velocity's indebtedness was acknowledged in paragraph 4, which reads as follows:

> The applicant's predecessor initiated a court-appointed receivership of companies *for which the respondent undertook to guarantee up to $10 million.* The court-appointed receivership is in progress and has not made any distributions to creditors leaving the applicant with an unknown debt receivable from the respondent. [Emphasis added.]

[57] The requirement for personal Guarantees from Waddell was not a last-minute addition or inclusion in the Loan Documents. The original term sheet for the Revolving Loan, signed by Waddell, explicitly contemplated that personal guarantees would be required, in a section initialed by Waddell, that provided as follows:

> Personal Guarantee of Dealers limited to the credit limit of their respective facility provided by Velocity. In addition to the personal guarantee by Hugh Waddell on the credit limit of his dealership on the Velocity facility limit, we will require Hugh Waddell to provide an additional $10,000,000 personal guarantee on a joint and several basis. Subject to satisfactory performance of the facility as determined by the Lender, the personal guarantee will be reduced by $2,500,000 on the first and second anniversary of renewal respectively.

[58] Waddell asserted during closing submissions that his understanding was that the Guarantees would only be required if the credit increased over time. This asserted understanding is not reflected anywhere in any of the documents or evidence.

[59] Waddell seeks, unpersuasively, to explain away the written acknowledgments of the Guarantees. For example, he testified that:

a. He was sick when his lawyer filed the Notice of Dispute and the lawyer just assumed the Guarantees were validly executed because they were attached to the Affidavit of Verification dated April 2, 2025, and filed in support of this bankruptcy Application.

b. When the Forbearance Agreement was signed, Mr. Glavey from Enlightened told him there were Guarantees which he did not question at the time. He says that the contingencies in this agreement requiring a mortgage on his personal property and the assignment of life insurance as additional security were not things that he realistically expected to be able to deliver upon, but he signed the document anyhow because they needed the money for the business. He says it was in that context that he made the comment in the September 4, 2023, email to Aird & Berlis that Enlightened already had obtained a $10,000,000 guarantee from him.

c. He claims the Forbearance Agreement was signed under duress and pressure because, at the time, Enlightened was owed $19 million by the Corporate Debtors which, even if offset by the $900,000 Waddell claimed Enlightened owed them, still put them under a lot of pressure to work something out.

d. He acknowledges that this agreement and the two Emergency Draw Agreements all contain his authorized signature and that they were relied upon by the Corporate Debtors and him in his corporate capacity to obtain additional needed funding for the business. He says that he personally signed the Emergency Draw Agreements

but did not realize at the time that they were referring to his personal Guarantees and he signed those agreements in his corporate capacity in order to obtain required funds for the business operations.

e. He forgot that there was a requirement for personal Guarantees from him contained in the original term sheet for the Loan because it dated back to 2021.

[60] The Guarantees were always contemplated, starting with the original term sheet for the Loan in August of 2021. They were included in the material that Auguste forwarded to Waddell and that Waddell forwarded to Jacobs and instructed her to sign in the spring of 2022. Waddell was copied on the emails that referred to his signed Guarantees, including the emails with the signed Guarantee pages that Jacobs sent back to Auguste to forward to the lawyers who were dealing with the Enlightened's counsel in connection with the Loan Transaction. In his September 4, 2023, email copied to Fraser, and later in the Forbearance Agreement and Emergency Draw Agreements that preceded it, the existence of the Guarantees was affirmed.

[61] Waddell is now saying that he did not realize that the Guarantees were among the documents that were signed by Jacobs and that she was not authorized to sign them because they were "personal" and that they are therefore not valid or enforceable. The purported distinction between personal and business documents is blurred in this case – these were personal Guarantees of corporate obligations.

[62] Waddell did not testify that if he had realized Jacobs had signed the Guarantees for him he would have instructed that they not be delivered and that the Loan Transaction not be completed, nor did he testify that he would not have signed the Guarantees himself. Waddell was distracted and busy and needed funding for his business. He did not review the documents that were forwarded to Jacobs, which he authorized and instructed her to sign on his behalf, and he did not review the documents she signed and sent back (copied to him) to be used in connection with the Loan Transaction.

[63] Waddell was either wifully blind or careless in his review of the documents that he authorized Jacobs to sign. According to Waddell, he mistakenly authorized Jacobs to sign the Guarantees because he did not realize that they were among the corporate Loan Documents that he did expressly authorize her to sign on his behalf. I am not aware of, and have not been directed to, any legal theory upon which this fact pattern of carelessness or wilful blindness would invalidate the Guarantees vis-à-vis the Creditor who received and relied upon them.

[64] McCarthur J. wrote in *Equitable Bank v. Bal*, 2025 ONSC 7130, at para. 15: " The Supreme Court of Canada made it clear more than 40 years ago that a person who executes a document without taking the trouble to read it is liable on it and cannot plead that they mistook its content", relying upon *Marvco Colour Research Ltd. v. Harris*, [1982] 2 S.C.R. 774, at pgs. 185-187. A failure to exercise reasonable care in signing the agreement will render the defence of *non est factum* unavailable.

