COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *White Square Development Inc. v. Tympanum Construction and Project Management Ltd.,* 2024 BCCA 66

Date: 20240227
Docket: CA49173

Between:

White Square Development Inc.

Appellant
(Defendant)

And

Tympanum Construction and Project Management Ltd.

Respondent
(Plaintiff)

Before: The Honourable Justice Griffin
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated April 24, 2023 (*Tympanum Construction and Project Management Ltd. v. White Square Development Inc.*, 2023 BCSC 653, Kelowna Docket S135625).

Counsel for the Appellant:	A.R.J. Way E. Sydora
Counsel for the Respondent:	M.B. Funt H. Nie
Place and Date of Hearing:	Vancouver, British Columbia February 12, 2024
Place and Date of Judgment:	Vancouver, British Columbia February 27, 2024

Written Reasons by:
The Honourable Justice Griffin

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Madam Justice Horsman

Summary:

The appellant appeals from a finding after a summary trial application that it owes a debt of $100,000 to the respondent. Held: Appeal allowed only with respect to an adjustment of the time for the running of prejudgment interest, but otherwise dismissed. The judge did not err in considering some of the evidence of telephone conversations introduced by the respondent's principal. The judge did not err in concluding that the matter was suitable for summary trial even though there were conflicts on the evidence, as the totality of the evidence allowed the judge to find the necessary facts and it was not unjust to do so. The action was started prematurely before the loan repayment was due, however, this was not an issue because the summary trial application was heard after the loan repayment was due. The central issue of whether there was a loan agreement was joined by the parties by the time of the summary trial application. However, the judge did err in that prejudgment interest under the Court Order Interest Act should not have begun to run until after the loan repayment was due.

Reasons for Judgment of the Honourable Justice Griffin:

Introduction

[1] The appellant White Square Development Inc. ("White Square") appeals from an order made April 24, 2023, finding it liable to the respondent Tympanum Construction and Project Management Ltd. ("TCPM") in debt in the amount of $100,000. The reasons for judgment are indexed at 2023 BCSC 653 ("Reasons").

[2] The judge also ordered prejudgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 [*COI Act*] running from April 1, 2022.

[3] The order was made following a summary trial application by TCPM. There was contested evidence as to the existence of the loan, with White Square asserting that TCPM had made an equity investment, not a loan.

[4] TCPM relied primarily on affidavit evidence filed by its principal Tamas Hugyi. His affidavits attached a form of written loan agreement between White Square and TCPM, documenting the $100,000 loan. His affidavits also attached his self-made purported "transcripts" of telephone conversations between him and the principal of White Square, Valeri Kantelashvili, discussing their business arrangements (the "Transcripts"). Mr. Hugyi's wife, Bernadett Puskas, was also on some of these calls.

Mr. Hugyi audio recorded these telephone conversations after TCPM made a demand for payment of the alleged loan (the "Audio Recordings").

[5] English is not the first language of either Mr. Hugyi or Mr. Kantelashvili, but since they are not from the same linguistic background, it was their language of choice for their communications.

[6] TCPM was self-represented by Mr. Hugyi at the summary trial application. The judge allowed Mr. Hugyi to play some portions of the Audio Recordings in court.

[7] On appeal, White Square argues that the judge made the following errors:

a) admitting into evidence, without providing any reasons, the Audio Recordings, and relying on that evidence to make findings of fact that there was a loan agreement;

b) finding that there was a loan agreement between White Square and TCPM, when he should have concluded that due to the conflicting evidence he was not able to find the necessary facts and determine the matter summarily; and

c) granting judgment in favour of TCPM despite the fact that the action had been commenced prematurely and before the alleged loan was due and payable, and failing to address this issue in the Reasons.

[8] For the reasons that follow, I would dismiss the appeal except for one issue that is conceded.

[9] I would vary the judge's order regarding the start-date for the running of prejudgment interest pursuant to the *COI Act*, so that prejudgment interest would start on March 15, 2023, one year after the demand for repayment was made. This issue was conceded by the respondent on the hearing of this appeal, because the loan agreement provides that the loan is repayable within one year of written notice of demand, and the demand for repayment was not made until March 14, 2022.

