

Court of King's Bench of Alberta

**Citation: BridgePoint Financial Services Inc. v William S. Klym Professional Corporation,
2026 ABKB 236**

**Date: 20260326
Docket: 2101 06345
Registry: Calgary**

Between:

**BridgePoint Financial Services Inc. and BridgePoint Financial Services Limited
Partnership**

Plaintiffs

- and -

**William S. Klym Professional Corporation, William Stephen Klym Professional
Corporation, William S. Klym, and Liliana Kostic**

Defendants

- and -

Liliana Kostic

Plaintiff by Counterclaim

- and -

**BridgePoint Financial Services Inc., BridgePoint Financial Services Limited Partnership,
Clint Docken, Docken Professional Corporation, Guardian Law Group, and John Does 1-
10**

Defendants by Counterclaim

- and -

**Miller Thomson, Clint Docken, Docken Professional Corporation, BridgePoint Financial
Services Inc., BridgePoint Financial Services Limited Partnership, CIBC Merrill Lynch,
CIBC WG, and CIBC**

Third Party Defendants

**Reasons for Decision
of the
Honourable Justice M.A. Marion**

I. Introduction

[1] This action is part of a larger set of actions (**Case Managed Actions**)¹ under my case management as case management justice (**CMJ**).

[2] These Reasons address a summary judgment application (**BridgePoint SJ Application**) by the plaintiffs, BridgePoint Financial Services Inc. and BridgePoint Financial Services Limited Partnership (together, **BridgePoint**) for:

- (a) rectification of three loan agreements (**K/K Loan Agreements**) dated December 20, 2011 (**2011 Agreement**), April 17, 2012 and October 17, 2012 (**2012 Agreements**) to replace William S. Klym Professional Corporation (**Klym Struck PC**) with William Stephen Klym Professional Corporation (**Klym PC**); and
- (b) judgment against Klym Struck PC, Klym PC and William S. Klym (**Klym**) (together, **Klym Defendants**).

[3] For the reasons set out below:

- (a) the application is granted with respect to the rectification of the K/K Loan Agreements, but subject to the opportunity of the other party to those agreements, Liliana Kostic (**Kostic**), to provide her position with respect to the same; and
- (b) the application for summary judgment against the Klym Defendants is dismissed.

II. Background

[4] It is necessary to provide a detailed procedural history of this matter to put the BridgePoint SJ Application in context.

[5] BridgePoint filed this action (**Action** or **BridgePoint Action**) on May 19, 2021, as against Klym Struck PC, Klym and Kostic. At that time, BridgePoint was represented by Guardian Law Group LLP (**Guardian**). The statement of claim details six loan agreements, the first three loans (**2009 Loans**) involved Kostic as the borrower but not the Klym Defendants (dated May 27, 2009, September 4, 2009 and December 23, 2009 (**2009 Loan Agreements**)) and the next three (the loans under the K/K Loan Agreements (**K/K Loans**)) involved Kostic as the borrower as well as some of the Klym Defendants as signatories.

[6] The May 19, 2021 statement of claim pleaded:

- (a) the 2009 Loans were to be repaid when Kostic “exercised her Restricted Shares pursuant to the Deferred Stock Bonus Plan provided by Raymond James Ltd. [**RJL**], or upon any settlement and/or adjudication of the Defendant’s legal claims”;

¹ As defined in Endorsement #4.

- (b) the K/K Loan Agreements were to be “payable from the proceeds of settlement or judicial award [**Settlement Funds**] from any and all claims for damages arising out of legal claims” identified by the statement of claim in action number 0801-05039 (**0801 Action**);
- (c) the defendants had received a settlement or judicial award from claims arising from the 0801 Action; and
- (d) BridgePoint had demanded repayment of the loans under the loan agreements, and the defendants had failed to repay the loans.

[7] The statement of claim sought special damages against the defendants in the amount of \$88,500 plus interest.

[8] On June 18, 2021, Klym (a lawyer) filed his statement of defence, pleading that the statement of claim be dismissed with costs, and that the K/K Loan Agreements were erroneously prepared by BridgePoint to include Klym Struck PC (which was Klym’s former professional corporation that had been struck in 1995) as a party instead of Klym PC as intended by the parties. Klym sought rectification of the arrangement to reflect Klym PC instead of Klym Struck PC.

[9] On June 22, 2021, BridgePoint filed an amended statement of claim. Among other things, the amendments changed the pleading related to the K/K Loan Agreements. It deleted that the defendants had received a settlement or judicial award as the trigger for the K/K Loans becoming due and payable, and instead referenced a BridgePoint right to repayment of the K/K Loans “where the borrower is otherwise deemed incapable of managing the litigation” and “upon transfer of the file”. The amended statement of claim pleaded that Kostic “has shown herself to be incapable of managing the litigation”, that the 0801 Action file had transferred between law firms, that the 2009 Loans and the K/K Loans were immediately due and payable, and that Klym was liable for the K/K Loans as guarantor.

[10] On August 16, 2021, Kostic filed a statement of defence and a counterclaim against BridgePoint, Clint Docken, Docken Professional Corporation² (together, **Docken**³), and Guardian Law Group⁴. Broadly construed, Kostic pleads (among other things):

- (a) as against Docken, that Docken acted for her in the 0801 Action from 2007 to March 2010 under a contingency agreement. Kostic asserts that Docken was involved in arranging the financing under the 2009 Loan Agreements, Docken was a good friend of the owner of BridgePoint, Docken made misrepresentations about the 2009 Loan Agreements (including that the 2009 Loans would only be repaid out of any settlement), Docken advised her to enter the 2009 Loan Agreements, Docken acted in a conflict of interest, and Docken failed to properly advise her in respect of the 2009 Loan Agreements. She also asserts that she sold shares she held in RJL under the threat of BridgePoint and Docken, and provided the proceeds to

² This appears to be an erroneous attempt to reference Clint Docken Professional Corporation, also later known as 216194 Alberta Ltd.

³ My reference to Docken includes reference to Clint Docken Professional Corporation and 216194 Alberta Ltd.

⁴ This appears to be an attempt to reference Guardian Law Group LLP.

