

COURT OF KING’S BENCH OF MANITOBA

B E T W E E N:

VALUES FINANCIAL SERVICES INC.,) Abhishek Makam
) for the plaintiff
 plaintiff,)
)
 - and -) Self-Represented
) on their own behalf
 EMMANUEL IMIEFOH, EBOSETALE JOAN)
 IMIEFOH, and GIFTED FINGERS)
 INTERNATIONAL,)
 defendants.) Judgment Delivered:
) February 12, 2026

BOCK J.

[1] The plaintiff, Values Financial Services Inc. (“Values Financial”) moves for summary judgment against the defendants, Emmanuel and Ebosetale Imiefoh, (the “Imiefohs”) on its claim to recover an unpaid loan made in 2022 in the principal sum of \$83,350. It alleges that loan was secured by, among other things, an equitable mortgage against the Imiefohs’ home. The Imiefohs deny this.

[2] Because the Imiefohs have made a consumer proposal under the ***Bankruptcy and Insolvency Act***, R.S.C., 1985, c. B-3 (the "**Act**"), the proper characterization of their loan is the central issue on this motion. That issue turns on the proper interpretation of the parties' contract. Questions of contractual interpretation often lend themselves to determination on affidavit evidence by summary judgment, and this case is no exception.

[3] As I will explain, the parties' contract was reduced to writing and comprises two documents, one titled "Loan Commitment" and the other "Loan Agreement". References in these reasons to their "contract" are therefore references to these documents.

[4] For the reasons that follow, I conclude the contract between the parties does not grant Values Financial an equitable mortgage in the Imiefohs' home, but it does grant it a security interest in any of the "goods" or "stocks" of Gifted Fingers International, the business name used by the Imiefohs ("Gifted Fingers"). I have also concluded that the Imiefohs are indebted to Values Financial in the sum of \$83,350 plus interest at the statutory rate calculated from the date on which it fell due, September 15, 2024.

BACKGROUND

[5] Values Financial carries on business as a private lender. It offers lending services as an alternative to banks, credit unions and other conventional financial institutions. It is operated by its president, Olayinka Brimoh, from his home in Winnipeg.

[6] The defendants are married. Ms. Imiefoh emigrated from Nigeria in 2013, and her husband followed her in 2019. Together, they have operated a number of small businesses in Winnipeg, including a gift shop under the trade name "Gifted Fingers International".

[7] Mr. Brimoh and the Imiefohs met more than eight years ago, through their connections in Winnipeg's Nigerian community. Since 2018, Values Financial has made three loans to the Imiefohs, in 2018, 2019 and 2023, in addition to the loan at issue in this proceeding, made in 2022.

[8] In 2022, the Imiefohs were operating their store, Gifted Fingers, from two Winnipeg locations, one at 955 St. Mary's Road and the other at 1006 Nairn Avenue. They lived in their home at 300 Eagleview Road and used their garage to store inventory.

[9] The Imiefohs attest that in early 2022 they decided to purchase merchandise for resale in their stores from a supplier in Nigeria. They determined the cost of that merchandise would be \$140,000, a considerable amount of which would need to be financed.

[10] The Imiefohs turned to Mr. Brimoh for financing. They met at Mr. Brimoh's home on September 8, 2022. While the parties give different accounts of their negotiations that day, they do agree that their negotiations culminated in the execution of the contract. Where they disagree is on the proper interpretation of certain terms of the contract.

[11] As already noted, the contract comprises two documents: one entitled "Loan Commitment" (Exhibit "E" to Mr. Brimoh's affidavit affirmed June 20, 2025), and the other entitled "Loan Agreement" (Exhibit "F" to the Brimoh affidavit). These documents were prepared by Mr. Brimoh. They take the form of a pre-written contract with set clauses and blank spaces which are to be filled in with specific information relevant to a particular transaction. Some of these terms were inserted into the documents by Mr. Brimoh on his computer before they were printed, while others were inserted by him by hand after they were printed, but before execution.