[65] The lender was entirely uninvolved in this alleged "mistake". As the Supreme Court of Canada observed in *Marvco* (at p. 785): "As between an innocent party (the appellant) and the respondents, the law must take into account the fact that the appellant was completely innocent of any negligence, carelessness or wrongdoing". Further (at p. 786):

> This principle of law is based not only upon the principle of placing the loss on the person guilty of carelessness, but also upon a recognition of the need for certainty and security in commerce. This has been recognized since the earliest days of the plea of *non est factum*. In *Waberley v. Cockerel* (1542), 1 Dy. 51. a.

[66] Jacobs signed exactly the documents that were forwarded to her and that Waddell authorized her to sign, and the Guarantees were among those documents. Someone who has authority to sign a guarantee can bind the guarantor under s. 4 of the *Statute of Frauds*, R.S.O. 1990, c. S.19, which reads as follows:

> No action shall be brought to charge any executor or administrator upon any special promise to answer damages out of the executor's or administrator's own estate, or to charge any person upon any special promise to answer for the debt, default or miscarriage of any other person, or to charge any person upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which the action is brought, or some memorandum or note thereof is in writing and signed by the party to be charged therewith or some person thereunto lawfully authorized by the party. [Emphasis added.]

[67] In *Web Objective Inc. v. Stramacchia*, 2022 ONSC 727, at paras. 51-53, the court upheld a guarantee that had been signed by person's alleged to have "forged" the guarantor's signature in circumstances where the court concluded that "they did so with his express authorization, implicit consent, or willful blindness": at para. 52. Here, Waddell is not even alleging that Jacobs or anyone else committed a forgery or fraud when she signed the Guarantees for him.

[68] Waddell provided a factum before the Bankruptcy Trial that contained a section titled "Part IV – Law & Analysis" and a section titled "Part V – Authorities" which included a list of 16 cases cited for various propositions, but provided no citations or hyperlinks. At the conclusion of the Bankruptcy Trial, Waddell was given the opportunity to update Part V of his factum to properly cite the authorities that he had referenced and to provide hyperlinks or copies of the authorities for the court's consideration. The court expressed concern at the time that the cases referred to might have been the product of AI-generated legal research and wanted to give Waddell the opportunity to provide proper cites or explain why they were not available.

[69] Waddell was not able to meet the original deadline for doing this, but did eventually re-submit his factum with a revised Part IV titled "Law and Analysis" citing five cases, only one of which was referred to in the original factum, and all of which relate to the contention that Waddell's Guarantees are invalid. The Applicant objected to Waddell's new submissions which

were not what the court had directed, but also responded to those submissions as the court invited it to do.

[70] I have considered the authorities provided by Waddell in his post-trial updated factum, and I agree with the Applicant that they do not assist him, including for the following reasons:

a. ***Toronto-Dominion Bank v 1538646 Ontario Inc.*, 2009 CanLII 28651 (Ont. S.C.),** is a *non-est-factum* guarantee case on a summary judgment motion, in which that defence was held to give rise to a genuine issue for trial on the question of whether ILA was required and, if so, had been provided where the guarantor claimed not to have understood what she was signing and to have been misled by the bank. Perell J. held, at para. 20, that "[a]lthough independent legal advice is not a prerequisite to an enforceable guarantee, as a factual matter, the absence of independent advice might be a genuine issue for trial if there is a plea of *non est factum*, unconscionability, fraud, misrepresentation, mistake, or undue influence". Given the ILA certificate was ambiguous, "there is a whiff of these defences" and therefore a trial was directed at that issue". Unlike in that case, Waddell was intimately familiar with the debt he was being asked to guarantee for the Corporate Debtors and the requirement for his personal Guarantees had been made clear from the outset, they were provided and sent to Jacobs with all of the other Loan Documents, Waddell authorized her to sign all of the Loan Documents, and he was copied on what she signed and forwarded on to be used in the Loan Transaction. He just did not bother to read them. As noted earlier in this endorsement, carelessness can be fatal to a *non-est factum* argument: see at *Marvco*, at p. 785; see also *Gold Leaf Products Ltd. v. Pioneer Flower Farms Ltd.*, 2015 ONCA 365, at para. 8, citing Marvco.

b. ***Royal Bank of Canada v. Jones*, 2009 CanLII 35721 (Ont. S.C.),** is a case regarding how ambiguities found in the words of a guarantee may be dealt with. In that decision, the guarantees were found to be clear and unambiguous: at para. 2. No ambiguities are alleged in this case. The terms of the Guarantees in this case are clear on their face and not in dispute.

