IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Georgas v. Ball,*
2024 BCSC 958

Date: 20240603
Docket: S210706
Registry: Vancouver

Between:

Christos Georgas

Plaintiff

And:

Terrence Ball aka Terry Ball, Margaret Sheila Ball, 1169179 B.C. Ltd.

Defendants

Before: The Honourable Justice Warren

Reasons for Judgment

Counsel for the Plaintiff:	C.N. Mangan S. Nainaar
Counsel for the Defendants:	D. Griffith K. Grant, Articled Student
Place and Dates of Trial:	Vancouver, B.C. May 17-19, and August 10, 2023
Place and Date of Judgment:	Vancouver, B.C. June 3, 2024

Table of Contents

Introduction

[1] This case arises out of two business ventures in which the plaintiff, Christos Georgas, and the defendant, Terrence Ball, participated in 2018. Counsel referred to these as the “Lending Venture” and the “Cash Transfer Venture”.

[2] The Lending Venture involved Mr. Georgas making a series of loans to Mr. Ball, usually evidenced by written promissory notes signed by Mr. Ball. Each promissory note specified a due date and a dollar amount of interest to be paid for the stated time period. When expressed in percentage per year terms, the interest rate was about 240 percent per year.

[3] The Cash Transfer Venture involved Mr. Georgas depositing funds, in Toronto, into bank accounts at TD Bank held in the name of one of two companies controlled by Mr. Ball; Mr. Ball withdrawing the same amounts in cash, in Vancouver, from the bank accounts in question; and Mr. Ball giving the cash to Mr. Georgas in Vancouver, less a fee of two percent. The two companies are the defendant, 1169179 B.C. Ltd. (“179”), which is controlled by Mr. Ball, and Centur Pallet & Lumber Co. (“Centur”), which was controlled by Mr. Ball but was dissolved before the commencement of the Cash Transfer Venture.

[4] Although 179 was named as a defendant, in final submissions Mr. Georgas sought relief only from Mr. Ball and Margaret Sheila Ball (who is the wife of Mr. Ball). Specifically, Mr. Georgas seeks judgment, jointly and severally, against Mr. Ball and Ms. Ball, as debt, damages for breach of contract, or restitution for unjust enrichment, in the principal amount of $267,700, which comprises $141,700 in principal allegedly owing to him pursuant to the Lending Venture; $63,000 for deposits he made into the bank account in Centur’s name pursuant to the Cash Transfer Venture that he says were not returned; and $63,000 for deposits he made into the bank account in 179’s name pursuant to the Cash Transfer Venture that he says were not returned.

[5] Mr. Georgas also seeks pre- and post-judgment interest on these amounts from July 2018 (which is when he says he last received interest on the amounts

owing pursuant to the Lending Venture) at a rate commensurate with the high rates agreed to by the parties in relation to the Lending Venture, or alternatively at a rate determined by the Court.

[6] The claim against Ms. Ball is founded upon the allegation that she verbally agreed to be liable for amounts owing by Mr. Ball to Mr. Georgas pursuant to the Lending Venture and the Cash Transfer Venture.

[7] Mr. Ball admits his involvement in the Lending Venture and the Cash Transfer Venture, but he denies owing anything to Mr. Georgas.

[8] With respect to the Cash Transfer Venture, Mr. Ball:

a) admits that Mr. Georgas made the deposits Mr. Georgas claims to have made, but says he repaid the deposited amounts in cash as agreed; and

b) in any event, if any of the deposited amounts were not repaid, they are not recoverable by Mr. Georgas because the Cash Transfer Venture was entered into for the illegal purpose of tax evasion and/or money laundering and as such is void as against public policy.

[9] Mr. Ball's position with respect to the Lending Venture has evolved and is less clear. As I understand it, as at the completion of the trial he:

a) admits that Mr. Georgas made some of the loans Mr. Georgas claims to have made;

b) says that $69,700 in principal was owing to Mr. Georgas as at August 2018, when Mr. Ball "cancelled" the loans;

c) says he made interest payments to Mr. Georgas totalling $73,200;

d) says it was a term of the Lending Venture that Mr. Georgas would provide Mr. Ball with his Social Insurance Number to enable Mr. Ball to issue a T5 slip to Mr. Georgas, and Mr. Georgas breached this term which entitled

Mr. Ball to cancel the outstanding promissory notes and apply the $73,200 in interest already paid to satisfy the outstanding principal; and

e) in the alternative to (d) above, says the $73,200 in interest payments he made reflect interest at a rate that exceeds the rate prohibited by s. 347 of the *Criminal Code*, R.S.C. 1985, c. C-46; the Court should sever the illegal interest provisions of the promissory notes and replace them with pre-judgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79 (the "COIA"); and any interest paid in excess of pre-judgment interest under the COIA should be applied against any amounts found to be still outstanding pursuant to the Lending Venture.

[10] The defendants deny that Ms. Ball personally guaranteed any amounts owing to Mr. Georgas under either the Lending Venture or the Cash Transfer Venture.

[11] By agreement, the parties relied on affidavits of their witnesses as forming part of the direct evidence of each witness.

Background

[12] Mr. Georgas and Mr. Ball met through a mutual friend, Russell Serion.

[13] Mr. Georgas and Mr. Serion became friends in high school. Each of them operates or has operated several businesses. They operated at least one business – a vape store – together.

[14] Mr. Georgas has or had an interest in a cannabis retail business in Ontario and a metal shop in Richmond, British Columbia.

[15] Mr. Ball is a retired accountant. He met Mr. Serion through Mr. Serion's parents, who were accounting clients of his. He performed accounting services for the vape store operated by Mr. Georgas and Mr. Serion.

[16] In the lead up to the material time, Mr. Ball was operating a financing business of sorts. He made short-term loans to clients at high rates of interest, which

were financed by investors, who in turn received high rates of interest on their investments. Mr. Serion was such an investor and he told Mr. Georgas about the opportunity. Mr. Serion testified that many investors were involved and it was highly lucrative. This financing business was the Lending Venture.

[17] Between February 2018 and July 2018, Mr. Georgas made several loans to Mr. Ball, pursuant to the Lending Venture. All but one of these loans were evidenced by promissory notes prepared by Mr. Ball which stipulated a due date and an interest amount, expressed in dollars. The interest amounts were set by Mr. Ball. There is no dispute that the principal amounts were not repaid on the stated due dates. Rather, the loans were "rolled over" for one or more additional periods, but interest was either paid periodically or accumulated at the rate that corresponded to the interest amount expressed in the note.

