

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Royal Bank of Canada v. Sun*,  
2025 BCSC 599

Date: 20250401  
Docket: H220070  
Registry: Vancouver

Between:

**Royal Bank of Canada**

Petitioner

And

**Sunny Sun, Irene Oi Yin Ngan, Chong Man Tang, Guo Zhen Shen, Tin Yau  
Timothy Chan, 0966203 B.C. Ltd., Xuanyi Huan, Hong Wen Shen, Wei Xing  
Guo, Lehigh Hanson Materials Limited, Jie Song, Cheng Cheng, Zhao Sun,  
Zhang Yi, Biao Mo, Jianhui Wang, Baisheng Sun, Xiaona Li**

Respondents

Before: The Honourable Madam Justice Sharma

## Reasons for Judgment

Counsel for the Respondent Tin Chan:	S. Chiu
Counsel for the Respondent Cheng Cheng:	J.J.R. Schachter
Counsel for the Respondent Irene Ngan:	C.R. Rubinstein
Counsel for the Respondents Guo Zhen Shen and Chong Man Tang:	C. Lo
Counsel for the Respondent Jie Song:	M. Manolis S. Cheong
Counsel for the Respondent Zhao Sun:	J.R. Pollard H. Nie
Counsel for the Respondent Xiaona Li:	B. Li
Place and Date of Trial/Hearing:	Vancouver, B.C. December 16–17, 2024
Place and Date of Judgment:	Vancouver, B.C. April 1, 2025

**Table of Contents**

**I. OVERVIEW..... 3**

**II. THE PARTIES ..... 4**

**III. LEGAL PRINCIPLES ..... 5**

**IV. APPLICATION FILED BY IRENE NGAN..... 10**

**V. APPLICATION FILED BY TANG/SHEN..... 12**

**VI. APPLICATION FILED BY TIMOTHY CHAN..... 14**

    A. Facts ..... 15

    B. Analysis..... 17

**VII. FURTHER DIRECTIONS ..... 20**

**APPENDIX A ..... 22**

**I. OVERVIEW**

[1] This judgment addresses three applications heard over two days starting December 16, 2024. The applications relate to the foreclosure of a property located at 11640 Blundell Rd. in Richmond, BC (the “Property”). That foreclosure completed, the Property has been sold, the first mortgage has been paid out and the remaining proceeds of sale have been paid into court.

[2] Counsel representing numerous respondents appeared at the hearing. They each assert different claims to a portion of the funds paid into court based on their varying claims to an interest in the Property.

[3] This foreclosure action was commenced by Royal Bank of Canada (“RBC”) in March 2022.

[4] On June 1, 2023, Associate Judge Vos granted an order for the sale of the Property for \$2,010,000, and other relief, including the following term:

4. The net purchase price after adjustments shall be paid to LINDSAY KENNEY LLP, in trust, and thereafter shall be disbursed in accordance with the following priorities without further Order:

- (a) Firstly, any arrears of taxes, water and sewer rates, interest and penalties thereon;
- (b) Secondly, as to any real estate commission payable;
- (c) Thirdly, in payment of what is due and owing to the Petitioner [RBC] for mortgage principal, interest, protective disbursements and costs; and,
- (d) The balance, if any, to be paid into Court to the credit of this proceeding until further order of the Court.

[5] The balance paid into court was \$975,955.58 (the “Court Funds”).

[6] It was anticipated at that time that further application(s) would be necessary to determine the validity and priority of the claims being brought by a number of the respondents.

[7] Because of the number of claims being asserted, and the differing legal bases for those claims, the factual matrix is complex. By reviewing the electronic court file,

I prepared a partial chronology of pleadings filed in this matter, which is included in Appendix A.

**II. THE PARTIES**

[8] Title to the Property was registered to Sunny Sun, who died intestate on May 25, 2022. At the time of his death, the following charges (and others not relevant to the hearing before me) were registered on title against the Property:

- a) the RBC mortgage, which was paid out under Associate Judge Vos’s Order;
- b) a mortgage in favour of the Irene Ngan in the amount of \$270,000 registered on title in August 2015 (the “Ngan Mortgage”);
- c) a mortgage granted by Chong Tang and Guo Shen in the amount of \$130,000 registered on title in June 2016: for convenience, I will refer to these respondents as Tang/Shen (the “Tang/Shen Mortgage”);
- d) a mortgage granted by Tin Chan (referred to as Timothy Chan) for \$120,000, registered on title in July 2016 (the “Chan Mortgage”); and
- e) a mortgage granted by Jie Song, the ex-spouse of Mr. Sun in the amount of \$300,000 which was registered in December 2021 (the “Song Mortgage”).

[9] In addition:

- a) Cheng Cheng claims an equitable mortgage against the Property in the amount of \$300,000. He filed a CPL on the Property.
- b) Mr. Sun’s spouse when he passed away, Xiaona Li, commenced an action in July 2023 claiming an interest in the Property on behalf of their daughter, Qingqing Li, who is a child. Xiaona Li filed a CPL on the Property.

