IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bank of Montreal v. Lee,*
2024 BCSC 2236

Date: 20241210
Docket: S221463
Registry: Vancouver

Between:

Bank of Montreal

Plaintiff

And

Alexandra Jen-Yi Lee and Kwei-Lan Liao

Defendants

Before: The Honourable Justice Latimer

Reasons for Judgment

Counsel for the Plaintiff:	B. Jibu
Counsel for the Defendants:	R. Eichler
Place and Date of Hearing:	Vancouver, B.C. November 19, 2024
Place and Date of Judgment:	Vancouver, B.C. December 10, 2024

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Overview

[1] The plaintiff, Bank of Montreal, applies under Rule 9-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 for summary judgment against the defendants, Alexandra Jen-Yi Lee and Kwei-Lan Liao, for an unpaid debt. The amount the plaintiff alleges is owing on Homeowner Readiline line of credit 22192306692 ("Line of Credit") is $352,396.38 plus interest calculated in accordance with a BMO Bank of Montreal Line of Credit Agreement Homeowner Readiline dated April 30, 2012 ("Agreement") for the Line of Credit.

[2] The defendants do not deny that they borrowed money on the Line of Credit and agree it must be repaid. They question the quantum owing. The defendants argue there are a number of discrepancies in the plaintiff's calculations. The defendants also say that the Agreement does not apply and the plaintiff should be limited to interest calculated under the *Court Order Interest Act*, RSBC 1996, c. 79. In the alternative, they challenge the admissibility of the interest calculations tendered in evidence by the plaintiff. Without those calculations, they say there is no evidence with respect to the applicable interest rate.

Issues

[3] For the reasons that follow, I conclude:

a) The plaintiff has established a *prima facie* case that a debt is owing. The amount of the debt owing as of February 11, 2022 was $352,490.79. The plaintiff is also entitled to interest on that debt after February 11, 2022.

b) The interest on the debt is to be calculated after February 11, 2022 up to the date of judgment in accordance with the Agreement. In particular, the defendants are obliged to pay interest charges on all amounts charged to the Line of Credit, calculated daily from the date each amount was charged to the Line of Credit until the date of payment, at a rate per year equal to the plaintiff's prime rate as that rate is determined by the plaintiff

from time to time. The interest compounds monthly. Changes to the prime rate are effective immediately.

c) There is not sufficient admissible evidence in the record before me upon which this Court can calculate the interest owing up to the date of today's judgment.

d) If the parties cannot agree on the interest owing based on my findings herein, they are at liberty to make further written submissions within the specific constraints set out below.

e) The plaintiff is entitled to its costs at Scale B.

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Legal Analysis

[4] To obtain summary judgment for monies owed, the plaintiff's pleadings must establish a *prima facie* case that a debt is owing, and the pleadings must be supported by sufficient affidavit evidence. If the plaintiff is successful in doing so, and there is no genuine issue to be tried, the court must grant judgment in favour of the plaintiff: *Richmond v. White*, 2015 BCSC 1445 [*Richmond*] at para. 27, rev'd on other grounds 2017 BCCA 330.

[5] To resist the application, the defendants must plead and adduce sufficient evidence to establish a defence, or otherwise show there is a genuine issue for trial such that the summary judgment ought not to proceed, in whole or in part. The defendants may also take the position that the plaintiff's pleadings or evidence fail to establish the cause of action. If the defendants are successful in doing so, the summary judgment application will be dismissed: *Richmond* at para. 28, rev'd on other grounds 2017 BCCA 330.

[6] The court must be satisfied that summary disposition is a proportionate, more expeditious, and less expensive means to achieve a just result for the parties than a conventional trial: *Hryniak v. Mauldin*, 2014 SCC 7 at para. 4.

Has the plaintiff established a *prima facie* case that a debt is owing?

[7] The plaintiff's pleadings and evidence establish a *prima facie* case that a debt is owing.

[8] It is not disputed that the plaintiff is a chartered bank and the defendants were long term clients of the plaintiff.