[18] Mr. Serion served as a courier in the Lending Venture, transporting cash from Mr. Georgas to be loaned to Mr. Ball, and transporting the promissory notes and cash interest payments back to Mr. Georgas, for which Mr. Serion received a fee.

[19] Mr. Georgas received regular interest payments, in cash, pursuant to the Lending Venture, until July 2018.

[20] In about June 2018, Mr. Georgas and Mr. Ball met at a Starbucks to discuss the Cash Transfer Venture. Mr. Serion was present. There is no dispute that Mr. Georgas asked for Mr. Ball's assistance in moving cash from Toronto to Vancouver. Mr. Ball agreed to assist by making the two TD Bank accounts available to Mr. Georgas, for a fee of two or three percent.

[21] Mr. Georgas testified that it was agreed that he would make the deposits in cash, noting that the very point of the Cash Transfer Venture was to transfer cash. He testified that Mr. Ball told him not to deposit more than $10,000 at a time.

[22] Mr. Ball testified that he insisted the deposits be made by cheque.

[23] Mr. Serion testified that it was clear from the discussion at Starbucks that the deposits would be made in cash, and the bank was less likely to be concerned if the cash deposits were kept under $10,000 each.

[24] Between June 18, 2018 and July 28, 2018, pursuant to the Cash Transfer Venture, Mr. Georgas made several cash deposits in Toronto into the two TD Bank accounts controlled by Mr. Ball. There is no dispute that in early July 2018, $45,000 in cash was repaid to Mr. Georgas in Vancouver, less a two percent fee retained by Mr. Ball.

[25] Mr. Georgas claims that after the Starbucks meeting but before June 18, 2018, Mr. Ball and Ms. Ball met him at his metal shop in Richmond and Ms. Ball agreed to be responsible for Mr. Ball's obligations.

[26] Mr. Ball acknowledged attending a meeting with Mr. Georgas at the metal shop a few days after the Starbucks meeting. He testified this was the only time he had been at the metal shop. He said that at the metal shop meeting he gave Mr. Georgas a bank statement for each of the TD Bank accounts, which Mr. Georgas photocopied so that he would have the information he needed to make the deposits pursuant to the Cash Transfer Venture. He testified that Mr. Serion was present at this meeting and he denied that Ms. Ball was present. Ms. Ball testified she did not attend this meeting and that she did not provide any assurance to Mr. Georgas about assuming responsibility for Mr. Ball's obligations.

[27] In August 2018, Mr. Ball stopped making interest payments to Mr. Georgas on the loans Mr. Georgas had advanced pursuant to the Lending Venture. He told Mr. Georgas that the TD Bank accounts had been frozen because, in furtherance of the Cash Transfer Venture, Mr. Georgas had deposited cash instead of cheques.

[28] Mr. Ball says that around the same time that the TD Bank accounts were frozen, he asked Mr. Georgas to disclose his Social Insurance Number so Mr. Ball could issue him a T5 tax slip for the interest income he had earned through the Lending Venture. He said Mr. Georgas refused to provide the information and

advised that he had no intention of reporting the interest income for tax purposes. Mr. Ball testified this was problematic because his clients were depending on deducting from their income the interest they paid, as an expense, and, as a result, he told Mr. Georgas he was “cancelling” the outstanding loans. Mr. Georgas denied that Mr. Ball ever asked for his Social Insurance Number, or that it was ever contemplated that he would declare the interest he earned through the Lending Venture for tax purposes.

[29] Mr. Georgas claims that he made loans in the total principal amount of $141,700 to Mr. Ball pursuant to the Lending Venture. He relies largely on the promissory notes, each of which he says reflects a new loan. Mr. Ball says Mr. Georgas loaned him only $69,700, and that some of the promissory notes reflect the refinancing of previous loans.

[30] Mr. Ball acknowledges that he did not repay the principal loaned to him by Mr. Georgas pursuant to the Lending Venture but, as alluded to, it is his position that it was an implied term of his agreement with Mr. Georgas that he could apply the interest he had already paid (which he says was in the total amount of $73,200) to satisfy the outstanding principal if Mr. Georgas prevented him from issuing a T5 in respect of that interest.

[31] Mr. Ball says that in October 2018, after the TD Bank accounts were “unfrozen”, he delivered $69,840 in cash to Mr. Georgas representing the remaining funds that Mr. Georgas had deposited in the TD Bank accounts pursuant to the Cash Transfer Venture.

Credibility

[32] Because of the limited documentary evidence, many of the issues depend for their resolution on the testimony of Mr. Georgas and Mr. Ball. Unfortunately, neither of them was a credible witness. There were many flaws in their testimony that caused me to conclude that it would not be safe to rely on it in the absence of reliable corroborating evidence. I do not intend to list all the problematic aspects of the testimony of each of them. Some examples will suffice.

[33] I will start with Mr. Georgas.

[34] At times Mr. Georgas was evasive in his testimony, particularly when confronted with questions about why he was moving cash from Toronto to Vancouver. What he did say about the Cash Transfer Venture was peculiar, and I concluded that it was at best incomplete and at worst fabricated. He claimed he was using cash to buy cryptocurrency in Vancouver and then selling the cryptocurrency in Toronto for cash, but he did not provide a coherent explanation as to why he was conducing this business in cash. He did not provide a rational explanation for not using his own bank accounts to deposit cash in Toronto and withdraw it in Vancouver, but rather chose to pay someone a fee to use their accounts.

[35] Mr. Georgas initially claimed that Mr. Ball had not returned any of the money Mr. Georgas deposited into the TD Bank accounts and he said he only later realized that in fact Mr. Ball had returned $45,000 (less the fee). It is unlikely that he would forget receiving a payment of $45,000.

[36] Mr. Georgas essentially admitted that he insisted on receiving interest payments in cash pursuant to the Lending Venture to facilitate tax evasion. He is a person who is prepared to engage in dishonesty to advance his own interests.

[37] Each time Mr. Georgas testified about his alleged meeting with Ms. Ball, he gave a somewhat different version of what she said about assuming responsibility for Mr. Ball's obligations. In his first affidavit sworn February 6, 2023, Mr. Georgas deposed that he met with Mr. Ball and Ms. Ball, at his metal shop in Richmond, and Mr. Ball "informed [him] that he and his wife agreed to be liable for repayment", that Ms. Ball was present and "expressed her agreement with all of the arrangements" and "offered to assist with the delivery of [his] cash payments". At trial, Mr. Georgas testified that at this meeting, Ms. Ball said she would step in and make the interest payments if required and that their son, who was a police officer, would make the deliveries if necessary. In cross-examination, Mr. Georgas said Ms. Ball said she would "take care of anything" if Mr. Ball was unable to do so. Later in cross-

examination, he said Ms. Ball said she and their son knew about everything and "they were the backup" should anything happen to Mr. Ball.