c. ***North Ladysmith Building v. Garner and Chapman*, 2000 BCPC 153,** is a case dealing with whether a valid and binding lease agreement had been reached, as well as several other issues, including if the principal's defendant had provided his signature as a personal guarantor. Saunders J. held that no lease was proven: at para. 28. Further, it was held that in the unsigned draft lease, there was no provision for the principal, Mr. Garner, to be a personal guarantee. Accordingly, there was insufficient evidence to find he intended to be a personal guarantee when he initialed a change to add his name to the unsigned lease, and there was not a clear distinction about whether Mr. Garner was signing as the corporate defendant or as an individual when he initialed (see at para. 29). There is no lack of evidence in this case. The Guarantees were not buried or hidden inside a larger document, they were

requested specifically and singled out from the other documents that Waddell was required to sign and they were signed as separate and distinct documents.

d. ***1175777 Ontario Limited v Magna International Inc.*, 2006 CanLII 39907 (Ont. S.C.), aff'd 2008 ONCA 406,** is a case about parties who failed to conclude an agreement regarding an industrial lease. The underlying letter at issue in the case was found to be too uncertain to form an offer, which remained not accepted: at para. 5. In the analysis, the court held that the individual who signed on behalf of one of two parties did not have the actual authority, nor should the plaintiff have thought he had ostensible authority based on prior dealings with the company: see e.g. paras. 188-89, 197. In contrast this is a case about actual authority. In this case Jacobs was not held out to Enlightened as having authority to sign on behalf of Waddell; Enlightened did not know that Jacobs had signed for Waddell. Waddell directed Jacobs to sign the documents being sent by Auguste, which included the Guarantees. Further, it is uncontroversial that Waddell's direction (although not expressly stated) was that Jacobs sign *his* name, as opposed to indicating that she was signing the document on his behalf.

e. ***Duca Community Credit Union Ltd v Fulco Automotive Ltd.*, 1994 CarswellOnt 2202 (Div. Ct.),** is another summary judgment decision about whether ILA is required for a spouse claiming unconscionability with respect to a corporate guarantee, who was later found at trial and on appeal to "have had a sophisticated business understanding of the transaction, that she understood that she was signing a mortgage, and understood the liability she undertook by signing it": see *Duca Community Credit Union Ltd. v. Fulco Automotive Ltd.*, 2002 CarswellOnt 5350 (Ont. S.C.), aff'd 2003 CarswellOnt 2315 (Ont. C.A.). In this case, Waddell's wife was not herself ever asked to sign a guarantee or directly encumber any of her property, and the observations of the trial court in *Duca* apply equally to Waddell.

[71] Waddell devoted considerable attention at trial to his assertion that neither he nor his wife received independent legal advice (ILA) before he signed the Guarantees and that they are not enforceable as a result. The cases he cites for this, *1538646 Ontario* and *Duca,* do not support his contention, for the reasons summarized in the case discussions above. Waddell's position is predicated on an erroneous premise that he required ILA and did not receive it. It is correct that he did not receive ILA, but his assertion that he required ILA for his Guarantees to be valid is not legally or factually supported.

[72] Waddell acknowledges that Auguste had been delegated the responsibility for dealing with the Loan transaction with Enlightened, including dealing with Fraser and Aird & Berlis, the lawyers for the borrowers. Waddell acknowledges that he did have some interactions with Fraser about the Loan Transaction and related documents. However, Waddell insists that Fraser and Aird & Berlis were not acting for him personally in connection with the Guarantees and asserts that no one recommended that he or his spouse seek ILA about the Guarantees before they were signed.

[73] Fraser testified that she considered Waddell her client for purposes of the Guarantees and later the Forbearance Agreement, as well as the other documents that Waddell signed or authorized Jacobs to sign. She primarily dealt with Auguste on the transaction, so the documents requiring Waddell's signature were transmitted through August to Waddell and returned to her by August once signed. She did have some direct dealings with Waddell on particular issues that came up. No questions were raised by Waddell or discussed regarding the Guarantees.

[74] Fraser explained during her testimony that ILA for Waddell was not requested by Enlightened. Waddell was not an uninvolved party who required ILA before signing the Guarantees, given Waddell's role as a shareholder, director and officer of the Corporate Debtors whose debts he was guaranteeing, and given his direct involvement in the business and in the Loan Transaction. Nor was ILA required for his spouse since she was not being asked to sign a guarantee or provide security over her assets for the Loan.

[75] Fraser could not provide ILA to Waddell because she also acted for the Corporate Debtors, but that lack of ILA does not vitiate the Guarantees. Waddell objectively knew (having signed and initialed the term sheet) that it was a condition of this Loan that he provide his personal Guarantees. Waddell acknowledged during his cross-examination that he had given guarantees for corporate debts in the past and was aware generally about what a guarantee is.