[9] Of relevance to this proceeding, it is not disputed that the defendants signed the Agreement.

[10] The Agreement provides in part:

> 1. The maximum amount available under the Line of Credit is $400,000.00 ("Line of Credit Limit"). The Bank may change the Line of Credit Limit at any time without prior notice.
>
> 2. The Borrower will pay the Bank on demand at the branch of account all amounts charged to the Account and accrued interest theron. Until demand has been made, the Borrower will pay according to one of the following options:
>
> > …
> >
> > b. the Borrower will make <u>monthly</u> installment payments in an amount at least equal to:
> >
> > …
> >
> > (ii) the interest charges shown as due on the monthly statement;
>
> …
>
> 4(a) The Borrower will pay interest charges on all amounts charged to the Account calculated daily from the date each amount is charged to the Account until the date of payment at a rate per year equal to the Prime Rate as that rate is determined by the Bank from time to time +0.05% per year, which is equal to the Personal Line of Credit Base Rate, as defined above, minus 0.5% compounded monthly not in advance both before and after demand, default and judgment, interest also compounds if the Borrower fails to make a minimum payment or if the Borrower chooses to defer a payment as approved by the Bank. The rule of interest under this Agreement will change automatically, without notice, whenever the Prime Rate changes. The Prime Rate on any day may be ascertained from any branch of the Bank in Canada. As of the date of this Agreement, the Prime rate is 3.00% per year and the rate of interest chargeable on all amounts charged to the Account is 3.5% per year calculated as specified above.
>
> Examples of Interest Charges

Annual Interest Rate	6%	5%	12%

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(per $1.000 of outstanding balance) Monthly Interest Charge	$4.93	$7.39	$9.85

(b) while changes to the Prime Rate are effective immediately, any other changes to the Borrower's interest rate will be effective at the beginning of the next billing cycle.

…

12. The Borrower will promptly notify the Bank in writing of any change of the Borrower's address, of any errors appearing on any monthly statement of the Account, and of any loss or unauthorized use of the Cheques or Advance Slips, or of any unauthorized ABM Access or of any loss or unauthorised use of a Line of Credit MasterCard card. After 30 days from the statement date, each monthly statement of the Account will be conclusively deemed to have been accepted by the Borrower as correct, except as to errors of which the Bank has been notified in writing within 30 days from the statement date. The Bank may charge, set off or, under Quebec law, compensate against any other of the Borrower's accounts and credit to the Account any payment that the Borrower is obliged to make to the Bank under this Agreement. …

…

14. Either the Bank or the Borrower may terminate the Account at any time by giving written notice to the other, but no termination will relieve the Borrower of any obligation to the Bank under this Agreement until the outstanding debt balance of the Account and accrued interest has been paid in full. …

[11] At some point, the plaintiff reduced the applicable rate of interest on the Line of Credit to the plaintiff's Prime Rate as that rate is determined by the plaintiff from time to time. The plaintiff's collections specialist, Justin Pariselli-Field, was unable to ascertain the exact date of this reduction. For reasons I will explain shortly, the exact point in time of this reduction is not material to this dispute.

[12] The Line of Credit was originally secured by a mortgage ("Mortgage") granted by the plaintiff in favour of the defendants registered on real property with a residential address of #13-5262 Oakmount Crescent, Burnaby, British Columbia ("Burnaby Property").

[13] The defendants sold the Burnaby Property on or about November 10, 2020.

[14] On November 10, 2020, the plaintiff received mortgage payout funds in the amount of $381,037.13 and applied it to the Line of Credit. These funds were sufficient to pay out the Line of Credit in full.

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[15] Mr. Pariselli-Field deposes that the process of closing the Line of Credit requires a plaintiff's branch representative to manually perform each of the following functions: process the payout in the internal platform, change the status of the Line of Credit to cancelled, and reduce the credit limit of the Line of Credit to zero. I accept Mr. Pariselli-Field's evidence that due to inadvertent human error, a branch representative of the plaintiff did not manually perform the functions necessary to close the Line of Credit.

[16] As a result, the defendants continued to have access to credit from the Line of Credit.