[38] I turn to Mr. Ball.

[39] Mr. Ball's testimony that Mr. Georgas was required to provide his Social Insurance Number so a T5 could be issued to him, which would effectively require him to declare, for tax purposes, the interest income earned through the Lending Venture, and his testimony that Mr. Georgas was to deposit cheques and not cash pursuant to the Cash Transfer Venture, is implausible. Mr. Ball made the interest payments in cash. In the absence of some reasonable explanation for Mr. Georgas requiring cash payments, Mr. Ball must have known that Mr. Georgas had no intention of declaring the interest income. Similarly, Mr. Ball obviously knew the purpose of the Cash Transfer Venture was to move cash without leaving a record linked to Mr. Georgas. This is clearly why Mr. Georgas was prepared to pay a fee for the use of someone else's accounts. It is highly unlikely that he would deposit cash in his own bank account, then write a cheque for deposit into accounts controlled by Mr. Ball, and then pay a fee to Mr. Ball to have cash returned to him.

[40] Some of Mr. Ball's testimony was plainly inaccurate. For example, he testified he withdrew $44,500 to return to Mr. Georgas pursuant to the Cash Transfer Venture and took a fee of three percent, but a note in his own handwriting indicates he paid Mr. Georgas $44,100, representing the return of $45,000 less a fee of $900, which is two percent. As discussed in more detail later, Mr. Ball's testimony about which loans remained outstanding was incoherent.

[41] Some of Mr. Ball's testimony was internally inconsistent. At trial, Mr. Ball acknowledged that he was lending to "clients" and he said his clients expected to expense the interest they paid. He said he would have to return interest payments made by his clients if he could not ensure they could claim them as expenses. In his second affidavit, he deposed that he told Mr. Georgas that "I wanted to deduct the interest that I was paying on my companies' income tax returns and that I would need to issue him a T5 in order to do so", with no mention of his clients.

[42] In his original response to the notice of civil claim (filed February 19, 2021), he pleaded that the TD Bank accounts remained frozen and $80,000 of the frozen funds represented deposits made pursuant to the Cash Transfer Venture. In cross-examination, he admitted that he reviewed this pleading before it was filed. It is very clear that the bank accounts were not frozen at the time the pleading was filed. In cross-examination, Mr. Ball said the accounts were released by the bank prior to October 2018 and that the accounts were actually closed by the time this pleading was filed. In his first affidavit sworn February 14, 2023, he deposed that he repaid the $80,000 to Mr. Georgas in October 2018. He later amended his pleading to acknowledge the bank accounts were not frozen and he claimed that of the amount that had been frozen, $69,840 represented deposits made pursuant to the Cash Transfer Venture and that he returned that amount in October 2018.

[43] In his testimony at trial, Mr. Ball denied that he incorporated 179 specifically for the Cash Transfer Venture. During his examination for discovery he agreed it was incorporated specifically for that purpose – he explained it gave him “one more bank account to deal with”.

[44] Mr. Serion testified that Mr. Georgas paid Mr. Ball a bonus to receive the interest payments pursuant to the Lending Venture in cash. Mr. Ball also received fees for his participation in the Cash Transfer Venture. It must have been obvious to him that Mr. Georgas insisted on receiving interest payments in cash pursuant to the Lending Venture to facilitate tax evasion, and that at least one purpose of the Cash Transfer Venture was to assist Mr. Georgas with moving large amounts of cash income in a manner that would conceal it from tax authorities and currency regulators. Mr. Ball is a person who is prepared to profit from his participation in schemes that are designed to assist other people to engage in dishonest conduct.

Issues

[45] The following issues arise:

1. With respect to the Cash Transfer Venture:

a) what deposits did Mr. Georgas make in Toronto?

b) what amounts did Mr. Ball return in Vancouver?

c) if any portion of the deposited amount remains outstanding, does Mr. Georgas' claim nevertheless fail because it is founded upon an illegal agreement? and

d) if not, what amount if any is owed and what interest is payable?

2. With respect to the Lending Venture:

a) what amounts were advanced by Mr. Georgas to Mr. Ball?

b) what payments were made by Mr. Ball to Mr. Georgas on account of interest?

c) was it a term of the Lending Venture that Mr. Georgas would provide Mr. Ball with his Social Insurance Number to enable Mr. Ball to issue a T5 slip to Mr. Georgas and, if so, does his failure to do that entitle Mr. Ball to cancel the outstanding promissory notes and apply the interest he had already paid to satisfy the outstanding principal?

d) do the promissory notes require interest to be paid at rates that exceed the rate prohibited by s. 347 of the *Criminal Code*?

e) if the promissory notes require the payment of "criminal" interest, should the illegal interest provisions of the promissory notes be severed and, if so, what if any interest is payable? and

f) if the promissory notes require the payment of "criminal" interest, should the amount of interest already paid by Mr. Ball that exceeds the interest determined to be payable be applied against any amounts found to owing by Mr. Ball to Mr. Georgas?

3. Is Ms. Ball liable for any amount?

Analysis

The Cash Transfer Venture

What deposits were made by Mr. Georgas?

[46] There is reliable documentary evidence in the form of deposit slips establishing that between June 18, 2018 and July 27, 2018, Mr. Georgas made 12 cash deposits into Centur's TD Bank account totalling $107,500. There is reliable documentary evidence also in the form of deposit slips that between July 25, 2018 and July 28, 2018, Mr. Georgas made seven cash deposits into 179's TD Bank account totalling $63,000. I rely on these deposit slips to find that Mr. Georgas deposited a total of $170,500 into the two TD Bank accounts in question. Each deposit was in an amount less than $10,000.

What amounts did Mr. Ball return?

[47] Mr. Georgas acknowledged, at trial, that Mr. Ball repaid $45,000. He testified that initially he forgot about this repayment, but on reflection and review of documents he realized that $45,000 (less a fee of $900, or two percent) was returned to him in two payments made on July 6 and July 9, 2018. He testified that he did not receive any additional repayments.

