COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *GEC (Richmond) GP Inc. v. Romspen Investment Corporation,* 2026 BCCA 23

Date: 20260127
Dockets: CA50094; CA50095; CA50098; CA50099; CA50100

Dockets: CA50094; CA50095

Between:

GEC (Richmond) GP Inc. and Global Education City (Richmond) Limited Partnership

Appellants (Plaintiffs)

And

Romspen Investment Corporation

Respondent (Defendant)

- and -

Dockets: CA50098; CA50099; CA50100

Between:

0989705 B.C. Ltd., Alderbridge Way GP Ltd., Alderbridge Way Limited Partnership, Gatland Development Corporation, REV Holdings Ltd., REV Investments Inc., South Street Development Managers Ltd., South Street (Alderbridge) Limited Partnership, Samuel David Hanson and Brent Taylor Hanson

Appellants (Plaintiffs)

And

Romspen Investment Corporation

Respondent (Defendant)

Before: The Honourable Madam Justice Fenlon
The Honourable Mr. Justice Butler
The Honourable Justice Winteringham

Supplementary Reasons to *GEC (Richmond) GP Inc. v. Romspen Investment Corporation*, 2025 BCCA 332, Vancouver Dockets CA50094; CA50095; CA50098, CA50099; CA50100.

Counsel for the Appellants in CA50094 and CA50095:	J.P. Sullivan S.Y. Bhura
Counsel for the Appellants in CA50098, CA50099 and CA50100	S. Coblin M. Hashmi
Counsel for the Respondent, Romspen Investment Corporation (CA50094, CA50095, CA50098, CA50099 and CA50100:	P. Bychawski J.A. Hutchinson
Place and Date of Hearing:	Vancouver, British Columbia May 20–22, 2025
Place and Date of Judgment:	Vancouver, British Columbia September 22, 2025
Written Submissions Received:	November 14 and 27, 2025; December 2, 2025
Place and Date of Supplementary Judgment:	Vancouver, British Columbia January 27, 2026

Supplementary Reasons of the Court

Summary:

These are supplemental reasons. The appeal turned on the interpretation of a construction loan agreement providing for a $422 million credit facility. In particular, the question was whether the respondent lender, Romspen, was required to continue funding its $212 million commitment when it was unable to syndicate the other $210 million. The trial judge found that Romspen was not obligated to continue its funding once syndication failed. The appellants were largely successful on appeal, establishing a contrary interpretation. Prior to the order being entered, this Court agreed to reopen the appeal to clarify three points.

First, Romspen sought clarification on the effect of the finding that it had breached the loan agreement. This Court concluded that the syndication condition did not entitle Romspen to terminate funding, but remitted to the trial court the question of whether Romspen could have ceased funding under other terms of the agreement. Therefore, it remains to be determined whether Romspen was in breach of its contractual obligations. Second, Romspen asked whether this Court intended to set aside certain paragraphs of the trial order, as indicated in the reasons for judgment. This Court set aside the paragraphs in question because they relate to matters that remain to be determined by the trial court. Finally, some of the appellants, being largely successful on appeal, argued that they should be entitled to their trial costs. However, the question of ultimate liability remains unresolved. Therefore, the issue of the appellants' trial costs is left to the trial court to determine as it sees fit.

Supplementary Reasons for Judgment of the Court:

[1] On September 22, 2025, we delivered judgment on this appeal indexed as 2025 BCCA 332. The main issue on the appeal was whether the trial judge correctly interpreted a clause in a commercial loan agreement relied on by the respondent lender, Romspen Investment Corporation ("Romspen"), to terminate its funding obligations. The appellants were largely successful on appeal, establishing a contrary interpretation.

[2] In November, prior to the order being entered, Romspen applied to reopen the appeal to clarify two points in the reasons for judgment that have led to an impasse between the parties concerning next steps in the proceedings: whether this Court intended to find that Romspen breached the loan agreement, and whether it intended to set aside certain paragraphs of the trial order. A number of the appellants responded to the application to reopen by adding a third issue for

consideration: whether, in light of their success on the appeal, they should be granted costs of the trial below.