[76] ILA is not a legal requirement for a guarantee to be valid (see *1538646 Ontario*, at para. 20). It is a safety precaution that some lenders require to avoid disputes later if the guarantor attempts to disavow the guarantee on grounds such as *non-est factum*, claiming not to have understood the nature and legal implications of having signed a guarantee. That is not this case. Waddell is not claiming that he did not understand what a guarantee is (e.g., the case of *1538646 Ontario Inc*. referenced in Waddell's updated factum that is discussed above).

[77] Fraser gave some evidence about verifying Waddell's signature on the various Loan Documents that required his signature by using a corporate certificate of incumbency with corporate officer signatures that had been provided. Waddell testified that the signature on the certificate of incumbency was not his. Jacobs was not asked specifically whether this was one among the many corporate documents she was authorized to sign for Waddell. Since there is no question that Jacobs signed the Guarantees and the other Loan Documents for Waddell, and they are not alleged by Waddell to be forgeries, the process and utility of signature verifications against the certificate of incumbency undertaken by Aird & Berlis does not need to be resolved for purposes of the issues to be decided in this case.

[78] Having regard to the totality of the evidence and the applicable legal principles, I find Waddell's Guarantees to be valid and enforceable.

ii. *Can the debt owing by Waddell be ascertained?*

[79] Following acknowledged defaults under the Loan Documents, the January 18, 2024 Demand Letter sent to Waddell specified the amount of his Indebtedness under his Guarantees to

be $20,826,966.72 (the "Indebtedness") as of that date based on the attached statement of indebtedness (of the Corporate Debtors). Under the terms of the Guarantees, that amount was owing by Waddell, without any obligation on the part of the Creditor to first seek repayment from the Corporate Debtors. The clear contractual terms (of the Guarantees) were part of what the Creditor bargained for.[4]

[80] Waddell counters that, until the final amount owing to the Applicant by the Corporate Debtors is known (which will not be until after the corporate receivership/bankruptcy proceedings have fully run their course), the debt owing by Waddell under the Guarantees cannot be ascertained and the Applicant thus cannot demonstrate that he owes it more than $1,000.

[81] This assertion is predicated on future recoveries and contingencies that do not need to be determined under the express terms of the Guarantees, which provide that they are due forthwith upon demand and do not require the Applicant to first exhaust recourse against the Corporate Debtors and their secured assets. In the bankruptcy context, contingent and unliquidated claims can be, and are, proven and valued (see ss. 121 and 135 of the *BIA*).

[82] The court in *Beach (Re)*, 2022 ONSC 6474, 4 C.B.R. (7th) 168 considered similar assertions to Waddell's contention that it has not been demonstrated that he owes more than $1,000 to the Applicant because the precise amount payable is not known, and disposed of them as follows:

> [25] A debt is a sum payable in respect of a liquidated demand, recoverable by action: *Diewold v. Diewold*. Section 43(1)(a) of the *BIA* requires only that a debt be "owing" and not that it be "payable" as at the date of the petition: *Zeller, Re*, at para. 28, citing Ground J. in *484030 Ontario Ltd. (Re)*.
>
> [26] So long as it is proved that the debtor is indebted to the applicant creditor for at least $1,000, it is unnecessary for the court to determine the exact amount owing to the applicant creditor: *Relectra Limited, Re*.
>
> [Footnotes omitted.]

[4] Although not specifically referenced by the parties, it is well established that the unambiguous and clear contractual terms of guarantees are regularly recognized and given effect by this court: See, for example, *Bank of Montreal v. 9310088 Canada Inc*., 2024 ONSC 2191, at paras. 37-43; *Toronto-Dominion Bank v. Konga*, 2016 ONCA 976, 44 C.B.R. (6th) 189, at paras. 23-24, leave to appeal to S.C.C. refused, 37481 (June 8, 2017).

[83] By the contractual terms of the Guarantees, Waddell "owed" the Indebtedness to the Applicant upon demand having been made, independent of whatever may be realized through the receivership/bankruptcy of the Corporate Debtors.

[84] Furthermore, and even though not required to be demonstrated under the terms of the Guarantees, based on the evidence of the Corporate Receiver there is a high probability that the Corporate Indebtedness will not have been fully repaid from the realizations in the estates of the Corporate Debtors and that more than $1,000 will be owing by Waddell to the Applicant. As of the date of the Bankruptcy Trial, accounting for all recoveries and anticipated recoveries, the Corporate Receiver was still estimating a deficiency in the recoveries from Velocity and the Dealer. While the Applicant must account for recoveries from other security, that does not mean that the amount owing under the terms of the Guarantee was not a liquidated sum once a demand was made.

[85] Waddell further asserts that the debt owing by the Dealer at the time of the Receivership was significantly less than what was indicated and could have been extinguished through various tax and accounting steps that the Receiver did not pursue. He accuses the Corporate Receiver of improper accounting and suggests that it created liabilities and has made accounting errors that fundamentally undermine the reliability of the claimed Corporate Indebtedness.

