IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Meadows v. Sward,*
2023 BCSC 1369

Date: 20230809
Docket: S232710
Registry: New Westminster

Between:

Robert Meadows

Plaintiff

And

Yvonne Sward, Parker Meadows and Renew Laser Ltd.

Defendants

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

Counsel for Plaintiff:	T.E. Watkins
Counsel for Defendants:	L.S. Vidovich
Place and Date of Trial:	New Westminster, B.C. January 24-25, 2023
Place and Date of Judgment:	New Westminster, B.C. August 9, 2023

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I. Introduction

[1] This dispute concerns a $60,000 e-transfer made on May 20, 2016, by the plaintiff, Robert Meadows, into a bank account controlled by the defendant, Yvonne Sward. The plaintiff alleges that the transferred funds were a loan.

[2] On October 22, 2020, the plaintiff filed a notice of civil claim alleging breach of a loan agreement. He seeks damages in the amount of the principal plus interest.

[3] The plaintiff is 66 years old. He retired from work as a truck driver in 2019 due to health issues. The defendant Parker Meadows ("Parker") is the plaintiff's son and was previously in a relationship with Ms. Sward.

[4] The plaintiff testified that the loan was made to Ms. Sward. The plaintiff testified that Parker was named as a defendant in the claim only at Ms. Sward's insistence. Parker was never served with the claim and his recent and present whereabouts are said to be unknown to the parties. Both the plaintiff and Ms. Sward describe Parker as a threatening individual.

[5] Ms. Sward owns and controls the corporate defendant, Renew Laser Ltd. ("Renew"). Renew is a British Columbia corporation and operates a tattoo removal business.

[6] In their joint response to claim, Ms. Sward and Renew deny being party to any loan agreement and deny having borrowed any money from the plaintiff. Ms. Sward also denies having agreed to be personally responsible for any loan made by the plaintiff.

[7] The parties provided a joint book of documents. They stipulated for the record that the documents in the joint book are authentic, that the dates shown on those documents are accurate, and that the bank records included are proof in fact that the transfers shown were made.

II. Background

[8] From 2016 through 2019, Ms. Sward and Parker were engaged to be married. Their relationship concluded in or about late 2019 or early 2020.

[9] The plaintiff testified that, in or about May 2016, Ms. Sward and Parker approached him and solicited him to make a loan to assist Ms. Sward in starting her own tattoo removal business.

[10] There is, in evidence, an undated business plan document entitled “Business Overview” setting out Ms. Sward’s plan to open and operate a tattoo removal business. Ms. Sward testified that the document was prepared to be presented to potential investors. Ms. Sward was unable to say when the Business Overview was prepared, but was able to say that it existed prior to the date Renew was incorporated (i.e., May 18, 2016). Notably, the Business Overview lists, as a business expense, $1000 a year for “Loan repayment”.

[11] The plaintiff testified that Parker and Ms. Sward showed him the Business Overview in the course of persuading him to provide a loan to Ms. Sward. Ms. Sward denies having done so. The plaintiff says Parker and Ms. Sward also showed him an April 4, 2016, customer purchase agreement (“Purchase Agreement”) that Ms. Sward had signed to buy a laser for $67,500. He testified that the Business Overview and Purchase Agreement were presented to him as a package.

[12] During cross-examination, the plaintiff testified that he could not recall if Ms. Sward was present when Parker initially raised the issue of borrowing money with him or whether she was present when he was initially shown the Business Overview and Purchase Agreement. He testified, however, that Parker and Ms. Sward were both present for discussions about these documents and were both present when the terms for repayment of a loan were discussed and settled.

[13] On direct examination, the plaintiff testified that, to the best of his recollection, a blank promissory note was also provided to him as part of the package providing

the Business Overview and Purchase Agreement, but he conceded on cross-examination that he could not recall when he first saw a promissory note.