[48] In his first affidavit, Mr. Ball deposed that he repaid all the deposits except $80,000, which he repaid in October 2018. In his third affidavit, Mr. Ball deposed that he was mistaken about the $80,000 repayment and that, in fact, he returned $69,840 to Mr. Georgas in October 2018. He relied on a diary-type entry in a personal notebook as corroborating evidence. He claims to have discovered the notebook in May 2023, more than two years after this action was commenced. At trial he testified that he also repaid $90,000 (in two amounts of $45,000 each) in late July or early August, 2018. He produced no documentary evidence of these payments (such as bank statements showing the withdrawals). He did not specifically mention these payments in any of his affidavits.

[49] For the reasons I have already expressed, I am unable to rely on Mr. Ball's testimony unless it is corroborated by evidence that is reliable. I am not satisfied that the notebook is reliable. As mentioned, Mr. Ball says he did not discover the notebook until May 2023. I do not believe that. The notebook purports to contain detailed records of his business dealings for all of 2018. Given the allegations made by Mr. Georgas in this case, it is not plausible that Mr. Ball forgot about the notebook until shortly before or during the trial.

[50] Further, on Mr. Ball's most recent version, he repaid a total of $204,840 ($45,000 in early July 2018, $90,000 in late July or early August 2018, and $69,840 in October 2018). Again, the deposit slips show deposits of only $170,500. Mr. Ball did not explain why he returned $204,840 when only $170,500 had been deposited.

[51] Mr. Georgas produced a written reconciliation that he emailed to Mr. Ball in January 2019. That reconciliation claims that $123,480 ($126,000 less a fee of two percent) in principal was outstanding pursuant to the Cash Transfer Venture and that there were five loans outstanding pursuant to the Lending Venture, with a total principal amount of $92,000. Mr. Ball acknowledged receiving this reconciliation from Mr. Georgas and admitted he did not dispute the amounts claimed in it. If he repaid all or most of the deposits by October 2018, he very likely would have responded in writing to set Mr. Georgas straight.

[52] I find that Mr. Ball returned only $45,000 of the $170,500 deposited by Mr. Georgas pursuant to the Cash Transfer Venture, leaving $125,500 (less a fee of two percent) outstanding.

Does Mr. Georgas' claim fail because it is founded upon an illegal agreement

[53] The doctrine of *ex turpi causa non oritur actio* was not pleaded by the defendants as a defence to the claim arising out of the Cash Transfer Venture. However, I raised the issue of potential illegality and gave the parties the opportunity to address it in their submissions: see *Randhawa v. 420413 B.C. Ltd*., 2009 BCCA 602 at paras. 67-69.

[54] The defendants then argued that if any of the amounts deposited into the TD Bank accounts by Mr. Georgas were not repaid by Mr. Ball, they are not recoverable by Mr. Georgas because the Cash Transfer Venture was entered into for the illegal purpose of tax evasion and/or money laundering. Mr. Georgas argued that there was nothing illegal about the Cash Transfer Venture. Alternatively, he says returning the deposited funds to him would not allow him to profit from any illegality, but rather would merely place him in the position he was in before any allegedly illegal conduct occurred.

[55] The doctrine of *ex turpi causa non oritur actio* prevents a party from using judicial processes to benefit from illegal or immoral conduct: *Cement LaFarge Ltd. v. B. C. Lightweight Aggregate*, [1983] 1 S.C.R. 452. The doctrine applies in both contract and tort: *Hall v. Herbert*, [1993] 2 S.C.R. 159.

[56] *Ex turpi causa* was traditionally applied to completely void contracts, on the basis of public policy, if they were prohibited by statute or the common law*: Wang v. Jiang,* 2021 BCCA 132 at paras. 41-42*.* However, the law has now rejected the strict approach in favour of a more flexible one that focusses on factors relevant to the integrity of the judicial process: *Wang* para. 50. This modern approach requires a balancing of "the need to preserve public policy by not enforcing illegal agreements […against] the need to prevent unjust enrichment by denying recovery": *Lindsay v. Ambrosi*, 2019 BCCA 442 at para. 27; *Wang* para. 58.

[57] *In Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.,* 2020 BCCA 130 at para. 69, the central question was framed as follows:

> … whether enforcement of an agreement that is tainted in some way with illegality will undermine the integrity of the legal system. This may occur when the remedy sought by the plaintiff would allow the plaintiff to profit from wrongful conduct, or would introduce inconsistency in the law, or would frustrate the policy underlying the illegality, or would in some other way driven by the facts of the particular case undermine the integrity of the judicial process.

[58] The following factors were identified in *Wang* at para. 50 as relevant to the assessment:

> … the objectives of the prohibition that was breached, whether the misconduct was serious in intent and result, the relative "fault" of the parties, the likely consequences of declaring the contract invalid, the possible unjust enrichment of one party as a result of the non-enforcement, and the potential that letting the estate 'lie where it falls' may bring about an unfair or disproportionate result.

[59] Again, there is no dispute that the purpose of the Cash Transfer Venture was to facilitate the movement of cash from Toronto to Vancouver. Mr. Georgas testified that this was to assist him in the buying and selling of cryptocurrency. He said he was buying cryptocurrency in Vancouver with cash and selling it in Toronto for cash at a profit of between eight and ten percent. He said he needed to get the cash proceeds received in Toronto back to Vancouver to buy more cryptocurrency. He did not provide a coherent explanation for using cash. He did not provide a coherent explanation for not using his own bank accounts to deposit cash in Toronto and withdraw it in Vancouver but instead paid Mr. Ball a fee to use his accounts. Mr. Serion's testimony clearly suggested that Mr. Georgas was trying to evade income taxes, and using someone else's accounts and limiting deposits to amounts less than $10,000 would reduce the risk of regulatory scrutiny.

[60] Mr. Ball testified that Mr. Georgas did not mention any cryptocurrency business. He testified that at the Starbucks meeting Mr. Georgas told him he needed to move cash from Toronto to Vancouver to conduct his cannabis retail business, which was located in Toronto. He said Mr. Georgas explained that growers of marijuana in British Columbia only took cash, so Mr. Georgas had to move cash earned from the business in Toronto to purchase product in British Columbia. He said Mr. Georgas had been transporting cash by truck but this was not safe.

[61] Again, Mr. Ball testified that he told Mr. Georgas to only deposit cheques into the TD Bank accounts. He said that he emphasized this was important because a series of cash deposits would likely cause the bank to "shut you down". He testified that "only an idiot would agree" to have cash deposited into his accounts.

[62] In cross-examination, Mr. Georgas agreed that he had an ownership interest in a cannabis retail business in 2018, and this was before legalization. However, he

denied that the purpose of the Cash Transfer Venture was to assist him in purchasing marijuana from growers in British Columbia for cash and selling the product for cash in Toronto.