- c) The son of Mr. Sun and Jie Song, Zhao Sun, claims that the Property was held in trust for him. He filed a petition on December 11, 2024, seeking declarations in relation to what he describes as the “Sun Family Residence Trust”.

### **III. LEGAL PRINCIPLES**

[10] The main dispute in these applications is the applicability and operation of the *Limitation Act*, S.B.C. 2012, c. 13, as it applies to each of the two aspects of a mortgage: the debt aspect and the security aspect. There was no dispute about the fundamental principles that govern mortgages in this province, and in particular the dual nature of mortgages.

[11] A mortgage represents both a security interest registered against land as well as evidence of a loan. This duality has legal significance to the applicable limitation period depending on whether a mortgagor wants to realize on its security as against the land itself or seek repayment of the loan.

[12] This principle is set out in, among others, *Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2020 BCSC 637, ref'd 2021 BCCA 171 (the Court of Appeal declined to hear the appeal on the basis of mootness) [*Forjay*]. Justice Fitzpatrick provided the following summary of the applicable principles:

[17] In the Summary Trial Reasons, I discussed the dual nature of a mortgage, such as the 625 Mortgage, as comprising both debt and security elements:

[69] It is trite law that a mortgage reflects two essential elements: debt and security: see *Bank of Montreal v. Orr* (1986), 4 B.C.L.R. (2d) 1 (C.A.) at para. 25; *Humble Investments Ltd. v. Therevan Development Corp.* (1982), 21 Alta. L.R. (2d) 40 (Q.B.) at paras. 19-23. Further, as between the mortgagee and mortgagor, those elements are to be found in the contractual provisions found in the mortgage.

[18] Within the limitations context, the dual nature of a mortgage (debt/security) was also recently discussed in *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33:

[45] This Mortgage, like most mortgages, includes both a covenant to pay and security for the debt. The covenant to pay the principal, considered on its face, and alone, is a demand obligation. With respect to it, s. 14 applies; that is, it is not payable until

demand. The obligation to pay interest, however, is not a demand obligation because it was payable without demand on October 31 of each year. The Mortgage also provides that the property mortgaged is security for the debt. With respect to security for the debt, s. 15 of the Act applies. The right to realize on the security arises upon discovery of that right.

[46] Discovery of the right, by s. 15, arises upon default. The default occurred when an interest payment was not made under the Mortgage, and thus the right to realize on the security arose on such default, and the two-year limitation period would apply from default, unless postponed.

[47] With respect to the demand obligation, s. 14 applied. Thus, the limitation period with respect to the ability to seek judgment enforcing the covenant to pay ran from November 9, 2016, the first day of a failure to pay after demand. With respect to the right to realize on the security, the limitation period ran from the first day that the right to enforce the security arose, namely, the date of default, October 31, 2013, by virtue of s. 15.

[48] Accordingly, *absent postponement*, the limitation period has expired with respect to the Leathersmans' ability to realize on the security and some of the interest. However, the limitation period had not tolled with respect to their ability to seek judgment on the covenant to pay, except to the extent of the interest payable more than two-years prior to the commencement of the foreclosure action.

[19] Accordingly, the dual aspects of the 625 Mortgage mean that there are two separate and distinct limitation periods potentially applicable with: firstly, the debt and, secondly, the security. It is always open to a lender to simply enforce the debt aspect of a mortgage, without reference to the security. Conversely, an action to enforce the security will only be allowed if the debt remains extant.

[Emphasis in original.]

[13] Section 6(1) of the *Limitation Act* states that a claim cannot be commenced more than two years after the day on which that claim is discovered. However, pursuant to s. 24, a limitation period can be extended if, before it expires, a person acknowledges liability in respect of the claim. The relevant sections are set out below:

- (2) An acknowledgement of liability in respect of a claim for interest is also an acknowledgement of liability in respect of a claim for
  - (a) the outstanding principal, if any, and
  - (b) interest falling due after the acknowledgement is made.
- (3) An acknowledgement of liability in respect of a claim to realize on or redeem collateral under a security agreement or to recover money in

respect of the collateral, if made by a person in possession of the collateral, is an acknowledgement of liability in respect of the claim by any other person who later comes into possession of the collateral.

....

(6) Subsection (1) does not apply to an acknowledgement, other than an acknowledgement referred to in subsection (7), (8) or (9), unless the acknowledgement is

- (a) in writing,
- (b) signed, by hand or by electronic signature within the meaning of the *Electronic Transactions Act*,
- (c) made by the person making the acknowledgement or the person's agent, and
- (d) made to the person with the claim, the person's agent or an official receiver or trustee acting under the *Bankruptcy and Insolvency Act* (Canada).

(7) In the case of a claim for payment of a liquidated sum, part payment of the sum by the person against whom the claim is or may be made or by the person's agent is an acknowledgement by the person against whom the claim is or may be made of liability in respect of the claim.