Background

[10] Mr. Hugyi and Ms. Puskas are owners of TCPM. They came to Canada in 2014. Mr. Hugyi began working as a full-time senior estimator with a roofing company in 2017. In 2020, he also began performing some part-time work on evenings and weekends for White Square.

[11] White Square is a cladding company. The work Mr. Hugyi did for it was to provide estimates to assist it in bidding on cladding projects.

[12] Mr. Kantelashvili is a principal of White Square. At some point Sarbjot ("Sarb") Hayer, became involved in the White Square business. Mr. Hayer's wife, Kiran Jit Kaur Hayer, is an officer and secretary of White Square.

Did the Judge Err in Admitting the Audio Recordings?

[13] White Square argues that the judge erred in admitting the Audio Recordings as evidence.

[14] A trial judge's ruling on the admissibility of evidence is an exercise of discretion that is reversible only where the court has misdirected itself, come to a decision that is so clearly wrong it amounts to an injustice, or where the judge gave no or insufficient weight to relevant considerations: *Santelli v. Trinetti,* 2019 BCCA 319 at para. 45; *Kish v. Sobchak Estate*, 2016 BCCA 65 at para. 33; *Penner v. Niagara (Regional Police Services Board)*, 2013 SCC 19 at para. 27.

[15] Mr. Hugyi for TCPM attached to his affidavit evidence in support of the summary trial application a copy of a written loan agreement dated March 15, 2021 between TCPM and White Square. That agreement documented that TCPM agreed to loan White Square $100,000 without interest, beginning March 15, 2021, and that the loan was repayable by White Square "within 1 year(s) of [TCPM] providing [White Square] with written notice of demand". The loan agreement was signed by Mr. Hugyi, on behalf of TCPM. Mr. Kantelashvili initialled two of the three pages of the agreement.

[16] Mr. Hugyi also attached to his affidavit evidence a copy of an email from TCPM to White Square, dated March 14, 2022, demanding that White Square make payment of the $100,000.

[17] In addition, as mentioned, Mr. Hugyi attached the Transcripts of the Audio Recordings to his affidavits.

[18] On appeal, White Square has illustrated that in Mr. Hugyi's third affidavit he attached a transcript of the same March 23, 2022 telephone call that he purported to have transcribed and appended in his first affidavit, except his third affidavit did not identify that he had truncated that "transcript" and left out parts of the conversation that he included in his first affidavit. However, a comparison of the two documents appended as exhibits to the affidavits does reveal the differences. Further, part of the Audio Recordings played in court included some of the truncated excerpts.

[19] Mr. Hugyi asserted in his affidavit evidence that in these telephone conversations, Mr. Kantelashvili acknowledged that the debt existed and promised to repay it and to propose a schedule of repayment.

[20] Mr. Kantelashvili, in his own affidavit, did not directly deny signing the loan agreement by initialing it. However, he tried to cast doubt on whether he knew that what he signed was a loan agreement: Reasons at para. 21(d).

[21] His affidavit stated:

> 5. It appears like my initials are found on page one and three of a loan agreement tendered by the Plaintiff ("Proposed Loan Agreement"). The Proposed Loan Agreement is attached as Exhibit "C" of the first Affidavit of Tamas, sworn November 16, 2022. I do not know how my initials ended up on two of the three pages of the Proposed Loan Agreement. I did not agree to that Proposed Loan Agreement on behalf of White Square, or at all.
> 6. I routinely provide my initials for subtrade contracts for White Square, but only after the subtrade contracts have been reviewed by Sarbjot Singh Hayer ("Sarb") because I am not confident in my English skills. Tamas would often print off the subtrade contracts for me to sign after they have been reviewed by Sarb.

> 7. I always consult Sarb before signing important documents for White Square because I do not read or write well in English. I did not consult Sarb about the Proposed Loan Agreement. I might have put my initials on those pages if I thought I was signing a subtrade contract. I did not sign the signature line of the Proposed Loan Agreement.

[22] In addition, Mr. Kantelashvili stated in his affidavit that he did not admit any debt was owing or request or agree to a repayment schedule in his conversations with Mr. Hugyi.

[23] Mr. Kantelashvili did not put in contrary evidence disputing the actual content of the Transcripts attached to Mr. Hugyi's affidavits. Indeed, Mr. Kantelashvili's affidavit does not comment at all on the conversations that the Transcripts record.