[86] These accusations against the Corporate Receiver have persisted for over two years without being substantiated and were raised by Waddell in support of the Production Motion that Waddell brought the week before this Bankruptcy Trial was scheduled to begin. As noted earlier, the conduct of the Corporate Receiver is not on trial here. Waddell's persistent but unproven allegations against the Corporate Receiver do not displace the claimed Indebtedness of at least $1,000 that the Applicant has proven.

[87] Waddell's assertion that the alleged misconduct of the Corporate Receiver has caused or contributed to the deficiency in its recoveries does not relieve Waddell of his *prima facie* contractual responsibility under the Guarantees for the Indebtedness owing as of the date of the Demand Letter, plus interest, expenses and costs continuing to accrue. Even if Waddell has other defences and claims set-offs vis-à-vis the Corporate Debtors and/or the Corporate Receiver, those do not alter his legal position vis-à-vis the Applicant under the Guarantees.

[88] In any event, even if Waddell had proven the allegations and resulting accounting adjustments (for the Assumed Credits) that would not have changed the outcome of this Bankruptcy Trial since, even adjusting for the Assumed Credits (reflecting the various examples of failures and errors by the Corporate Receiver), the Corporate Indebtedness (as guaranteed by Waddell) would still be significantly more than $1,000 at the time of the Bankruptcy Application.

[89] In summary, even if the Corporate Indebtedness is reduced by realizations that have occurred and by estimated proceeds of realization to come, and even accounting for the Assumed Credits, as of April 4, 2024 (and continuing as of the time of this Bankruptcy Trial), there was as

of the date of this Application, and remains, more than $1,000 owing under by Waddell under the Guarantees.

[90] I find that Waddell owed at the time of the commencement of this Application, and still owed at the time of the Bankruptcy Trial, more than $1,000 to the Applicant. Waddell is liable under the Guarantees, even if the final amount owing to the Applicant by the Corporate Debtors is not yet known.

b. Did Waddell Commit an Act of Bankruptcy?

[91] This bankruptcy Application was filed on April 4, 2024. In the six months prior to then, Waddell had ceased to pay his debts as they came due (s. 42(j) of the BIA), in that:

a. He did not make any payments to the Applicant in response to its demands for payment under the Guarantee, starting with the Demand Letter sent on January 18, 2024.

b. He did not make payments to other creditors of the Corporate Debtors who had demanded payment from him on personal guarantees he had provided for the Dealer's obligations to them.

[92] The Corporate Receiver's Second Special Report provides evidence from the corporate records of demands that had been received from three creditors for payments owing by the Dealer that had been personally guaranteed by Waddell, as follows:

a. A motion brought by AutoLoans 4 You in the Corporate Receivership proceeding predicated upon amounts claimed to be owing by the Dealer and its former principal, Waddell, of over $800,000 (*Enlightened Funding Corp. v. Velocity Asset and Credit Corporation*, 2024 ONSC 4003, e.g., at para. 11 (c)) and the evidence filed in support of that motion, which I heard and decided;

b. A December 11, 2023, email from counsel to 9859870 Canada Inc. ("Canacap") to Waddell's corporate email address attaching a notice of intention to enforce security against the Dealer as a result of the Dealer's default. The amount of the indebtedness was stated to be $61,498.66. The email also advised that Waddell was liable for the debt in his capacity as a personal guarantor of the Dealer's obligations to Canacap.

c. An October 31, 2023, email from 2M7 Financial Solutions ("2M7") to Waddell's corporate email address advising that the Dealer had breached its contractual obligations and was indebted to 2M7 and litigation would be commencing shortly against both the Dealer and Waddell in his capacity as a personal guarantor of the Dealer's obligations to 2M7.

[93] The Applicant attempted during the cross-examination of Waddell to introduce evidence at the Bankruptcy Trial of a further demand confirmed in a recently issued statement of claim by

another creditor, Beacon Portfolio Servicing Inc, Beacon Trust and others. Waddell testified that he was unaware of this claim, and it was not admitted into evidence.

[94] Waddell claims not to have had access to his corporate email account and to not have been aware of the various demands by other creditors against him personally when they were made. While he is on the service list in the Corporate Receivership proceedings, he claimed not to have paid attention to the Corporate Receiver's reports or the court's decisions in that proceeding that reference claims against him personally of amounts claimed to be owing by these other creditors. He testified that he has just become aware of a default judgment against him in favour of AutoLoans 4 You that he intends to move to set aside. At the very least, based on the information about these other demands against Waddell personally contained in the reports of the Corporate Receiver, Waddell had to have either known or been wilfully blind to the existence of these other demands against him.

[95] Waddell testified that he disputes these claims by other creditors. However, as of the date of this Bankruptcy Trial, none of these claims by other creditors had been resolved in Waddell's favour, Waddell did not lead evidence to challenge the amounts of the debts claimed by those other creditors and he admitted that he had not paid them what they were demanding.