[17] After the Burnaby Property was sold and the Line of Credit paid out, it is not disputed that the defendants made several withdrawals from the Line of Credit. In particular, on or around the following dates the defendants withdrew the following amounts from the Line of Credit:

a) November 23, 2020 $48,714.51

b) December 15, 2020 $346,000.00

c) January 14, 2021 $5,846.09

d) January 28, 2021 $572.37

e) February 17, 2021 $1,930.74

[18] The defendants argue that after the plaintiff received the mortgage payout funds in the amount of $381,037.13 and applied it to the Line of Credit on or around November 10, 2020, the Line of Credit became a new loan that was no longer bound by the original terms of the Agreement. They argue, therefore, that with respect to all of the amounts withdrawn from the Line of Credit after November 10, 2020, the plaintiff is only entitled to interest pursuant to the *Court Order Interest Act*.

[19] I reject the argument that the Line of Credit became a fresh loan unbounded by the Agreement between the parties. No authority was provided in support of this argument.

[20] The Agreement requires that either the Bank or the Borrower may terminate the Account at any time by giving written notice to the other. There is no evidence of such written notice having been given between November 10, 2020 and November 23, 2020. As I will detail below, termination did not occur until later. Clause 14 of the Agreement provides that “no termination will relieve the Borrower of any obligation to the Bank under this Agreement until the outstanding debt balance of the Account and accrued interest has been paid in full”. I conclude that the Agreement governs this dispute.

[21] Mr. Pariselli-Field’s affidavit appends copies of the Line of Credit statements of account for July 2020 to July 2021. The Line of Credit statements of account for each month of November 2020 to February 2021 show that the defendants made payments against the Line of Credit in each month. Up to and including February 11, 2021, pursuant to clause 2 of the Agreement, the monthly Line of Credit statements of account each indicate that the minimum payment due by the start of the next month is the interest shown as due on that account. The periodic payments made by the defendants between November 2020 and February 2021 exceeded the payment due.

[22] I note as well that the defendants were given ongoing notice of certain terms of the Agreement, for example with respect to interest charges and calculations, on the monthly statements of account that continued to be sent by the plaintiff monthly for a period of time. As discussed at more length below, there is no evidence that the defendants disputed those terms in any timely way.

[23] On March 2, 2021, the plaintiff sent a letter to the defendants confirming that the plaintiff had discharged the Mortgage. The Line of Credit was then unsecured but had still not been cancelled. Sometime in or around March 2021, the plaintiff realized its mistake. The Line of Credit statement dated March 11, 2021 states:

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> YOUR ACCOUNT IS CLOSED TO FURTHER TRANSACTIONS. PLEASE CONTACT YOUR BRANCH TO MAKE PAYMENT ARRANGEMENTS.

[24] Despite that the defendants had not yet reached the $400,000 limit, pursuant to clause 1 of the Agreement, the plaintiff changed the credit limit without notice and indicated in the Line of Credit statement of account that there was $0 credit available.

[25] The plaintiff also made written demand for payment pursuant to clause 2 of the Agreement. It did so on the Line of Credit statement of account which showed that the minimum amount due by April 1, 2021 was $346,555.09. The statement of account further indicates interest calculated at 2.45% annually or 0.00671% daily.

[26] The defendants did not, pursuant to clause 12 of the Agreement, notify the plaintiff in writing of any errors appearing on that monthly statement within 30 days. Instead, the defendants made a number of payments against the Line of Credit. In particular, on the following dates the defendants paid:

a) April 1, 2021 $610.77

b) April 12, 2021 $610.77

c) April 30, 2021 $720.45

[27] Despite these periodic payments, the plaintiff made further demand for payment in its statement of account dated April 11, 2021 indicating the minimum payment required by May 2, 2021 was then $346,664.73. The Line of Credit statement dated April 11, 2021 indicates interest calculated at 2.45% annually or 0.00671% daily to April 11, 2021. The statement of account provided:

> YOUR ACCOUNT IS CLOSED TO FURTHER TRANSACTIONS. PLEASE CONTACT YOUR BRANCH TO MAKE PAYMENT ARRANGEMENTS.
>
> OUR RECORDS INDICATE THAT YOUR ACCOUNT IS PAST DUE.
>
> IF YOU HAVE RECENTLY SUBMITTED A PAYMENT WE THANK YOU.