[24] During the summary trial hearing, Mr. Hugyi advanced the arguments for TCPM. When he was describing the evidence in the Transcripts, the judge invited him to play some of the Audio Recordings, which he then did.

[25] The excerpts of the Audio Recordings played in court were recorded by the court's own digital transcribing service, which forms part of the record on appeal.

[26] By listening to the portions of the Audio Recordings that he heard in court, the judge was able to compare those portions of the conversations with the Transcripts.

[27] In written response to the summary trial application, counsel for Mr. Kantelashvili objected to the admissibility of the Transcripts, arguing that they were not properly authenticated and were not reliable, or alternatively, that they should be given very little weight.

[28] The objection was repeated in oral argument. Counsel for Mr. Kantelashvili further argued that the Transcripts did not prove what Mr. Hugyi was asserting, namely, they did not show that Mr. Kantelashvili agreed to repay a $100,000 loan, and there were parts of the conversation consistent with the White Square version of events, namely, that the $100,000 was an investment.

[29] The judge held this in respect of the Audio Recordings and Transcripts:

> [23] The affidavit material is voluminous and there is no doubt that many of the background facts are in conflict. As part of its supporting material, Tympanum relies on recorded telephone conversations between Mr. Hugyi and Ms. Puskas on one side, and Mr. Kantelashvili on the other. Transcripts of the relevant portions of these audio recordings are also in evidence. The telephone conversations were conducted in English.
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> [24] Some of the recordings were difficult to decipher. However, what was clear from them was that Mr. Kantelashvili did not deny the debt when confronted with the $100,000 alleged to be owing under the Loan Agreement, but rather left the distinct impression that he knew the money was owing. Much of the discussion was about setting up a schedule of repayment because he needed more time to pay. Mr. Kantelashvili attempted to persuade Mr. Hugyi and Ms. Puskas that money from other projects would soon be available to pay the debt, if they gave him more time. Indeed, he promised repayment on a number of occasions during the audio recordings.
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> [25] I conclude that, when placed in the context of the entire business dealings between the parties, the audio recordings confirm that Mr. Kantelashvili knows that White Square continues to owe Tympanum $100,000 under the Loan Agreement.

[30] Thus, the judge found three aspects of the Audio Recordings to be relevant evidence:

a) They helped refute Mr. Kantelashvili's claim that he was not confident in his English language skills;

b) They showed that Mr. Kantelashvili was aware that Mr. Hugyi was claiming that $100,000 was owed under the loan agreement, and Mr. Kantelashvili was not denying the debt; and

c) Mr. Kantelashvili made statements promising to repay the debt but claiming that he needed more time, which also went to the question of whether the debt was owed.

[31] I am of the view from reviewing the official transcription of the summary trial hearing, that the Audio Recordings played in court can be interpreted to support the judge's findings on the above three points. To put it another way, it cannot be said that the judge made a palpable and overriding error in this regard.

[32] I accept that it was unusual during the course of the hearing for the judge to invite Mr. Hugyi, as the applicant, to play portions of the Audio Recordings. I accept that White Square did not have advance notice that this would occur and it is a basic premise of Rule 9-7 of the *Supreme Court Civil Rules* that parties must give advance notice of the evidence intended to be relied upon; see by analogy *Nagy v. William L. Rutherford (B.C.) Limited,* 2021 BCCA 62 at para. 32. However, the context was that the Audio Recordings were of evidence that was purportedly transcribed, and White Square did have notice that evidence of these conversations would be relied upon.

[33] Furthermore, this was a commercial dispute where the amount at stake was significant to the parties but may not have justified a full panoply of pre-trial procedures, and the applicant was self-represented. The judge was doing his best to try to understand the evidence and manage the proceeding in an efficient and proportionate way, even if that meant some relaxation of the ordinary rules.

[34] The situation before the judge was distinguishable from the situation in *Rebello v. Ontario (Ministry of Community Safety and Correctional Services)*, 2023 ONSC 3574, a case cited by White Square on appeal. In that case the plaintiff advanced claims against the government for $17 million for alleged failure to properly assist her by having police officers investigate her claims that she was a victim of crimes. Her claims had no basis in reality. For example, she refused to accept that the reason a car repeatedly came to her street in the early hours of the morning was to deliver a newspaper to the neighbour's house, not to stalk her. The plaintiff attached her own self-transcribed telephone conversations with police officers to her affidavits, but admitted she may have missed a few things. She did not produce the audio recordings of the conversations.