[14] There is a unfinalized promissory note ("Note") in evidence. The Note was a document that the plaintiff had in his possession. The terms of the Note are rudimentary and it contains blanks that are not filled in. It reads:

> In 2016, I, Robert Meadows will lend Parker Meadows and Yvonne Sward a sum of $_____ the form of Cash (Bank Transfer), which is to be repaid in full by _____.
>
> Interest Payments will be made monthly until the loan has been paid, starting on _____ and ending on _____. The interest rate is 3.33% and as a result, each monthly payment will amount to $ _____.
>
> Every monthly payment must be made before or on the 15th of every month.
>
> Additionally, the sum of the loan shall be paid by a minimum of $1000.00 (or more if possible) per month also made before or on the 15th of every month.
>
> Parker Meadows, (Borrower)
> Yvonne Sward, (Borrower)
> Robert Meadows, (Lender)

[15] The Note has a signature line for each of Parker, Ms. Sward and the plaintiff. The copy of the Note in evidence has no signatures. There are no other versions or copies of the Note were put into evidence.

[16] The plaintiff testified that he rather reluctantly agreed to loan $60,000 to Ms. Sward, but made it clear to Parker and Ms. Sward that he did not have the funds and would have to raise it by means of a home equity line of credit registered against his mobile home. According to the plaintiff, he, Parker and Ms. Sward negotiated the terms for the loan. His evidence is that they agreed that for the initial year of the loan term, Ms. Sward would be required to make monthly payments equalling the plaintiff's line of credit interest charges in respect of the $60,000. After the first year, those monthly payments were to increase by $1,000, and thus begin to pay down the principal.

[17] The plaintiff testified that he wanted some changes made to the promissory note he was first shown and that a revised version was made. He testified that he

(the plaintiff) signed that revised version. He testified that "to the best of his recollection" Ms. Sward also signed the revised version of the Note. He has no recollection as to whether Parker signed. The Plaintiff testified that he is presently unable to recall what changes he had asked to be made to the promissory note.

[18] Ms. Sward denies having been privy to any conversations that may have taken place between Parker and the plaintiff regarding the $60,000. She testified that her understanding was that the plaintiff owed a $60,000 debt to Parker for work Parker had done on improvements to the plaintiff's mobile home, and that Parker was approaching the plaintiff to collect that debt. She said the plan, as she understood it, was that Parker would collect the debt and would then give her the $60,000 as a gift.

[19] On May 16, 2016, the plaintiff arranged a $75,000 line of credit from TD (the "LOC"), secured against his mobile home. The interest rate was 3.3%.

[20] On May 18, 2016, Ms. Sward incorporated Renew.

[21] On May 19, 2016, the plaintiff transferred $10,561.10 from the LOC to his own personal chequing account. He used this money to pay a debt he owed to VanCity.

[22] On May 20, 2016, the plaintiff e-transferred $60,000 directly from the LOC into another TD bank account (the "Transfer"). The transfer memo for the Transfer shows the funds were transferred to a TD account number associated with the name "R LASERS".

[23] Ms. Sward acknowledged that the "R LASERS" TD account was a bank account under her control. She described it as "her" account. She testified that the Transfer was made directly into the R LASERS account because that account and the plaintiff's LOC account were both with TD, making the transfer easy to accomplish. She said the Transfer was done this way because it was more convenient than having the plaintiff pay his debt to Parker and Parker then gifting the money over to her.

[24] Ms. Sward denies having anything to do with creating the Note. She acknowledges, however, that she reviewed the Note and that when she reviewed it, she understood that the Note related to the $60,000. She testified that she did not review the Note at a meeting with the plaintiff, but rather that Parker brought the Note home to her and that she reviewed it there. She testified that after giving her the Note to review, Parker instructed her not to sign the Note because he (Parker) did not intend to pay the plaintiff back.

[25] When asked whether she saw the Note before or after the Transfer was made, Ms. Sward said she was unsure of the actual timing. However, later in her testimony she insisted that she only saw the Note after the Transfer had been made.

