CITATION: *Redback Tours v CEFL*, 2025 ONSC 5321
COURT FILE NO.: CV-24-00087688-000/CV-24-00088265-0000
DATE: September 18, 2025

SUPERIOR COURT OF JUSTICE

RE: REDBACK TOURS INC. and PAUL FERRIS and ANGELA FERRIS v. CANADIAN EQUIPMENT FINANCE & LEASING INC.

BEFORE: Latimer, J.

COUNSEL: Ian Klaiman, for Redback Tours Inc. and Paul & Angela Ferris

Brendan Bissell, for Canadian Equipment Finance & Leasing Inc.

HEARD: March 13, 2025

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REASONS FOR JUDGMENT

I. Introduction

[1] Redback Tours was a bus company borrowing money for the purchase of a new bus. Canadian Equipment Finance & Leasing was in the business of lending money to borrowers who – like Redback – sometimes had poor credit. The parties agreed upon a loan that required Redback to make a substantial down payment and pay a significant interest rate. Additionally, the company's directors had to personally guarantee the loan and provide a collateral mortgage on their private residence. All of this was provided, and the loan was granted.

[2] And then, almost immediately, things began to fall apart.

[3] The bus company became delinquent in making payments as set out in the Loan Agreement. Relevant information – such as whether the bus remained insured – was kept from the lender. The company sought to renegotiate the Agreement and move on from the loan, but the parties could not reach accord. Thereafter things got worse, most notably when the bus company quietly sold the bus to a third party and refused to provide the lender any details as to its whereabouts.

[4] That the borrowers defaulted, everyone agrees. Where the lender and borrowers disagree is on what comes next. They disagree on the implications of the default within the context of their contractual agreement and the surrounding jurisprudence. Both have applied to the court for a determination of, fundamentally, whether there is any remaining balance on the loan. Resolving this seemingly straightforward question, however, requires several steps.

[5] Procedurally, the parties have agreed to have these Applications heard together. I will in these Reasons refer to Canadian Equipment Finance & Leasing Inc. as either "CEFL" or "the lender", and Redback Tours Inc. and Paul and Angela Ferris as either "Redback" or "the Ferris'".

[6] I will now review my factual findings regarding the circumstances surrounding this Agreement and its rapid dissolution before moving to a legal analysis of the core issues raised.

II. Facts

(1) Parties to an Agreement

[7] Redback is a business that provides, *inter alia*, bus charters. Like many companies, it was negatively impacted by the Covid-19 pandemic. More recently, money was being lost because of their main bus breaking down. They needed a more reliable passenger coach bus to resolve this issue. To purchase such a bus, they needed a loan.

[8] The borrowers' business was brought to the lender's attention by a broker. The proposed loan presented significant risk to the lender, as the borrowers had poor credit and past defaults. As a result, the lender proposed an agreement that involved a $50,000 down payment, a 15.25% annual interest rate, and personal guarantees by the Ferris', along with the remaining equity in their residence being pledged.

[9] The lender is not a chartered bank. CEFL is a company that provides loans and leases for the purchase of commercial equipment by its borrowers. Given their size, CEFL often, including in this case, obtains the funds for a proposed loan from an agreement with a third party. This means that, in this case, upon entering into the Agreement presently under dispute, the borrowers

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were obligated to pay CEFL pursuant to their agreement, and CEFL in turn was obligated to pay back their related loan from a third-party lender.

[10] On November 8, 2023, CEFL proposed terms for the borrowers' consideration. The terms were accepted a week later, and on January 22, 2024, the parties entered into the Loan Agreement. On the same date, the Ferris' signed personal guarantees in favour of CEFL in respect of the indebtedness of Redback as part of the Agreement. The guarantees included a collateral mortgage on the Ferris' residence as further security.

[11] In sum, the parties agreed that CEFL would lend $559,250.00 to Redback, who would pay that amount back with interest – 15.25% annually – over a five-year term. The total amount payable pursuant to the Loan Agreement would be $829,532.40.

(2) A rocky start

[12] Redback's first scheduled payment ($8,588.04) was due on March 1, 2024. The payment was returned for non-sufficient funds (contrary to s. 10(a) of the Agreement). It was subsequently deposited successfully seventeen days later.

[13] In late March, CEFL was notified by Redback's insurance provider that premiums on the bus had not been paid (contrary to s. 5(j) of the Agreement) and coverage would lapse on April 19, 2024. Redback never directly notified CEFL of their insurance arrears (contrary to s. 5(f)(v) of the Agreement), but the arrears were ultimately resolved just prior to the cancellation date and insurance on the bus remained.

[14] On May 1, 2024, a $74,250 HST recovery payment was due but not provided. It was subsequently paid two days later. All other payments up until July 1, 2024, were made.

