

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Five Peaks Capital Ltd. v. Global City Properties (Cottonwood) Ltd.*,
2025 BCSC 1726

Date: 20250908
Docket: H255880
Registry: New Westminster

Between:

Five Peaks Capital Ltd.

Petitioner

And

**Global City Properties (Cottonwood) Ltd.,
Jaswant Singh Dhillon, Jaswinder Kaur Dhillon
1209879 B.C. Ltd., Mya Deol,
The Crown in Right of British Columbia**

Respondents

Before: The Honourable Madam Justice Sukstorf

Reasons for Judgment

Counsel for the Claimant: T. Ewert

Counsel for Respondents: J.R. Pollard

Place and Date of Hearing: Port Coquitlam, B.C.
June 9, 2025

Place and Date of Judgment: New Westminster, B.C.
September 8, 2025

Table of Contents

OVERVIEW..... 4

ISSUES..... 5

FACTS..... 5

LEGAL FRAMEWORK..... 11

 Section 8 of the *Interest Act* 11

 Renewal vs. Variation..... 13

 Economic Duress 14

POSITIONS OF THE PARTIES..... 16

 Petitioner (Five Peaks Capital Ltd.) 16

 1. Characterization of the Renewal Agreement: 16

 2. No Breach of Section 8 of the Interest Act: 17

 3. No Economic Duress: 17

 Respondents (Global City Properties) 17

 1. Characterization of the Renewal Agreement: 18

 2. Section 8 Violation: 18

 3. Economic Duress:..... 18

ANALYSIS..... 19

 A. How should the Renewal Agreement be characterized? 21

 B. Is the 22% Default Clause Enforceable under s. 8 of the *Interest Act*? 22

 C. Is the 12.7% Renewal Agreement a Valid and Enforceable Contract? 23

 Economic Duress..... 24

 Leverage and the s. 8 Clause 24

 Petitioner’s position on practical alternatives..... 24

 Respondents’ position on practical alternatives 25

 Discussion 26

 Threshold – Pressure & Illegitimacy 26

 Threshold - Practical Alternatives..... 27

 Compulsion 28

 Consideration 28

 Protest 28

 Disaffirmation or Repudiation 29

 Independent Legal Advice 29

Conclusion on Economic Duress 30
CONCLUSION..... 30

OVERVIEW

[1] This case concerns the enforceability of a default interest clause and its second-order effect on an increased interest rate contained in a subsequent mortgage renewal agreement.

[2] The petitioner, Five Peaks Capital Ltd. (“Five Peaks”), lent \$3.6 million to the respondent, Global City Properties (Cottonwood) Ltd. (“Global City”), under a one-year mortgage agreement (“Agreement”). The Respondent, Jaswant and Jaswinder Dhillon, signed as guarantors to Global City under the Agreement (together, the Respondents). The Agreement specified that if Global City did not repay the \$3.6 million mortgage in full by the maturity date, Five Peaks could unilaterally impose a 22% interest rate for a period of three months, as well as charge a renewal fee.

[3] When the mortgage matured in 2024, the parties eventually entered into a renewal agreement that extended the Agreement by one year but increased the interest rate from 12.2% to 12.7% (the “Renewal Agreement”).

[4] Global City subsequently defaulted on the mortgage. In foreclosure proceedings, Associate Judge Hughes fixed a redemption date and redemption amount but left the applicable interest rate to be determined. That question, the proper rate of interest to be applied to the accounting, is the sole issue before me.

[5] The petitioner maintains that the applicable interest rate under the Renewal Agreement is 12.7% as set out in the Renewal Agreement, while the Respondents contend that the correct rate is 12.2%.

[6] The Respondents challenge the enforceability of the 22% default interest clause in the original mortgage agreement, arguing that it contravenes s. 8 of the *Interest Act*, R.S.C. 1985, c. I-15, which prohibits the imposition of penalty interest on arrears. They submit that the threat of a 22% interest rate created undue pressure, leaving Global City with no meaningful choice but to accept the increased 12.7% interest rate in the renewal agreement. On that basis, the Respondents ask

the Court to strike down the Renewal Agreement, maintaining that it was made under duress, and that the 12.2% interest rate should continue to apply.

[7] Five Peaks emphasizes that it never enforced the 22% clause and characterizes the Renewal Agreement as a new bargain reflecting a consensual re-pricing of risk.

ISSUES

[8] Against that backdrop, the central issues for determination are:

1. Whether the 22% default interest clause in the original mortgage Agreement contravenes s. 8 of the *Interest Act* and is therefore unenforceable; and
2. Whether the 12.7% interest rate in the Renewal Agreement is valid and enforceable, or whether it was agreed to under pressure such that the original 12.2% rate continues to apply?

[9] After reviewing the evidence, the submissions of the parties, and the relevant case law, I have concluded that the 22% default interest clause in the original mortgage is void under s. 8 of the *Interest Act*, but I find that the Renewal Agreement, including the 12.7% rate, was not procured under duress and remains valid and enforceable.

FACTS

[10] Under an Offer Letter dated February 28, 2023, Five Peaks extended a mortgage of \$3,600,000.00 to Global City for 12 months at an annual interest rate of 12.20%, calculated and compounded monthly and secured by the lands described as:

PID 002-367-084

LOT 7, Section 16

Township 12, New Westminster District Plan 21065

[11] Amortization was interest-only, compounded monthly, with monthly payments of \$36,600.00.

[12] The parties executed the Agreement on March 10, 2023.

[13] The advance date for the funds was March 15, 2023, with the first monthly payment due on May 1, 2023, and a balance due date of April 1, 2024.

[14] It was an open mortgage. Global City could prepay in whole or in part upon 30 days' written notice, provided full payment was made of all accrued interest and other amounts owing to Five Peaks, with a minimum fee of 3 months' interest.