[63] For reasons I have explained, I cannot rely on the testimony of either Mr. Georgas or Mr. Ball. In the result, the evidentiary record is not sufficiently credible for me to make a finding about whether the Cash Transfer Venture was intended to facilitate a legal cryptocurrency business or an illegal marijuana business.

[64] Nevertheless, I have no difficulty concluding that the Cash Transfer Venture is tainted by illegality. The evidence as a whole leads to the inescapable conclusion that one of the objectives, if not the primary objective, was to assist Mr. Georgas move large amounts of cash income in a manner that would conceal it from tax authorities and currency regulators. At least one of the objectives of the concealment was to allow Mr. Georgas to evade income taxes. Evasion of or an attempt to evade the payment of income tax is an offence: *Income Tax Act*, R.S.C. 1985, c.1 (5th Supp.), s. 239.

[65] The next question is whether this illegality precludes Mr. Georgas from recovering the deposits that I have found remain outstanding. As discussed, this depends on whether permitting recovery, on the facts of this case, would undermine the integrity of the justice system. I have somewhat reluctantly concluded that it would not.

[66] While the misconduct (participating in a tax evasion scheme) is serious, the evidence fails to demonstrate that any third party, the Canada Revenue Agency in particular, in fact suffered a loss from the deception and, if so, to assess the magnitude of that loss.

[67] Both Mr. Georgas and Mr. Ball were knowing participants in the illegality. They are equally at fault. Both of them stood to benefit: Mr. Georgas from the tax

evasion and Mr. Ball from the fees. In the result, their moral culpability is similar if not the same.

[68] Failing to require Mr. Ball to return the outstanding deposits would be a disproportionate and unbalanced result that would unjustly enrich Mr. Ball. Unjustly rewarding Mr. Ball, who is appropriately viewed as one of the two wrongdoers, would undermine the integrity of the law.

[69] For these reasons, I have concluded that the agreement between Mr. Georgas and Mr. Ball underlying the Cash Transfer Venture must be enforced.

What amount is owed and what interest is payable?

[70] I have found that $125,500 (less a fee of two percent) remains outstanding. That amount ($122,990) must be returned to Mr. Georgas by Mr. Ball.

[71] The record clearly establishes that an implied term of the Cash Transfer Venture agreement was that the deposits would be returned promptly. There is no reliable evidence suggesting the parties agreed that interest would be paid to Mr. Georgas in relation to the Cash Transfer Venture. All the deposits had been made by July 28, 2018. In the circumstances, pursuant to s. 1 of the COIA, Mr. Ball shall pay pre-judgment interest on the $122,990 from August 1, 2018.

The Lending Venture

What principal amounts were advanced by Mr. Georgas to Mr. Ball and how much remains outstanding?

[72] Mr. Georgas says that he advanced a total of $141,700 to Mr. Ball pursuant to the Lending Venture, as follows:

Loan #	Commencement Date	Due Date	Principal Sum	Term	Interest
1.	March 26, 2018	April 26, 2018	$15,000	Monthly	$2,742

Loan #	Commencement Date	Due Date	Principal Sum	Term	Interest
2.	March 15, 2018	April 15, 2018	$20,000	Monthly	$6,000
3.	March 20, 2018	April 20, 2018	$15,000	Monthly	$3,000
4.	April 12, 2018	May 1, 2018	$20,000	20 days	$4,200
5.	April 14, 2018	May 14, 2018	$19,700	Monthly	$5,000
6.	April 15, 2018	May 15, 2018	$20,000	Monthly	$6,000
7.	April 20, 2018	May 20, 2018	$15,000	Monthly	$3,000
8.	July 9, 2018	July 31, 2018	$17,000	20 days	$3,400

[73] Mr. Georgas says that the entire $141,700 in principal remains outstanding. He produced promissory notes documenting all of the loans noted above except loan #4. He produced a deposit slip for that loan and Mr. Ball agreed in cross-examination that the deposit reflected a loan principal payment to him from Mr. Georgas. Mr. Georgas acknowledged that loan #1, which is documented by a promissory note dated March 26, 2018, comprised two pre-existing loans from February 2018 that were rolled over and bundled together with additional $3,000 loan, and then documented with a fresh promissory note.

[74] As mentioned, Mr. Georgas produced a written reconciliation that he emailed to Mr. Ball in January 2019. That reconciliation claims that there were five loans outstanding pursuant to the Lending Venture, with a total principal amount of $92,000. Those five loans roughly correspond, in principal sum and corresponding interest obligation, with loans #4 through #8 above. I say “roughly” because the reconciliation appears to claim the April 14, 2018 loan as being in the principal amount of $20,000 although the corresponding promissory note reflects a principal

of $19,700, and the reconciliation appears to claim the July 9, 2018 loan as attracting interest of $3,400 a month although the corresponding promissory note reflects interest of $3,400 for a 20 day term.

[75] Mr. Georgas and Mr. Serion produced a variety of additional spreadsheets and notes purporting to document the amounts outstanding to Mr. Georgas pursuant to the Lending Venture at various times. I found those documents largely incomprehensible, but none of them appeared to contradict the written reconciliation Mr. Georgas sent to Mr. Ball in January 2019.

[76] Mr. Georgas testified that he did not include loans #1 through #3 (that is, the loans made in March 2018) in the written reconciliation he sent to Mr. Ball in January 2019 because they were “long term” loans, as distinct from the others which were “short-term”. In his trial testimony he said the distinction was that the interest on the long-term loans would not be paid monthly or periodically but rather would accrue and be paid “at the end” (which I took to mean when the principal was repaid), whereas interest on the short-term loans would be paid in cash periodically, usually monthly.

[77] Mr. Ball’s evidence about the amounts advanced by Mr. Georgas pursuant to the Lending Venture was confusing and contradictory. He readily agreed that no principal had been repaid, but he said, essentially, that some of the loans referred to in the table above are duplicates.