[28] No further payments were made after April 30, 2021. Yet the defendants did not, pursuant to clause 12 of the Agreement, notify the plaintiff in writing of any errors appearing on that monthly statement within 30 days.

[29] The plaintiff made further demand for payment in its statement of account dated May 11, 2021 indicating the minimum payment required by June 1, 2021 was then $345,029.53. The Line of Credit statement dated May 11, 2021 indicates interest calculated at 2.45% annually or 0.00671% daily to May 11, 2021. It states:

> YOUR ACCOUNT IS CLOSED TO FURTHER TRANSACTIONS. PLEASE CONTACT YOUR BRANCH TO MAKE PAYMENT ARRANGEMENTS.
>
> OUR RECORDS INDICATE THAT YOUR ACCOUNT IS TWO PAYMENTS PAST DUE.
>
> IF YOU HAVE RECENTLY SUBMITTED A PAYMENT WE THANK YOU.

[30] The plaintiff made further demand for payment in its statement of account dated June 11, 2021 indicating the minimum payment required by July 2, 2021 was then $346,749.30. The Line of Credit statement of account dated June 11, 2021 indicates interest was calculated at 2.45% annually or 0.00671% daily to June 11, 2021. It states:

> YOUR ACCOUNT IS CLOSED TO FURTHER TRANSACTIONS. PLEASE CONTACT YOUR BRANCH TO MAKE PAYMENT ARRANGEMENTS.
>
> YOUR ACCOUNT IS SERIOUSLY PAST DUE AND MAY RESULT IN THE CLOSURE OF YOUR ACCOUNT. PLEASE CONTACT US TO MAKE PAYMENT ARRANGEMENTS.

[31] The defendants did not, pursuant to clause 12 of the Agreement, notify the plaintiff in writing of any errors appearing on that monthly statement within 30 days.

[32] The plaintiff made further demand for payment in its statement of account dated July 11, 2021 indicating the minimum payment due by August 1, 2021 was then $347,447.30. The Line of Credit statement of account dated July 11, 2021 indicates interest was calculated at 2.45% annually or 0.00671% daily to July 11, 2021. It states:

> UNFORTUNATELY WE FOUND IT NECESSARY TO CLOSE YOUR ACCOUNT. IF YOU HAVE NOT ALREADY DONE SO PLEASE CONTACT US TO DICUSS PAYMENT OF YOUR BALANCE.

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> THANK YOU.
>
> YOUR ACCOUNT REMAINS SERIOUSLY PAST DUE. WE REGRET THAT YOUR ACCOUNT HAS BEEN CLOSED. PLEASE CONTACT US TO MAKE PAYMENT ARRANGEMENTS.

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[33] There is no evidence that the defendants notified the plaintiff in writing of any errors appearing on any of the plaintiff's monthly statements between March 2021 and the filing of its response to civil claim in November 2022.

[34] The defendant Lee now deposes that she does not agree "with many details" in the Line of Credit statements of account. The evidence in the record before me now raises certain complaints about errors said to have occurred in or around November 2020. For example, it is alleged that the plaintiff overcharged in calculating a per diem interest amount owed in its payout statement, erroneously delayed in filing a mortgage discharge, and erroneously overcharged for the mortgage discharge fee. The alleged over charge in respect of the per diem interest owed on the payout statement was observed by the defendants' then solicitor who deposed that "I do not follow how interest on approximately $3,700.00 can be $25.55 over two days but it was not worth an argument." In other words, through their solicitor, the defendants acquiesced to that alleged error. The delay in filing the mortgage discharge has no bearing on the debt owed and, in any event, the plaintiff made a payment of $980 to the defendants' solicitor to compensate for the additional time required to pay and cancel the charge on title. The defendants raised the alleged error in respect of the mortgage discharge fee for the first time in an affidavit made in November 2024. It is said that the plaintiff charged $109.31 whereas it was only entitled to charge $75. In fact, the payout statement lists a discharge fee of $75 and a government registration fee of $34.31. In any event, the defendants' failure to notify the plaintiff in writing of any of these alleged errors in a timely way pursuant to the Agreement means the plaintiff's charges and calculations are deemed to have been accepted by the defendants as correct.