[3] We agreed to reopen the appeal to address these three points and received written submissions from the parties. These supplemental reasons for judgment must be read and understood in the context of our earlier judgment, but it will be helpful to begin with a summary of the underlying litigation.

Background

[4] In 2017, the appellants 0989705 B.C. Ltd., Alderbridge Way Limited Partnership, and Alderbridge Way G.P. Ltd. (the "Developers") became involved in an ambitious $726 million development of seven residential and commercial towers covering an entire city block in Richmond (the "Project"). The appellants Gatland Development Corporation, REV Investments Inc., REV Holdings Ltd., South Street (Alderbridge) Limited Partnership, South Street Development Managers Ltd., Samuel Hanson, and Brent Hanson are guarantors of the Developers' indebtedness ("the Guarantors").

[5] In 2018, the appellants GEC (Richmond) GP Inc. and Global Education City (Richmond) Limited Partnership (collectively "GEC") pre-purchased two towers and some retail office space in the Project for over $100 million. GEC paid a $60 million deposit pursuant to a purchase and development agreement with the Developers, which it secured by way of a mortgage over the lands on which the Project was to be built. GEC is not a lender. It is in the business of providing housing and other facilities for students.

[6] The respondent, Romspen, began providing construction financing for the Project in February 2019. Romspen is not a conventional lender; it generally charges interest and fees at a rate double that of conventional institutional lenders.

[7] In November 2019, the Developers and Guarantors entered into a construction loan agreement (the "Loan Agreement"), pursuant to which Romspen agreed to provide a "Construction Loan Commitment Amount" defined as $422

million subject to the terms and conditions of the Loan Agreement. Romspen would have until March 31, 2020 to use "commercial reasonable efforts" to acquire participations in the $422 million credit facility (the "Construction Facility")—i.e., to syndicate the loan. Its portion of the Construction Loan Commitment Amount was defined as $212 million (the "Lender Commitment"), leaving an aggregate $210 million to be raised through syndication.

[8] On the same day the Loan Agreement was signed, GEC entered into an agreement to subordinate its security to Romspen's (the "Subordination Agreement").

[9] Romspen advanced draws totaling $143.6 million. On March 31, 2020, Romspen sent a letter to the Developers advising that it would suspend all further draws and advances under the Loan Agreement because Romspen had not been able to obtain commitments from other lenders to make up the full Construction Facility of $422 million—the syndication condition.

[10] The Developers were unable to secure alternative financing to continue with the Project, which at that point was only at the excavation stage. Eventually, the Developers sought restructuring of their substantial debt in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [*CCAA*]: *Alderbridge Way GP Ltd. (Re),* 2022 BCSC 1436.

[11] A flurry of claims and counterclaims followed. GEC commenced an action against Romspen alleging that Romspen's decision to stop funding the Project was a breach of the Subordination Agreement, and seeking a declaration of priority over Romspen's security, equitable subordination, and damages for the tort of unlawful means.

[12] Romspen started an action seeking judgment against the Developers and Guarantors for the outstanding debt owed under the Loan Agreement and guarantees, including interest accruing at $1.5 million per month.

[13] The Developers and Guarantors commenced an action against Romspen alleging that Romspen's decision to stop funding the Project on March 31, 2020 was a breach of the Loan Agreement, and in the alternative that Romspen breached its duty of good faith and honest performance in relation to its syndication efforts. The Guarantors sought a declaration that the guarantees were unenforceable because Romspen's breaches had materially increased their risk.

[14] Pursuant to a direction of Justice Fitzpatrick in the *CCAA* proceedings, the three claims were directed to be heard together on the issue of liability only, with damages to be assessed in a later proceeding: *Alderbridge Way GP Ltd. (Re)*, 2024 BCSC 382.