[26] In or about April 2017 (about one year after the Transfer), Ms. Sward began making periodic payments (“Payments”) to the plaintiff. Initially, these Payments approximated the monthly LOC interest attributable to the $60,000.

[27] The plaintiff entered his historic LOC statements into evidence. The statements feature handwritten annotations calculating out the proportionate amount of the total LOC interest relating to the $60,000 withdrawal. He testified that these annotations were made by him contemporaneously (that is, shortly after he received each statement). Ms. Sward agreed on cross-examination that the plaintiff provided her with copies of his LOC statements and that she understood that he was doing that so she could see the amount of interest owing in relation to the $60,000.

[28] The plaintiff testified that Ms. Sward missed some monthly payments altogether and thereafter would sometimes pay somewhat larger amounts in an attempt to catch up on the interest owing.

[29] There are text messages between Ms. Sward and the plaintiff in which a “loan” is discussed. These text messages do not provide a full view of the parties’ exchanges. The plaintiff testified that when he got a text that required a lengthy answer, he often phoned Ms. Sward to discuss the matter rather than type out a

response. His testimony in this respect is consistent with the pattern of their text exchanges.

[30] For example, on June 13, 2016, Ms. Sward sent the two following texts:

> Hey Rob, can you give me the number owing and initial loan amount on the line of credit/ equity loan? Thank you.
>
> Are you applying my payments to the Equity? I'm just looking at the statements and it look like only the interest is being paid when I'm paying more.

There is no responsive text message from the plaintiff. The next text messages between them occur on a different day and relate to a new topic.

[31] On June 20, 2019, Ms. Sward sent a text stating:

> Hey rob, Parker and I were discussing the loan, he told me you said I have only been paying the interest and that I've paid nothing towards the loan….

[32] On February 2, 2020, Ms. Sward texted:

> … Parker wants me to pay him, says its his money. Said he will "deal with you his way" not sure what that means. …

[33] It is evident from the February 2, 2020 texts, and surrounding texts, that Parker and Ms. Sward's relationship had broken down by February 2, 2020. In the February 2, 2020 text and later texts, Ms. Sward reports to the plaintiff that Parker has been coming to her residence and harassing her and that she is looking into getting a restraining order.

[34] Along the same lines of the February 2, 2020 text set out above, on March 11, 2020, Ms. Sward texted the plaintiff saying:

> Can you please let Parker know I am not paying him only you. He has called me a million times again.

[35] There is no text response to Ms. Sward's March 11, 2020 text. It is unclear whether the parties had a telephone conversation following that text.

[36] Three days later, on March 14, 2020, the plaintiff texted Ms. Sward as follows:

> Yvonne because of my health I am unable to continue dealing with the loan especially considering the direction things have taken. You are continually behind on the interest payments and have made no payments toward the principal as agreed. Moving forward I will not be involved further. Parker and I entered this together and it is now his responsibility to deal with. I will have no involvement and will do what is necessary to ensure this with both you and Parker. I hope you and Parker can work this out …

[37] The plaintiff testified about his March 14, 2020, text. The plaintiff testified that he meant by it that he was done dealing with Parker and was only going to deal with Ms. Sward. The plaintiff could not recall if he and Ms. Sward had a phone conversation further to this message, but he said that shortly after it Ms. Sward blocked him as a caller on her phone and ceased making Payments.

[38] There are also a series of texts between Parker and Ms. Sward in evidence. In those texts, Parker consistently denies that he gave Ms. Sward the $60,000 as a gift. Notably, in a series of texts dated July 26, 2017, Parker writes: “If you want to keep your business figure out how to pay back that loan ASAP” and that “All I need is 60k”.

[39] In June 2020, the plaintiff decided to sell the mobile home. On July 24, 2020, the plaintiff fully paid off the LOC using proceeds from the sale.

[40] Ms. Sward testified that she only made the Payments because Parker told her to do so. She said Parker told her that he wanted the plaintiff to believe the money would be repaid, even though it would not. When asked why she was willing to mislead the plaintiff in this way, she testified that Parker would threaten her if she failed to do as she was told.