Docken to pay her loans and these funds are unaccounted for. She asserts that Docken breached the terms of the retainer agreement, breached professional duties and obligations to her (including under the Law Society of Alberta Code of Conduct), and was negligent in the conduct of the 0801 Action;

- (b) as against Guardian, that Docken was a partner there when the Action was filed, in breach of duties to her, and that Guardian was responsible for Docken's conduct;
- (c) BridgePoint was a "credit granter" under the *Fair Trading Act*, RSA 2000 c F-2 (now the *Consumer Protection Act*, RSA 2000, c C-26.3), BridgePoint failed to comply with its disclosure obligations under the legislation, and BridgePoint is not entitled to seek the damages being claimed or charge the interest claimed; and
- (d) the *Limitations Act*, RSA 2000, c L-12.

[11] On September 7, 2021, Docken and Guardian filed their statement of defence to the Kostic counterclaim. Docken acknowledges that it represented Kostic in respect of the 0801 Action and provided legal services to Kostic with respect to two 2008 loans involving BridgePoint (**2008 Loans**), but denies providing legal services to Kostic in respect of the loan agreements at issue in the Action, or that Docken acted in a conflict or was negligent. Docken denies that the 2008 Loans were obtained to fund the 0801 Action, but asserts that they were to provide her liquidity pending vesting of her RJL shares, and that the funds received from the sale of the RJL shares were used to pay and retire the 2008 Loans. Guardian, established in 2016, denies ever having any relationship with or duties or obligations to Kostic. Docken and Guardian claim that the Kostic counterclaim was filed in breach of the requirement to obtain leave of the Court and should be struck for non-compliance with the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*).

[12] On September 10, 2021, BridgePoint Financial Services Inc. filed its defence to Kostic's counterclaim.

[13] On September 20, 2021, Kostic filed her reply to the statements of defence to her counterclaim.

[14] On November 16, 2021, Kostic noted several defendants in default, some of which appeared to have had already filed a statement of defence. She filed an amended noting in default on November 25, 2021. An application to set aside the noting in default was scheduled for March 8, 2022.

[15] On March 7, 2022, Kostic filed an application (**Kostic Dismissal Application**) for, among other things, summary dismissal and other relief against BridgePoint, relying on a lengthy March 1, 2022 affidavit.⁵ Kostic's grounds for summary dismissal include: (1) the BridgePoint Action (or part of it) is barred by limitations; (2) BridgePoint acted in bad faith and breached its duties of good faith, fair dealing and honest performance; (3) BridgePoint breached the terms of the loan agreements by prematurely filing the BridgePoint Action; (4) BridgePoint breached the terms of the loan agreements as they were misrepresented to her by BridgePoint and Docken; (5) the loan agreements were contingent upon the conclusion of the 0801 Action; (6) the 2009 Loan

⁵ This affidavit is attached part of Schedule A to Endorsement #23.

Agreements were entered into when Docken was in a conflict of interest; (7) violation of the *Fair Trading Act* and *Interest Act*, RSC 1985, c I-15; and (8) BridgePoint is estopped by cause of action estoppel.

[16] On March 8, 2022, Applications Judge Mason set aside the noting in default.

[17] On March 22, 2022, BridgePoint (then represented by Miller Thomson LLP), filed an amended statement of defence to Kostic’s counterclaim.

[18] On April 1, 2022, Kostic filed:

- (a) a notice of appeal of the order setting aside the noting in default;⁶
- (b) a notice of claim against co-defendants (**Notice to Co-Defendants**), which named Miller Thomson, Docken, BridgePoint, RJL, CIBC World Markets, CIBC Merrill Lynch, CIBC WG, CIBC, CIBC Trust, Piikani Nation and Gowling WLG as named “third party defendants” (**Third Party Defendants**);
- (c) an amended reply (**Amended Reply**) to the amended statement of defence and counterclaim; and
- (d) an amended counterclaim (**Amended Counterclaim**), which included claims against the Third Party Defendants, including (among other things) extensive allegations related to conduct in respect of other Case Managed Actions (including the 0801 Action and action number 0601-13081 (**0601 Action**)), and allegations that they caused or contributed to the indebtedness pursued by BridgePoint in the BridgePoint Action.

[19] On April 19, 2022, the Kostic Dismissal Application was before Justice Feasby in morning civil chambers and was adjourned *sine die*.

[20] On April 21 and 22, 2022, Associate Chief Justice Rooke granted Piikani Nation and its Chief and Council (and what appears to be its council members) leave to apply to strike the Notice to Co-Defendants, the Amended Reply and the Amended Counterclaim against them.

[21] On May 18, 2022, apparently without first seeking permission to do so, Docken and Guardian filed an application to strike the Notice to Co-Defendants, Amended Reply and Amended Counterclaim against them (**Docken/Guardian Strike Application**).

⁶ On June 2, 2022, Justice Hollins adjourned the notice of appeal *sine die* to a half-day special application which was never scheduled. In Endorsement #13, I directed Kostic to advise, by August 8, 2025, whether she intended to pursue this appeal. As reflected in Endorsement #23, on July 22, 2025, Kostic incorrectly stated that she had not filed an appeal. Kostic has never indicated any intention to continue with this appeal.

[22] On July 28, 2022, BridgePoint filed an application to compel Kostic's affidavit of records. The application noted that BridgePoint had served its affidavit of records on November 16, 2021.⁷

[23] On September 16, 2022, Justice de Wit granted a consent order⁸ permitting BridgePoint to file an amended amended statement of claim (**AASOC**), which added more particulars relating to the asserted liability of the Klym Defendants and formally sought rectification of the K/K Loan Agreements to include Klym PC and/or Klym instead of Klym Struck PC.

[24] On October 7, 2022, Justice de Wit struck Kostic's Notice to Co-Defendant, Amended Reply and Amended Counterclaim as against Piikani Nation, Gowling WLG (Canada), RJL, CIBC World Markets Inc and CIBC Trust Corporation.

[25] On March 14, 2023, BridgePoint filed the AASOC.

[26] On April 20, 2023, the Klym Defendants filed an amended statement of defence to the AASOC. It pleads that: as of 2012, Klym PC had an existing financial relationship with BridgePoint; the guarantees in the K/K Loan Agreements are unenforceable because they are subject to equitable terms that BridgePoint would not accelerate the K/K Loans except in accordance with the terms of the K/K Loan Agreements; BridgePoint accelerated the payment of the K/K Loans in breach of the K/K Loan Agreements, which discharges the guarantor; the 0801 Action is ongoing and an application was before the Court to have Kostic's damages assessed; and the K/K Loans are not due and payable until the 0801 Action is resolved. The Klym Defendants also plead the *Consumer Protection Act* to the effect that only the principal of the K/K Loans is owed and only upon conclusion of the 0801 Action.