[15] The trial judge described the central dispute before him this way:

> [86] The fundamental issue to be determined in this matter is whether Romspen was entitled to terminate its funding of the Project as it did in March 2020. Determining this issue is a matter of contractual interpretation. The question is whether Romspen was contractually required to fund a minimum amount of $212 million under the Construction Loan Agreement regardless of whether its syndication efforts were successful.

[16] Romspen took the position that it was not obligated to fund any portion of the loan, including the $212 million Lender Commitment, unless it was satisfied that it had syndication commitments for the full $422 million. It also asserted that it had a right to cease funding based on other terms and conditions of the Loan Agreement, and so had not breached the contract.

[17] The appellants took the position that the $212 million Lender Commitment was not subject to syndication, and that Romspen breached the Loan Agreement when it terminated funding on March 31, 2020.

[18] The trial judge agreed with Romspen's interpretation of the contract, finding it had a right to cease funding on March 31, 2020. On appeal, we came to a contrary interpretation, concluding that the syndication provisions did not entitle Romspen to stop funding in respect of its $212 million Lender Commitment. In this regard we said:

> [46] In summary, on this ground of appeal, we conclude that s. 2.02(2)(d) and Schedule B can only be read coherently with s. 3.03(a) and the entirety of the Loan Agreement if Romspen's funding commitment is $212 million regardless of syndication. It follows that Romspen breached the Loan Agreement when it refused to advance further funding after March 31, 2020 on the basis of the syndication condition.

[19] We immediately noted, however, that this finding did not resolve the parties' dispute, saying:

> [47] This finding does not, however, provide a straightforward path to the recovery of damages by the appellants. That is so because Romspen also argued at trial that it was entitled to suspend funding on March 31, 2020 based on funding conditions other than the syndication condition. In particular, Romspen relied on the fixed-price contract funding condition set out in ss. 3.01(q) and 3.03(d) of the Loan Agreement, which requires the Developers to enter into a fixed-price construction agreement with the general contractor for the entirety of the first phase of the Project.
>
> …
>
> [49] Thus, although we have found that Romspen breached the Loan Agreement when it refused to fund any further advances beyond March 31, 2020 based on the syndication condition, it remains to be determined, in the assessment of damages, whether Romspen would have been entitled to rely on the fixed-price contract condition or any other funding condition to refuse to fund draws requested after March 31, 2020.
>
> [Emphasis added.]

[20] We next considered GEC's grounds of appeal that required consideration based on our interpretation of the Loan Agreement. At trial, GEC advanced two arguments in support of its position that Romspen's breach of the $212 million Lender Commitment was also a breach of the Subordination Agreement. First, it argued the Subordination Agreement, properly interpreted having regard to the recitals, should be interpreted to include terms from the Loan Agreement. In the alternative, it argued that terms from the Loan Agreement, including the $212 million Lender Commitment, could be implied into the Subordination Agreement. The trial judge found it unnecessary to consider those arguments, which he described as "rather creative," having found no breach of the Loan Agreement.

[21] GEC repeated the same arguments on appeal. We rejected its argument that the Subordination Agreement, properly interpreted with reference to the recitals,

included terms from the Loan Agreement. However, we found we could not resolve the issue of whether terms from the Loan Agreement could be implied into the Subordination Agreement, as the trial judge had not made the necessary findings of fact about the parties' intentions. We remitted determination of that issue to the trial court: at paras. 56–80.

[22] GEC also appealed the trial judge's determination that it had breached s. 7 of the Subordination Agreement by challenging Romspen's priority interest. We rejected GEC's argument that s. 7—referred to as the Standstill Clause—was contrary to public policy because it effectively ousted the court's supervisory jurisdiction. We found that the Standstill Clause did not prevent GEC from enforcing the terms of the Subordination Agreement, but that it had breached that agreement by seeking a remedy it agreed not to pursue. We concluded:

> [98] In summary, we would conclude that s. 7 is not contrary to public policy and that the judge did not err in finding that GEC breached s. 7 of the Subordination Agreement by seeking relief that would set aside the priority it had agreed to grant to Romspen.