[15] The Agreement stipulated that Global City was to pay the full amount of the loan plus any costs, charges, fees, interest, or other amounts payable, accrued or unpaid, immediately upon the expiry of the one-year term of the loan.

[16] Should the mortgage not be repaid in full on the Balance Due Date, Global City and Five Peaks agreed that the term may be renewed for an additional three (3) months at 22% per annum, to be unilaterally imposed by Five Peaks at its sole option and without notice to Global City.

[17] Upon the commencement of the Renewal Term, the Borrower was required to pay a fee to the Lender equal to the Lender Fee (the "Renewal fee"). The Renewal Fee was due and owing on the first day of the Renewal Term and was to be added to the amount secured by the Five Peaks' mortgage.

[18] Global City's agreement to repay the loan on the expiration date of the Term appears to have been a critical term of the Agreement. The parties acknowledge that they intended the Renewal Fee to ensure that the loan would be repaid in full and on time.

[19] Based on the affidavits of Brian Redekopp (Chief Investment Officer for Five Peaks, sworn June 4, 2025) and Mandeep Dhillon (the son of the Respondents' Jaswinder and Jaswant Dhillon and authorized agent of Global City, sworn on May 23, 2025), the following timeline is material:

1. Feb 8, 2024 — The petitioner emailed David Marti (mortgage broker of the Respondents), giving 60-day notice that the “236 loan” would mature on April 1, 2024.
2. Feb 9, 2024 — Mr. Marti replied that the Respondents wished to renew and were considering adding an interest reserve; he indicated the property would be listed for sale rather than developed.
3. Feb 20, 2024 — Jesse Mallette (Operations Manager, Five Peaks) asked whether an updated appraisal had been ordered, noting additional capital would be required.
4. Mar 4, 2024 — Mr. Marti confirmed the Respondents still sought renewal and were awaiting the updated appraisal, expected within days.
5. Mar 14, 2024 — Mr. Mallette followed up for the appraisal update and stated: “We need to get moving on it ASAP to avoid hitting the auto-renewal.”
6. Mar 14, 2024 — The same day, Mr. Marti asked whether a one-month extension could be granted to assemble a renewal request.
7. Mar 22, 2024 — Mr. Mallette sent a Renewal Offer stating the rate remained at the same rate with a 1% renewal fee. He asked that the Respondents sign the mortgage renewal and provide a void cheque and bank draft. The document set an interest rate of 12.2%, a \$36,000 renewal fee (capitalized), interest-only payments of \$36,600/month for 12 months, an open mortgage, and a renewal maturity of April 1, 2025. It also stated: “This Renewal agreement will expire and become null and void without further notice if not accepted in writing and received by the lender on or before May 25, 2024.”
8. May 20, 2024 — The Respondents signed the Renewal Agreement. On May 22, 2024, Tyler Evans (Five Peaks) advised Mr. Marti that the

acceptance period had lapsed on March 25, 2024 (not May 25, 2024, as stated in the revised renewal), that Five Peaks would no longer offer a renewal, and that the May 1 payment remained outstanding.

9. May 21, 2024 — Mr. Dhillon emailed Mr. Marti an edited version of the renewal, reverting the rate to 12.2% and altering the renewal fee and interest payment terms;
10. May 22, 2024 — The petitioner rejected the proposed edits and stated the loan had auto-renewed at 22%.
11. May 22, 2024 — Mr. Marti emailed Mr. Dhillon that he had been “trying to buy [them] additional time,” but repeated missed deadlines and non-completion had led the lender to become “fed up.”
12. May 23, 2024 — Mr. Dhillon advised Mr. Marti that the property was live on MLS and provided marketing materials.
13. May 28, 2024 — The Respondents executed a renewal offer setting the interest rate at 12.7%.
14. June 3–4, 2024 — Mr. Dhillon sent copies of the signed renewal at 12.7%, explaining in his affidavit that he felt he had no choice but to accept to avoid the 22% rate.
15. The May 2024 renewal was conditional on the lender receiving: (i) the outstanding May 1, 2024, payment, and (ii) pre-payments of June 1 and July 1, 2024, interest.
16. June 4, 2024 — Mr. Evans emailed that, absent the Respondents’ account information by the end of the day to pull payments, the renewal offer would be withdrawn, and the 22% rate would apply retroactively to April 1, 2024.

[20] The relevant terms of the renewal of the Agreement (the “Renewal Agreement”, signed and accepted by the Respondents on May 28, 2024, are as follows:

The Lender confirms that the terms and conditions contained in the original Mortgage Loan Commitment remain unchanged, unmodified and in full for and effect, except as modified by this Renewal.

Loan Amount: \$3,600,000.00

Borrower(s): Global City Properties (Cottonwood) Ltd.

Guarantor(s): Jaswant Dhillon, Jaswinder Dhillon

Lender(s): Five Peaks Capital Ltd

Property: 11523 236 Street Maple Ridge BC V2W 1G1

Security: First charge on The property

Interest Rate: 12.70%

Renewal Fee: \$36,000.00 – To be Capitalized.

Amortization: Interest only, with monthly payments of \$38,100.00. Pre-authorized payment form required to be signed.

Term: 12 months

Prepayment Terms: This is an open mortgage, and may be prepaid in full or in part upon 30 days’ written notice and upon full payment of all accrued interest and other amounts owing to the Lender.

Renewal Maturity Date: April 1, 2025

Terms and Conditions: See Schedule “A”, as attached, which forms part of the Renewal Agreement and the mortgage contemplated herein.