[27] On June 14, 2024, CMJ Graesser granted three orders:

- (a) an order (**First June 2024 Order**) approving a fiat request to CIBC, CIBC Merrill Lynch and CIBC Wood Gundy (**CIBC Parties**) to apply to strike Kostic's April 1, 2022 pleadings against them (**CIBC Strike Application**). The First June 2024 Order prohibited Kostic from taking further steps against the CIBC Parties until the CIBC Strike Application is heard, and delayed next steps for the CIBC Strike Application until Kostic filed her response materials. The First June 2024 Order also prohibited Kostic from bringing any fiat request or application for save harmless or indemnity relief against any party that has an outstanding application to strike in the BridgePoint Action;
- (b) an order (**Second June 2024 Order**) providing directions with respect to an application by Miller Thomson to strike Kostic's claims against it (**Miller Thomson Strike Application**); and
- (c) an order (**Third June 2024 Order**) providing Kostic leave to file an amended statement of defence and amended counterclaim in the BridgePoint Action, and

⁷ The BridgePoint affidavit of records is attached as an exhibit to the December 2, 2021 affidavit of Arsham Gill (student-at-law at Miller Thomson), filed by BridgePoint. The application to compel Kostic's affidavit of records was adjourned by applications judges twice in 2022. It is presently unclear to me whether it ever proceeded.

⁸ This order was not filed until March 23, 2023.

providing a procedural schedule for the Kostic Dismissal Application. It also provided that Kostic was not entitled to participate in the BridgePoint SJ Application.

[28] On June 18, 2024, BridgePoint filed the BridgePoint SJ Application.

[29] In December 2024, I was appointed CMJ over the Case Managed Actions, including the BridgePoint Action. I engaged in a process by which parties provided me with information about the various Case Managed Actions, including their status and next steps, following which I directed several case management conferences (CMCs) in groups of the Case Managed Actions.

[30] In that process, Kostic advised that she intended to seek a stay of some of the Case Managed Actions. She did not follow my initial directions related to this relief, and later advised me that she sought to stay the BridgePoint Action pending the determination of the 0801 Action. Following a June 23, 2025 CMC in respect of the BridgePoint Action and other actions⁹, on July 22, 2025, I issued Endorsement #13, in which I directed, among other things:

- (a) Kostic to provide her Fiat Request to stay the BridgePoint Action pending determination of the 0801 Action, by August 29, 2025.¹⁰ I am not aware that she ever did so;
- (b) Kostic to make any amendments to her statement of defence as contemplated by the Third June 2024 Order, by October 1, 2025;
- (c) Kostic to amend her Kostic Dismissal Application by October 1, 2025;
- (d) Kostic to provide her response to the CIBC Strike Application by September 12, 2025. I also set out the next steps for the hearing of the CIBC Strike Application. Kostic filed an affidavit on September 12, 2025;
- (e) Kostic to provide her response to the Docken/Guardian Strike Application and the Miller Thomson Strike Application by September 28, 2025; and
- (f) if she wanted to pursue interlocutory “save harmless” relief in the context of the BridgePoint Action, Kostic to provide a Fiat Request by September 5, 2025.

[31] On August 22, 2025, I issued Endorsement #23, which responded to Kostic’s request for a corrigendum or clarification of Endorsement #13 related to the BridgePoint Action. On August 26, 2025, in Endorsement #25, I addressed Kostic’s further correspondence to the Court related to Endorsement #23.

⁹ Action number 1501-11111 (referred to in these matters as the “Kostic-Thom Action”), action number 1701-06258 (referred to in these matters as the “AIG Action”), and action number 1901-06547 (referred to in these matters as the “SVR Action”).

¹⁰ Endorsement #13 at paras 7-8, 35.

[32] On September 5, 2025, Kostic provided a Fiat Request seeking to file a proposed application in the BridgePoint Action (**Proposed BridgePoint Action Application #1**).¹¹ On October 1, 2025, Kostic wrote me another letter, with a Fiat Request to file another proposed application in the BridgePoint Action (**Proposed BridgePoint Action Application #2**).¹²

[33] On October 7, 2025, I issued Endorsement #45, which set the Kostic Dismissal Application, any application to strike any portion of any Kostic amended statement of defence or counterclaim, the CIBC Strike Application, the Docken/Guardian Strike Application and the Miller Thomson Strike Application to be heard on May 21 and 22, 2026.

[34] In Endorsement #45, I also rejected Kostic's Fiat Requests for the Proposed BridgePoint Action Application #1 and Proposed BridgePoint Action Application #2, by which Kostic sought to bring applications for specific relief against BridgePoint and Docken, including an order declaring them to be bound to fund Kostic's 0801 Action, specific performance, damages, declarations that BridgePoint/Docken were negligent and made fraudulent representations, and to seek various indemnity and save harmless relief against several parties. I directed that if Kostic intended to pursue specific relief against BridgePoint/Docken in the BridgePoint Action beyond what she has already pleaded or filed, or has already been approved to file, she must provide a compliant Fiat Request by October 31, 2025. I also directed that if she sought further indemnity and save harmless relief (including in the BridgePoint Action), she must do so by October 31, 2025 (which was later amended to November 28, 2025 under Endorsement #46¹³).

[35] On November 24, 2025, in Endorsement #52, I approved a proposed procedural schedule for the hearing of the various applications in the BridgePoint Action that had been scheduled for May 21 and 22, 2026.

[36] On October 22, 2025, I heard the BridgePoint SJ Application and reserved my decision.

III. Record

[37] The record for the BridgePoint SJ Application includes:

- (a) an affidavit of Karen Wheaton, a legal assistant with Code Hunter LLP, sworn and filed August 11, 2022;
- (b) an affidavit of Stephen Pauwels (**Pauwels**), co-founder and partner of BridgePoint sworn January 17, 2024 (filed June 18, 2024) (**Pauwels Affidavit #1**);
- (c) the transcript of April 29, 2024 questioning of Pauwels on his January 17, 2024 affidavit;
- (d) a Klym affidavit sworn May 22, 2024 (filed May 24, 2024);

¹¹ This is further described in Endorsement #45.