[78] Mr. Ball testified that when the promissory notes came due he had the option of repaying the principal or refinancing and executing a new promissory note for the same or a similar amount. In his first affidavit sworn February 14, 2023, he deposed that loans #5 through #8 were the product of refinancings of loans notes #1 through #4, suggesting that the only loans outstanding were #5 through #8. In that affidavit, he deposed that as of August 2018, the total principal amount outstanding to Mr. Georgas was $70,000, but he did not specifically identify which promissory notes corresponded to that amount. The sum of loans #5 through # 8 is $71,700, not $70,000. In his third affidavit sworn May 16, 2023, Mr. Ball deposed that the

outstanding principal was $69,700, but again he did not identify which promissory notes corresponded to that amount. In his testimony at trial he said that the outstanding principal as of August 2018 was $69,700, and in cross-examination he agreed that the outstanding promissory notes were those with due dates of April 15, April 20, May 15, and May 20, 2018. Those are loans #2, 3, 6, and 7, but the total principal of those is $70,000. He claimed that the promissory note for loan #5 ($19,700) was a correction of a $20,000 note he issued for a payment he received in May 2018 that was short $300, but the note is dated April 14, 2018, well before this short payment was allegedly received. In cross-examination, he acknowledged having issued the promissory note corresponding to loan #8, dated July 9, 2018, but claimed he never got the money. He did not explain why he would issue a promissory note to Mr. Georgas if he had not received the corresponding principal from Mr. Georgas.

[79] Mr. Georgas disputed Mr. Ball's claim that loans #5 through #8 were the product of refinancings of loans notes #1 through #4. He testified that new promissory notes were not created when the loans rolled over. Mr. Serion testified to the same effect. However, as mentioned, Mr. Georgas admitted that a new promissory note was in fact created on March 26, 2018, when two existing loans from February 2018 were rolled over, bundled together with an additional $3,000 loan, and documented with a fresh promissory note.

[80] I have concluded that it is more likely than not that some of the loans were refinanced and documented with new promissory notes. I do not rely on Mr. Ball's evidence in reaching this conclusion. Rather, this conclusion is based on Mr. Georgas' concession that this did occur with the two loans he made in February 2018, and the fact that the written reconciliation he created in January 2019 does not mention loans #1 through #3.

[81] I reject Mr. Georgas' explanation for omitting loans #1 through #3 from the reconciliation. Again, his explanation at trial was that loans #1 through #3 were "long term", meaning that interest accrued and periodic interest payments were not made.

Mr. Georgas' explanation in his 3rd affidavit for not including loans #1 through #3 on the written reconciliation was different. In that affidavit he said:

> There are five promissory notes shown on these emails because the other three were long term and I was receiving regular interest payments on those notes and, at the time, I trusted they would be taken care of in the longer term as agreed. It is not because the amounts owing on the other three were repaid. They remain outstanding. [emphasis added]

[82] There is no documentary evidence to corroborate Mr. Georgas' evidence about there being a distinction between long-term and short-term loans. The promissory notes themselves make no such distinction. Mr. Serion testified he knew nothing about such a distinction.

[83] I have concluded that the only reliable evidence of the principal outstanding pursuant to the Lending Venture is the written reconciliation Mr. Georgas sent to Mr. Ball in January 2019. By this time, their relationship had deteriorated and Mr. Georgas' patience was wearing thin. It is unlikely that he would not have demanded repayment of everything owed to him at that time. Mr. Ball admitted that he chose not to respond (in other words, dispute) Mr. Georgas' written reconciliation at the time he received it. It is very likely he would have disputed it if it was incorrect.

[84] In the result, I find that as of August 1, 2018, the principal outstanding to Mr. Georgas pursuant to the Lending Venture was $91,700, which reflects the $92,000 claimed in the reconciliation less $300 because the reconciliation claims principal of $20,000 in relation to the April 14, 2018 loan but the corresponding promissory note reflects principal of only $19,700.

What payments were made by Mr. Ball to Mr. Georgas on account of interest?

[85] Again, there is no dispute that no principal repayments were made. There is also no dispute that interest payments were made initially, but they stopped in July 2018.

[86] Mr. Georgas admitted that he received interest payments for a few months but he did not quantify them in his evidence. After the evidentiary phase of the trial, I asked counsel to identify in their final submissions the objective evidence supporting their case including what interest payments had actually been received by Mr. Georgas pursuant to the Lending Venture. In response to that request, counsel for Mr. Georgas set out the amounts that Mr. Georgas admits he received in interest payments under the Lending Venture. They total $64,804, but there is no evidence to this effect.

[87] Mr. Ball testified he paid Mr. Georgas a total of $73,200 in interest. He said he "went through [his] book" and added up all the payments Mr. Georgas received from March to July 2018, but he did not actually refer to this "book" or put it in the record.

[88] During final submissions, it was agreed that, given the state of the evidentiary record, it would be necessary to direct that an accounting of the interest payments received by Mr. Georgas be held by a registrar.

[89] Pursuant to Rule 18-1(1) of the *Supreme Court Civil Rules*, I direct that an inquiry, assessment or accounting be held by an associate judge or registrar to determine the amount of interest Mr. Georgas received from Mr. Ball pursuant to the Lending Venture, and I direct that the result be certified and filed as contemplated by Rule 18-1(2).

Was it a term of the Lending Venture that Mr. Georgas would provide Mr. Ball with his Social Insurance Number and, if so, what are the consequences of Mr. Georgas' failure to do that?

[90] Again, Mr. Ball says that it was an implied term of the Lending Venture that Mr. Georgas disclose his Social Insurance Number so Mr. Ball could issue him a T5 tax slip for the interest income he earned through the Lending Venture.

[91] Mr. Georgas made clear in his testimony that he never intended to declare the interest he earned as income for tax purposes. He says it was agreed between him and Mr. Ball that the interest payments would be made in cash, and Mr. Ball

never told him he intended to issue a T5. He said he made the loans in cash and expected cash back. He conceded that this was to help him evade taxes.

[92] There is no dispute that the interest payments Mr. Ball made to Mr. Georgas were made in cash. Mr. Serion testified he transported the cash and that Mr. Georgas paid Mr. Ball a premium to receive the payments in cash. Mr. Serion testified he was not aware of Mr. Ball asking Mr. Georgas for his Social Insurance Number so he could issue a T5.

[93] For the reasons I have given, I do not accept either Mr. Ball's testimony or Mr. Georgas' testimony, unless it is corroborated by other reliable evidence. There is no other reliable evidence relevant to the issue of the existence of this allegedly implied term. There is no mention in any written communication between Mr. Ball and Mr. Georgas of need for Mr. Georgas to disclose his Social Insurance Number, not even in response to Mr. Georgas' written demands for payment into 2019. If this was a term of the Lending Venture, it is very likely that Mr. Ball would have complained, in writing, about Mr. Georgas' failure to comply with it, at least after the parties' relationship broke down and Mr. Georgas was demanding repayment.

