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COURT OF APPEAL FOR ONTARIO

RE: BUSINESS DEVELOPMENT BANK OF CANADA (Plaintiff)
(Respondent) – and – MARIO PARRAVANO and BARBARA
PARRAVANO (Defendants) (Appellants)

BEFORE: WEILER, ABELLA and ARMSTRONG JJ.A.

COUNSEL: Mario Parravano
and Barbara Parravano
appellants in person

Ben Frydenberg
for the respondent

HEARD &
ENDORSED: April 13, 2004

On appeal from the order of Justice Randall Echlin of the Superior Court of Justice
dated September 30, 2003.

A P P E A L B O O K E N D O R S E M E N T

[1] We agree with Echlin J. that the defence of misrepresentation is defeated by the strict terms of the guarantee. The other defences proposed by the Parravanos on the hearing of the motion for summary judgment and our response to them are as follows:

- (1) The Bank's representation that it wouldn't sue on the guarantee pending resolution of an insurance claim by the borrower – There was no consideration from the Parravanos to the Bank for this promise. The Bank is not bound by it. In fact the Bank forbore for 18 months.
- (2) The Bank failed to fully advance on a loan to the borrowers – The Parravanos were out of covenant on the ratio of assets to liquidity due to their insurance claim. In these circumstances the Bank was not obliged to fully advance the money.

- (3) The Bank should have applied certain funds it received in account of the guaranteed loan and not an entire loan. The Bank's General Security Agreement and loan agreement confer an unfettered discretion on the Bank insofar as the appropriation of payments is concerned.
- (4) The allegation that the Bank approved the sale of the borrowers' business assets when it ought not to have done so is also without merit as the receiver was appointed by the court and the court approved the sale. The Bank simply did not oppose it.

[2] Costs of the appeal to the Bank fixed in the amount of \$2,000, all-inclusive.