(8) A debtor's performance of an obligation under or in respect of a security agreement is an acknowledgement by the debtor of liability in respect of a claim by the creditor for realization on the collateral under the security agreement.

(9) A creditor's acceptance of a debtor's payment or performance of an obligation under or in respect of a security agreement is an acknowledgement by the creditor of liability in respect of a claim by the debtor for redemption of the collateral under the security agreement.

(10) This section applies to an acknowledgement of liability in respect of a claim for payment of a liquidated sum even though the person making the acknowledgement refuses or does not promise to pay the sum or the balance of the sum still owing.

[14] Section 1 of the *Electronic Transactions Act*, S.B.C. 2001, c. 10, defines "electronic signature" to mean "information in electronic form that a person has created or adopted in order to sign a record and that is in, attached to or associated with the record".

[15] A dispute can arise, as it has in this case, as to whether the mortgagor's acknowledgment relates to both the debt and the security aspect of a mortgage.

[16] Section 15 of the *Limitation Act* provides that a claim to realize or redeem security is “discovered on the first day that the right to enforce that security arises”. Thus, to constitute an extension, a written acknowledgement must specifically reference the debtor’s liability with regard to that security. With respect to a debt, a partial payment can confirm a cause of action for the purpose of the limitation period: *Limitation Act*, s. 24(7).

[17] In *Forjay* at paras. 23–47, Fitzpatrick J. further discusses the case law addressing whether acknowledgments are regarding both the debt and security aspects of a mortgage. Among others, the following principles arise from her discussion:

- a) The onus lies on the mortgagee to establish that a mortgagor made an acknowledgement in time to avoid the expiry of a limitation period: at para. 29.
- b) A bare acknowledgement as to the existence of a cause of action is not sufficient; instead, there must be an admission of some liability: at para. 31, citing *Podovnikoff v. Montgomery*, 1984 CarswellBC 385 at para. 11, 1984 CanLII 52 (C.A.).
- c) The intention of the person making the acknowledgement is critical. The person must admit some liability, and that intention must be evident on the face of the document: at paras. 32–33, citing *Ryan v. Moore*, 2005 SCC 38 at para. 45; *Brons v. 622943 B.C. Ltd.*, 2006 BCSC 193 at paras. 26, 29.
- d) A document will postpone a limitation period “if a reasonable person would construe the words as an acknowledgement of ‘some liability’”: at para. 34, citing *Trombley v. Pannu*, 2016 BCCA 324 at paras. 18–28; *Nguyen v. Johnson*, 2008 BCCA 218 at paras. 44–47.
- e) The court takes a broad contextual analysis of the written document and overall circumstances to determine whether an acknowledgement

occurred, but doing so must “not overwhelm the actual words found in the document”: at paras. 35–36, citing *Grimsley v. Roe*, 2018 BCSC 985 at para. 65; *George et al v. McMahon et al*, 2006 BCSC 1394 [*George*]; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 57.

[18] Text messages have been found to meet the prerequisites under s. 24(6) of the *Limitation Act*. In *Ross v. Parihar*, 2021 BCPC 96, the plaintiff relied on an exchange of text messages as constituting an acknowledgement under s. 24. The court ultimately concluded that text messages were sufficient, in part, by relying on *Johal v. Nordio*, 2017 BCSC 1129.

[19] The court in *Johal* looked to the decision of the Saskatchewan Queen’s Bench in *I.D.H. Diamonds NV v. Embee Diamond Technologies Inc.*, 2017 SKQB 79, aff’d 2017 SKCA 79 [*Embee*], which addressed whether an email can constitute an acknowledgement under that province’s equivalent statute to BC’s *Electronic Transactions Act*. The court then adopted the following four requirements of a valid electronic signature from *Embee*: (i) presence of some type of information in the emails; (ii) such information may be in electronic form; (iii) the information must have been created or adopted by the person in order to sign a document; (iv) the information must be attached to or associated with the document: *Johal* at para. 41.

[20] All four conditions were found in *Ross* to have been met for the text messages at hand. The court further relied on the comment in *Johal* that the meaning of “electronic signature” must focus on whether the sender had intended to create a signature to identify themselves as its composer and sender: *Ross* at para. 59, citing *Johal* at para. 33.

[21] Similar reasoning was relied upon by the Ontario Superior Court of Justice to find that text messages could satisfy the “signature” requirement: *1475182 Ontario Inc. o/a Edges Contracting v. Ghotbi*, 2021 ONSC 3477 at paras. 48–50.

**IV. APPLICATION FILED BY IRENE NGAN**

[22] Irene Ngan filed a notice of application on February 6, 2024 seeking payment from the Court Funds to satisfy the security of the Ngan Mortgage. A number of respondents filed applications opposing Irene Ngan’s original notice of motion: Cheng Cheng filed a response on March 8, 2024; Jie Song filed a response on May 10, 2024; Timothy Chan filed a response on May 10, 2024; and, Zhao Sun filed a response on May 14, 2024.