[35] The court in *Rebello* held that the transcripts were "likely not" admissible evidence, but the audio conversations might have been. Further, if the judge was to admit the transcripts she would give them little weight given that they were not professionally prepared and were admittedly incomplete: para. 22. The judge was

not satisfied that the self-prepared transcripts represented a fair and accurate record of the conversations: para. 23.

[36] The case of *Rebello* illustrates that the judge needs to be satisfied the evidence has met a threshold of reliability when admitting evidence of this nature.

[37] Implicitly, the judge in the present case ruled that the Audio Recordings were reliable to the limited extent they provided evidence as set out above. The Audio Recordings reflected a portion of what was already in evidence in the Transcripts. As noted, Mr. Kantelashvili did not dispute that the conversations occurred and other than a very general denial that he admitted the debt or discussed a repayment schedule, did not provide his own contrary evidence on the content of those conversations.

[38] Further, there was other evidence in this regard including the written loan agreement itself. The judge concluded that the loan agreement was signed by Mr. Kantelashvili as a representative of White Square, knowing that he was acknowledging a debt of $100,000 owed to TCPM: para. 29. I acknowledge that White Square appeals this finding too, which I will turn to next. Nevertheless, it is relevant that the Audio Recordings were not the sole evidence on the point.

[39] Furthermore, White Square was not prejudiced by the playing of portions of the Audio Recordings in court. White Square had copies of the Audio Recordings, as admitted by its counsel during the hearing. The objections White Square made to the admissibility of the Transcripts had to do with reliability, and by playing the Audio Recordings, the judge could assess for himself what was said, at least in the portions played into court. As mentioned, those Audio Recordings played in court supported the judge's limited conclusions drawn from this evidence.

[40] I accept that White Square has a legitimate complaint that on their face, the Transcripts do not look like they start at the beginning of the parties' conversation which creates a risk that important contextual information was left out. There was a risk that by accepting Audio Recordings of only part of the parties' conversation, the

judge could be misled as to the full content and context of the conversation. But the judge was able to assess this risk. It cannot be said that there was procedural unfairness to White Square, because it had the opportunity to provide evidence if it disputed the portions of Transcripts attached to Mr. Hugyi's affidavits. Further, the judge did not draw detailed inferences from the Audio Recordings but only the more limited and general inferences set out above. It was within the judge's discretion to accept this evidence to this extent.

[41] Based on the above reasons, including the context in which the evidence was admitted and its limited use by the judge, I would not accede to the first ground of appeal.

Did the Judge Err in Finding a Loan Agreement, Or Should He Have Declined to Determine the Issue Summarily?

[42] White Square argues that the question of whether TCPM loaned $100,000 to White Square, or whether it was an equity investment in White Square's business, should not have been determined on the summary trial application, because there was conflicting evidence from the two sides that required determinations of credibility and the judge ought to have concluded that he could not find the necessary facts on the evidence.

[43] A judge's decision as to the suitability of proceeding by way of summary trial to determine an action is a discretionary one: *Newhouse v. Garland,* 2022 BCCA 276 at para. 85.

[44] In its application response filed on January 13, 2023, White Square consented to have the matter proceed by summary trial. However, after issues of credibility were raised during the hearing of the summary trial application, White Square argued that the matter was no longer appropriate for summary trial.

[45] In addition to Mr. Kantelashvili's evidence, White Square filed an affidavit from Mr. Hayer. Mr. Hayer's affidavit supported Mr. Kantelashvili's evidence that Mr. Kantelashvili would normally review any agreements with Mr. Hayer before

signing them, due to his poor English skills. However, Mr. Hugyi filed additional affidavits refuting this point, stating that Mr. Kantelashvili signed numerous documents in his presence without Mr. Hayer present. To support this submission, Mr. Hugyi attached evidence of other legal agreements signed by Mr. Kantelashvili, such as subcontracts.