[94] Further, Mr. Ball was making the interest payments to Mr. Georgas in cash. Given all the circumstances, the only reasonable inference is that he knew Mr. Georgas wanted cash payments because he did not intend to report the interest as income for tax purposes. It follows that he must have known that Mr. Georgas would not agree to a T5 being issued for that income.

[95] I am not satisfied that it was a term of the Lending Venture that Mr. Georgas provide Mr. Ball with his Social Insurance Number.

Do the promissory notes require interest to be paid at rates that exceed the criminal rate prohibited by s. 347 of the Criminal Code?

[96] Section 347 of the *Criminal Code* provides:

> **347 (1)** Despite any other Act of Parliament, every one who enters into an agreement or arrangement to receive interest at a criminal rate, or receives a payment or partial payment of interest at a criminal rate, is

> **(a)** guilty of an indictable offence and liable to imprisonment for a term not exceeding five years; or
>
> **(b)** guilty of an offence punishable on summary conviction and liable to a fine of not more than $25,000 or to imprisonment for a term of not more than two years less a day, or to both.

Section 347(2) defines "criminal rate" as an "effective annual rate of interest … that exceeds sixty percent".

[97] Section 347 creates an offence that can be committed in two different ways; by entering into an agreement to receive interest at a criminal rate or by receiving a payment at a criminal rate: *Degelder Construction Co. v. Dancorp Developments Ltd.*, [1998] 3 S.C.R. 90. In this case both are engaged.

[98] No party led any actuarial evidence as to the effective interest rate charged under the Lending Venture, but there is no dispute that it exceeded sixty percent per year and was about 240 percent per year. I am satisfied that the promissory notes underlying the Lending Venture clearly require payment of interest at criminal rates.

[99] I turn then to the consequences of the breach of s. 347.

Should the illegal interest provisions of the promissory notes be severed, and if so, what if any interest is payable?

[100] Section 347 can be used as a defence in the civil context or to recover illegal interest paid. When a contract calls for an illegal interest rate and a contracting party seeks to use s. 347 as a defence, the court has "considerable discretion" to choose an appropriate remedy depending on the context of the case: *Forjay Management Ltd. v. 625536 B.C. Ltd.*, 2020 BCCA 70 at para. 44, leave to appeal ref'd [2020] S.C.C.A. No. 128, citing *Transport North American Express Inc. v. New Solutions Financial Corp.*, 2004 SCC 7 [*Transport North*] at para. 6.

[101] According to *Forjay* at paras. 52–54, there are three options to remedy a criminal interest rate:

1. void the contract *ab initio* and deny the lender all recovery – the most extreme option that should be used sparingly for situations where the contract itself is an "exploitive loan-sharking arrangement" or has a "criminal object";

2. strike out, or "blue pencil" a term or terms in the contract to sever the illegal interest from the principal owed, allowing the lender to recover only the principal; or

3. provide "notional severance" and read down the interest rate to allow for interest to be recoverable at 60 percent.

[102] In *Transport North* at paras. 6, 24 and 40–46, the Supreme Court of Canada explained that the determination of which remedy is appropriate depends on the context in which the illegal interest rate arises and, in particular, on the following factors:

1. whether the purpose or policy of s. 347 would be subverted by severance;

2. whether the parties entered into the agreement for an illegal purpose or with an evil intention;

3. the relative bargaining positions of the parties and their conduct in reaching the agreement; and

4. the potential for the debtor to enjoy an unjustified windfall.

[103] As summarized by the Court of Appeal in *Community Savings Credit Union v. Bodnar*, 2022 BCCA 263, these factors are not "a simple 'checklist'":

> [70] … Rather, each reflects different concerns underlying the exercise of discretion. The first consideration — that of whether the purpose or policy of s. 347 would be subverted by severance — recognizes that a judge's discretion cannot be allowed to override the legislative intent of the *Criminal Code* provision. It would be an error for a judge to grant a remedy that fails to respect the rationale for the provision.
>
> [71] The second consideration — whether the parties entered into the agreement for an illegal purpose or with an evil intention — takes into account the broader goals of the criminal law and of regulation. Parties must

> be discouraged from deliberately defying or subverting the law. Courts cannot countenance transactions that are criminal, corrupt, or malevolent.
>
> [72] The third consideration — the relative bargaining positions of the parties and their conduct in reaching the agreement — recognizes that the law is aimed at preventing lenders from exploiting vulnerable or desperate borrowers.
>
> [73] The fourth consideration — the potential for the debtor to enjoy an unjustified windfall — also reflects a desire to avoid exploitation, this time exploitation of the lender by the borrower. A borrower should not generally be allowed to exploit a situation of unknowing violation of the criminal interest provision to obtain a windfall from an unsuspecting lender.
>
> [74] Together, the four considerations set out in *Transport North American Express* are designed to place transactions on a spectrum. The most egregious violations of the *Criminal Code* provisions will result in the courts refusing, entirely, to enforce the debt obligation. Other transactions may result in a court refusing to allow the plaintiff any interest on the debt. This remedy may be appropriate in a situation where the lender, though not intending to act criminally, takes advantage of another person by demanding an exorbitant interest rate. In most cases where the parties have entered into a commercially defensible loan arrangement not knowing that it violated the criminal interest provision of the *Criminal Code*, courts have applied a remedy of notional reverence, simply reducing the interest rate to 60%.

[104] The lender's intent or awareness is relevant to the remedy, but even where there is intention to charge a higher rate than 60 percent, courts are reluctant to void a whole loan agreement to make the principal irrecoverable. There must be some additional element of loan sharking or illegality. For example, in *Canmerica Mortgage Corporation v. Yu*, 2015 BCSC 773, Justice Sewell was satisfied that the lender's evidence was "contrived and designed to persuade the Court that he did not intend to charge criminal interest", and that the lender was aware of and intended to charge interest at a usurious rate: at para. 122. Nonetheless, Sewell J. noted that "[l]oan sharking involves some element of coercion or intimidation to collect the debt", so despite finding an intention to charge a rate higher than 60 percent per annum and then avoid the consequences, there was no evidence of intimidation from the lender, so the remedy was to sever the interest provisions from the principal and still allow recovery of the principal: at paras. 130–131 and 142.

[105] Again, the first factor identified by the Supreme Court of Canada in *Transport North* is whether the purpose or policy of s. 347 would be subverted by severance.

Its purpose is to prevent loan-sharking, and "violations of the section that clearly do not involve loan-sharking should be approached cautiously, keeping in mind that there is no need to deter, through the criminal law, effective interest rates of up to 60 percent per year": *Transport North* at para. 43.