(3) The borrowers quickly seek to exit the Agreement

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[15] Redback's lawyer wrote to CEFL's lawyer on June 26, 2024, asking for a payout quote on the Loan Agreement. Redback, it was said, was considering restructuring their finances. The parties negotiated in writing until August, but no payout arrangement was ever reached.

[16] Details of these negotiations are included in both application records. CEFL submits that this information is protected by settlement privilege and should be struck from the record. The borrowers respond that what occurred does not meet the *Sable*[1] test and, even if it does, the evidence relating to these negotiations is necessary in the public interest to demonstrate the bad faith conduct of CEFL during the payout discussions, which resulted in unreasonable and unnecessary costs being incurred. I will address this issue later in Part III (4) below.

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(4) The fallout

[17] In early August, once payout discussions had failed, the borrowers ceased all remaining compliance with the Agreement. On August 22, CEFL sent Default Notices to Redback, the Ferris', and their counsel. The amount demanded following acceleration of the Loan Agreement was $672,417.20. This was the sum of all remaining payments. A bailiff was also sent to repossess the bus, which ultimately proved unlocatable. When asked at his home about the bus's whereabouts, Mr. Ferris told the bailiff that he had been sent on "a wild goose chase" and that CEFL would never find the bus.

[18] A Canada-wide vehicle database search discovered the bus in Alberta, registered to the Saddle Lake Cree Nation. Further investigation revealed that the bus had been secretly sold by the borrowers on July 24, 2024, while the payout negotiations were ongoing. No notice was provided to CEFL (contrary to s. 10(h) of the Agreement), nor were the proceeds of the sale remitted within ten days (s. 10(a) of the Agreement). The proceeds were eventually – on September 17, 2024 – provided to CEFL ($457,334.93) with the remainder ($42,665.07) remaining in trust pending the result of this proceeding.

III. Legal Analysis

(1) The Positions of the Parties

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[1] *Sable Offshore Energy Inc. v. Ameron International Corp.*, [2013] 2 SCR 623.

[19] CEFL submits that Redback and the Ferris' are indebted pursuant to the Loan Agreement, inclusive of the personal guarantees and collateral mortgage, and seeks judgment in the amount of $627,330.41 less credits for the bus sale ($500,000) and security deposit ($25,000). They further seek interest at 19.56% on the remainder ($102,331.37) from August 1, 2024.

[20] Redback responds that CEFL has been paid the total principal and interest owing up to September 17, 2024 ($457,334.93). It is submitted CEFL's claim to future interest is not mandated by the Agreement and, if it is, the amount claimed violates section 17 of the *Mortgages Act* and/or section 8 of the *Interest Act*. Further, the costs claimed are unreasonable and the result of CEFL's bad-faith payout negotiations.

(2) Which clause in the Agreement applies?

[21] The lender issued Notices of Default on August 22, 2024, exactly seven months from the date of the Agreement. It is undisputed that multiple default events occurred during these seven months.

[22] Much of the disagreement in this matter is the result of differing interpretations of the Agreement. What portion of the Agreement permits the lender's current claim to future interest, and is that portion unlawful? The lender submits that the borrower's focus on the prepayment clause (s. 1 of the Agreement) is misplaced, as that clause does not apply to what occurred. I agree with that submission.

[23] It is helpful to set out the two relevant clauses here. First, the prepayment clause:

> 1. PREPAYMENT – Any prepayment of the Principal Sum may only be made with the Lender's prior written consent and on terms which shall reasonably compensate the Lender for any reduction in its rate of return on the Principal Sum based, in part, on the Lender's cost of funding the Principal Sum.

[24] Next, the acceleration clause:

> 11. ACCELERATION – The Lender, in its sole discretion, may, with or without legal process, demand or notice of any kind and without any liability to the Lender whatsoever, declare all or any part of indebtedness which is not by

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> its terms payable on demand to be immediately due and payable, upon (i) the occurrence of an Event of Default, or (ii) if the Lender in good faith believes that the ability of the Borrower to pay amounts owing, or to perform its obligations, whether owing and due under this Loan and Security Agreement, any agreement relating to the indebtedness or any other agreement now or hereafter in effect between the Borrower and the Lender is or is about to become impaired, or (iii) if the Lender in good faith believes that the Collateral is in danger of being lost, damaged or confiscated. The Lender's right to accelerate payment under this section is subject to any statutory provisions but in addition to any other right or remedy the Lender may have (including those of the Lender under the PPSA). The provisions of this Section are not intended in any way to affect any rights of the Lender with respect to any indebtedness which may or hereafter be payable on demand.

