

Director personally liable for corporation's operating line but not Visa account (RBC v. 1108135 Ontario Inc.)

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In many cases where a small corporation borrows money, the lender will seek a personal commitment from the corporation's owner to repay the debt, whether by way of a guarantee contained in the loan agreement or otherwise. If a dispute over the owner's personal liability subsequently arises, the court will assess the terms of the contract at issue and the surrounding circumstances when the agreement was allegedly made. This may lead to different results even where the dispute is between the same parties, as shown by *RBC v. 1108135 Ontario Inc. et al.*, 2025 ONSC 3285 (CanLII).

The plaintiff in the case was a bank that had provided a business operating line (BOL) and a Visa credit card to the defendant corporation dating back several years. In 2025, the BOL and Visa accounts were in arrears and the bank pursued a collection action. The corporation did not contest its liability. At issue was whether the corporation's director was personally liable under a guarantee he had provided for both accounts.

The bank moved for summary judgment. In response, the director sought a dismissal of the claim on the basis that he did not apply for the BOL or the Visa in his personal capacity; that he did not sign any documents by which he could, or should, be found personally liable; and that he was never told by the bank that he would be personally liable to pay the debts.

The BOL was governed by a written BOL Agreement. The signing page of the BOL Agreement, just above where the director signed, stated in part as follows:

OWNER READ CAREFULLY: By signing this Agreement, you agree to be personally responsible for the full repayment of all Debt and Royal Bank may demand payment from you. This liability remains in full force and effect even if the Customer or the Bank were to amalgamate with another legal person.

Further, there were two signing boxes on the last page of the BOL Agreement, both of which were signed by the director electronically. In the lefthand box, the director's signature was identified as "Authorized Person's Signature" and in the righthand box, as "Owner's Signature".

The bank argued that even if the director read only the last page of the BOL Agreement, he would have seen the above words, he would have seen that he was signing both on behalf of the corporation and also as an owner and that, as owner, he was agreeing to be personally responsible for full repayment of amounts owing under the BOL credit facility.

In response, the director's evidence was that when he opened an account with the bank in 2012, he was advised that the corporation had been preapproved for the Visa, which he "happily accepted on" behalf of the corporation. He claimed that he was never told, nor did he agree, that he would be personally liable for any amounts owing on the Visa. He signed no documents to that effect.

The director acknowledged that he signed the BOL Agreement. However, he denied that he agreed to be personally liable to pay any amounts owing. He stated that he accepted the bank's offer for the BOL by clicking an online link, which directed him to sign at the bottom of the last page of the BOL Agreement. The director

asserted that there was nothing on the page to indicate that he was signing in his personal capacity. He also claimed that he was not given an opportunity to read the BOL Agreement in its entirety before signing and that he was not provided with a copy of the BOL Agreement after it was signed.

As a matter of law, the director asserted the provisions in the BOL Agreement imposing personal liability upon him were “onerous” terms and therefore unenforceable based on the seminal Ontario Court of Appeal decision of *Tilden Rent-A-Car Co. v. Clendenning*, 1978 CanLII 1446 (Ont. C.A.), at paragraph 30.

The motion judge noted that *Clendenning* involved the enforceability of exclusions under a pre-printed insurance policy for rental cars where the renter was not told that there would be no coverage if damage occurred while the vehicle was driven by an impaired driver. The court determined that the terms at issue in that case were onerous and contained in a “standard form” contract, and that “the important provisions on the reverse side and in very small type would discourage even the most cautious customer from endeavouring to read and understand it” (at para.31).

Conversely, in a more recent Ontario decision involving a credit card debt, *RBC v. Petittclerc*, 2016 ONSC 19, the court held that a “joint and several liability” term was not onerous and that the bank had taken reasonable measures to draw the provisions to the attention of the defendant.

In the case at hand, the motion judge's view was that the facts were entirely distinguishable from those in *Clendenning*. The director's liability as owner was clearly highlighted in the BOL Agreement which spelled out that liability using capital letters and bold font, located immediately above where he signed.

In the circumstances, the director knew or ought to have known that by signing the BOL Agreement, he agreed to be personally liable as the owner of the corporation for the BOL Debt. The bank's requirement that the owner of a one-person corporation assume liability for the debts of their corporation was neither unusual nor onerous. The motion judge referred to this as “the commonly known practice among lenders”.

Further, after using the credit facility for his business for several years, the director was not entitled to complain that he had never read the BOL Agreement nor knew what it said. Even if he did not receive the BOL Agreement when he signed it, he could have asked for a copy at any time. He was accordingly found to be personally liable for the BOL debt.

The director's personal liability for the Visa debt was a different matter.

The director's evidence was that he never received the Visa Agreement and that he had no memory of any personal obligations being referenced in the online pre-approved offer. The motion judge did not accept that the bank had any reliable evidence to dispute this assertion.

The Visa Agreement was a 20-page document, prepared by the bank and there did not appear to be any opportunity or invitation for any signing party to make any changes to it. While the Visa Agreement was not something that was signed by a cardholder, the motion judge found that by using the Visa card, the director accepted and was bound by the terms of the Visa Agreement.

The bank's claim failed, however, because the Visa Agreement did not impose personal liability on the director as an “Owner”, defined as an individual who has signed the Agreement. Further, the bank had no evidence to challenge the director's assertion that he did not sign the Agreement in his personal capacity. The monthly Visa statements for the account did not clearly identify the director and the corporation as account holders, nor did the statements say that the director was liable for the corporation's indebtedness. The director was not identified as a co-borrower.

In the result, the motion judge found that the director was not an “Owner” as defined in the Visa Agreement and accordingly he was not personally liable for the corporation's Visa debt.

The decision illustrates the different results that may arise from the circumstances surrounding an individual's agreement—or lack thereof—to be liable for a corporation's debts. The key factors will involve the specific terms of the written agreement and whether there is evidence that an individual knowingly took on the legal responsibility for payment of the corporation's debts. A PDF version is available for download [here](#).

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