[41] Ms. Sward testified that she stopped making Payments because it was “not [my] loan to begin with” and because Parker had begun demanding that she make payments on the $60,000 to him rather than the plaintiff. She testified that there were “a lot of threats coming my way”, and so she decided to “wash her hands clean of the both of them” (i.e., Parker and the plaintiff).

III. Positions

[42] Ms. Sward emphasizes that, on her evidence, she was not present when Parker and the plaintiff discussed or negotiated terms regarding the Transfer. She says that even if there is a loan agreement, it would be an agreement between Parker and the plaintiff, and thus the plaintiff has no cause of action against her or Renew. She also relies on the fact that the Note is unsigned.

[43] The plaintiff relies on his own evidence that Ms. Sward did participate in discussions about the loan including settling the terms of repayment before the Transfer was made. On his evidence, Ms. Sward also saw the Note prior to the Transfer.

[44] The plaintiff also argues the fact that Ms. Sward made the Payments, it is dispositive evidence that the parties had a shared common intention to the treat the $60,000 as a loan at the time the Transfer was made. He places similar reliance on their text messages and her text inquiry about the status of the principal.

IV. Legal Framework

[45] There is no legal requirement for a loan agreement to be set out in a written document. While it is obviously prudent to set down the terms of in writing, the law recognizes agreements reached orally or through conduct establishing an intention to be bound. As Justice Dickson (then of this Court) stated in *Soleil Hotel & Suites Ltd. v. Soleil Management Inc.*, 2009 BCSC 1303:

> [321] Courts strive to uphold contractual obligations solemnly and freely undertaken. They do not, however, impose them upon parties who have not reached agreement on all essential terms: *Catalyst Paper Corp. v. Companhia de Navegacao Norsul,* 2008 BCCA 336.
>
> [322] For parties to be bound in a contractual relationship there must be a manifest meeting of the minds. They must express themselves outwardly in a manner that indicates both an intention to be bound and reasonably certain mutually agreed terms: *Klemke Mining Corporation v. Shell Canada Limited*, 2007 ABQB 176, affirmed 2008 ABCA 257 (CanLII).
>
> [323] These fundamental principles of contract law enable commercial life to operate in a fair, predictable and efficient manner. They apply whether the purported contract in question is concluded in writing, orally, by conduct, or by a combination thereof. The key question in all cases is whether an

> agreement has been reached on all essential terms, regardless of its form: *Catalyst Paper Corp. supra; Periscan Financial Services Inc. v. 519090 B.C. Ltd*., 2007 BCSC 707; *Leong & Associates Actuaries & Consultants Inc. v. Watt*, 2003 BCSC 1885.

[46] The test for determining whether there was an intention to create legal relations is objective. The question is whether the parties "indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": *Berthin v. Berthin*, 2016 BCCA 104 at para. 46, citing G.H.L. Fridman, *The Law of Contract in Canada* (6th ed., 2011) at 15.

[47] In this respect, evidence of the parties' actual subjective state of mind is not relevant: *Hammerton v. MGM Ford-Lincoln Sales Ltd.*, 2007 BCCA 188 at para. 23. As Justice Blackburn stated in *Smith v. Hughes* (1871), L.R. 6 Q.B. 597 (Q.B.), the leading English decision on the issue:

> If whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the terms proposed by the other party and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.

Or, as it was put in *Osorio v. Cardona* 1984 364 BCSC at paras. 32 and 34, evidence establishing that one party had a "secret mental reservation about performing the agreement" does not mean a contract was not concluded.

[48] The intention of the parties must be manifested before or when the contract is made. However, evidence of the parties' subsequent conduct may be looked to in determining whether a contract was formed: *Hoisington v. Johnson & Johnson Inc.* 2015 BCSC 1582 at para. 52; *Hoban Construction Ltd. v. Alexander*, 2012 BCCA 75 at paras. 39 and 43-44 [*Hoban Construction Ltd*].