[12] The principal amount of the loan was \$83,350 and the stated advance date was September 15, 2022. The contract called for twenty-four interest-only payments of \$1,425, payable on the twentieth of every month, commencing September 15, 2022. The principal amount of the loan was to be repaid on September 15, 2024.

[13] The Imiefohs admit receiving loan proceeds of \$80,000 on about September 15, 2022. The balance of the loan, \$3,350, was deducted from the loan amount by Values Financial to cover the "Application fee" (\$250), "Legal Fee" (\$1,500), "Broker's fee (1%)" (\$800) and "Lender's fee" (1%) (\$800) called for by the contract.

[14] From September 20, 2022 to August 20, 2024 the Imiefohs made 24 interest-only payments of \$1,425 on the twentieth day of each month in accordance with the terms of the contract, for a total of \$34,200. But their business, Gifted Fingers, was failing. As a result, in August 2024 they also made a consumer proposal under s. 50 of the **Act**. Their proposal was accepted on August 20, 2024.

[15] The Imiefohs' consumer proposal triggered a statutory stay of proceedings under s. 69.1(1) of the **Act**, the effect of which is to bar most creditors from starting or continuing any action, execution, or other legal proceeding to recover a claim provable in bankruptcy. However, the claims of secured creditors are not subject to the stay under s. 69.1(1). It is for this reason that the proper interpretation of the contract is so important to the parties. If the loan made by Values Financial to the Imiefohs was secured by an equitable mortgage against their home at 300 Eagleview Road, s. 69.1(1) would not prevent Values Financial from taking steps to enforce that mortgage.

[16] On September 17, 2024, Values Financial registered a caveat against title to 300 Eagleview Road in the Manitoba Land Titles Registry, claiming an equitable mortgage in that property.

THE RELEVANT TERMS OF THE CONTRACT AND THE PARTIES' POSITIONS

[17] As I have noted, the primary issue which divides the parties is the proper interpretation of the contract. Their dispute revolves around two terms in particular, one contained in the Loan Commitment under the heading "Securities", and the other in the Loan Agreement under the heading "Security and Terms".

[18] The relevant portions of the Loan Commitment are as follows:

Values Financial Services Inc. (hereinafter referred to as VFSI) is pleased to advise the commitment for your secured loan/security charge on the property described on the following terms and conditions:

...

Securities : All goods at both Gifted Fingers International, Winnipeg locations (955 St. Mary's Road and 1006 Nairn Avenue) and 300 Eagleview Road, Winnipeg, Manitoba.

[19] The relevant portions of the Loan Agreement are as follows, with handwritten insertions noted in italics:

Security and Terms

The Borrower [defined elsewhere as the Imiefohs] shall provide to the Lender [defined elsewhere as Values Financial] the following collateral security in support of the within Loan

- a) A Promissory Note in the amount of *\$83,350*; and *300 Eagleview Rd, Winnipeg, MB and the stocks at 955 St. Mary's Rd and 1006 Nairn Avenue.*
- b) A General Security Agreement.

The Borrower shall provide to the Lender *24* post dated cheques covering each month of the Loan term. *24 checks for interest payment only and 1 check for the principal repayment.*

[20] Values Financial submits that an agreement in writing, duly signed, and however informal, by which any property is made a security for a debt due creates an equitable charge. From this it follows that I should interpret the references to 300 Eagleview Road in the Loan Commitment and Loan Agreement as creating an equitable mortgage in its favour.

[21] In reply, the Imiefohs submit that these terms of the contract, properly construed, only grant a security interest in the "goods" or "stocks" of Gifted Fingers located at any of the three locations identified, but not on their home. Alternatively, the terms in question are ambiguous, and the ambiguity should be resolved in their favour by application of the doctrine of *contra proferentem*.