[96] Waddell also admitted that he owed his wife and daughter money that was repaid from the sale of the proceeds of his Florida property (still under review) that resulted in the appointment of the Interim Receiver. In the endorsement appointing the Interim Receiver, based on Waddell's conduct in December of 2023 and January 2024 with respect to his Florida property, the court concluded that there was a real risk that assets would disappear if the Interim Receiver was not appointed. The statement of assets and liabilities that Waddell prepared for the Interim Receiver when it was appointed indicates that he has no money to pay his debts. He testified that he has been borrowing from family members to fund his legal and other expenses.

[97] The Applicant argues that the court can consider debts owing to other creditors of Waddell that unnamed petitioners or applicants, based on the plain reading of the words of s. 42 (j) of the BIA: a debtor who "ceases to meet his liabilities generally as they become due". As was noted in my earlier decision in *Sergio Grillone (Re)*, 2023 ONSC 5710, at para. 127: "The test to demonstrate that a debtor has ceased to meet their liabilities as they become due 'requires … (i) proof of the outstanding debt owed to the applicant and (ii) evidence that the debtor has ceased to meet his liabilities to its creditors in general'", citing *Howard Paul Ivany (Re)*, 2012 ONSC 7058, 97 C.B.R. (5th) 214, at para. 12.

[98] The Court of Appeal confirmed in *Levesque (Re)*, 2016 ONCA 393, 36 C.B.R. (6th) 217, at para. 7 that the onus set out *Ivany*, at para. 12, lies on the petitioning creditor to establish each of the elements prerequisite to a bankruptcy order on sufficient evidence and that: "The existence of unpaid creditors is not sufficient, in and of itself, to establish an act of bankruptcy; the applicant must prove, on the balance of probabilities, that the debtor has ceased to meet its liabilities generally as they become due. Since the machinery of the BIA is for the benefit of the creditors of a debtor as a class, establishing that a debtor has ceased to meet his liabilities generally requires

some evidence that the debtor has ceased to meet liabilities other than those incurred towards the applicant creditor".

[99] In its Application For Bankruptcy Order, the Applicant asserted that Waddell:

> [W]ithin the six (6) months next preceding the date of the filing of this Application, committed the following acts of bankruptcy: the Debtor has (a) made a transfer of his property that would, under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, be void as a fraudulent preference; (b) assigned, removed, secreted or disposed of, or attempted to assign, remove, secrete or dispose of his property with intent to defraud, defeat or delay his creditors and (c) ceased to meet his liabilities generally as they become due.

[100] As was confirmed in *Re Holmes Re Sinclair* (1976), 9 O.R. (2d) 240, 60 D.L.R. (3d) 82, at p. 243: "the Court must be satisfied that there is sufficient evidence from which an inference of fact can fairly be drawn that creditors generally are not being paid". The Applicant argues in this case that this can be inferred from the evidence of the existence of the other creditors' claims against Waddell on his personal guarantees that had not been resolved at the time this application was commenced on April 4, 2024, and that remained unresolved at the Bankruptcy Trial.

[101] I agree that the evidence in this case establishes, on a balance of probabilities, that the Applicant and at least some other creditors of Waddell were generally not being paid at that time. The existence of multiple unresolved demands by other creditors, even if they are not themselves petitioners, is evidence from which it can be inferred that other creditors are not being paid and that a debtor is therefore not meeting liabilities generally as they come due. Each case is fact specific, but the evidence of the personal guarantees of Waddell of the Corporate Indebtedness and his refusal to acknowledge (or pay) that and other guaranteed debts is a sufficient basis for the inference to be drawn here.

[102] Waddell had the onus to demonstrate that there was some legitimate basis on which these other debts were being challenged. Simply stating that he disputes them and will challenge them (or, in the case of AutoLoans 4 You, move to set aside the judgment against him) is not sufficient.

[103] I recently adopted a similar approach in *Wang, Fengxi (Re)*, 2025 ONSC 6707, at paras. 46-49, in which evidence of demands and claims by other creditors were held to be sufficient to establish that the debtor had "ceased to meet his liabilities generally as they came due" and committed an act of bankruptcy under. s. 42(1)(j) of the BIA. As I wrote in *Wang*, at para. 48:

> In *Suitor*, at paras. 55-59, the court found that there was evidence establishing that there were other creditors where the applicant pointed to (a) a claim filed against the respondent for enforcement of a promissory note, which he had defended; (b) a demand letter in respect of a mortgage which had matured and remained in default; and (c)

> guarantee obligations in relation to loans advanced to a group of corporations which the applicant was a principal of that had commenced CCAA proceedings. These are similar in nature to Wang's obligations to his other creditors, WPC and Duca.

[104] Unlike *Grillone* (a case I decided prior to *Wang* that the parties relied upon in this case), this was not an application for bankruptcy predicated on unpaid demands and debts owing to a single creditor[5]. In *Grillone*, at paras. 130-32, I observed that a single creditor can petition a debtor into bankruptcy under s. 43 of the BIA; however, not every application can be proved with evidence of the existence of only a single creditor unless certain requirements are met, citing *Valente v. Courey* (2004), 70 O.R. (3d) 31, 47 C.B.R. (4th) 31 (C.A.), at para. 8, and various other authorities.