[49] Finally, there is a distinction between a concluded agreement that has not been successfully "papered over" and a failure to conclude an agreement. In Hoban Construction Ltd., the Court of Appeal (per Bennett J.A.) wrote:

> [38] In [*Langley Lo-Cost Builders Ltd. v. 474835 B.C. Ltd.*, 2000 BCCA 365] at para. 76, this Court referred to *Bawitko Investments Ltd. v. Kernels*

Popcorn Ltd. (1991), 1991 CanLII 2734 (ON CA), 79 D.L.R. (4th) 97 (Ont. C.A.), setting out the following excerpt from 103-104:

> As a matter of normal business practice, parties planning to make a formal written document [of] the expression of their agreement, necessarily discuss and negotiate the proposed terms of the agreement before they enter into it. They frequently agree upon all of the terms to be incorporated into the intended written document before it is prepared. Their agreement may be expressed orally or by way of memorandum, by exchange or correspondence, or other informal writings. The parties may "contract to make a contract", that is to say, they may bind themselves to execute at a future date a formal written agreement containing specific terms and conditions. When they agree on all of the essential provisions to be incorporated in a formal document with the intention that their agreement shall thereupon become binding, they will have fulfilled all the requisites for the formation of a contract. The fact that a formal written document to the same effect is to be thereafter prepared and signed does not alter the binding validity of the original contract.
>
> However, when the original contract is incomplete because essential provisions intended to govern the contractual relationship have not been settled or agreed upon; or the contract is too general or uncertain to be valid in itself and is dependent on the making of a formal contract; or the understanding or intention of the parties, even if there is no uncertainty as to the terms of their agreement, is that their legal obligations are to be deferred until a formal contract has been approved and executed, the original or preliminary agreement cannot constitute an enforceable contract. In other words, in such circumstances the "contract to make a contract" is not a contract at all. The execution of the contemplated formal document is not intended only as a solemn record or memorial of an already complete and binding contract but is essential to the formation of the contract itself...

V. Analysis

[50] The primary issue in this case is whether the Transfer was pursuant to a loan agreement and, if so, whether Ms. Sward and/or Renew were party to that agreement.

[51] The plaintiff testified that there is, or at least was, a final version of the Note that he signed. He is unable, however, to definitively say whether the document he signed was signed by Ms. Sward or Parker. Further, he is unable to say in what way the final version differed from the version of the Note in evidence. Thus, if there is a loan agreement, the plaintiff must establish it as one having been concluded orally, by conduct, or by a combination of those two.

[52] Ms. Sward has testified that she was not present when the terms or conditions of the advancement of the $60,000 were discussed and that she understood the Transfer to be an indirect gift to her from Parker. The plaintiff testified that Ms. Sward actively participated in the discussions persuading him to make a loan to her and negotiation of the terms of repayment. Resolving this factual dispute is critical to the disposition of the plaintiff's claim.

[53] The plaintiff and Ms. Sward were the only trial witnesses. There are relatively few documents. Credibility and reliability are central here given the direct conflicts in the evidence.

[54] In *Bradshaw v. Stenner*, 2010 BCSC 1398, Justice Dillon provided a review of the relevant principles:

> [186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Farnya*]; *R. v. S.(R.D.),* 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Farnya* at para. 356).
>
> [187] It has been suggested that a methodology to adopt is to first consider the testimony of a witness on a 'stand alone' basis, followed by an analysis of whether the witness' story is inherently believable. Then, if the witness testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison. Finally, the court should determine which version of events is the most consistent with the "preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions" (*Overseas Investments (1986) Ltd. v. Cornwall Developments Ltd*. (1993), 1993 CanLII 7140 (AB KB), 12 Alta. L.R. (3d) 298 at para. 13 (Alta. Q.B.)). …

[55] I found the plaintiff to be a persuasive witness. The events at issue were financially significant to him. His recollections of how he came to advance the money were specific and detailed, but without being unrealistically so. He acknowledged there were things he could not recall due to the passage of time. When valid points were raised to his attention on cross-examination, he made thoughtful and reasonable concessions. The plaintiff's overall chronology of the events leading up to the Transfer corresponds to what reasonable people would do in the circumstances and can be reconciled with the documents in evidence.