SCHEDULE “A”

Conditions

The Lender’s obligation to Renew is conditional upon the following:

1. Receipt and satisfactory review of the Tax returns and Notices of Assessment for all Borrower(s) and guarantor(s) confirming all taxes (and any related interest or penalties) are paid in full;
2. Receipt and satisfactory review of evidence confirming payment of any outstanding property taxes, levies, interest or otherwise related to the Property(ies);
3. Executed Lender Pre-Authorized Debit Plan Agreement by the Borrower(s);
4. Receipt and satisfactory review of certificates of insurance showing a current and comprehensive insurance policy over each of the

Property(ies) and any structures/buildings located on the Property(ies), in a form satisfactory to the Lender, showing the Lender as the first loss payee (the "Insurance");

5. Receipt of outstanding May 1, 2024 Payment (\$38,100.00)
6. Receipt of Prepayment for June 1, 2024 and July 1, 2024 Interest Payments (\$76,200.00)
7. Lender Renewal Fee (\$36,000.00) – To be Capitalized.

[21] These terms are noted only to situate the dispute about the interest rate; their enforceability was not argued before me and is not in issue.

[22] On May 13, 2025, Associate Judge Hughes declared the March 10, 2023, Agreement valid and in default; fixed the amount to redeem as of April 1, 2024 at \$3,600,000 plus interest at 12.2% (*or such other rate as later determined*), calculated monthly and on overdue interest, less payments made between April 1 and September 1, 2024; directed that interest continue to accrue until redemption or sale and awarded the petitioner its costs; confirmed the Dhillons' guarantee as unconditional; and set November 14, 2025 as the last date for redemption:

1. The mortgage dated March 10, 2023 made by Global City Properties (Cottonwood) Ltd., as mortgagor and the petitioner, as mortgagee, and registered in the New Westminster Land title office on March 20, 2023 under number CB526111-CB526112 is a mortgage charging those lands and premises within the province of British Columbia, more particularly known and described as:

PID 002-367-084.

LOT 7, Section 16

Township 12, New Westminster District Plan 21065

2. The Respondent, Global City Properties (Cottonwood) Ltd., has made default under the mortgage and that the amount of money due and owing under the mortgage and the amount of money required to redeem the lands as at April 1, 2024 is the sum of \$3,600,000.00 together with interest accruing after April 1, 2024 at the rate of 12.2%, or such other rate as determined by this court at a future hearing, calculated monthly as well after as before maturity and default, with interest on overdue interest at the same rate as on the principal, less payments made between April 1 to September 1 2024. To accrue until the lands are redeemed or sold, together with the petitioner's costs awarded in this proceeding.

3. The guarantee dated March 10, 2023, made between the Respondents, Jaswant Singh Dhillon and Jaswinder Kaur Dhillon, as guarantors, and the Petitioner, Five Peaks Capital Ltd. (the "Guarantee"), is a nonconditional guarantee of all present and future indebtedness and liabilities, direct and indirect, absolute and contingent of the Respondent, Global City Properties (Cottonwood) Ltd., to the Petitioner.

4. The last date for redemption shall be November 14, 2025 ("Redemption Period").

[23] Having left the interest rate to be determined, the issue before me is the determination of what interest rate should be applied in the calculation of the amount owing by the Respondents to the petitioner.

LEGAL FRAMEWORK

Section 8 of the *Interest Act*

[24] Section 8 of the *Interest Act* provides that lenders may not impose a higher interest rate on arrears secured by real property than on principal not in arrears:

8 (1) No fine, penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage on real property or hypothec on immovables that has the effect of increasing the charge on the arrears beyond the rate of interest payable on principal money not in arrears.

[25] In *Reliant Capital Ltd. v. Silverdale Development Corp.*, 2006 BCCA 226 [*Reliant*], the Court of Appeal noted that while higher interest rates on arrears are standard and legitimate in commercial lending, Parliament has prohibited such increases in mortgages on real property. The purpose of this is to protect owners from charges that could make redemption impossible or strip their equity, as a higher rate on arrears would often make foreclosure inevitable. Whether s. 8 applies depends on the specific language of the agreement and the surrounding circumstances. The provision prevents lenders from increasing interest on arrears in a manner that constitutes a penalty for non-payment of mortgage obligations.

[26] The Ontario Superior Court of Justice found that, under s. 8, the term "arrears" referred to the entire mortgage in default and the "trigger" event for the increased interest was the respondent's non-payment: *Walia v. 2155982 Ontario Inc.*, 2019 ONSC 1059 at paras. 34-35 *aff'd* 2020 ONCA 493.

[27] In *Krayzel Corp. v. Equitable Trust Co.*, 2016 SCC 18 [*Krayzel*] the Supreme Court of Canada ("SCC") considered, for the first time, whether s. 8 of the *Interest Act* is contravened by a term in a mortgage agreement that imposes a higher rate of

interest only where the mortgagor defaults, either by failing to make prescribed payments at a lower “pay rate” of interest or by failing to repay the loan in full upon maturity.

[28] In *Krayzel*, Justice Brown confirmed that s. 8 of the *Interest Act* is engaged where the effect of a mortgage term, regardless of whether it is styled as a penalty or a discount, is to impose a higher interest rate on arrears than on principal money not in arrears. The test is focused on the effect of the clause rather than its form, and it applies equally to:

1. penalty clauses that impose higher interest upon default, and
2. “discount” structures that only maintain a lower rate if there is no default (at paras. 25, 31–33).

[29] The relevant principles for courts to apply are broken down as follows:

1. Focus on substance over form: What counts is how the impugned term operates, and the consequences it produces, irrespective of the label used (para. 25). In practice, a clause is not saved from s. 8 merely because it’s structured as a reward for performance rather than a penalty for default.
2. Both penalties and discounts may offend s. 8: Section 8 applies both to discounts (incentives for performance) as well as penalties for non-performance whenever their effect is to increase the charge on the arrears beyond the rate of interest payable on principal money not in arrears (para. 31).
3. Legitimacy of purpose does not save the clause: “Inquiring into the ‘legitimacy’ of the purpose underlying an arrangement that offends s. 8 not by its purpose but by its effect undermines Parliament’s clearly expressed intent (para. 32).