[105] *Valente* is the most frequently cited case about single creditor applications. The Court of Appeal succinctly outlines, at para. 8, the law on when failure to pay a single creditor can constitute an act of bankruptcy:

> It is now well-settled in the case law that the failure to pay a single creditor can constitute an act of bankruptcy under s. 42(1)(j) when there are special circumstances, which have been recognized in three categories: (a) where repeated demands for payment have been made within the six-month period; (b) where the debt is significantly large and there is fraud or suspicious circumstances in the way the debtor has handled its assets which require that the processes of the *BIA* be set in motion; and (c) prior to the filing of the petition, the debtor has admitted its inability to pay creditors generally without identifying the creditors.

[106] Although not needed in this case due to my earlier findings, the Applicant could have established the existence of the first two *Valente* special circumstances. The Applicant, AutoLoans 4 You, Canacap and 2M7 had all been making demands on personal guarantees given by Waddell that he either did not respond to or challenged directly. The debt to the Applicant was large (at the time of the Demand Letter it was almost $20 million), and the decision and findings of the court when the Interim Receiver was appointed clearly establish that there were suspicious circumstances in the way Waddell was handling his assets, which required that the processes of the BIA be set in motion (e.g., the appointment of the Interim Receiver).

[107] In *Grillone*, I found that the Applicant had satisfied that the first two *Valente* categories of special circumstances existed: at paras. 141-60. However, at paras. 134-35, 161, the door was left

[5] The Notice of Application in Grillone only referred to the failure to pay a debt owing to the applicant creditor as the act of bankruptcy, and did not reference unpaid debts to other creditors, although those were established at the trial.

open for the court in Ontario to apply the "more contextual and purposive approach to special circumstances" that the Alberta courts have been leaning towards in single creditor bankruptcy petitions: see *Sultan Management Group (Re)*, 2023 ABKB 262, 61 Alta. L.R. (7th) 308, aff'd 2023 ABCA 110, 61 Alta. L.R. (7th) 334). In *Grillone,* I then held:

> [161] Even if this circumstance does not strictly come within the *Valente* category 2 in that I have not found that Mr. Grillone has committed a fraud or found suspicious circumstances in the way he has handled his assets in the six months prior to the bankruptcy application, I find that it constitutes a new category of special circumstances that are sufficient to support an act of bankruptcy under s. 42(1)(j) based on a failure to pay a single creditor. The categories of special circumstances are not closed. See *ATB Financial*, at para. 114.

[108] The new category considered in *Grillone*, at para. 162, was to recognize the need "to achieve an orderly distribution of Mr. Grillone's estate to his creditors, including Bluecore, and to create a single forum in which the multiplicity of claims involving Mr. Grillone (by and against him) can be determined while ensuring no creditor obtains an unfair advantage over the others in the interim". It is consistent with the scheme of the act and the wording of s. 42(j) of the BIA to have multiple creditors but a single proceeding model to address the claims of all creditors through a court-appointed trustee. Although there was no direct evidence from the other creditors in this case, that same logic could be applied here as well.

[109] The Applicant also relies on BIA s. 42(a), preferences to family members, s. 42(g), transfers of the Florida property with intention to defeat creditors, and s. 42(b), fraudulent activities, pointing to the findings of this court when orders were made on May 3, 2024. These orders appointed the Interim Receiver and authorized the Corporate Receiver to petition the Corporate Debtors into bankruptcy and were based on concerns about Waddell's conduct dating back to before April 4, 2024. Waddell disputes these more serious allegations of fraudulent activities and preferences. The court does not need to decide these more serious allegations given the findings already made regarding the other act of bankruptcy under s. 42(j) of the BIA.

[110] I am satisfied with the proof of facts alleged in the application, supplemented by the evidence given by various witnesses at the hearing, that the requirements of s. 43 of the BIA have been met.

c. <u>Is there a reason for the court to exercise its discretion not to grant the bankruptcy order or to stay the bankruptcy Application?</u>

[111] If the applicant meets its onus to satisfy the requirements of s. 43 of the BIA, the court may then consider whether it should exercise its discretion not to grant the requested bankruptcy order. Section 43(7) provides that:

> If the court is not satisfied with the proof of the facts alleged in the application or of the service of the application, or is satisfied by the debtor that the debtor is able to pay their debts, or that for other sufficient cause no order ought to be made, it shall dismiss the application.

[112] The onus is on the debtor to satisfy the court that he or she comes within s. 43(7). Waddell did not raise this issue directly, but he did make submissions about prejudice and alleged misconduct of the Corporate Receiver, which, if substantiated, could be relevant factors to consider under s. 43(7). However, these allegations were not substantiated.