[23] We summarized our conclusions in the disposition:

> [117] The appeals are allowed in part. Paragraphs 1(ii)- (iv), 2(ii)-(iii) and 3(ii)-(iv) of the order are set aside, and the outstanding matters remitted to the trial court for determination. The Developers and Guarantors are entitled to one set of appeal costs from Romspen in relation to CA50098, CA50099, and CA50100. GEC and Romspen are to bear their own costs in relation to the Romspen/GEC appeals CA50094 and CA50095.

[24] In its application to reopen, Romspen submits the disposition should be amended to reinstate that part of the trial order awarding Romspen's judgment against GEC on Romspen's counterclaim for breach of the Standstill Clause, so that it provides:

> (a) paragraphs 1(ii) – (iv), 2(ii) – (iii), and 3(ii) of the Trial Order are set aside, and all outstanding matters of liability are remitted to the trial court for determination;
>
> (b) the Developers and Guarantors are entitled to one set of appeal costs from Romspen in relation to CA50098, CA50099, and CA50100.; and
>
> (c) GEC and Romspen are to bear their own costs in relation to the Romspen/GEC appeals CA50094 and CA50095.

[25] We turn now to the first point of clarification sought by Romspen.

1. Did this Court intend to find that Romspen breached the Loan Agreement?

[26] Romspen asks us to clarify that the references in this Court's judgment to Romspen's breach of the Loan Agreement are meant to convey only that Romspen's reliance on the syndication condition was not made out, and that "all issues of liability including Romspen's ability to rely on the alternate liability-based defences it had argued at trial [are to] be remitted to the trial court".

[27] The request for clarification on this point is somewhat puzzling given that the reasons expressly state that the matters to be remitted to the trial court for determination include "whether Romspen [was] entitled to rely on the fixed-price contract condition or any other funding condition to refuse to fund draws requested after March 31, 2020": at para. 49 (emphasis added).

[28] As we understand it, the impasse between the parties stems from two statements in the reasons quoted above. First, we described Romspen's reliance on the syndication condition as *a breach of contract*; second, we referred to the remaining liability issues being sorted out *at the damages assessment stage* of the trial.

[29] Concerning the first point, Romspen submits that, since it remains to be determined whether Romspen had a right to cease funding the Project as of March 31, 2020 based on various other grounds that neither the trial judge nor this Court considered, it should not have been found to be in breach of the Loan Agreement.

[30] As noted above, Romspen's entitlement to cease funding under other terms of the Loan Agreement remains to be resolved and has been remitted to the trial court. On the continuation of the proceedings below, Romspen may establish that it had a right to terminate funding on March 31, 2020. Romspen is correct that, if it is able to do so, it would not be in breach of its contractual obligations.

[31] However, at this point we do not know whether Romspen will be found to be in breach. The only condition justifying cessation of funding fully addressed at trial and on appeal was the syndication condition. We concluded that the syndication condition did not entitle Romspen to terminate funding on March 31, 2020. If no other bases exist, that refusal to fund based on the syndication condition will constitute a breach of Romspen's obligations.

[32] As to the second point, although we referred to the remaining issues being resolved as part of the assessment of damages, rather than as a continuation of the liability stage of the trial, in practical terms, all other liability defences Romspen may have must be resolved before the appellants will be in a position to prove they have suffered losses. Since the parties have been unable to agree on next steps, we confirm that the remaining liability defences raised by Romspen should be resolved in the continuation of the liability phase of the trial.

[33] We pause here to note that much of the impasse the parties find themselves in could have been avoided had Romspen identified the precise orders it sought in the alternative if it did not succeed on the appeal. That is a practice we commend to all parties, particularly in complex litigation.

[34] I turn now to a number of other issues Romspen raised in its submissions on this reopening. Romspen argues that we should have determined that it could not be in breach of its contractual obligations on March 31, 2020 because its funding obligations were limited to funding valid drawdown requests submitted by the Developers—and the trial judge found that the Developers did not have any valid outstanding drawdown requests on March 31, 2020.