[106] There is no evidence of any coercion or intimidation on the part of Mr. Georgas in the setting of criminal rates of interest. To the contrary, the evidence as a whole (including that of Mr. Georgas, Mr. Ball and Mr. Serion) supports the conclusion that it was Mr. Ball who set the rates. In these circumstances, severing the interest provisions would not subvert the purpose of s. 347. This weighs against the most extreme option of denying Mr. Georgas all recovery.

[107] The second consideration is whether the parties entered into the agreement for an illegal purpose or with an evil intention.

[108] Mr. Georgas testified that at the time he participated in the Lending Venture he was unaware that there was a criminal prohibition against entering into agreements to receive interest above a certain rate. Mr. Ball said the same thing – he claimed to have been unaware, in 2018, that the *Criminal Code* essentially capped the amount of interest that could be received. For reasons I have already expressed, I do not accept the evidence of either of them. Having said that, there is no evidence of any evil or immoral purpose associated with the interest rates themselves, such as coercion or intimidation of a vulnerable debtor. However, I am satisfied that the Lending Venture was tainted by illegality because it was clearly Mr. Georgas' objective to receive the interest payments in cash for the purpose of evading income taxes. This weighs heavily against reading down the interest rate to allow for interest to be recoverable at 60 percent.

[109] The third consideration – the relative bargaining positions of the parties and their conduct in reaching the agreement – recognizes that the law is aimed at preventing lenders from exploiting vulnerable or desperate borrowers. In this case, the parties were of equal bargaining strength and there was nothing about their

conduct that suggests exploitation. This factor weighs in favour of reading down the interest rate to allow for interest to be recoverable at 60 percent.

[110] The fourth consideration is the potential for the debtor to enjoy an unjustified windfall. If the second *Forjay* option is chosen – that is, allowing Mr. Georgas to recover only the principal – there is a possibility that Mr. Ball would enjoy a windfall. The evidence established that he was lending the money he borrowed from Mr. Georgas to third parties. It is very likely he was charging his clients even higher rates of interest than he was paying his investors. Otherwise, his financing business would seem to serve no purpose. However, the evidence did not go so far as to permit even a rudimentary assessment of the "profit" he generated personally from Mr. Georgas' loans. In the circumstances, this factor adds little to the analysis.

[111] Having considered all of these factors, I have concluded that the appropriate remedy in this case is to notionally strike out the contractual interest provisions of the promissory notes and allow Mr. Georgas to recover only the principal (plus pre-judgment interest under s. 1 the COIA). But for the illegality that tainted the Lending Venture, I would have allowed interest to be recoverable at 60 percent.

[112] For these reasons, pre-judgment interest pursuant to the COIA is payable on loans #4 through #8 described in the table at para. 72 above, from the commencement dates also identified in that table. If the parties are unable to agree on the calculation of such interest then, pursuant to Rule 18-1(1), I direct that an inquiry, assessment or accounting be held by an associate judge or registrar to determine that matter, and I direct that the result be certified and filed as contemplated by Rule 18-1(2). If this is necessary, the inquiry, assessment or accounting shall be held together with that directed in para. 89 above.

Should the amount of interest already paid by Mr. Ball that exceeds the interest determined to be payable be applied against any amounts found to be owing by Mr. Ball to Mr. Georgas?

[113] To implement my determination of the way in which the criminal interest rate should be remedied in this case, it is necessary to deduct from the amount of

interest ultimately determined to be payable in accordance with para. 112 above the amount of interest already paid as ultimately determined in accordance with para. 89 above. Indeed, in final argument, Mr. Georgas conceded that the interest payments he received should be deducted as a credit on the interest that is ultimately determined to be payable.

Is Ms. Ball liable for any amount?

[114] Ms. Ball categorically denied ever agreeing to be responsible for Mr. Ball's obligations to Mr. Georgas. She denied ever attending a meeting with him and testified that the first time she met him was at an examination for discovery in this proceeding.

[115] The only evidence supporting Ms. Ball's liability, is the testimony of Mr. Georgas. For the reasons already expressed, I do not accept his testimony unless it is corroborated by reliable evidence. There is no such evidence. In the result, it is not necessary for me to rely on Ms. Ball's evidence to conclude that Mr. Georgas has failed to prove his case against Ms. Ball.

[116] Mr. Georgas' claim against Ms. Ball is dismissed.

Conclusion

[117] With respect to the Cash Transfer Venture:

- Mr. Georgas deposited a total of $170,500 into the two TD Bank accounts in question;
- Mr. Ball returned only $45,000 of the $170,500 deposited by Mr. Georgas pursuant to the Cash Transfer Venture, leaving $125,500 less a fee of two percent ($122,990) outstanding;
- the agreement between Mr. Georgas and Mr. Ball underlying the Cash Transfer Venture must be enforced, notwithstanding it is tainted by illegality;
- Mr. Ball must return $122,990 to Mr. Georgas; and

- pursuant to the COIA, Mr. Ball shall pay pre-judgment interest on the $122,990 from August 1, 2018.

[118] With respect to the Lending Venture:

- $91,700 in principal remains outstanding to Mr. Georgas pursuant to the Lending Venture and must be paid by Mr. Ball;

- pursuant to Rule 18-1(1), I direct that an inquiry, assessment or accounting be held by an associate judge or registrar to determine the amount of interest Mr. Georgas received from Mr. Ball pursuant to the Lending Venture, and I direct that the result be certified and filed as contemplated by Rule 18-1(2);

- it was not a term of the Lending Venture that Mr. Georgas provide Mr. Ball with his Social Insurance Number;

- the promissory notes underlying the Lending Venture require payment of interest at rates that exceed the rate prohibited by s. 347 of the *Criminal Code*;

- the contractual interest provisions of the promissory notes are severed and Mr. Georgas may recover only the principal outstanding plus pre-judgment interest under s. 1 of the COIA;

- if the parties are unable to agree on the calculation of such interest then, pursuant to Rule 18-1(1), I direct that an inquiry, assessment or accounting be held by an associate judge or registrar to determine that matter, and I direct that the result be certified and filed as contemplated by Rule 18-1(2); and

- the amount of interest already paid by Mr. Ball to Mr. Georgas must be set off against the amount of interest ultimately determined to be payable.

[119] Mr. Georgas' claim against Ms. Ball is dismissed.

[120] If any party wishes to speak to costs, they may contact Supreme Court Scheduling to secure a date for a hearing, provided they do so within 30 days of release of these Reasons.

"Warren J."