[46] Mr. Hayer's evidence suggested that Mr. Hugyi was an investor in White Square, together with him and Mr. Kantelashvili. His evidence was that the three of them were to enter into a shareholder agreement but this was delayed. He also said that on March 17, 2022, he sent instructions to his lawyer to prepare a share purchase and transfer agreement allowing him and Mr. Kantelashvili to each sell one-third of their shares in White Square to Mr. Hugyi.

[47] Notably, Mr. Hayer's evidence was that the date of these instructions was after the date that TCPM demanded repayment of the loan. TCPM sent the email demand to White Square for repayment of the alleged loan on March 14, 2022.

[48] Mr. Hayer's evidence is that he later told his lawyers to hold off on the proposed share purchase agreement because it was then clear that Mr. Hugyi did not want to go ahead with the proposed share purchase.

[49] It seems undisputed that the judge properly instructed himself on the test for whether to decide the matter summarily pursuant to R. 9-7. The judge held:

> [28] The test involved in a R. 9-7 summary trial application is different [than a summary judgment application]. Simply put, the test is whether the court is able find the necessary facts to determine the case summarily and whether it would be unjust to do so. Whether to grant or dismiss a summary trial application under R. 9-7 is discretionary. Factors include: the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise from delay, the cost of taking the matter forward to a conventional trial in relation to the amount involved, the course of the proceedings and whether the evidence presented is sufficient to resolve the dispute: *Cepuran* [*v. Carlton*, 2022 BCCA 76] at paras. 149–50, citing *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.).

[50] Faced with conflicting affidavit evidence that may require the judge to determine the dispute by weighing credibility of the witnesses, a judge hearing a summary trial application may well decide that the matter cannot be decided summarily and should instead be decided based on oral testimony of witnesses at trial. The benefit of doing so will be that the witnesses can be challenged on their evidence in the witness stand, better allowing the judge to assess their truthfulness.

[51] However, there are also a number of procedures short of a conventional trial that may permit the testing of the affidavit evidence of a witness. These procedures may include examinations for discovery or cross-examination of witnesses on their affidavits.

[52] White Square opposed the summary trial application, but did not seek to cross-examine witnesses on their affidavits, nor did White Square seek examination for discovery.

[53] Furthermore, the totality of the affidavit evidence may allow a judge to determine disputed facts in a summary trial application, even when there are conflicts and credibility issues: *Amacon Alaska Development Partnership v. ARC Digital Canada Corp.*, 2023 BCCA 34 at paras. 39, 40. In *Amacon*, the parties both agreed summary trial was appropriate, while in these proceedings, White Square initially consented and then subsequently opposed proceeding by summary trial after credibility issues were raised. Nevertheless, a judge may determine credibility issues on a summary trial application even where a party opposes the procedure, so long as the judge is satisfied on the evidence that the judge is able to find the necessary facts and it would not be unjust to do so: R. 9-7(15)(a).

[54] There was conflicting affidavit evidence as between Mr. Kantelashvili's evidence that he would not have knowingly signed a loan agreement, and Mr. Hugyi's evidence that Mr. Kantelashvili knowingly did sign and agree to the loan agreement. The judge clearly appreciated this central dispute in the evidence.

[55] Considerable additional evidence supported Mr. Hugyi's version of events and contradicted Mr. Kantelashvili's version, as found by the judge, including not only the initialled loan agreement document itself, but evidence that:

a) Mr. Kantelashvili routinely signed legal documents written in English in the same fashion as he signed the loan agreement: para. 30;

b) Mr. Kantelashvili is proficient in English. He can speak, read, write and understand English. He conducts his business and deals with other parties in English: para. 31(a); and

c) While Mr. Kantelashvili and his business associate Mr. Hayer tried to persuade Mr. Hugyi and Ms. Puskas, his wife, to become business partners in White Square, this did not occur. Instructions to solicitors to prepare the necessary documents were retracted and no agreement in this regard completed: para. 31(h).

[56] The judge was entitled to consider that the full body of evidence, including the above evidence, refuted Mr. Kantelashvili's version of events, and to conclude that the loan agreement was proven by TCPM, without the need for a conventional trial.

[57] The judge did not misapprehend the evidence and it cannot be said he made a palpable and overriding error in concluding he could find the necessary facts on the evidence. I would not accede to this second ground of appeal.

Did the Judge Err in Granting Judgment When the Action was Commenced Prematurely, Before the Loan Repayment was Due?