¹² This is further described in Endorsement #45.

¹³ Endorsement #46, at paras 29-30.

- (e) the transcript of June 26, 2024 questioning of Klym on his May 22, 2024 affidavit, with exhibits; and
- (f) a Pauwels affidavit sworn July 31, 2024 (filed August 6, 2024).

IV. Issues

[38] The issues before me are:

- (a) Should BridgePoint be granted summary judgment rectifying the K/K Loan Agreements to include Klym PC as a party in place of Klym Struck PC?
- (b) Should BridgePoint be granted summary judgment against the Klym Defendants or some of them?

V. Analysis

[39] Rules 7.3(1)(a) and 7.3(1)(c) together provide that a plaintiff may apply for summary judgment in respect of all or part of a claim where there is no defence to a claim or part of it, or where the only real issue is the amount to be awarded.

[40] Summary judgment cannot be granted if the application presents a genuine issue requiring trial: *Hannam v Medicine Hat School District No 76*, 2020 ABCA 343 at para 13, leave to appeal denied 2021 CanLII 20326 (SCC); *Clearbakk Energy Services Inc v Sunshine Oilsands Ltd*, 2023 ABCA 96 at para 5.

[41] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result: *Hryniak v Mauldin*, 2014 SCC 7 at para 49; *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 21; *Liberty Mortgage Services Ltd v River Valley Development Corp*, 2025 ABCA 346 at para 27; *Calgary Co-operative Association Limited v Federated Co-operatives Limited*, 2025 ABCA 142 at para 24.

[42] The proper approach to summary dispositions in Alberta has been laid out in *Weir-Jones* at para 47 (emphasis in original) (and as recently re-affirmed by the Court of Appeal in *Liberty Mortgage* at para 28 and *Calgary Co-operative* at para 25):

[47] The proper approach to summary dispositions, based on the *Hryniak v Mauldin* test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be predictable, consistent, and fair to both parties. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:

- (a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or

do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?

- (b) Has the moving party met the burden on it to show that there is either “no merit” or “no defence” and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- (c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party’s case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- (d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

To repeat, the analysis does not have to proceed sequentially, or in any particular order. The presiding judge may determine, during any stage of the analysis, that summary adjudication is inappropriate or potentially unfair because the record is unsuitable, the issues are not amenable to summary disposition, a summary disposition may not lead to a “just result”, or there is a genuine issue requiring a trial.

[43] The court has a duty to take a “hard look” at the merits of the claim or defence on a summary judgment application: *Weir-Jones* at para 44.

A. Should the K/K Loan Agreements be Rectified Summarily?

[44] On the record before me, BridgePoint has established that there is no merit to any defence that the proper party to the K/K Loan Agreements, as they relate to Klym, was Klym PC and not Klym Struck PC. I also find that there is no genuine issue requiring a trial regarding rectification.

[45] The Klym Defendants’ first statement of defence also sought rectification effectively on the same basis. Their amended statement of defence continues to plead that, at all material times, BridgePoint and Klym PC intended the arrangement to be with Klym PC, not Klym Struck PC. In their oral submissions, the Klym Defendants confirmed that they had no issue with this requested relief.

[46] The problem is that BridgePoint and Klym were not the only parties involved in the K/K Loan Agreements. Kostic is a party to the K/K Loan Agreements and was not permitted to participate in this application. However, it is difficult to conceive any basis upon which Kostic could object to the rectification of the K/K Loan Agreements to reflect the intended Klym professional corporation, provided that it is done without prejudice to Kostic's positions in the BridgePoint Action.

[47] In the circumstances, I find that it is appropriate to summarily grant the rectification of the K/K Loan Agreements, and the related Irrevocable Authorization and Direction, to replace any reference to Klym Struck PC with Klym PC. I also declare that the rectification is granted without prejudice to any party's position with respect to the remaining issues in dispute in the BridgePoint Action.

[48] I direct that this order shall not be effective until one month after these Reasons, so that Kostic's position may be provided. If Kostic objects to the rectification of the K/K Loan Agreements as set out herein, she shall inform me in writing within two weeks of these Reasons and shall provide me the basis of this objection (failing which she will be deemed to consent to the rectification on the basis set out herein).

B. Should the BridgePoint SJ Application Be Dismissed for Failure to Comply with Rule 7.3(2)?

[49] The Klym Defendants argue that BridgePoint's application cannot succeed because the Pauwels affidavits are non-compliant with the requirement under rule 7.3(2) as they do not "swear positively that one or more of the grounds described in subrule (1) have been met...".

[50] But rule 7.3(2) goes on to say "... or by other evidence to the effect that the grounds have been met". I am entitled to assess the totality of the admissible evidence in determining whether the grounds for summary judgment have been made out, and the requirements of rule 7.3(2) can be inferred from the affidavit without the affiant using the precise words in the rule: *Otiti v Har-Par Investments Ltd*, 2025 ABCA 379 at para 5; *Saito v Lester Estate*, 2021 ABCA 179 at para 13; *Dingwall v Dornan*, 2014 ABCA 89 at para 23.

[51] I decline to reject BridgePoint's application on this technical argument raised by the Klym Defendants. I have considered the totality of the evidence before me to determine if summary judgment is appropriate.

C. Should BridgePoint be Granted Summary Judgment Against Klym's Professional Corporation under the K/K Loan Agreements?

1. Has BridgePoint Met Its Threshold Burden to Show No Merit or Genuine Issue Against Klym's Professional Corporation?

[52] A plaintiff-applicant for summary judgment has the initial burden to provide the factual elements of its case (that is, the facts on which it relies), on a balance of probabilities, that there is no defence, and that there is no genuine issue requiring a trial: *Weir-Jones* at paras 31-35 and 47(b); *Giustini v Workman*, 2021 ABCA 65 at paras 22-24; *P & C Lawfirm Management Inc v Sabourin*, 2020 ABCA 449 at paras 38-59; *Hannam* at paras 145-151.

a. Facts

[53] It is helpful to set out some of the non-controversial or uncontested facts to put this aspect of the application in context.

[54] Kostic borrowed money from BridgePoint through the 2008 Loans, but they are not the subject of this Action.