[113] Waddell would have to have provided affirmative evidence that proves that he is able to pay his debts: see *Re Hayes* (1979), 34 C.B.R (N.S.) 280 (B.C.S.C.), at pp. 280-81. He has not provided any evidence to demonstrate that he has assets in or outside of Canada sufficient to satisfy the outstanding Corporate Indebtedness that he has guaranteed to the Applicant and others. Waddell does not say that he has the ability to pay his debts as they come due; to the contrary, he has testified that he has to borrow from family members to pay ongoing debts.

[114] I do not find there to be any compelling facts or circumstances to support the exercise of the court's discretion under s. 43(7) of the BIA not to grant the bankruptcy application, and I decline to do so.

[115] Section 43(11) of the BIA provides that:

> The court may for other sufficient reason make an order staying the proceedings under an application, either altogether or for a limited time, on any terms and subject to any conditions that the court may think just.

[116] Where a debtor has committed an act of bankruptcy and failed to lead any evidence of their ability to pay their creditors, they have an extremely high onus to meet if they want the court to exercise its discretion to stay the bankruptcy order: the debtor needs to demonstrate that it serves no valid purpose see *Beach (Re)*, at paras. 79-81, citing *Medcap Real Estate Holdings Inc. (Re)*, 2022 ONCA 318, at para. 23. Waddell has not established that there is no purpose in a bankruptcy or that the application has been brought for an improper purpose.

[117] In *Beach*, the debtor alleged that the bankruptcy would serve no purpose: at para. 81. The court found that the debtor's conduct in responding to the bankruptcy application against him and his litigation conduct more generally were reason enough to warrant an investigation of his affairs by a trustee. I am of the same view here.

[118] As was found to be the case in both *Grillone* and *Wang*, and now in this case, there is a benefit to all stakeholders in having one trustee in bankruptcy looking to identify and secure for the benefit of all stakeholders any assets that Waddell may personally still have (as distinct from the assets under the corporate receiverships), so that there is not a race by creditors to realize on his assets (if any). A bankruptcy also provides a single forum for proving, valuing and prioritizing all the known claims, rather than having a multiplicity of guarantee actions in which Waddell is

likely to be raising the same defences that would run the risk of overlapping or lead to inconsistent findings.

[119] Further, the trustee in bankruptcy can assess if and when the appropriate time would be for the determination and valuation of the various unsecured guarantee and other claims against Waddell. The trustee would also be best situated to determine whether it would make sense to defer doing so until after those same creditors' secured claims in the receivership proceedings have worked themselves out, so that *pro rata* distributions can eventually be made as between creditors, if that becomes relevant.

[120] Waddell did not provide credible evidence of any compelling reasons why I would exercise my discretion in this case to either dismiss or stay this Application.

Final Disposition and Costs

[121] No costs were sought in the Notice of Application by the Applicant and no Bill of Costs was provided. To the extent that the Loan Documents provide that the Applicant's enforcement costs form part of the Corporate Indebtedness, they can be considered and addressed in that context.

[122] For the foregoing reasons, I find that the requirements of s. 43 of the BIA have been met and I am granting the requested order declaring Waddell to be a bankrupt. The Applicant has alleged and demonstrated that as of the date of this application on April 4, 2024:

a. it was (and still is) owed at least one thousand dollars by Waddell; and

b. Waddell had ceased to meet his liabilities generally as they came due to the Applicant creditor and to other creditors in the six months preceding the filing of the application.

[123] Waddell has not satisfied the court that he is able to pay his debts, and has not identified any credible and supported reason for the court to exercise its discretion not to make the bankruptcy order, or to stay it.

[124] Accordingly, the bankruptcy order is granted. Waddell is adjudged bankrupt. Albert Gelman Inc. is qualified and has agreed to act as trustee of the property of Waddell.

[125] The court requests that counsel for the Applicant submit a draft order for the court's consideration, that includes in the preambles reference to the pre-filed affidavit evidence and oral testimony and submissions of the witnesses over the course of the three days of the hearing that took place on December 2, 4 and 5, 2025, and to reflect the specific findings made in this endorsement. This revised draft shall be provided in a word format to the court, by email to my assistant Kassandra.Kidd@ontario.ca, copied to Waddell. The court will then review it, make any further changes it deems appropriate and sign it.

[126] The Interim Receiver's Discharge Motion is adjourned. The Interim Receiver acknowledges that it will need to remain in place until after this decision and all appeals have been exhausted. That motion may be brought back on proper notice to the service list on a date to be co-ordinated with the parties expected to participate at the appropriate time. If any interim approval of the Interim Receiver's report(s) and activities and fee approvals is going to be sought prior to the discharge motion, that can be addressed through separate motions in the meantime.

Kimmel J.

Released: January 20, 2026

CITATION: Waddell (Re), 2026 ONSC 387
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ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF THE BANKRUPTCY OF HUGH WADDELL

REASONS FOR JUDGMENT

KIMMEL J.

Released: January 20, 2026