[22] The other issues raised by Values Financial on this summary judgment motion were not seriously contested by the Imiefohs: the amount which remains owing under

the contract and whether that amount is secured against the goods and stocks of the Imiefohs' business, Gifted Fingers.

DISCUSSION AND DISPOSITION

[23] The rules of contractual interpretation were very succinctly summarized by Spivak JA in *Vesturland Development Ltd et al v Gimli (Rural Municipality) et al*, 2021 MBCA 45, as follows:

[53] As previously noted, the goal of contractual interpretation is to give effect to the intention of the parties, to be gathered from the words they have used, reading the contract as a whole and taking into account the surrounding circumstances. Surrounding circumstances include the aim and genesis of the contract which can, in some circumstances, be gleaned from evidence of negotiations (see *Elias* at para 132; see also *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 85).

[24] In my opinion, when these rules are applied to the case at hand the parties' intentions with respect to an equitable mortgage over 300 Eagleview Road are not clearly revealed. Rather, they reveal the contract's ambiguity.

[25] In my view, the provision in the Loan Commitment is susceptible to two reasonable meanings. On the one hand, it can be read conjunctively as granting a security interest in "all goods" of Gifted Fingers located at any of the three addresses listed. On the other hand, it can be read disjunctively as granting a security interest only in goods located at the Gifted Fingers locations, and in the real property at 300 Eagleview Road.

[26] The same can be said of the provision in the Loan Agreement. As they appear in the original, Mr. Brimoh's handwritten insertions can be taken as either granting a security interest in the "stocks" at the three locations, or as granting a security interest

only in the “stocks” at 955 St. Mary’s Road and 1006 Nairn Avenue, and in the real property at 300 Eagleview Road.

[27] Reading these terms in the context of the contract as a whole fails to resolve these interpretive challenges.

[28] For instance, the Loan Commitment contains a one-page section entitled “Mortgage Commitment”, but it only provides that “the lender’s fees and costs constitute an interest in the land and the personal property of the borrower”. From the plaintiff’s perspective, at best that language seems to evince an intention to secure the amount of the lender’s fees and costs by way of a mortgage (the \$3,350 referred to earlier in these reasons), but no more.

[29] The Loan Commitment also contains a one-page section entitled “Clients Authorization/Financial Information”. The first paragraph explicitly identifies “mortgage financing” as the purpose of the Loan Commitment:

I hereby certify that the information given in my application is complete and correct. And it is given for the purpose of obtaining mortgage financing.

[30] But the apparent meaning of that provision is undermined by two other terms in the same section of the Loan Commitment. The very next paragraph provides that there is no obligation to proceed with mortgage financing – “Signing this statement does not obligate me to proceed with the mortgage.” The final paragraph implies that the object of the statement is for “loan approval”, not for “mortgage approval”. Read as a whole, this suggests to me that the loan contemplated by the Loan Commitment may, or may not, be secured by a mortgage.

[31] The Loan Agreement offers no assistance in arriving at a coherent interpretation of the contract. It contains no explicit reference to mortgage financing. And while it does refer to “collateral security”, as I have already observed, the handwritten notes added to that part of the document do not clearly indicate whether the collateral security taken includes an interest in 300 Eagleview Road.

[32] Both parties urged me to refer to the surrounding circumstances known to the parties at the time of formation of the contract for the purpose of interpreting it. While consideration of the surrounding circumstances is recognized as a necessary and important part of the interpretive process (*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, at para. 46), it is equally important to understand its limits. Evidence of the surrounding circumstances should be admitted to identify the commercial purpose of the contract, and in some cases that may include evidence of negotiations (*Sattva*, at para. 47 and *Vesturland*, at para. 53), but it should not include the subjective evidence of the parties’ intentions (*King v. Operating Engineers Training*, 2011 MBCA 80, at para. 70).