4. Distinction between time-based increases and default-based increases:
An interest rate increase triggered by the mere passage of time, rather than default, does not offend s. 8 (para. 33).

[30] In *P.A.R.C.E.L. Inc. v. Acquaviva*, 2015 ONCA 331, the Ontario Court of Appeal set out a helpful framework for the present analysis. The Court identified four elements that must be present before s. 8 of the *Interest Act* is engaged. This framework was later summarized and endorsed by Justice Jones in *Gemstone Advantage Limited v. Zhang*, 2025 BCSC 1012 at para. 29.

[31] Those requirements specify that:

- a) the covenant must impose a fine, penalty, or rate of interest;
- b) the fine, penalty, or interest must relate to arrears of principal or interest secured by a mortgage on real property;
- c) the covenant must have the prohibited effect of increasing the charge on the arrears beyond the interest rate otherwise payable on principal not in arrears; and
- d) a mortgage on real property must secure the arrears.

[32] Framed in the above way, the four requirements offer a practical substitute for the traditional formulation of questions to be asked under s. 8 of the *Interest Act*.

Renewal vs. Variation

[33] The characterization of the Renewal Agreement as either a renewal or a variation is important. A renewal generally extends the mortgage for a new term, often supported by fresh consideration in the form of the lender's forbearance from enforcing its remedies at maturity, and is treated as a new contract enforceable on its terms. A variation, by contrast, alters the obligations of an existing contract. Its enforceability depends on whether it is supported by consideration or, following

Rosas v. Toca, 2018 BCCA 191 at para. 183, whether it was entered into voluntarily and free from economic duress.

[34] This distinction also has consequences under s. 8 of the *Interest Act*. The authorities make it clear that an increase in interest triggered solely by the passage of time may be valid, but an increase triggered by default or non-payment at maturity contravenes s. 8. If the Renewal Agreement is characterized as a renewal supported by forbearance, it is assessed as a new bargain, subject only to whether consent was vitiated by duress. If, however, it is in substance a variation compelled by reliance on the unenforceable 22% clause, then the 12.7% rate may represent a default-based increase on arrears, which is prohibited by s. 8 regardless of consent.

[35] The distinction between renewal and variation is therefore a threshold issue. It determines whether the 12.7% rate is valid unless set aside for duress (renewal), or invalid on statutory grounds as a penalty on arrears (variation). In either case, the doctrine of economic duress remains central, but the route by which the agreement may be invalidated differs.

Economic Duress

[36] Economic duress is a coercion of the will that vitiates consent: *Pao On v. Lau Yiu*, [1979] All E.R. 65 (P.C) at p. 78, adopted in *Byle v. Byle*, 65 D.L.R. (4th) 641, 1990 CanLII 313 (B.C.C.A.) and *Bell v. Levy*, 2011 BCCA 417 at para. 71.

Commercial pressure is not enough. Rather, the pressure (a) must be such as to amount to compulsion and (b) must be illegitimate: *Universe Tankships of Monrovia v. International Transport Workers' Federation*, [1982] 2 All E.R. 67 (H.L.) at p. 88.

[37] The New Brunswick Court of Appeal in *Greater Fredericton Airport Authority Inc. v. NAV Canada*, 2008 NBCA 28 [*Nav Canada*], reformulated the doctrine in the context of post-contractual variations. It emphasized that the cornerstone of the analysis is the absence of genuine consent, not the legitimacy of the pressure per se. Although *Nav Canada* has been cited in B.C. decisions, including *Rosas v. Toca*, 2018 BCCA 191, and by the dissent in *Bell* (para. 58), the B.C. Court of Appeal has

not adopted the test wholesale. *In Bell*, which post-dated *Nav Canada*, the Court reaffirmed that the proper starting point remains *Pao On*.

[38] In *Bell*, the Court of Appeal at para. 72 identified the core elements of duress:

- a. the party made the alleged threats;
- b. the threats were wrongful; and
- c. the execution of the agreement was in fact induced by overriding the free will of the other party.

[39] In *Gorup-Paule v. Palmatier*, 2024 BCSC 353 at para. 145, Justice Morely set out the factors identified in *Pao On* to determine whether there has been coercion of the will that vitiates consent. These include:

- a) whether the party allegedly coerced protested;
- b) whether they had an alternative course of action, such as a legal remedy;
- c) whether they received independent legal advice; and
- d) Whether the person took steps to cancel (“avoid”) the contract as soon as the duress ceased.

[40] These are not rigid requirements but factors to guide the inquiry. As K. Smith J.A. noted at para. 71 in *Bell*, they are relevant considerations rather than fixed conditions.

[41] Accordingly, while *Nav Canada* is persuasive and broadly consistent with B.C. jurisprudence, caution is required. In particular, *Nav Canada*’s statement that illegitimate pressure is not essential has not been endorsed in this province. Binding B.C. authority requires the party alleging duress to show that “some illegitimate means of persuasion was used” (*Bell*, at para. 71). Similarly, *Nav Canada*’s reluctance to give weight to independent legal advice does not reflect the approach

taken in B.C., where the availability (or absence) of legal advice remains a relevant factor.

[42] The burden of proof lies on the party asserting duress. The analysis typically proceeds in two stages. At the threshold, the claimant must show:

- a) Pressure: that the agreement or variation was extracted by pressure, whether through threats or by withholding performance; and
- b) No practical alternative: that the party had no reasonable option but to agree.