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[25] These are distinct clauses that serve different functions in this contractual setting. Acceleration permits the lender to accelerate the loan's maturity following, *inter alia*, an event of default. Acceleration is a tool of the lender. Prepayment, on the other hand, is "a voluntary action to pay prior to the due date and not a payment responding to potential enforcement proceedings where the maturity date has been accelerated by the lender": *Cymax v Coleco Investments Inc*., 2019 BCSC 492, at para. 53. Prepayment, as set out in s. 1 of the Agreement, provides an opportunity for the parties to end the Agreement on terms that are mutually satisfactory. That is not what occurred here.

[26] Whatever the borrowers' intentions were in Summer 2024 when they approached the lender about a payout quote, the s. 1 prepayment clause could only be triggered by mutual agreement. The clause was never utilized because no agreement was ever reached. I note as well that these discussions overlapped with the borrowers' clandestine efforts to sell the bus without notice to the lender.

[27] I appreciate the proceeds of the bus were (eventually) provided to the lender. I do not characterize this payment, however, as an act of prepayment as argued by the borrowers. It was partial payment on a mature loan accelerated pursuant to the terms of the Agreement. Having done so, the lender was entitled to require "all indebtedness" to be paid by the borrower. This language comfortably includes the future interest that had already been calculated into the payment schedule incorporated into the Agreement (Schedule A).

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(2) The inapplicability of section 17 of the *Mortgages Act*

[28] The borrower submits that, even if the Agreement permits the lender to claim future interest, their claim is statutorily capped by s. 17 of the *Mortgages Act*[2] at three months' worth of interest. The provision reads:

> 17 (1) Despite any agreement to the contrary, where default has been made in the payment of any principal money secured by a mortgage of freehold or leasehold property, the mortgagor or person entitled to make such payment may at any time, upon payment of three months interest on the principal money so in arrear, pay the same, or the mortgagor or person entitled to make such payment may give the mortgagee at least three months notice, in writing, of the intention to make such payment at a time named in the notice, and in the event of making such payment on the day so named is entitled to make the same without any further payment of interest except to the date of payment.

[29] Justice Boswell of this court provides a helpful summary of s. 17 in *Lee v He*, 2018 ONSC 5932, at paras. 24-26:

> Section 17 is incorporated into every mortgage in Ontario. Its purpose was discussed by the Court of Appeal in *Mastercraft Properties Ltd. v. EL EF Investments Inc.*, 1993 CanLII 8545 (ON CA), 1993 CarswellOnt 614. There, McKinlay J.A. said as follows, at para. 21:
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> > …The provision protects the mortgagor by permitting payment of arrears without penalty, or by permitting early redemption at a price. It protects the mortgagee by giving him a three-month period during which to arrange for reinvestment of his principal, or monies to compensate for lack of that notice. *The option is that of the mortgagor*. (Emphasis Boswell J).
>
> Mortgages are secured loans. Loans are contractual agreements. Pursuant to the loan agreement, the borrower is entitled to the use of the lender's capital for some stipulated period of time. The lender, in return, is entitled to a stream of interest income, in addition to the ultimate repayment of its capital. When a borrower goes into default, the lender is theoretically entitled not only to repayment of its capital, but also to the present value of the lost income it would

[2] RSO 1990, c M.40, s.17.

> have received by way of interest had the breach not occurred. The lender's damages are, of course, subject to the requirement that it take steps to reasonably mitigate its losses through the reinvestment of its capital.
>
> Providing that a mortgagor in default may redeem the mortgage on the payment of three months interest, or on the provision of three months' notice, serves to cap the damages payable for the mortgagee's lost income stream, while concurrently fixing the mortgagee's responsibility to mitigate its losses. In effect, it is afforded three months to reinvest its capital.

[30] In *Lee*, the issue was a lender's attempt to charge an additional fee of three months' interest on a default following maturity. Boswell J. held that the lender was "not able to convert the [borrower's] option to redeem into an obligation to pay a bonus of three months' interest" (para. 31).

[31] I am unconvinced that section 17 applies to the present facts. This is not a mortgage; it is a commercial loan agreement that includes security in the form of a collateral mortgage. The rights available under s. 17 are options available to a mortgagor on default of a mortgage: see *Ialongo v Serm Investments Limited* (2007), 54 RPR (4th) 310 (Ont. S.C.J.), at para. 30; *58 Cardiff Inc. v Rathcliffe Holdings Limited*, 2018 ONCA 672, at para. 6. The borrowers have provided no authority that extends the application of s. 17 to a default in the present context, *i.e.* an attempt to use the provision as a shield against liability following a breach of a commercial contract.