[33] In my opinion, both parties have exceeded the limits on evidence of surrounding circumstances by including a great deal of inadmissible evidence of their subjective intentions. Additionally, I find the evidence of their past agreements in 2018 and 2019 to be mostly unhelpful or irrelevant. The parties’ past agreements turn on their particular facts. The commercial purpose for each of those agreements is unique. While the written form of those agreements is in some respects similar from one

agreement to the next, in other respects it is quite different. For these reasons, I find them of no assistance in my efforts to discern the parties' intentions in the contract.

[34] For the purpose of construing the contract, the relevant surrounding circumstances include the fact that the commercial purpose of the loan was to finance the Imiefohs' acquisition of inventory for their Gifted Fingers stores. But that fact does little to resolve which of the competing interpretations of the contract put forward by the parties should be preferred.

[35] Drawing again on *Vesturland*, the contract leaves me with a "[t]rue legal ambiguity" because, despite careful analysis, the terms dealing with security remain "reasonably susceptible to more than one meaning" (at para. 41).

[36] As a last resort, where the usual rules of contractual interpretation lead to two (or more) reasonable interpretations of the language in question and therefore fail to identify the objective intent of the parties at the time of execution of the contract, the rule of *contra proferentem* may be invoked to resolve the issue (*Dinney v. Great-West Life Assurance Co. et al.*, 2009 MBCA 29, at paras. 58–60). I find it appropriate to do so here.

[37] The following definition of the rule of *contra proferentem* by G. H. L. Fridman, in his text *The Law of Contract in Canada* (3rd ed. 1994), at pp. 470-71, was applied by a majority of the Supreme Court of Canada in *Manulife Bank of Canada v. Conlin*, 1996 CanLII 182, [1996] 3 S.C.R. 415:

9 ...The *contra proferentem* rule is of great importance, especially where the clause being construed creates an exemption, exclusion or limitation of liability...

Where the contract is ambiguous, the application of the *contra proferentem* rule ensures that the meaning least favourable to the author of the document prevails.

[emphasis added]

[38] The application of the rule in this case is justified on the basis that the author of the contract, Values Financial, sought to secure a significant advantage over the Imiefohs in the form of an equitable mortgage on their home. In order to achieve that result, it ought to have used clear language. That is particularly so where, as here, Values Financial aimed to create a kind of standard-form contract of adhesion. In cases like this, fairness dictates that any ambiguity or imprecision in the relevant terms be resolved against their author. (*Manulife*, at paras. 7–10).

[39] When I apply the rule of *contra proferentem* to the contract, I am led to the conclusion that it does not provide Values Financial with an equitable mortgage over 300 Eagleview Road.

[40] That said, it is clear that the contract was intended to provide, and did provide, a security interest in any “goods” and “stocks” of the Imiefohs’ Gifted Fingers business located at 955 St. Mary’s Road, 1006 Nairn Avenue, or 300 Eagleview Road.

[41] Finally, there is no dispute that the Imiefohs paid all 24 interest payments due under the contract. What they failed to pay was the principal amount of \$83,350 when it came due on September 15, 2024. Values Financial is entitled to judgment in that amount against the defendants jointly and severally.

[42] The contract does not stipulate that the contractual rate of 21 % interest applies to the outstanding principal after payment is due. Values Financial could have easily provided for such a result by indicating in the contract that interest would be payable at that rate both before and after maturity, demand, default and judgment, but it did not. I therefore order that judgment bears interest at the post-judgment rate from September 15, 2024 to the date of payment.

[43] The parties may arrange to make further submissions with respect to the issue of costs if they are unable to agree.

[44] Finally, I note that at the hearing of this matter, the Imiefohs were assisted by Daniel Hildebrand, a staff lawyer at the Legal Help Centre. His very able assistance in this matter worked to the benefit of all parties and the court by narrowing the focus of the hearing on the facts and law relevant to the determination of the issues in dispute. I commend both him and plaintiff's counsel, Mr. Makam, for their helpful submissions.

J.