[43] If these thresholds are met, the court then examines whether consent was truly vitiated. Relevant factors include whether the agreement was made under protest or with a reservation of rights, whether prompt steps were taken to repudiate or avoid it once the pressure lifted, whether the variation was supported by fresh consideration, and whether independent legal advice was available. A lack of consideration may support a finding of duress, but its presence does not defeat it. Delay or silence may weaken the claim.

POSITIONS OF THE PARTIES

Petitioner (Five Peaks Capital Ltd.)

[44] The petitioner, Five Peaks, seeks judgment on the mortgage and enforcement of the outstanding amount with interest. Their key arguments are:

1. Characterization of the Renewal Agreement:

[45] Five Peaks maintains that the Renewal Agreement was a true renewal of the mortgage. It extended the mortgage for a new term at a revised rate and was supported by fresh consideration in the form of the lender's forbearance at maturity. According to this characterization, the 12.7% rate was the result of a new bargain enforceable on its terms, subject only to allegations of duress. Five Peaks argues that the Respondents' effort to treat the 12.7% as a variation is misplaced and intended to draw the agreement within s. 8 of the *Interest Act*.

2. No Breach of Section 8 of the Interest Act:

[46] Five Peaks argues that the 22% default interest clause does not violate s. 8 of the *Interest Act*, since it was never enforced. Instead, the renewal at 12.7% reflected a negotiated and consensual adjustment of risk. Relying on case law that distinguishes time-based increases from penalties for default, they argue that the 22% default rate was not a penalty interest under s. 8.

3. No Economic Duress:

[47] Five Peaks argues that the borrower willingly accepted the 12.7% renewal rate and had the option to seek other financing. It highlights that:

1. the borrower had legal advice and time to consider options;
2. no protest was raised at the time of renewal;
3. the 22% clause was never applied—it merely acted as a fallback; and
4. there is no evidence of coercion as required under the legal test for economic duress.

[48] The petitioner argues that this was an ordinary commercial mortgage, where the borrower had alternatives and negotiation opportunities, distinguishing this case from monopoly situations, such as those in *Nav Canada*.

Respondents (Global City Properties)

[49] The Respondents ask the Court to strike down both:

1. the 22% default interest clause, and
2. the 12.7% interest rate in the Renewal Agreement.

[50] The Respondents' arguments are:

1. Characterization of the Renewal Agreement:

[51] Global City contends that the Renewal agreement was not a genuine renewal, but a variation compelled by reliance on the unenforceable 22% clause. They submit that once the mortgage matured and was unpaid, the entire balance was in arrears, and any increase tied to that non-payment is prohibited under s. 8. In their view, the 12.7% was not the product of free bargaining but was extracted under the threat that, absent acceptance, the loan would auto-renew at 22% retroactive to April 1, 2024. They argue that their attempt to alter the renewal to 12.2% demonstrates protest and the lack of genuine choice.

2. Section 8 Violation:

[52] The Respondents argue the 22% clause violates s. 8 of the *Interest Act* because it imposes a penalty interest on arrears. They cite *Krayzel*; *Walia*; and *Gemstone*, arguing that:

1. once the mortgage matured and payment was not made, all sums became in arrears; and
2. the automatic application of 22% on default constituted an impermissible penalty under s. 8.

3. Economic Duress:

[53] The Respondents claim they were forced into agreeing to the 12.7% renewal rate under duress, given the threat of being charged 22% if they refused. They emphasize:

1. the renewal was not meaningfully negotiated — it was a “take it or leave it” offer;
2. they had no practical alternatives, as refinancing elsewhere would trigger penalties;
3. the lender used leverage to extract an unconscionable term; and

4. the Renewal Agreement lacked legal witnessing and was signed under pressure.

[54] Global City relies on *Nav Canada* to argue for a more flexible approach to economic duress in commercial contexts. They contend that formal protest is not required and that practical inability to resist oppressive terms is sufficient.

ANALYSIS

[55] Global City also submitted that there was never a binding contractual agreement at the outset, contending that the transaction proceeded only based on an offer letter and the subsequently registered mortgage.

[56] I do not need to resolve that issue. Associate Judge Hughes has already decided that a valid mortgage agreement existed, that Global City was in default under it, and that the only question left for determination is which interest rate should apply to the Renewal Agreement. Therefore, my analysis proceeds on the basis that the underlying mortgage is valid and enforceable, and that the dispute is limited to whether the 22% default clause was enforceable and, if not, whether the petitioner's reliance upon it invalidated the 12.7% interest rate set out in the subsequent Renewal Agreement.

[57] However, upon reviewing the evidence, I find that there is uncertainty in the record regarding the Renewal Agreement itself. The petitioner relies on the version attached as Exhibit D to the affidavit of Tyler Evans, sworn November 20, 2024, which bears signatures dated March 25, 2024, and sets the interest rate at 12.7%. The Respondents, by contrast, rely on the version attached as Exhibit D to the affidavit of Mandeep Dhillon, sworn May 23, 2025, which is substantively the same document (with minor additions to the Schedule A conditions) but is signed and dated May 28, 2024. It is difficult to reconcile the existence of an executed Renewal Agreement dated March 25, 2024, with the Respondents' account that negotiations and protests continued into late May before it was signed. Nonetheless, nothing in these reasons hinges on the precise execution date; the analysis remains the same for either version.

[58] However, I note that the May 2024 renewal documents were expressly conditional on the lender receiving: (i) the outstanding May 1, 2024, instalment, and (ii) pre-payments of the June 1 and July 1, 2024, interest.

[59] On June 4, 2024, Mr. Evans emailed the Respondents to inform them that unless their account information was provided by the end of that day, so that payments could be withdrawn, the renewal offer would be revoked. The 22% rate would apply retroactively to April 1, 2024.