[58] The loan agreement by its terms provided that repayment was not due until one year following written notice of demand.

[59] TCPM made demand for repayment on March 14, 2022. This means that by its terms White Square was not in breach of its obligation to make the loan repayment until March 15, 2023. Before this repayment date was reached, on November 10, 2022, TCPM filed its notice of civil claim against White Square

commencing these proceedings for breach of the loan agreement, and judgment in the amount of $100,000.

[60] White Square points out that when TCPM commenced the underlying claim, a cause of action had not yet accrued because White Square had not yet defaulted, a position consistent with this Court's decision in *Kong v. Saunders*, 2014 BCCA 508. There Justice Tysoe held:

> [19] The limitation period in respect of contingent loans begins to run on the repayment date or the occurrence of the contingency. This is because an action for repayment of the loan cannot be brought prior to the repayment date or the occurrence of the contingency, as the case may be.
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> …
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> [22] A more recent decision of this Court, *Ewachniuk Estate v. Ewachniuk*, 2011 BCCA 510, has also acknowledged these principles. In that case, the Court held that a loan payable one year after demand fell within the category of a contingent loan, with the result that the limitation period did not begin running on the day the loan was made. The reason is that an action could not have been brought for repayment of the loan on the day the loan was made because the demand the lapse of time after the demand were conditions precedent to the bringing of the action.
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> [Emphasis added.]

[61] In *Ewachniuk Estate*, cited in the above passage, the action was based on a promissory note that set out a promise to pay the amount "one year after demand", similar to the loan terms in the present case. However, the estate brought the action on the promissory note before the expiry of one year after demand. This Court noted:

> [8] On 23 July 2009, the plaintiff commenced this action to recover the sum owing under the note. It is common ground that nothing turns on the fact that the action was commenced within one year from the date of the demand. The defendant agrees that the writ could have been reissued after 30 November 2009, and within the six-year limitation period provided for in s. 3(5) of the *Limitation Act*.
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> [Emphasis added.]

[62] While the issue was not contested in *Ewachniuk Estate*, White Square concedes that the fact the present action was started before the loan was repayable does not mean that the judge did not have jurisdiction to hear the case.

[63] TCPM advances two arguments in response to the argument that its action was premature. First, it says that it was entitled to commence its claim based on "anticipatory breach", given that White Square was denying that there was any loan agreement. Second, it says that the issue is moot because by the time the summary trial application was heard, and subsequently determined, one year had expired from the demand and the loan had not been repaid.

[64] I have some reservations about accepting the anticipatory breach argument given that it was not advanced below.

[65] I agree with White Square that it raised the point with the chambers judge that TCPM's lawsuit was premature but he did not address it in his reasons.

[66] However, by the time the judge was hearing the issue, the question of whether the lawsuit had been commenced prematurely was irrelevant. The summary trial application was heard March 31, 2023, and the loan ought to have been repaid before March 15, 2023.

[67] White Square does not suggest that anything about the prematurity of the commencement of the lawsuit prejudiced its ability to prepare for the summary trial application. All issues were joined before that date, including the question of whether there was a loan agreement or not.

[68] Therefore, nothing turns on the fact that the judge failed to consider the prematurity of the lawsuit, with one exception.

[69] The judge granted prejudgment interest pursuant to the *COI Act* from April 1, 2022, stating that this was the date the monies became due: para. 35. This was a palpable and overriding error as the monies were not due until one year from the date of the written demand. The written demand was made on March 14, 2022. In my view, the breach of the loan agreement therefore occurred on March 15, 2023 when repayment was not made before that date, and so prejudgment interest should run from March 15, 2023.

Disposition

[70] I would allow the appeal only to vary the time for the running of prejudgment interest under the *COI Act*, such that it is to run from March 15, 2023. I would dismiss the other grounds of appeal.

[71] The amount of prejudgment interest was not significant, relative to the judgment for the repayment of the loan. In the judge's order the prejudgment interest was calculated as $478.28. In my view, TCPM has been substantially successful on appeal and so costs of the appeal should flow to the respondent accordingly.

"The Honourable Justice Griffin"

I agree:

"The Honourable Madam Justice DeWitt-Van Oosten"

I agree:

"The Honourable Madam Justice Horsman"