[23] Irene Ngan’s application came before Justice Thomas on May 17, 2024, who adjourned it to September 12, 2014, on a peremptory basis to allow Irene Ngan the opportunity to review certain bank records that were relevant to her claim to enforce the security of her mortgage as against the Property.

[24] That application was not heard on September 12, 2014, because no judge was available, so it adjourned to December 16, 2024. In the meantime, Irene Ngan filed an amended notice of motion on November 20, 2024 (the “Nov. Ngan NOA”). The changes were significant. In her original notice of application, she sought “an order that the amount due and owing ... pursuant to [the Ngan Mortgage] ... be paid out” in an amount owing at that time (as of October 28, 2023) of approximately \$407,231.89. The respondents who opposed that relief alleged that the claim was statute barred.

[25] In the Nov. Ngan NOA, the orders originally sought in the February 6, 2024 NOA were crossed out, and in their place, were the following:

- a) an order that the principal and interest in the amount of \$448,902.04 due and owing as of December 16, 2024, on the Ngan Mortgage be paid out of the Court Funds “pursuant to the Certificate of Result of Sale entered on October 31, 2023;
- b) in the alternative, an order that the principal alone for the Ngan Mortgage be paid out of the Court Funds pursuant to the Certificate of Result of Sale entered on October 31, 2023; and

- c) in the further alternative, an order for judgment against the Respondent, Sunny Sun, in the amount of \$270,000 plus court ordered interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

[26] However, at the hearing before me on December 16, 2024, Irene Ngan confirmed that she was no longer seeking the first two orders reproduced from the Nov. Ngan NOA above because she agrees that that relief is barred by the applicable limitation period under the *Limitation Act*. Therefore, she only seeks the further alternative relief pursuant to the third paragraph.

[27] No party suggests that Irene Ngan is not entitled to receive \$270,000 from the Court Funds, but they disagree as to whether an order should be granted in the exact terms sought. That dispute has to do with the priority that would attach to the order approving payout to her from the Court Funds. Her position is that she is entitled to an order confirming the payout from the Court Funds, but also a declaration of judgment, which would rank in priority to other claims made against the Court Funds.

[28] Other parties took issue with what they say was Irene Ngan's last-minute change of position because of a lack of fair notice. In particular, counsel representing Zhao Sun opposed the Court's making any comment about the priority of Irene Ngan's claim to any portion of Court Funds, certainly not without affording the opportunity to his client to file an application. As noted above, he claims a family trust in the Property, and filed his petition regarding that on December 11, 2024.

[29] After hearing submissions from counsel about how to proceed regarding the relief sought by Irene Ngan given the parties' positions, I decided in the overall interest of justice and fairness, that I would not immediately issue judgment relating to Irene Ngan's claim to be paid her debt from the Court Funds as she requested, and I adjourned judgment on that. The purpose of doing so was solely for the purpose of allowing the other parties to address the issue of priorities. However, I made it clear after hearing those submissions that I may be unpersuaded that there

was, or had been, any need to postpone judgment in favour of Irene Ngan, and that if so, I may choose to pronounce an Order to that effect.

[30] I address this issue below starting at para. 67.

**V. APPLICATION FILED BY TANG/SHEN**

[31] Tang/Shen filed an application on December 21, 2023, seeking payment from Court Funds in the amount of \$178,616.44, but by December 16, 2024, they claim the amount owing was \$185,027.39. Cheng Cheng and Timothy Chan filed responses objecting to that order being granted, and other parties took no position.

[32] The basis of Tang/Shen’s claim is the Tang/Shen Mortgage, but there is a dispute as to the validity of that mortgage at the time the Property was sold. Cheng Cheng submits that the evidence filed by Tang/Shen demonstrates on a balance of probabilities—or at least, raises the spectre—that the mortgage was fully satisfied, meaning no debt remains to be paid out.

[33] In their notice of application, Tang/Shen claim they had a contract with a company owned by Mr. Sun relating to the construction of their house in Vancouver. Guo Shen deposed in her affidavit made on November 30, 2023 (filed December 11, 2023) that her and her husband, Chong Tang, contracted Mr. Sun and his company to build a house located at 3407 West 35<sup>th</sup> Avenue. She stated that, shortly after entering the contract, Mr. Sun told them that he could not complete the construction due to cashflow problems. To address them, Mr. Sun borrowed \$130,000 from Tang/Shen subject to their mortgage on the Property. He promised to pay them back in 6 months with simple interest at 5% per annum.

[34] In other words, the purpose of the loan secured by mortgage was to allow Mr. Sun to complete the construction of their house. The mortgage was registered on June 30, 2016. Tang/Shen claim Mr. Sun failed to make any payment despite their demands. They commenced an action on October 30, 2017.