[55] On May 22, 2009, Kostic made a loan request for \$7,000 to BridgePoint by filling out a “Plaintiff Loan Application Form – General Litigation – Alberta”. In the form, she described her claim as a breach of contract for which she was claiming a “loss of income based on breach of contract, already have the defendant noted in default”. Her form stated “...all that is required is a potential assessment of income loss and obtaining default judgment” and that an “economic loss report” was currently being prepared for default judgment. It can be inferred that the claim being referenced by Kostic was her claim in the 0801 Action.

[56] In the 0801 Action, Kostic claims damages for the breach of a business agreement between her and Piikani Nation wherein Piikani Nation agreed to retain her to provide investment advice: *Kostic v Piikani Nation*, 2017 ABCA 53 at para 3.

[57] In 2009, Kostic borrowed the aggregate of \$32,000 from BridgePoint pursuant to the 2009 Loan Agreements. The 2009 Loan Agreements have not been put into evidence by BridgePoint, although copies of at least some of them appear to be filed elsewhere in this Action.

[58] In 2010, Klym became involved in the 0801 Action.

[59] On December 20, 2011, Kostic and Klym executed the 2011 Agreement for a BridgePoint loan to Kostic of \$25,000. Klym executed the 2011 Agreement as “counsel and guarantor” on behalf of his professional corporation. These funds were advanced in various instalments from December 2011 to February 2012.

[60] On April 12, 2012 and October 18, 2012, Kostic and Klym executed the 2012 Agreements, for BridgePoint loans to Kostic of \$25,000 and \$6,500 respectively. Again, Klym executed as counsel and guarantor on behalf of his professional corporation. Funds under these agreements were advanced in April, October and November 2012.

[61] There is some uncertainty in the evidence about the purpose of the K/K Loan Agreements. BridgePoint asserts that the loans were for the purpose of funding Kostic’s litigation in the 0801 Action.¹⁴ Klym’s evidence is less clear about the purpose; his recollection is that the advances were not used to pay Kostic’s legal or expert fees for the 0801 Action.¹⁵

[62] The K/K Loan Agreements’ terms are virtually identical. Some key provisions relating to repayment of the K/K Loans are set out below (using the 2011 Agreement as an example):

¹⁴ Pauwels Affidavit #1 at para 8.

¹⁵ Transcript of Klym questioning at pp 18-19.

FOR VALUE RECEIVED ... Kostic ... (the “Borrower”), and where the Borrower is in default or as otherwise set out below, her legal counsel ... (“Counsel”) as guarantor (“Guarantor”) acknowledges themselves indebted and promise to pay upon the circumstances identified below to ... (“Lender”), the sum of ... \$25,000 (“Loan Amount”) ... together with interest thereon at the rate of ...18% ... per annum (the “Loan”). Interest payable on the Loan shall be compounded semi-annually, and shall be calculated daily and payable from the proceeds of settlement or judicial award (the “Settlement Funds”) from and any and all claims for damages arising out of legal claims arising from events of May 2006 as described ... in ... [the 0801 Action] ... (“Claim”).

[...]

The Lender’s obligation to advance funds as set out above is subject to the condition that there are no events or potential issues that arise that result or may result in a material adverse change in the value of the Claim or its recovery (“Material Adverse Change”). The Lender shall have full discretion acting reasonably to determine whether a Material Adverse Change has occurred and shall provide the Borrower with reasonable notice of any decision to not advance further funds pursuant to this Agreement.

[...]

Further, the Borrower shall execute an Irrevocable Letter of Authorization and Direction requiring Counsel to immediately pay to the Lender and Counsel hereby agrees to pay the Loan Amount plus accrued interest owing hereunder immediately upon receipt by Counsel ... of Settlement Funds ... as a result of the settlement and/or adjudication, in whole or in part, of the Claim ... Should the Settlement Funds be insufficient to repay all principal and interest owing on the Loan, the Lender shall have full recourse to obtain repayment of the Loan for any outstanding and unpaid amounts from the Guarantor immediately upon making a demand for payment...

[...]

The Lender has the right to demand repayment of the Loan from the Borrower or the Guarantor, as the case may be, upon (i) transfer of the file to new Counsel or (ii) abandonment of any or all Claims, or (iii) where the Borrower is otherwise deemed to be incapable of managing the litigation. In the event the Borrower retains new Counsel the Lender shall have absolute discretion to accept or reject any requests to maintain or otherwise renew this financing arrangement with new legal counsel. [...]

[63] The record before me does not have much information about any dealings between BridgePoint, Kostic and the Klym Defendants from November 2012 to March 2017.

[64] During that period, there had been developments in the 0801 Action. On February 5, 2013, ACJ Rooke granted an order staying all actions against Piikani Nation, including the 0801 Action.

On February 19, 2013, he granted an order lifting the stay for the 0801 Action, denied an application to consolidate the 0801 Action with the 0601 Action, and directed the 0801 Action to a trial in December 2013. There were various steps related to the production of Kostic's medical records and undertaking answers. The trial did not proceed in December 2013.

[65] Eventually, in April 2015, Justice Anderson presided over a summary trial and dismissed Kostic's claim against Piikani Nation. In February 2017, in *2017 ABCA 53*, the Court of Appeal overturned that decision, and stated at paras 19-20:

[19] The Nation agreed with Ms. Kostic that she would be the Nation's investment advisor for a term of seven years. The Nation terminated that agreement prior to the expiration of the term. As a consequence Ms. Kostic was unable to earn that income. Typically, a plaintiff's inability to earn income as a result of another's breach of contract gives rise to a damage claim, but this is a matter for a trial court to assess. And in conducting that assessment, Ms. Kostic's claim to damages for the manner in which the Nation terminated the business agreement should also be considered. It was not dealt with by the trial judge.

[20] In conclusion, we would allow the appeal and order that the court below consider whether or not the appellant is entitled to damages in accordance with these reasons, and if so, in what quantum.

[66] In March 2017, Kostic contacted BridgePoint about a further loan and was advised that a further loan would be considered. There is no evidence on the record that an additional loan was discussed further.

[67] In June 2017, Klym and Docken parted ways. Klym joined a different law firm and took the 0801 Action file with him.

[68] In February 2018, BridgePoint contacted Klym and he provided an update about the status of the 0801 Action. BridgePoint contacted Klym again in April, October, and November 2018 seeking updates about the 0801 Action. He did not respond. BridgePoint's external counsel followed up again in April 2019. Again, Klym did not respond.