[35] We see no merit in this argument. First, Romspen did not raise this issue at the appeal hearing. Second, the argument is based on the flawed premise that the letter merely evinced an intention not to fund at that moment. The trial judge found, to the contrary, that Romspen by its March 31, 2020 letter elected to terminate its funding obligations under the Loan Agreement. We agree with that finding.

[36] What remains to be determined at the resumption of the liability stage of the trial is whether Romspen had a right to cease funding under the Loan Agreement on March 31, 2020. In the event that Romspen did not have the right to terminate funding on March 31, 2020, the court below will also have to address whether Romspen could have refused to fund at a subsequent date, as that will be relevant to the assessment of damages.

[37] Romspen also asks us to remit to the trial court the question of whether the letter constituted a repudiatory breach of the Loan Agreement in the event Romspen did not have alternative grounds to terminate funding on March 31, 2020. The appellants argue that this question should **not** be remitted to the trial court because it is self-evident that, absent a basis to terminate, the letter amounted to a repudiatory breach. That argument seems to us to be persuasive. However, the parties did not address this issue on appeal. Out of an abundance of caution, we therefore leave that determination to the trial judge. If the judge finds that Romspen's March 2020 letter constituted a repudiatory breach of the Loan Agreement, we also leave to the trial court the question of whether the Developers accepted that repudiation. For clarity, the trial court is free to address whatever it deems necessary to resolve the remaining liability and damages issues arising on the amended pleadings.

[38] We turn now to the second point Romspen raises for clarification.

2. Did this Court intend to set aside paras. 3(iii) and (iv) of the trial order?

[39] As noted, this Court concluded that GEC breached s. 7 of the Subordination Agreement by seeking to set aside the priority it had agreed to grant to Romspen: at para. 98. However, at para. 117, we stated that para. 3(iii) of the trial order—which provided that "judgment is granted in favour of Romspen in Romspen's counterclaim against GEC"—was set aside and that "outstanding matters" were remitted to the trial court for determination.

[40] Romspen seeks clarification of the apparent inconsistency between these two statements. It acknowledges that the Court has remitted the question of whether

terms from the Loan Agreement could be implied into the Subordination Agreement to the trial court, which raises the potential for a finding that Romspen breached that agreement. It further concedes the possibility that the trial court could find Romspen liable in damages for breach of contract for failing to meet obligations found to be implied into the Subordination Agreement. However, it submits that the existence of any claim GEC may have for such a breach of the Subordination Agreement by Romspen cannot be utilized to "override" GEC's breach of the Standstill Clause, which has been confirmed by this Court. Accordingly, it submits that this Court should clarify the reasons by indicating that para. 3(iii) of the trial order is not set aside.

[41] GEC contends that no clarification is required and disagrees with Romspen's characterization of the potential outcomes from our decision to remit issues to the trial court. Having remitted the questions of whether Romspen had a right to cease funding under the Loan Agreement on March 31, 2020, and whether terms from the Loan Agreement could be implied into the Subordination Agreement, GEC says that the issues of liability and damages that must be determined could result in a "scenario" where there would be an ultimate finding that GEC did not breach the Subordination Agreement. It notes that pursuant to s. 7, it agreed that it "shall not challenge, contest or bring into question the validity, priority or perfection of" Romspen's security only "<u>while any Prior Indebtedness remains outstanding</u>". It argues that the remittal of the issues to the trial court could result in a finding that no amount was owing from the Developers to Romspen when GEC commenced its action. If such a conclusion is reached by the trial court, GEC submits the trial court should also conclude that it did not breach the Subordination Agreement by issuing the notice of civil claim in which it claimed priority over Romspen's security.