[60] According to this record, the Renewal Agreement did not take effect before early June 2024, and in any event, only upon the lender's receipt of the required PAD information and the specified prepayments. The June 4, 2024, email shows that although the lender requested those items that day, the record does not establish when (or if) they were satisfied. This timing does not affect the characterization analysis.

[61] Further, on this record, there is no clear evidence that the Respondents met the payment conditions set out in the Renewal Agreement—specifically, making the missed May 1, 2024, instalment and the advance payments for June and July 2024 interest. The only evidence of payments comes from the order of Associate Judge Hughes, which fixed the redemption amount as of April 1, 2024, at the principal sum plus interest at 12.2%, less payments made between April 1 and September 1, 2024. Nothing in these reasons should be taken as a determination of the amounts, timing, or application of payments.

[62] This uncertainty in the documentary record reinforces the need to address characterization of the Renewal Agreement as a threshold matter. Whether the Renewal Agreement should be treated as a renewal supported by forbearance or as a variation compelled by reliance on the unenforceable 22% clause determines how the court must approach both the statutory analysis under s. 8 of the *Interest Act* and the subsequent inquiry into economic duress.

A. How should the Renewal Agreement be characterized?

[63] A threshold issue is whether the Renewal Agreement should be treated as a renewal of the mortgage or as a variation of the existing loan terms. Global City submits that it was not a fresh bargain, but an amendment compelled by reliance on the 22% clause and should therefore be assessed as a variation. Five Peaks, by contrast, argues that the Renewal Agreement created a new contract: it extended the mortgage for another year, imposed additional fees and conditions, and was supported by the lender's forbearance from enforcing its remedies at maturity.

[64] Structurally, the original March 2023 mortgage did not provide for any open-ended renewal. Its only post-maturity mechanism was an automatic three-month extension at 22% interest, exercisable at the lender's sole option if the debt was not repaid on April 1, 2024. While the debt was not repaid by that date and the petitioner did threaten to invoke the clause, it was never actually imposed on the Respondents.

[65] Once the mortgage matured, the parties could not continue under the original instrument and were required to negotiate new terms if the loan was to be extended. The May 2024 documentation did so: it eliminated the 22% clause and established a fresh one-year term at 12.7%, with revised monthly payments, a renewal fee, and new conditions.

[66] Notably, it also introduced automatic pre-authorized payments in place of manual monthly payments. This change reflected the fact that the Respondents were already in default and that the petitioner sought to secure regular repayment of its funds. Taken together, these structural differences indicate that the parties were not simply amending the existing mortgage but entering into a renegotiated set of obligations.

[67] As previously discussed, there is some uncertainty in the record as to execution. The petitioner relies on a version signed March 25, 2024, while the Respondents rely on a version signed May 28, 2024, with minor additions to the conditions. Whatever the precise date of execution, both versions went beyond a

simple amendment of existing terms and contemplated a continuing relationship under new obligations.

[68] Courts have recognized that where the lender forbears from enforcing its strict rights at maturity and the parties agree to extend the mortgage for a new term on revised conditions, the arrangement is appropriately treated as a renewal rather than a mere variation as recognized in *Tri City Capital Corp. v. 0942317 B.C. Ltd.*, 2016 BCSC 1514 at paras. 122–125, 132–135.

[69] In light of these structural features, and consistent with how courts have treated similar arrangements, I conclude that the Renewal Agreement is properly characterized as a renewal rather than a variation. This classification is important because, as a renewal supported by forbearance, the agreement is enforceable on its terms unless consent was vitiated by economic duress.

B. Is the 22% Default Clause Enforceable under s. 8 of the *Interest Act*?

[70] Although the 22% default interest clause was never applied in practice, the Respondents contend that it is invalid under s. 8 of the *Interest Act*. It is therefore necessary to determine whether the clause contravenes s. 8. In doing so, I begin with the principles set out by the Supreme Court of Canada in *Krayzel* and then consider how those principles were applied in *Gemstone*, and *Walia*.

[71] Five Peaks argues that the 22% rate was not a penalty for default but a time-based increase outlined in the original agreement. According to that view, the clause functioned as the agreed rate for a three-month renewal period following the end of the one-year term and thus falls within the type of “time-triggered” arrangement that *Krayzel* asserts does not violate s. 8.

[72] I do not accept that characterization. The mortgage did not stipulate that the rate would automatically increase on the anniversary of the advance, regardless of the payment status. The higher rate applied only if the balance was not paid in full on the maturity date, in which case the lender could unilaterally impose a three-month extension at 22% and charge a renewal fee. In substance, the trigger was the

borrower's failure to repay the loan when due, resulting in a default, and the increased rate was to be imposed on the arrears. Under *Krayzel*, such a default-based increase falls squarely within s. 8's prohibition.

[73] Applying the above legal framework and principles, I find that the structure of the mortgage agreement in the case at bar is materially indistinguishable from the provision struck down in *Krayzel*, where the interest rate increased from 7.5% to 25% following default. In both cases, the increased rate was not a time-based step-up but was contingent upon non-payment.

[74] The same conclusion was reached in *Gemstone*, where the court held that a 22% default interest rate, imposed after maturity, contravened s. 8 and was unenforceable. In that case, as here, the higher rate was triggered only by non-payment at maturity and was not part of a prospectively negotiated new term supported by consideration.

[75] Against that framework, I conclude that the 22% interest rate clause operates to increase the interest payable on arrears beyond the rate applicable to principal not in arrears. This is precisely the mischief s. 8 was enacted to prevent. The 22% default interest clause in the Agreement is therefore unenforceable.