[69] In 2018 (and likely at other times), BridgePoint appears to have made a registration at the personal property registry in relation to the loans at issue in this Action, as described by the Court of Appeal in *Piikani Nation v Raymond James Ltd*, 2020 ABCA 41 at para 24 in the context of a security for costs application (emphasis added):

[24] The Respondents submit that it appears the Appellant has access to some resources to pursue her litigation efforts. Mr Alger deposed that she has counsel on some actions and that the PPR search indicated that she granted a security agreement a litigation lender, BridgePoint Financial Services Inc, in May 2018 which described the collateral pledged was "**Proceeds to be received upon resolution of a claim and/or settlement where the debtor has an interest in the outcome**".

[70] In August 2019, Kostic filed an application in the 0801 Action seeking an order directing an assessment of damages or summary judgment. According to Klym's affidavit in this application, the matter was before CMJ Nation during the COVID pandemic in February 2020, but was adjourned pending cross-examination on Kostic's affidavit.

[71] On August 19, 2020, BridgePoint wrote to Klym and stated that it had the right to demand repayment of all amounts owing under the K/K Loans from Klym. BridgePoint demanded full payment of the entire balance by August 31, 2020 (**Demand**).

[72] Klym testified that he did not respond to BridgePoint's queries or the Demand because, in an unrelated matter related to the 2015 settlement of a class action, BridgePoint had accused him of embezzling funds and reported him to the Law Society of Alberta. (Klym's evidence is that he was later cleared of these allegations).

[73] Klym's affidavit explains steps that continued to occur in the 0801 Action after the Demand, including a cross-examination of Kostic on her affidavit in December 2020. He did not inform BridgePoint about these steps.

[74] On May 19, 2021, BridgePoint commenced this action.

[75] Since the BridgePoint Action was commenced, the 0801 Action has continued and has not yet been resolved. In February 2024, CMJ Graesser decided that the 0801 Action should proceed to trial on damages together with other actions (but this was never implemented and has been overtaken by subsequent events): *Kostic v Piikani Nation*, 2024 ABKB 40. In November 2024, CMJ Graesser permitted Kostic to amend her statement of claim in the 0801 Action: *Kostic v Piikani Nation*, 2024 ABKB 671. Since I was appointed CMJ, I have made various directions related to the 0801 Action. Kostic has now filed her amended amended amended statement of claim. On June 6, 2025, Piikani Nation filed its amended statement of defence. Although I have set the 0601 Action down for trial, the 0801 Action was not ready to be set down for trial at the same time.¹⁶

b. Principles of Contractual Interpretation

[76] The question of whether the K/K Loans had become due and payable on their own terms, or whether the Demand was permitted, or whether Klym's professional corporation was obligated to pay the Loan Amount under the K/K Loan Agreements, raises issues of contractual interpretation.

[77] The goal of contractual interpretation is to determine the objective intent of the parties at the time the contract was made through the application of legal principles of interpretation: *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 79, leave to appeal to SCC refused, 2018 CanLII 28111 (SCC); *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 49; *Remington Development Corporation v Canadian Pacific Railway Company*, 2025 ABCA 244 at para 43.

¹⁶ Endorsement #43 at para 9.

[78] Provisions must be interpreted in light of the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of the formation of the contract: *Arsopi v ARVOS GmbH*, 2026 ABCA 49 at para 52; *Remington Development* at para 43; *Sattva* at paras 47, 49; *IFP* at para 79; *Tercon Contractors Ltd v British Columbia (Transportation and Highways)*, 2010 SCC 4 at para 64.

[79] Courts must consider the relevant surrounding circumstances, including the “objective evidence of the background facts at the time of the execution of the contract ... that is, knowledge that was or reasonably ought to have been within the knowledge of both parties at or before the date of contracting”: *IFP* at paras 82-83, citing *Sattva* at para 58; *Remington Development* at para 47.

[80] Relevant background facts can include the genesis, aim or purpose of the contract, the nature of the relationship created by the contract, the nature or custom in the industry in which the contract was executed, antecedent agreements leading up to the contract, and even negotiations if they shed light on the factual matrix: *IFP* at paras 83-85 and the cases cited therein; *Alberta Union of Provincial Employees v Alberta Health Services*, 2020 ABCA 4 at para 32.

[81] “Surrounding circumstances” does not include the parties’ subjective intentions and cannot be used to add to, detract from, vary, or otherwise overwhelm the written words: *Sattva* at paras 59-60; *IFP* at paras 81-82; *Talwandi Video Lab Inc v 1441419 Alberta Ltd*, 2024 ABCA 140 at para 11; *Alberta Union* at para 26; *Remington Development* at para 47; *SA v Metro Vancouver Housing Corp*, 2019 SCC 4 at para 30; *Heritage Property Corporation v Trioinvest Inc*, 2025 ABCA 64 at para 14.

[82] For standard form contracts, the surrounding circumstances generally play less of a role in the interpretation process, and where they are relevant, they tend not to be specific to the particular parties: *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co*, 2016 SCC 37 at para 32; *Canadian Natural Resources Limited v Harvest Operations Corp*, 2024 ABCA 3 at para 15; *Duri Homes Ltd v Quest Coatings Ltd*, 2023 ABCA 276 at para 32. However, the parties’ reasonable expectations as informed by the purpose of the contract, the nature of the relationship the standard for contract creates, and the market or industry in which it operates, should be considered when interpreting a standard form contract: *Ledcor* at paras 31, 95. Where meaningful evidence of the factual matrix does exist and where the contract is one of “utter particularity” due to the unique set of circumstances, the modern contractual interpretation approach from *Sattva* continues to apply to standard form contracts: *Earthco Soil Mixtures Inc v Pine Valley Enterprises Inc*, 2024 SCC 20 at para 29.

[83] If the terms of an agreement are ambiguous, the court may refer to the parties’ post-contractual conduct to resolve the ambiguity: *IFP* at paras 86-87; *Shewchuk v Blackmont Capital Inc*, 2016 ONCA 912 at paras 46, 56. Mere difficulty in interpreting a contract is not the same thing as ambiguity; a contract is ambiguous when the words are reasonably susceptible to more than one meaning: *IFP* at para 87. In the face of ambiguity, the interpretation promoting business efficacy is to be preferred so long as it is supported by the text: *IFP* at para 86.