[35] Cheng Cheng's position is that there is evidence upon which the Court can infer that the house was completed, thus negating the mortgage. He also submits the latest date the Tang/Shen Mortgage could have gone into default was October 30, 2017. He says there is no evidence before the Court that Mr. Sun ever gave written acknowledgement of his indebtedness to Tang/Shen. Therefore, he submits that the Tang/Shen Mortgage is barred by s. 6(1) of the *Limitation Act*. Lastly, he alleges there is no evidence the mortgage remains unpaid.

[36] In response to that position, Tang/Shen submit that there was an error or "omission" in their notice of civil claim, which explains a contradiction between that information and what Ms. Shen deposed to in her affidavit. The error has to do with the possible mis-identification or failure to properly particularize the address of the home on which Mr. Sun's company was doing work that triggered the Tang/Shen mortgage. As noted, the purpose of the security aspect of that mortgage was to ensure that Mr. Sun's company completed the work. The allegation is that the work was completed, precluding the ability of Tang/Shen to succeed on enforcing any aspect of the mortgage.

[37] Counsel for Tang/Shen wanted to explain the error, and in support of that, referred to an affidavit filed December 16, 2024. Other parties objected to the Court considering that affidavit, submitting that it was filed too late. I agree, but more importantly, the affidavit constitutes double hearsay because it was completed by a legal assistant and simply attached, among other things, two affidavits. One of the attached affidavits was made by Ms. Shen in October 2024, but it too is devoid of narrative and simply attaches pleadings and documents. As such, the affidavit contained no relevant or admissible evidence.

[38] Counsel for Tang/Shen wanted to supplement the information in the affidavit with statements, but given the disputed nature of the assertions, it is not appropriate to rely on counsel's submissions. If Tang/Shen wanted this Court to reject the points raised by other parties about the mortgage being fully satisfied, it was incumbent upon them to file an affidavit, on time, based on personal knowledge.

[39] In any event, the other parties assert that it is clear from Tang/Shen's pleadings that their action relates purely to recovery of a debt and not action to enforce the Tang/Shen Mortgage. They also point out that Tang/Shen have twice set this matter down for trial, from which the Court should infer that they believe a triable issue exists about the validity of their claim regarding the mortgage.

[40] Regardless of the status of their mortgage at the time the Property sold, given the obvious and inherent problems with the evidence filed on behalf of Tang/Shen as to the basis of the mortgage they granted, I am not prepared to make a finding about the validity of that mortgage. That issue may need to go to trial.

[41] At the close of the hearing while canvassing the parties' positions as to the procedure for setting down the continuation of Irene Ngan's application, counsel for Tang/Shen suggested that he may want to amend their notice of application. Whether that should be permitted, or is possible, may have to be decided at a later date. Nothing in this judgment should be seen as either permitting or disallowing Tang/Shen from applying to do so. I also do not confirm one way or another whether it would be appropriate at any subsequent hearing of Irene Ngan's application to hear submissions from Tang/Shen on that point.

[42] For all those reasons, the Tang/Shen notice of application is dismissed.

## **VI. APPLICATION FILED BY TIMOTHY CHAN**

[43] Timothy Chan seeks an order that \$203,656.97 (as of December 16, 2024) be paid out of the Court Funds to him pursuant to the Chan Mortgage. He admits that the Ngan and Tang/Shen Mortgages rank higher in priority to his.

[44] There is no dispute that the Chan Mortgage was not paid out prior to the sale of the Property. The main issue is whether Timothy Chan's claim is statute-barred.

[45] For clarity, I will refer to enforcement of the security aspect of the mortgage as the Chan Mortgage, and the debt aspect as enforcement of the promissory note.

## A. Facts

[46] Timothy Chan lent money to Mr. Sun who signed a promissory note. He relies on his own affidavit, and an affidavit filed by his father, Andrew Chan. Andrew Chan deposed that he had been liaising with Mr. Sun regarding the terms of the promissory note and mortgage. In his affidavit, Andrew Chan makes statements about terms agreed to by his son and Mr. Sun. However, Timothy Chan's affidavit makes no mention of his father's role with regard to the money loaned to Mr. Sun, which is problematic. However, no party suggested that this anomaly made any material difference to the enforceability of the Chan Mortgage or promissory note, or Timothy Chan's application for payout from the Court Funds on any other basis.

[47] The promissory note has a due date of September 1, 2016. The following are relevant extracts:

**FOR VALUED RECEIVED**, the undersigned, **SUNNY SUN** of [the Property] (the "Borrower") hereby acknowledges himself indebted to [TIMOTHY CHAN] ... (the "Lender") and promises to pay ... the principal sum of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00) (the "Principal Sum") in lawful money of Canada.

The Borrower promises to pay to the Lender in one lump sum the Principal Sum with interest at 12.00% per annum upon the sale of [the Property] or upon demand of the Lender by seven (7) days' prior written notice to the Borrower, whichever earlier [*sic*].