C. Is the 12.7% Renewal Agreement a Valid and Enforceable Contract?

[76] The next issue is whether the lender's reliance on the unenforceable clause during negotiations deprived the Respondents of any real choice but to enter into the Renewal Agreement at a higher rate of interest. That question must be assessed within the legal framework of economic duress, as applied to the particular facts of this case.

[77] In resolving this issue, the reasoning in *Walia* is instructive. There, a mortgage commitment provided for 12% during the term, increasing to 21% if in default or unpaid at maturity. Justice Hebner held that once the mortgage matured unpaid, the entire principal was "in arrears" within s. 8, and the higher rate was therefore prohibited. Justice Hebner also assessed the subsequent renewal

agreement. While the renewal was found unenforceable on its own facts (including concerns about signing authority), the case illustrates that a renewal that reproduces an unlawful default-interest mechanism or a similar variation will not be enforced.

[78] Read together, *Krayzel*, *Gemstone*, and *Walia* confirm two key principles: first, that interest rate increases triggered by default or non-payment at maturity fall within the prohibition in s. 8; and second, that renewal agreements negotiated in the shadow of such clauses must be assessed on their own terms and in their factual context. If a subsequent renewal omits the unlawful term or contains substantively different provisions, a court could uphold it.

[79] As the authorities make clear, the presence of an unlawful clause in an earlier agreement does not, without more, render a subsequent agreement that omits it unenforceable.

[80] I find no evidence that the unenforceable 22% default clause was incorporated into the Renewal Agreement, nor is there any variation of that clause that could render the Renewal Agreement unenforceable.

Economic Duress

Leverage and the s. 8 Clause

[81] Having found the 22% interest clause to be invalid and unenforceable, I must still consider the effect of the lender's reliance on it during the renewal negotiations. The Respondents, who allege duress, must establish that the pressure exerted by reference to the invalid clause left them with no practical alternative and effectively deprived them of free choice.

Petitioner's position on practical alternatives

[82] The petitioner submits that the Respondents had practical alternatives at all material times. The loan's April 1, 2024, maturity was known from inception, affording a whole year to arrange refinancing or to prepare for payout. There is no evidence that the Respondents canvassed other lenders, sought term sheets, or were refused replacement financing either before maturity or at the renewal juncture.

If they disputed the enforceability of any post-maturity rate, they could have sought timely relief in court rather than agree to the 12.7% renewal.

[83] The petitioner submits that the record demonstrates ordinary commercial negotiation rather than compulsion. The parties bargained over whether the rate should be 12.2 or 12.7%. The Respondents executed the Renewal Agreement, and they subsequently made payments under it. No reservation of rights was raised at the time, and the first formal allegation of duress did not arise until May 2025, well after the Respondents had defaulted. In the petitioner's view, this conduct is inconsistent with a lack of alternatives and instead reflects affirmation of the Renewal Agreement.

[84] The petitioner further argues that any reference to an "auto-renew" or 22% post-maturity rate did not foreclose alternatives. Even assuming such a rate applied, the Respondents could have declined the renewal, pursued refinancing, sold the property, or sought directions during the redemption period. Pressure inherent in default and maturity, the petitioner says, does not equate to "no practical alternative."

Respondents' position on practical alternatives

[85] The Respondents contend that the relevant period is after maturity, during renewal negotiations, when they had no practical choice but to sign. They cite lender communications that issued a short-fuse ultimatum. Unless the renewal was accepted immediately and specific payments were made, the lender would withdraw the offer and impose a 22% rate retroactive to April 1. Emails also confirm that the retroactive application of the 22% rate was threatened if account information was not provided "by the end of the day."

[86] The Respondents submit that by spring 2024, market and property conditions had worsened, making rapid refinancing unrealistic. In their view, theoretical alternatives such as replacement financing, sale, or litigation were not viable within the compressed timeframe created by the ultimatum and the financial jeopardy posed by the retroactive 22% rate.

[87] The Respondents point to their attempted protest, noting that they returned the renewal with an amended rate of 12.2%. The lender rejected this counterproposal and reiterated that a 22% rate would now apply. The Respondents say they ultimately signed at 12.7% without independent legal advice and under the immediate threat of retroactive interest and enforcement. They argue that this insistence on the unlawful clause created the very emergency that foreclosed any practical alternative, leaving them with no genuine choice.

[88] In support, they rely on *Nav Canada* for the principle that economic duress does not require proof of illegitimate pressure, and they say the altered renewal letter itself evidences their continuing protest.

Discussion

[89] The petitioner's repeated references to the 22% clause form part of the factual context for assessing whether the Respondents were subjected to wrongful pressure within the meaning of the economic duress doctrine.

Threshold – Pressure & Illegitimacy

[90] Aside from the three-month default clause that permitted First Peaks to impose the 22% interest clause unilaterally, the mortgage did not provide for any automatic or discretionary renewals. It was designed to run for a period of one year, expiring on April 1, 2024. On February 8, 2024, Five Peaks gave the Respondents' broker 60 days' notice of the maturity date and, in the weeks that followed, sent repeated reminders urging a response before maturity and requesting an updated appraisal if a renewal was being sought.

[91] When the loan matured without repayment, the 22% clause became the backdrop for increasingly strained discussions.

[92] In considering the first threshold from *Nav Canada*, I find that the lender's repeated references to, and threats to enforce, the 22% clause constituted commercial pressure. Five Peaks invoked the prospect of that rate both to induce the Respondents to execute the Renewal Agreement and to secure the initial

payments required as a condition of renewal. Consistent with B.C. jurisprudence on economic duress, I conclude that this pressure was wrongful because the negotiations themselves were predicated on the threatened enforcement of an unlawful interest rate.