[56] That said, there are aspects of his testimony that certainly raise issues. As a notable example, his testimony regarding the meaning of his March 14, 2020 text simply cannot be reconciled with the actual content of the text. As I read that text, the plaintiff is advising Ms. Sward that he is tired of being in the midst of her and Parker's ongoing personal dispute and has decided he will leave it to Parker to see that Ms. Sward repaid the plaintiff the money. Given both parties' testimony regarding Parker's character, the text is more a less a veiled threat and Ms. Sward appears to have appreciated that. Her response was to "wash her hands clean" and refuse to make any Payments at all. I conclude that the plaintiff's strained interpretation was offered in testimony because the plaintiff was not keen to admit to having made a threat.

[57] The plaintiff's misleading testimony aside, however, the actual content of his March 14, 2020 text is still consistent with the plaintiff's position that the Transfer was a loan to Ms. Sward.

[58] In contrast, Ms. Sward's testimony was unsatisfactory in a number of respects.

[59] She was, on multiple occasions, unable to recall the order of significant events relevant to this dispute. This raises, at minimum, an issue of reliability. Further, when challenged in cross-examination as to whether her conduct made sense in light of her own testimony or surrounding events, she often responded with

some variation on “I just do what Parker tells [me] to do”. I find this response was deliberately employed as a means to close down effective cross-examination.

[60] There were also credibility issues. For example, Ms. Sward testified that Parker only recharacterized the Transfer as something other than a gift after they broke up. That is flatly inconsistent with texts in evidence. As set out above, there are text exchanges between Ms. Sward and Parker in which Parker characterizes the money as a loan back in 2017.

[61] There are also credibility issues with Ms. Sward’s claim that she simply did whatever Parker told her. Significantly, Ms. Sward testified that she did not owe any money to the plaintiff and only made the Payments because Parker told her to make them. However, she testified that Parker disapproved of her making her larger “catch-up” Payments, but she paid them anyway. She agreed on cross-examination that she continued to make Payments to the plaintiff even after Parker told her to stop paying the plaintiff at all. When Parker directed her to start paying him (Parker) instead of the plaintiff, she flatly refused.

[62] I also find it improbable that Ms. Sward would express concerns to the plaintiff about increasing payments to make progress on reducing the principal if she was only paying anything at all because she was afraid of Parker.

[63] Ms. Sward initially testified that she was not certain whether she reviewed the Note before or after the Transfer was made. In later testimony, she firmly asserted that she only saw the Note after the Transfer. I find this change in position was brought about by it having become apparent to Ms. Sward during cross-examination that a prior review of the Note could be harmful to her legal position.

[64] I also find her testimony in relation to the Business Overview improbable. Ms. Sward agrees she drew up the Business Overview and that it existed prior to the Transfer. The Business Overview speaks of a loan, not of investors. There is no evidence suggesting that either Parker or Ms. Sward had any ability to obtain a loan from any legal source other than through the plaintiff. There was no apparent need

to prepare the Business Overview other than to persuade the plaintiff to make a loan – a loan he was clearly reluctant to make – to enable Ms. Sward to open the business. It is also notable that the Business Overview includes the repayment of a loan as a business expense at $1000 monthly, which is the same amount set out on the Note and the same amount the plaintiff testified that he, Ms. Sward and Parker all agreed upon prior to the Transfer.

[65] Further, I accept that the plaintiff's testimony that he believed he was being asked to make a loan to help Ms. Sward open a business. Having made that finding, I find it highly improbable that he agreed to put his home up for security in order to make that loan without speaking directly with Ms. Sward about the business and her plan to repay the money. Accordingly, I reject Ms. Sward's testimony that she did not discuss and agree upon terms and conditions with the plaintiff. It follows that I also reject her assertion that she accepted the Transfer on the understanding that it was an indirect gift to her from Parker.