The Borrower agrees to execute documents to grant a mortgage with respect to the Property in favour of the Lender to secure the Principle Sum, if so required by the Lender.

[48] Around the time the promissory note became due, Mr. Sun got an extension to the loan conditional upon him making interest payments of \$1,200 a month. It is not disputed that Andrew Chan agreed to accept \$1,000 per month from Mr. Sun, forgiving the outstanding \$200, so long as Mr. Sun continued to make payments.

[49] Mr. Sun executed the mortgage documents the same day the promissory note was signed, but the Chan Mortgage was not registered on title until July 25, 2016.

[50] On February 1, 2019, Mr. Sun defaulted by failing to make the required interest payment; he made no further payments after that until May 2022.

[51] Following the default, Andrew Chan deposed that he had several discussions and meetings with Mr. Sun about repaying the loan, including bi-monthly phone calls, WeChat communications and meetings in person, outlined below:

- a) In December 2019, Mr. Sun said he was optimistic he could repay the loan as he was starting a business venture regarding cannabis and the profits would allow him to repay Timothy Chan.
- b) In October 2020, Mr. Sun advised Andrew Chan that the profit margins from cannabis were not enough for him to repay the loan and he again asked for more time to repay the loan.
- c) On October 7, 2021, Mr. Sun sent Andrew Chan two text messages, which have been translated into English as follows (the “October Texts”):

I am preparing to sell my house and am negotiating with a creditor. What do you want for your \$120,000 loan and interest?

If the negotiations among the creditors go smoothly, I will do a debt restructuring; otherwise I will declare bankruptcy and the bank will do a foreclosure sale. The down payment for this house is not mine, and a trust was created for business risks. Anyhow, I will not let you suffer losses. You have helped me, and I still have a conscience.

- d) On March 13, 2022, Mr. Sun sent a text message to Andrew Chan, which stated:

I have received notice from the bank, and the foreclosure procedures are in progress. Please forgive me for the trouble I have caused you before.

- e) On May 5, 2022, Mr. Sun paid Andrew Chan \$500. He also sent a message indicating that he was waiting for somebody else to pay him and would make up the difference of the interest payment when he got that payment. Andrew Chan responded with “Ok thanks.” On May 16, 2022, Mr. Sun transferred another \$500 to Andrew Chan.

f) As already noted, Mr. Sun died on May 25, 2022.

[52] Timothy Chan filed a response to RBC's petition on May 19, 2023. On April 9, 2024, he filed a notice of civil claim seeking judgment against the estate of Mr. Sun in the amount of \$120,000 for the principal amount as well as contractual interest at the rate of 12% per annum.

### **B. Analysis**

[53] The parties agreed that due to the extension of limitation periods caused by the COVID-19 pandemic, the applicable limitation period for enforcing the security aspect of the Chan Mortgage would be February 1, 2022, because it would be anchored by Mr. Sun's February 1, 2019 default. If the October Texts constitute a valid acknowledgment of his liability, then the limitation period would be further extended to October 2023. In that case, the parties disagree whether the extension would apply to the promissory note and/or the Chan Mortgage.

[54] There is no dispute that Mr. Sun's October Texts satisfy the requirements of being in writing and bearing an electronic signature, and that Mr. Sun was communicating some liability to Andrew Chan. The dispute is whether his acknowledgment was regarding the promissory note or the Chan Mortgage.

[55] Timothy Chan's position is that the October Texts constitute Mr. Sun's acknowledgement of liability for the Chan Mortgage, thereby postponing the running of the limitation period pursuant to s. 24(1) of the *Limitation Act*. He also submits that the May 2022 interest payments constitute acknowledgement of liability under the Chan Mortgage, meaning that the ultimate limitation period would have ended on May 16, 2024 (two years from the last payment). His position is that his claim is not statute-barred because he actively participated in the foreclosure proceeding and filed a notice of civil claim prior to the expiry of the ultimate limitation period.

[56] Timothy Chan relies on the opening words of the October Texts where Mr. Sun stated that he was preparing to sell his house. He submits because the promissory note stated that the loan would be paid back once the house sold, this is

at least an implicit reference to the security interest of the mortgage. He contends that statement combined with references to not wanting Andrew Chan to “suffer loss” and that Mr. Sun “still had a conscience” confirms that interpretation.

[57] Other parties do not agree. They submit the text is clear on its face that it only refers to Mr. Sun’s liability under the promissory note. They submit from an objective point of view, Mr. Sun’s specifically asking, “What do you want for your \$120,000 loan and interest?” can only be in reference to the promissory note. Further, they submit the subsequent text confirms that interpretation because of Mr. Sun’s mentioning that there may not be any money left after the sale of the Property given that he did not make the down payment, and he had placed it in a trust.

