



## ENDORSEMENT SHEET FOR CIVIL MOTION/APPLICATION

**ACTION COMMENCED AT:** Waterloo Regional Courthouse

**SHORT TITLE OF PROCEEDINGS:** Bank of Montreal v. PI Square Sleep Studio Inc. et al.

**COURT FILE NO.:** CV-25-00000048-0000

**BEFORE:** Justice Smith

**HEARD ON:** May 29, 2025

**COUNSEL:** E. Fish, for plaintiff  
Y. Gulia, for defendant

**MOVING PARTY**    ☐ Plaintiff                      ☐ Defendant                      ☐ Other

**RELIEF REQUESTED:**

☐ ORDER SIGNED                      ☐ ON CONSENT

☐ UNOPPOSED                      ☐ NO ONE APPEARED

☐ ADJOURNED TO

**ENDORSEMENT:**

The moving defendants, Raman Subbarama and Chetna Choudhry, move to set aside the default judgment entered against them. The plaintiff opposes the motion.

The action involves loans made by the plaintiff bank to the corporate defendant in 2023, which loans were guaranteed by the moving defendants, and which have fallen into default. The plaintiff filed a writ of seizure and sale against the guarantors on March 28, 2025. On April 11, 2025, the moving defendants, who are spouses of each other, listed their residential property for sale.

The plaintiff concedes that this motion was brought promptly enough. Although the plaintiff says that the explanation for the default is lacking in detail, I am satisfied that given the relatively brief period of delay this should not disentitle the moving defendants to relief.

The plaintiff's primary arguments are that the defendants do not have an arguable defence and that the plaintiff will suffer prejudice should the relief sought be granted.

With respect to the latter argument, the plaintiff notes that if the motion is successful, it will suffer extra legal costs and be forced to bring an unnecessary summary judgment motion. Further, the defendants have listed their property for sale. If the default and the writ are set aside the plaintiff will have lost a significant tool in the enforcement of the guarantees. Although I could leave the writ in place even if I ordered that the default judgment be set aside, I note that counsel for the



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defendants strenuously objected in oral argument to doing so.

With respect to the former argument, the bank asserts that the materials filed by the moving defendants do not disclose an arguable defence. Notably, no draft statement of defence has been filed with those materials.

I agree with counsel for the plaintiff that it is impossible to discern a defence from the defendants' motion materials. All that can be said is that Mr. Subbarama's affidavit reveals that the defendants were directors and shareholders of the corporate defendant but entered into an agreement in March of 2024 whereby they sold their shares and resigned as directors. The share purchase agreement is not appended to the affidavit and appears nowhere in the record. In any case, it is asserted in the affidavit that, thereafter, the moving defendants had no role in the company and were not at fault for the company's default on the loans, despite attempts by the company's corporate counsel to lay blame at the feet of outgoing directors. Further, the affidavit claims that the plaintiff has treated some of the defendants favourably, giving rise to an allegation that the plaintiff has some bias against the moving defendants. This body of evidence is largely irrelevant.

As counsel for the plaintiff observed in argument, the word "guarantor" does not appear anywhere in Mr. Subbarama's affidavit. Nor does the word "guarantee." Moreover, on cross-examination, Mr. Subbarama refused to answer questions respecting his guarantees. Nowhere do the moving defendants assert that they were ever released from their guarantees, or that there is some viable reason that they should not have to honour them. In fact, on cross-examination, Mr. Subbarama acknowledged that he never contacted the plaintiff respecting his guarantee obligations. In other words, not only have the defendants not advanced an arguable defence, they have advanced no defence at all.

In all these circumstances, I see no reason why the plaintiff should have to incur any further costs in connection with this action. Its result is a foregone conclusion. To continue it would undermine the integrity of the administration of justice.

The motion is therefore dismissed.

The plaintiff is entitled to its costs. Although counsel to the moving defendants objected to the bill of costs filed by the plaintiff as excessive, I do not agree. Therefore, the moving defendants will pay the plaintiff's partial indemnity costs in the amount of \$13,136.87, all inclusive.

**Date:** May 30, 2025

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**Justice Smith**