[66] The source of the Note is unclear. The plaintiff says he did not draft it and Ms. Sward says she was presented with it for review. Quite possibly, it was drafted by Parker in his effort to put a loan arrangement together. It is not, however, a finding that need to be made. I am satisfied that Ms. Sward and the plaintiff had already agreed to the essential terms under which a loan would be made by the plaintiff and repaid by Ms. Sward before the Transfer was made. The "contract" already existed and a signed Note would only have papered that existing agreement.

[67] On the whole of the evidence, I am satisfied that Ms. Sward accepted the Transfer from the plaintiff knowing that it was advanced to her as a loan and that it was subject to repayment on terms. The agreed upon essential terms were generally consistent with the Note and the plaintiff's evidence: i.e., that Ms. Sward could make payments covering only the monthly interest under the LOC for a year while her business got up and running and then increase by $1000 in order to reduce the principal.

[68] It is quite possible that Parker assured Ms. Sward that he would arrange it so she not actually have to repay the entire loan. However, whatever Ms. Sward subjectively planned or expected with respect to repayment, she objectively entered a contract and she accepted the Transfer under the terms of that contract. The law is clear that the intentions of the parties must be ascertained from the perspective of a reasonable bystander. I find that a reasonable person would view Ms. Sward's conduct as consistent with someone who intended to enter a contract.

[69] Further, Ms. Sward's subsequent conduct was consistent with that of a person who was bound by a contract and was aware of the terms of that contract. While Ms. Sward failed to fully comply with the repayment terms, she consistently acknowledged those terms and made partial payment under those terms through February 2020. She also expressly confirmed to the plaintiff that the money was a loan on multiple occasions after the Transfer was made.

[70] The plaintiff has not established by evidence that Renew was a party to the loan agreement.

[71] The bare fact that the Transfer was made to a Renew bank account would not make Renew liable under the loan agreement. Further, it is not established on the evidence that the bank account associated with the name "R LASER" is, in fact, a corporate account belonging to Renew. To the contrary, in her testimony, Ms. Sward described the account in question as her account. I note that Renew was not named on the Note.

[72] The plaintiff did not directly address Renew's status as a defendant to the contract claim as set out in the notice of civil claim at any time prior to closing argument. He did not establish in evidence or argue that Renew was a party to the loan agreement or that there were grounds for piercing the corporate veil.

[73] In closing argument, counsel for the plaintiff suggested the pleadings could be interpreted as including a plea of "resulting trust". I disagreed with this suggestion and with his further suggestion that there would be no prejudice involved in adding a

resulting trust claim at that point of final argument. (No application to amend the notice of civil claim was actually made.) In any event, adding a claim of resulting trust would not advance the matter as a claim against Renew as a defendant. There is no failed contract claim here. My conclusion that that there was a loan agreement between the plaintiff and Ms. Sward and the Transfer was pursuant to that contract. If there was a gratuitous transfer made here, it was one from Ms. Sward to Renew.

VI. Disposition

[74] Accordingly, I order Ms. Sward pay to the plaintiff $62,393.34. This amount reflects the original amount loaned by the plaintiff, the accrued interest at the LOC rate up until the date the LOC debt was retired by the plaintiff (i.e., July 24, 2020), and the amount already paid by Ms. Sward to the plaintiff under the Payments.

[75] As the loan agreement provided for the interest rate under the LOC to form part of the debt, no further interest is awarded for the period up until July 24, 2020: *Court Order Interest Act*, R.S.B.C. 1996, c. 79, ss. 1, 2(b). However, pre-judgement interest at Registrar's rates is payable on the sum of $62,393.34 from July 24, 2020 to the date of this decision.

[76] The plaintiff is entitled to his costs.

Tucker J.