[58] Timothy Chan submits that Mr. Sun’s discussions with Andrew Chan after the default and before the May 2022 payments are part of the relevant context that supports the notion that Mr. Sun intended to satisfy the Chan Mortgage. Other parties point out that the evidence relating to anything Mr. Sun and Andrew Chan might have discussed is vague and ambiguous.

[59] I find the October Texts constitute acknowledgement of liability for the promissory note only, and not the Chan Mortgage. Asking what Andrew Chan wanted for the loan and interest is a clear and unambiguous reference to the debt, rather than inviting him to realize the security interest of the mortgage. I am not persuaded that his reference to selling the Property changes that interpretation, primarily because there is no previous mention or reference by either men to Timothy Chan realizing on the security.

[60] I find the discussion of other cases in *Forjay* to be helpful on this point. In discussing *George*, Fitzpatrick J. focussed on the content of the acknowledgement and its context. The acknowledgement in *George* was a letter, which was sent in response to the mortgagee’s communication that specifically referred to the mortgage and the possibility of foreclosure: at paras. 11–12. In that circumstance, after reading the mortgagor’s letter in context of the letter from the mortgagee, the

court concluded that the acknowledgement referred to the mortgagee's right to proceed against the property.

[61] Justice Fitzpatrick also commented on *Grimsley*, noting that it did not deal with a conventional mortgage. That case was about the assertion of an equitable mortgage over interests in a guiding territory certificate. The acknowledgement in *Grimsley* was an email from the borrower that contained her insurance binder, which was sent in response to the lender's inquiries about how the loan would be repaid. The court held that amounted to an acknowledgement of liability for the security aspect of that loan. Justice Fitzpatrick noted "there would have been no other rational reason to raise the matter of insurance" of the asset unless the mortgagor was acknowledging the creditor's right to proceed against the asset: *Forjay* at paras. 46–47.

[62] Thus, the objective meaning of the words of an acknowledgement may be affected by a previous demand or query made by the lender/mortgagor. Here, there is no evidence that any previous communication referred to Timothy Chan's right to proceed against the Property itself for Mr. Sun's default.

[63] The case law is clear that an acknowledgement is assessed on an objective basis and must be unambiguous and clear. I find the interpretation advanced by Timothy Chan relies on supposition and an unreasonable interpretation of the words in the October Texts.

[64] Accordingly, I conclude that the October Texts operated to postpone the limitation period on the promissory note, not the Chan Mortgage. Therefore, relief sought by Timothy Chan relating to the security aspect of the Chan Mortgage is statute-barred.

[65] The October Texts postponed the expiry of the limitation to enforce the promissory note to October 1, 2023. I also find Mr. Sun's payments in May 2022 further postponed that limitation period, such that the ultimate expiry for realizing the debt of the promissory note expired May 5, 2024.

[66] The application is dismissed.

**VII. FURTHER DIRECTIONS**

[67] As referenced above, Irene Ngan sought an order declaring she was entitled to judgment in the amount of \$270,000 to be paid out of the Court Funds. I have already described why I determined I would postpone my consideration of whether to do that.

[68] Having reviewed this matter and considered all submissions, I remain of the view that it would be imprudent to grant judgment to Irene Ngan in the specific terms sought, without giving Cheng Cheng, Xiaona Li and Zhao Sun fair opportunity to address the Court. In my view, given all that has transpired and the manner in which it unfolded, I am not satisfied that those respondents had fair notice that Irene Ngan would restrict the relief she sought at the hearing in December 2024 to the further alternative ground in Nov. Ngan NOA.

[69] Accordingly, I direct counsel for Irene Ngan, Cheng Cheng, Xiaona Li and Zhao Sun to attend a case planning conference (the “CPC”) before me to discuss next steps. Any other party which filed a response to the Nov. Ngan NOA opposing the relief she sought can (but is not obliged) to attend. While I would not bar any other party from attending, it is not clear to me why they should have a right of audience at that CPC, although I would fairly consider a submission why they should.

[70] I also state the obvious, that Irene Ngan, Cheng Cheng, Xiaona Li and Zhao Sun are free to come to some other arrangement or consent order that negates the necessity of attending a CPC before me.

[71] However, if counsel agree to convene a CPC, I direct as follows in order to schedule it as efficiently as possible with minimal interaction with Supreme Court Scheduling:

- a) Counsel for Irene Ngan, Mr. Rubinstein, shall, no later than seven days from the date of this judgment, contact counsel for Cheng Cheng, Xiaona Li and Zhao Sun to identify up to seven (7) possible dates in the months of April and May 2025 (except April 1, 14, or May 1, 26) that he is available at 9:00 am for a one-hour CPC. I would ask him to copy that correspondence to any other counsel that appeared before me on December 16 and 17, 2024.
- b) Counsel for any party wanting to participate in the CPC shall, within seven (7) days of Mr. Rubinstein's communication, respond as to which of the suggested dates they are available.
- c) No sooner than fifteen (15) days after the date of this judgment, counsel for Irene Ngan shall complete an online "Request to Appear" for a 9:00 am CPC before me, referencing this judgment, and indicate on which dates he and counsel for Cheng Cheng, Xiaona Li and Zhao Sun are available. If there is no single date when those four counsel are available, counsel for Irene Ngan shall state the availability of each of them and await further correspondence from the Court.
- d) If any of the above deadlines create hardship for any counsel, I expect other counsel to accommodate reasonable extensions of time.
- e) Despite any extensions agreed to by counsel, the online request to schedule the CPC must be submitted to Supreme Court Scheduling no later than 45 days from the date of this judgment.