[32] Further, I do not accept as a factual matter that what occurred in this case was "payment" for the purposes of s. 17. The borrowers sold the bus in secret and kept the lender in the dark until they discovered the bus, three provinces over, through their own expense and diligence. The borrowers subsequently resisted providing the proceeds of the bus sale to CEFL, and only eventually did so because of pressure from the third-party purchaser. This scenario is a far cry from a mortgagor taking reasonable steps to renegotiate a mortgage to save their home.

(3) The applicability of Section 8 of the *Interest Act*

[33] The provision reads:

> 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

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> 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.[3]

[34] I accept that this provision applies: *P.A.R.C.E.L. Inc* v *Acquaviva*, 2015 ONCA 331. The rate of interest on arrears cannot exceed the rate payable on principal money not in arrears. Here, the principal money rate is 15.25% which, while high, is the result of negotiation and agreement between two commercial actors, one of whom had poor credit and presented as financially high risk. In the circumstances, the agreed upon rate should apply, but any greater amount attached to arrears would violate s. 8(1) of the *Act*. As will be seen below, it is appropriate to apply 15.25% interest to the entirety of the Agreement.

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(4) Costs claimed are reasonable

[35] Section 12(g) of the Agreement entitled the lender to costs reasonably incurred during enforcement of the Agreement. The borrowers submit that the lender's costs are unreasonable and rely upon the evidence filed in relation to the Summer 2024 payout quote negotiations. The lenders submit their costs were reasonable because of the borrowers' multiple acts of default and deceit, and in any event the negotiation discussions are covered by settlement privilege.

[36] In my view, the privilege question is an unnecessary issue to resolve because it has no impact on the ultimate resolution of this proceeding. I find as a fact, having reviewed the record, that the interaction between the parties was nothing more than preliminary discussions in aid of a potential compromise resolution, one that ultimately never arrived. Further, the borrowers claim of bad faith on the lender's part during this period rings hollow. The borrowers wished to negotiate a payout arrangement six months into a five-year fixed term contract. The lender was not prepared to sacrifice much of the contractual protection it already possessed and had their own related loan to worry about. In this commercial context, there is nothing unreasonable about taking such an approach. It bears reminding that the borrowers had committed multiple acts of default by this point and were engaged in an ongoing process that would cause the bus to be surreptitiously sold.

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[3] RSC 1985, c. I-15, s.8.

When the lender's bailiff came looking for the bus, Mr. Ferris obstructed the process and metaphorically thumbed his nose at the lender's rights. His current complaints regarding honesty and good faith fall flat. I am satisfied the costs claimed in the lender's material are reasonable.

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IV. Disposition

[37] I declare that the borrowers are indebted to the lender in the amount specified in paragraph 38 of their Reply Factum, specifically:

The total remaining principal and interest due over the 5-year term of the Loan Agreement	$672,342.20
The WiseCap Broker Fee	$12,571.25
Enforcement Costs up to Dec 6, 2024	$32,701.96
Less the Bus's Sale Price	($500,000)
Less the Security Deposit	($25,000)
Net Amount Owing	**$192,615**

[38] I accordingly grant judgment in favour of Canada Equipment Finance & Leasing Inc. in the amount of $192,615.00.

[39] CEFL is also entitled to court costs. My jurisdiction to order costs resides in section 131(1) of the *Courts of Justice Act*. I have reviewed the jurisprudence in this area and draw guidance from Justice Perell's decision in *394 Lakeshore Oakville Holdings Inc. v. Misek*, 2010 ONSC 7238, at paras. 11-17. I have also reviewed Rule 57.01 of the *Rules of Civil Procedure*. CEFL has been successful on this motion and, as these reasons reflect, I am troubled by the borrowers' conduct during the summer of 2024, in particular the actions taken to dispose of the bus. Counsel on this motion have, however, acted reasonably and pursued submissions that, while unsuccessful, were arguable and well-made.

[40] The Agreement stipulates that the borrower will be liable for all reasonable costs of litigation (see s. 12(g) of the Agreement). CEFL has provided a Bill of Costs indicating a full indemnity figure over twice that of the borrowers' Costs Outline ($77,691.55 vs $32,933.90).

[41] In *Everest Finance Corporation v. Jonker*, 2023 ONCA 146, at para. 3, the Court of Appeal stated that "[c]ontractual provisions stipulating entitlement of a mortgagee to costs of enforcement on the basis of costs actually expended will generally be enforced, absent misconduct or unfairness on the part of the party claiming costs". The term in question in *Everest* stated, "full indemnity costs". In the present case, different language – "reasonably incurred" – was agreed upon by the parties.

[42] In the circumstances, the material and advocacy I received from both sides was very similar. The borrowers presented quality material and argument but lost on the merits. They spent substantially less than the lender. In the circumstances, this disparity causes me to conclude that a costs award of $45,000 is fair and reasonable.

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Latimer, J.

Date: September 18, 2025

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