[35] It is also alleged that in November 2020, the defendants instructed the plaintiff to make certain payments from their personal line of credit and the plaintiff

erroneously made the payment from the homeowner line of credit instead. Again, failure to notify the plaintiff in writing of this alleged error in a timely way pursuant to the Agreement means the plaintiff's charges and calculations are deemed to have been accepted by the defendants. It is also not argued that moving those charges to the defendant's personal line of credit would have been financially advantageous to the defendants.

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[36] Also, in November 2020, the defendants note that the plaintiff made an error with respect to the transfer of $5,000 that was then corrected. Given the error was reversed, this appears to be an error with no financial impact.

[37] The defendants also say that an incorrect per diem charge was made in February 2021 that was later reversed by the plaintiff (the per diem was $27.55 and the defendants say it should have been $25.55). Given the charge was reversed, this appears to be an error with no financial impact. Even if it did have a financial impact, failure to notify the plaintiff in writing of this alleged error in a timely way pursuant to the Agreement means the plaintiff's charges and calculations are deemed to have been accepted by the defendants.

[38] In short, none of the alleged errors are germane to this dispute. The plaintiff acknowledged and corrected some of the errors identified by the defendants in this period. Some have no impact on the quantum of the debt owing. In every instance, the defendants' failure to notify the plaintiff in writing of any of these alleged errors in a timely way pursuant to the Agreement means the plaintiff's charges and calculations are deemed to have been accepted by the defendants as correct.

[39] The defendant Lee says that this was an extremely busy period of time for her family as they were in the midst of packing up and consolidating two households, moving, and overseeing minor improvements to a new house all while ensuring meals and suitable sleeping arrangements for the family. None of these concerns are a sufficient explanation for a delay in identifying errors in the monthly statements for over a year and a half.

[40] On February 8, 2022, the plaintiff sent further demands for payment by letter to the defendants through its solicitors. These letters were sent to the wrong addresses. Nothing turns on this error because, as noted above, previous demands for payment were contained in the Line of Credit statements of account sent monthly since March 2021 and these had been sent to the correct address.

[41] [33] The evidence establishes that a debt is owing under the terms of the Agreement which specifically provide that the defendants "will pay the Bank on demand at the branch of account all amounts charged to the Account and accrued interest theron".

How should interest be calculated?

[42] I have rejected the defendants' argument that the plaintiff is limited to interest calculated under the *Court Order Interest Act*. I have found that the Agreement binds the parties.

[43] Under clause 4(a) of the Agreement, the defendants are obliged to pay interest charges on all amounts charged to the Line of Credit, calculated daily from the date each amount was charged to the Line of Credit until the date of payment at a rate per year equal to the plaintiff's prime rate as that rate is determined by the plaintiff from time to time. Changes to the prime rate are effective immediately. The interest compounds monthly.

[44] As noted above, although clause 4(a) refers to the plaintiff's prime rate +0.05% per year, clause 4(b) contemplates changes to the rate of interest. In the time period in dispute, the plaintiff has only been charging its prime rate, which is what it is entitled to.

[45] Although the defendant Lee has deposed that the rate of interest charged exceeds that set out in the *Interest Act*, RSC 1985, c. I-15, this argument is not set out in the application response, not pleaded with any specificity in the response to civil claim, and was not advanced at the hearing. I take it to be abandoned.

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Is there sufficient admissible evidence in the record upon which to calculate the interest owing?