[72] I would kindly ask counsel to be mindful of Supreme Court Civil Practice Direction 27, *Communicating with the Court*, and avoid directing any communication to Supreme Scheduling except as outlined above.

"Sharma J."

**APPENDIX A**

**PARTIAL CHRONOLOGY OF PLEADINGS**

1. **April 7, 2022** RBC filed amendment to original petition, which was filed March 3, 2022 to add tenants of the Property (the “Petition”)
2. **April 13, 2022** Cheng Cheng filed response to the Petition, reserving the right to oppose orders in future and asking for notice
3. **April 26, 2022** Tang/Shen filed a response to Petition, taking no position to relief sought in Petition
4. **August 15, 2022** RBC filed a further amended petition on issues not relevant to this judgment
5. **August 29, 2022** Zhao Sun filed a response to Petition taking no position on orders sought except to oppose paragraph 12 seeking order for sale of the Property
6. **August 31, 2022** Iran Ngan filed response to Petition taking no position on the relief sought in the Petition
7. **November 22, 2022** RBC filed notice of hearing for Petition and Statement of Relief Sought
8. **December 5, 2022** Zhao Sun filed NOA seeking order granting him conduct of sale
9. **December 7, 2022** Cheng Cheng filed response to Zhao Sun’s December 5, 2022 NOA seeking terms for conduct of sale
10. **December 15, 2022** now Associate Judge Muir granted order providing redemption date of June 15, 2023, ordering Sunny Sun’s estate to pay out RBC and related relief
11. **May 17, 2023** application filed by Zhao Sun seeking approval for sale of Property to Han Jun for \$2,020,000
12. **May 19, 2023** Timothy Chan filed response to original petition dated March 3, 2022 taking no position
13. **May 26, 2023** Tang/Shen filed response to Zhao Sun’s May 17, 2023 NOA seeking that net proceeds of sale be paid into court and not paid out from court without further notice
14. **June 1, 2023** now Associate Judge Vos grants an order that, among other things, provided for the net proceeds of sale of Property be paid into court
15. **November 7, 2023** Irene Ngan filed NOA seeking order to confirm amount due and owing pursuant to the Ngan Mortgage be paid out
16. **December 21, 2023** Tang/Shen filed NOA seeking amount due and payable under Tan/Shen Mortgage be paid out

17. **January 15, 2024** Cheng Cheng filed response to Irene Ngan November 7, 2023 NOA opposing all relief sought, on basis of, among others, expiry of limitation period
18. **February 6, 2024** Sudesh Kalia and Rama Kalia file NOA seeking payout of Ngan Mortgage (\*it appears everyone treated this as a NOA filed on behalf of Irene Ngan) (the “Feb. Negan NOA”)
19. **March 8, 2024** Cheng Cheng filed response to Feb. Ngan NOA, raising among others, opposition to payout because of limitation period
20. **May 10, 2024** Timothy Chan filed NOA seeking payout of Chan Mortgage
21. **May 10, 2024** Jie Song filed response to Feb. NOA opposing relief sought
22. **May 10, 2024** Timothy Chan filed response to Feb. Ngan NOA consenting to relief sought by Irene Ngan on condition that Timothy Chan also be paid out
23. **May 14, 2024** Zhao Sun filed response to Feb. Ngan NOA opposing all relief sought
24. **May 17, 2024** Justice Thomas granted order adjourning to September 12, 2024 hearing of Feb. Ngan NOA peremptory on her (in attendance were counsel for Cheng Cheng, Jie Song, Timothy Chan and Shao Sun)
25. **November 20, 2024** Irene Ngan filed NOA (purporting to be an amended NOA) seeking payout of principal and interest of Ngan Mortgage, or in the alternative payout of principal alone, or in the further alternative order for judgment in amount of \$270,000
26. **November 22, 2024** Order granted adding Xiaona Li as respondent pursuant to application she filed on November 6, 2024
27. **December 11, 2024** Xiaona Li filed response to Irene Ngan November 7, 2023 NOA and Timothy Chan May 10, 2024 NOA opposing all relief sought
28. **December 11, 2024** NOA filed by Timothy Chan seeking payout of \$203,656.97 as of December 16, 2024 (not specified whether payout of debt or mortgage)
29. **December 12, 2024** Zhao Sun filed amended response to Tang/Shen December 21, 2023 NOA opposing all relief sought