Threshold - Practical Alternatives

[93] I am not persuaded that the second threshold, the absence of a practical alternative, has been met. Although the Respondents faced an unfavourable market and the prospect of a 22% rate if they declined the 12.7% renewal, the record discloses no evidence that they made diligent efforts to pursue an early sale, refinancing, or other reasonable options, nor is there evidence that Five Peaks obstructed such avenues. On the contrary, the correspondence suggests that Five Peaks was relatively patient in the lead-up to renewal.

[94] Global City had nearly a year's notice of the April 1, 2024 maturity date yet took little substantive action until the final months. On May 22, 2024, Mr. Marti, acting for the Respondents, wrote to Mr. Dhillon that he had been "trying to buy [them] additional time," but that repeated missed deadlines and non-completion had left the lender "fed up." The next day, Mr. Dhillon confirmed that the property had only then been listed for sale and provided marketing materials. Despite repeated opportunities to arrange renewal or explore alternatives, deadlines were missed and commitments not fulfilled.

[95] Notably, the Renewal Agreement introduced tighter repayment mechanisms, such as automatic withdrawals, which reflected Five Peaks' interest in securing regular payments in the face of default. This context helps explain the lender's insistence on particular terms, but it does not in itself establish that the Respondents were left without meaningful alternatives. The inquiry into practical alternatives is not confined to negotiating better terms with the existing lender. The Respondents were also required to demonstrate that they explored viable options with third parties.

[96] Market headwinds aside, the Respondents adduced no evidence of diligent attempts to refinance, pursue an early sale, or seek timely court relief. Their delay

and inaction cannot be reframed as proof that no alternatives existed. The onus lies on them to show the absence of reasonable options, and that burden has not been discharged.

Compulsion

[97] Even if both thresholds were met, I am not convinced that the renewal was a response to coercive pressure, leaving Global City with no real choice but to accept the Renewal Agreement. Assessing the factors relevant to whether there has been compulsion is illustrative and weighs against a finding of economic duress.

Consideration

[98] I find that the Renewal Agreement was supported by fresh consideration on both sides. Five Peaks agreed to forbear from immediate enforcement at maturity and to extend the time for repayment by one year, to accept payment by pre-authorized debit, and to capitalize the renewal fee—each a legal detriment. In exchange, Global City undertook new obligations, including paying interest at 12.7% for the renewed 12-month term, curing the May 1 arrearage, prepaying the June and July instalments, providing PAD authorization, maintaining insurance naming the lender as the primary loss payee, and meeting tax clearance conditions. Any uncertainty about subsequent performance goes to compliance and potential affirmation, not to the existence of consideration, which is assessed at the time of contracting.

Protest

[99] I accept that the Respondents demonstrated some resistance by returning the altered 12.2% renewal letter. However, attempts to negotiate terms while entering into an agreement do not, without more, amount to protest. The Respondents' contention that they protested entering into the Renewal Agreement rests largely on Mandeep Dhillon's statement that he "felt he had no choice but to accept [the Renewal Agreement] to avoid the 22% interest penalty." Internal dissatisfaction, however genuine, does not constitute protest unless it is communicated to the other party. Likewise, Global City's efforts to obtain a lower interest rate before ultimately

agreeing to the higher rate are characteristic of ordinary commercial negotiations. In the absence of evidence of an express reservation of rights, those discussions cannot be retroactively characterized as a protest.

[100] A valid protest requires clear communication to the other party that the promisor is agreeing under protest and without waiving legal rights. I accept Five Peaks' submission that there is no evidence Global City gave such notice; the first formal allegation of duress arose only in May 2025, after default and in the course of these proceedings. While a failure to object at the time is not necessarily fatal to a claim of economic duress, it significantly undermines the allegation (*Nav Canada* at paras. 57–58), as I find to be the case here.

Disaffirmation or Repudiation

[101] In the absence of a promise made under protest, the law requires that the victim take reasonable steps to disaffirm or disavow the promise as soon as practicable: *Nav Canada* at para. 58. Similar to the fact that the Respondents did not protest the Renewal Agreement until after its execution, as discussed above, there is no evidence they took steps to disaffirm or disavow the Renewal Agreement until after they defaulted and this litigation commenced.

Independent Legal Advice

[102] Despite the courts' hesitance in *Nav Canada* to treat independent legal advice as an integral component of the economic duress doctrine, it remains a relevant, though not determinative factor in B.C. jurisprudence. As previously noted, the Respondents had several months to consider the renewal and the opportunity to obtain legal advice. They were also sophisticated parties, corresponding regularly by email and represented by a mortgage broker throughout the lead-up to the renewal. In that context, the absence of independent legal advice does not provide strong support for the conclusion that the Respondents failed to act independently in signing the Renewal Agreement.

Conclusion on Economic Duress

[103] Although I have found the 22% clause void under s. 8 and of no legal effect from the outset, its reference in the renewal discussions does not, on its own, invalidate the Renewal Agreement. The evidence does not establish that the Respondents' will was overborne or that they lacked practical alternatives, as contemplated in *Nav Canada* and *Bell*. I therefore conclude that the interest rate term in the Renewal Agreement was not procured under duress and is enforceable. I make no findings on the enforceability of any other renewal terms.

CONCLUSION

[104] In summary, I find that the 22% default interest clause in the original mortgage contravenes s. 8 of the *Interest Act* and is void.

[105] The Renewal Agreement, including the 12.7% interest rate, was not a disguised penalty, does not offend s. 8, and was not procured under economic duress. It is therefore valid and enforceable.

[106] Accordingly, the petition is granted in part. The 22% default interest clause is struck, but the balance of the mortgage and the Renewal Agreement remain valid and enforceable.

[107] If the parties are unable to agree on costs, they may make written submissions not exceeding five pages within 14 days of receiving these reasons. Any reply must be filed within 7 days thereafter.

“Sukstorf J.”