[84] Courts should prefer interpretations that are consistent with the reasonable expectations of the parties, and avoid interpretations that would give rise to an unreasonable or unrealistic result

or that would not have been in the contemplation of the parties at the time of the contract: *Ledcor* at paras 50, 65, 78; *Progressive Homes Ltd v Lombard General Insurance Co of Canada*, 2010 SCC 33 at para 23; *IFP* at paras 350–351; *Swan Group Inc v Bishop*, 2013 ABCA 29 at para 23; *Paramount Resources Ltd v Chubb Insurance Company of Canada*, 2024 ABCA 266 at para 37.

[85] If ambiguity remains after application of these rules, *contra proferentum* can be employed to construe a contract of adhesion against the party who drafted it: *Urban v Enright West Ltd*, 2026 ABCA 34 at para 25; *Ledcor* at paras 50-51; *Progressive Homes* at para 24; *Condominium Corporation No 9312374 v Aviva Insurance Company of Canada*, 2020 ABCA 166 at para 17.

c. Positions of the Parties

[86] The K/K Loan Agreements provide several specific ways by which Klym’s professional corporation could become personally liable to pay the Loan Amount: (1) if Klym’s professional corporation is in receipt of Settlement Funds; (2) upon “the transfer of the file to new Counsel”; (3) upon “abandonment of any or all Claims”; or (4) “where [Kostic] is otherwise deemed incapable of managing the litigation”.

[87] BridgePoint relies on (4) to support its summary judgment claim. It argues that it had the discretionary power to deem Kostic incapable of managing the 0801 Action, it did so reasonably, and this triggered the repayment obligation and the right to make the Demand.

[88] In its AASOC, BridgePoint also pleads (2), namely, that there was a file transfer because Klym changed law firms, however, in argument, BridgePoint’s counsel confirmed that it was not relying on this ground to support summary judgment. In my view, this was for good reason since “Counsel” is defined in the K/K Loan Agreements as Klym’s professional corporation, not the law firm with which it or Klym practiced. There is no evidence that the 0801 Action file was transferred to new Counsel.

[89] The Klym Defendants argue that BridgePoint has not established that Kostic was in breach of the K/K Loan Agreements; BridgePoint has not established that Kostic was incapable of managing the litigation; the K/K Loans were not payable until there was resolution of the 0801 Action; BridgePoint’s attempt to accelerate the K/K Loans was not, in any event, based on Kostic being incapable of managing the litigation, but on the false premise that the 0801 Action had been resolved and Settlements Funds existed; and that, by making the Demand, BridgePoint discharged the guarantor.

[90] In reply, BridgePoint argues, among other things, that the question of whether BridgePoint was entitled to demand is an objective one. BridgePoint acknowledges that, because it had the discretion to deem Kostic incapable of managing the 0801 Action, it had to exercise its discretion in good faith as per *Wastech Services Ltd v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 at para 63.

[91] BridgePoint further argues that, even if the obligation to repay the K/K Loans was contingent on the resolution of the 0801 Action, then BridgePoint is nonetheless entitled to be paid within a reasonable time (which has expired), relying on *Better Off Dead Productions Inc v Pendulum Pictures Inc*, 2002 BCSC 462 at para 27.

d. BridgePoint's Position re: Deemed Incapable of Managing the 0801 Action

[92] I am not satisfied that BridgePoint has met its burden to show no meritorious defence to its position that its right to demand payment of the Loan Amount was triggered on the basis that Kostic was “deemed incapable of managing the litigation”.

[93] There is a genuine issue as to whether the K/K Loan Agreements were standard form contracts in the litigation financing industry, which could have a material effect on their interpretation and the use of evidence of the commercial context and surrounding circumstances.

[94] Further, regardless of whether the K/K Loan Agreements were standard forms or not, BridgePoint has not adduced much about the background facts known to the parties at the time they executed the K/K Loan Agreements in 2011 and 2012. BridgePoint asserts that the purpose of the loans was to finance Kostic's prosecution of the 0801 Action but, as noted above, there is conflicting evidence on this point.

[95] BridgePoint's position results in there being a genuine issue requiring better evidence and, failing which, a trial, with respect to the resolution of ambiguities in the K/K Loan Agreements. On the record before me, I find it the K/K Loan Agreements are ambiguous as to who is entitled or required to do the “deeming” that Kostic is incapable of managing the 0801 Action, and further, what it means for Kostic to be “incapable” of managing the 0801 Action. BridgePoint argues that this must mean that BridgePoint is entitled to deem Kostic incapable based on an objective assessment of her *ability* to manage the 0801 Action and to advance it to conclusion within a reasonable time. In my view, and particularly given the context within which this phrase is found within the K/K Loan Agreements, it is also a possible reasonable interpretation that this clause means that a third party, for example a medical professional or a court, must do the deeming and, in any event, that “incapable” is a reference to *legal capacity* not *ability*.

[96] I find that BridgePoint has not adduced sufficient extrinsic evidence to fairly resolve the ambiguities summarily in BridgePoint's favour:

- (a) BridgePoint has not adduced any communications between the parties leading up to the K/K Loan Agreements, or about the 2008 Loans. BridgePoint's affidavit of records shows that it prepared assessment reports in February and May 2008, in May, September and December 2009, and again in August 2015. The 2009 loan application form contemplated communications and cooperation between the parties at both step 2 (assessment) and step 3 (approval) of the financing approval process. BridgePoint's affidavit of records also includes numerous “correspondence” records between February 2008 and February 2012, which are not before me;

- (b) BridgePoint has not adduced evidence about the nature or custom of third-party litigation funding or financing industry in Canada at the time of these loans at issue;¹⁷
- (c) BridgePoint has provided little evidence about the post-contractual conduct of the parties. The record it *has* adduced does not support resolving the ambiguity in BridgePoint’s favour. There appears to have been limited communications between the parties after the K/K Loans were advanced. The evidence suggests no material communications for over four years. Further, the March 9, 2017 internal BridgePoint email included in Pauwels’ affidavit states that Kostic advised Ms. Tsang of BridgePoint that “BridgePoint had walked away several years ago”, which is not adequately explained or addressed in BridgePoint’s evidence. There is also no extrinsic evidence about BridgePoint’s filings at the personal property registry at the time of or after the K/K Loans; and
- (d) it is unclear who drafted the K/K Loan Agreements, whether they were the subject of negotiation, or whether they were contracts of adhesion which might bring the doctrine of *contra proferentum* into play.