[42] There is obvious merit to Romspen's position. It is trite law that a breach of contract is actionable without proof of damages and that where a breach is found the wronged party may be entitled to nominal damages even in the absence of proof of damages. Accordingly, the fact Romspen has yet to prove that it suffered damages for GEC's breach of s. 7 of the Subordination Agreement is not a basis for setting

aside the order granting Romspen judgment against GEC. Further, if Romspen is unable to prove it suffered damages but the basis for the finding of the breach against GEC is not impacted by the determinations made in the matters remitted to the trial court, Romspen would still be entitled to a declaration that GEC had breached the Subordination Agreement and may be entitled to an award of nominal damages.

[43] However, given the limited issues considered on appeal, we cannot conclude that GEC's position is entirely without merit. The only issue we were asked to consider on GEC's appeal of the order finding it in breach of the Subordination Agreement was whether the Standstill Clause was unenforceable because it was contrary to public policy. We concluded it was not and thus dismissed GEC's appeal on that ground. Had that been the only issue before this Court, it is correct that para. 3(iii) of the trial order would not have been set aside and, pursuant to that order, the amount of damages arising from the breach would have been referred to the trial court for assessment.

[44] But our decisions on the interpretation of the Loan Agreement and the implied term question raised by GEC's appeal mean that the remaining issues to be determined by the trial court are much more extensive than simply determining the quantum of damages arising from the breach of the Subordination Agreement found by the trial judge. While it appears unlikely to us that the basis for the finding of breach by GEC will be impacted by the issues remitted to the trial court, that is a possibility because the Developers' assertions will have to be considered by that court, as will GEC's contention that terms of the Loan Agreement are implied into the Subordination Agreement. As we observed concerning the issue of repudiatory breach, the fact that one party's position (here, Romspen's) appears persuasive does not mean that we can address an issue that was not argued on the appeal.

[45] Given these considerations, we agree that some clarification of our decision is required. However, it is not a clarification of the disposition as sought by Romspen. Rather, we would restate our conclusion at para. 98 of the reasons as follows:

> In summary, we would conclude that s. 7 is not contrary to public policy. We would also agree with the judge that GEC was in breach of s. 7 of the Subordination Agreement by seeking relief that would set aside the priority it had agreed to grant to Romspen **if**, when it commenced its action seeking that relief, some amount of the Developers' Prior Indebtedness to Romspen remained outstanding. The trial judge determined that was the case but, given the matters we have remitted to the trial court, that may not be so: if the Developers establish a claim in damages against Romspen, it may be open to GEC to argue that those damages offset and negated the Prior Indebtedness at the time the GEC action was commenced.

[46] In its application to reopen, Romspen also asks this Court to reconsider our decision to set aside para. 3(iv) of the trial order, which granted Romspen costs against GEC in the GEC action. Romspen made no written submissions on this issue.

[47] As we have remitted the question of whether terms from the Loan Agreement are implied into the Subordination Agreement, GEC's claim for breach of contract has not been finally determined. Accordingly, the issue of trial costs for the GEC action should also be left to the trial court to determine as it sees fit.

[48] In summary, there is no need to clarify or restate the disposition as set out in para. 117 of the reasons.

3. Are the Developers entitled to their trial costs from Romspen?

[49] Finally, we address the Developers' contention that we did not address their entitlement to trial costs from Romspen. They note that Romspen was awarded its trial costs because it succeeded on the primary issue at trial—i.e., the contract interpretation issue. The Developers say that having succeeded on that central question on appeal—and therefore in effect on that issue at trial as well—they should be entitled to their taxable trial costs in the same way that Romspen originally was.

[50] We would not accede to this argument. On the trial judge's interpretation of the Loan Agreement, liability was resolved in Romspen's favour. However, the interpretation we accepted leaves liability unresolved at this point. Whether the

Developers and Guarantors will ultimately succeed in their claims against Romspen remains to be determined. It is for these reasons that we did not award costs for the first part of the liability phase of the trial. That decision should be left to the trial court to determine as it sees fit.

"The Honourable Madam Justice Fenlon"

"The Honourable Mr. Justice Butler"

"The Honourable Justice Winteringham"