[46] After April 30, 2021, the defendants made no additional payments against the Line of Credit and the only change to the quantum owing reflected in the monthly statements of account from May 11, 2021 was as a result of the plaintiff's calculation of interest pursuant to clause 4(a) of the Agreement. The defendants do not object to the admissibility of the statements of account for the Line of Credit.

[47] As noted above, appended to Mr. Pariselli-Field's affidavit are statements of account for the Line of Credit for the material time period up to July 11, 2021. All of the calculations in those statements of account are deemed to be accepted as owing by the defendants.

[48] There is then a gap in the record. Ms. Lee has appended statements of account dated January 11, 2022 and February 11, 2022 which show the same rate of interest as the earlier statements of account. Those accounts are also deemed to be accepted as owing by the defendants. The amount owing as of February 11, 2022 was $352,490.79.

[49] The notice of civil claim was filed February 2022 and the response to civil claim was filed November 2022. The response to civil claim disputes the amount claimed. Therefore, although I have before me a statement of account dated November 11, 2023, that account cannot be deemed to be accepted.

[50] I do not have any evidence of the plaintiff's prime rate between February 2022 and November 11, 2023.

[51] The legal administrative assistant of the plaintiff's lawyer has provided a table which sets out the plaintiff's prime rate, interest charged, and total owing for each period in which that particular prime rate applied between November 11, 2023 and November 2024.

[52] The defendants argue that the table appended to the affidavit of the legal administrative assistant is inadmissible hearsay under Rule 22-2(12) and (13) of the

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Rules. They also say they do not know where the figures in the table come from because the source of the information is unattributed. The defendants admit that the same information contained in that table would be admissible if it was contained in the affidavit of a corporate representative of the plaintiff.

[53] The plaintiff's counsel submitted orally that the figures in the table were not calculated manually and that they come from a system maintained by the plaintiff. Unfortunately, none of this is set out in the affidavit and the legal administrative assistant is not a corporate representative of the plaintiff.

[54] I conclude that the current form of the evidence runs afoul of Rule 22-2. The defendants are correct to admit that the same information would be admissible if it was contained in the affidavit of a corporate representative of the plaintiff.

[55] I have not overlooked the defendants' argument that there are inconsistencies between the interest rate calculations in the demand letters sent by the plaintiff in February 2022, the affidavit of Mr. Pariselli-Field, the calculations in the various affidavits of the legal administrative assistant, and the plaintiff's pleadings. I accept that there are some inconsistencies between the pleadings and different parts of the record. However, given that I have set out how interest is to be calculated and that the record does not contain sufficient evidence to permit this calculation to be conducted, I need not consider these arguments further.

Further Submissions

[56] The defendants suggest that with guidance from this Court on whether the Agreement continues to apply, the parties may be able to work out the math.

[57] The history of proceedings to date leaves some question as to whether such a resolution is likely. In those circumstances, while I encourage the parties to reach a consent resolution, I consider it prudent to direct that if they are unable to do so, the parties are to make further written submissions to me addressing the interest calculation only. In particular, if no agreement is reached between the parties:

a) The plaintiff's submissions and supporting affidavit are due 14 days after the date of today's judgment. The plaintiff will include with its submission an affidavit from a corporate representative of the plaintiff that sets out the plaintiff's prime rate at all material times between February 2022 and the date of this judgment. The affidavit should also include a table in a similar format to that appended to Affidavit 5 of Ms. Blanca for each period between February 2022 to the date of this judgment. The interest must be calculated in accordance with clause 4(a) of the Agreement except that the rate of interest is the plaintiff's prime rate as it was determined by the plaintiff from time to time, not its prime rate +0.05%.

b) The defendants' submission and supporting affidavit, if any, is due 30 days after the date of today's judgment.

c) The plaintiff's reply submission and supporting affidavit, if any, is due 35 days after the date of today's judgment.

d) The parties' submissions in chief are not to exceed 5 pages. The plaintiff's reply, if any, is not to exceed 2 pages.

e) The parties' supporting affidavits, if any, are not to exceed 5 pages.

Costs

[58] As the plaintiff has been substantially successful, it is entitled to its costs which are sought and granted at Scale B.

"Latimer J."

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