[97] Even if I were to interpret the K/K Loan Agreements on the limited record before me, I would not interpret them in BridgePoint’s favour, to suggest that BridgePoint had the unilateral discretion to declare Kostic incapable of managing the 0801 Action at any time. The K/K Loan Agreements had other provisions that clearly provided a unilateral discretion in favour of BridgePoint.¹⁸ Had the same been intended as a trigger to demand repayment, the parties could have used similar language. In this event, BridgePoint would not get over the “no merits” threshold on this record.

[98] In any event, even if BridgePoint’s interpretation is correct, BridgePoint has not, on the record before me, established that BridgePoint in fact deemed Kostic incapable of managing the 0801 Action, thereby triggering a right to make the Demand. Its only affiant, Pauwels, was clearly not involved in the decision to make the Demand. His statement that “BridgePoint determined that Kostic was incapable of managing,”¹⁹ the 0801 Action was not said to be based on any BridgePoint business records (beyond, perhaps, the limited records appended to his affidavit). Thus, *Moore v Wetaskiwin Friends and Horizons Training*, 2022 ABKB 617 does not assist BridgePoint in the manner asserted.

[99] Pauwels’ evidence on this point is either hearsay (for which he has not identified the source and therefore it cannot be relied upon to support summary judgment: rule 13.18; *McDonald v Sproule Management GP Limited*, 2023 ABKB 587 at paras 93-94, aff’d *Sproule Management*

¹⁷ Since these loans were granted, the British Columbia Law Institute published a study paper on financing litigation which included consultation with BridgePoint and information about the industry at that time: British Columbia Law Institute, Study Paper on Financing Litigation, British Columbia Law Institute, 2017 CanLIIDocs 219, <<https://canlii.ca/t/7fp>>, retrieved on 2026-03-23 at pp 108-110.

¹⁸ For example, the K/K Loan Agreement provides: “The Lender shall have full discretion acting reasonably to determine whether a Material Adverse Change has occurred and shall provide the Borrower with reasonable notice of any decision to not advance further funds pursuant to this Agreement”.

¹⁹ Pauwels Affidavit #1 at para 16.

GP Limited v McDonald (November 6, 2024), Calgary (Alta CA) (Antonio, Woolley and Feehan JAs); *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd*, 2023 ABKB 659 at paras 30-31) or is a bare assertion, factual conclusion, speculation, conjecture, interpretation, opinion, or belief (also something BridgePoint is not permitted to use to obtain summary judgment: *Utah v Zelisko*, 2025 ABKB 582 at para 63, citing *McDonald* at para 96; *H2 Canmore* at paras 14, 23-25).

[100] There is evidence that, in April 2019, BridgePoint’s external counsel noted a repayment obligation when “the borrower is unable to manage the litigation”, and that Klym’s failure to provide an update on the status of the 0801 Action “raises issues as to the overall management of the action”. In this letter, BridgePoint did not suggest or imply that Kostic was incapable of managing the 0801 Action. Ultimately, the Demand was not sent by BridgePoint’s external counsel, but over a year later by someone else from whom no evidence has been adduced (Lindsey Hutton, BridgePoint’s Vice President, Legal Services). It is unknown if Ms. Hutton remains under BridgePoint’s control.

[101] Further, the Demand does not state the basis for the Demand, other than by broadly pointing to the K/K Loan Agreements and stating that BridgePoint “has the right to demand repayment of all amounts owing” from Klym. It also states that “[w]e can only conclude that you intentionally ignored the inquiries from our former counsel”.

[102] Another eight months went by after the Demand. Then, BridgePoint filed its statement of claim on May 19, 2021 and, as noted above, relied on the alleged fact that Settlement Funds for the 0801 Action had been received.²⁰ This pleading was only changed by way of BridgePoint’s amended statement of claim filed June 22, 2021, under rule 3.62(1)(a), after the Klym Defendants filed their statement of defence on June 18, 2021 (which confirmed that there had been no resolution of the 0801 Action). The reason for the initial pleading, and its subsequent amendment, was not adequately addressed in BridgePoint’s evidence but was simply stated in argument to be an error. An error is not the only reasonable inference available on the record before me.

[103] For the same reasons, BridgePoint has not shown no meritorious defence and no genuine issue requiring a trial with respect to whether, if BridgePoint had the discretion to deem Kostic incapable of managing the 0801 Action, that it did so in good faith in accordance with *Wastech*. As summarized in *Wastech* at para 88:

In sum, then, the duty to exercise discretion in good faith will be breached where the exercise of discretion is unreasonable, in the sense that it is unconnected to the purposes for which the discretion was granted. This will notably be the case where the exercise of discretion is capricious or arbitrary in light of those purposes because that exercise has fallen outside the range of behaviour contemplated by the parties. The fact that the exercise substantially nullifies or eviscerates the fundamental contractual benefit may be relevant but is not a necessary pre-requisite to establishing a breach.

²⁰ Statement of claim at para 15.

[104] BridgePoint has not adduced sufficient evidence to meet its threshold burden to show that BridgePoint exercised any discretion in good faith and for the purpose for which the discretion was granted.

[105] Summary judgment fails on this ground.

e. BridgePoint’s Position re: Reasonable Time for Repayment

[106] BridgePoint also argues that, in the event that it was not entitled to make the Demand based on Kostic being deemed to be incapable of managing the 0801 Action, it was nonetheless entitled to make the Demand because it was entitled to be repaid the K/K Loans within a reasonable time.

[107] It has been stated that parties to a business relationship would usually not intend to be bound in perpetuity: *Serinus Energy PLC v SysGen Solutions Group Ltd*, 2023 ABKB 625 at para 128, citing *Rapatax (1987) Inc v Cantax Corporation Ltd.*, 1997 ABCA 86 at paras 18-19 and *Conseil Scolaire Catholique Franco-Nord v Nipissing*, 2021 ONCA 544 at para 30. Whether the parties intended a contract to be of perpetual duration is a matter of interpretation of the agreement and its surrounding circumstances: *Serinus* at para 128; *Conseil Scolaire* at para 33, citing *Shaw Cablesystems (Manitoba) Ltd v Canadian Legion Memorial Housing Foundation (Manitoba)*, 1997 CanLII 11521 (MB CA) and *Edmonton Kenworth Ltd v Kos*, 2018 ABQB 439 at para 43.

[108] Where a contract contains no termination provision, and the court concludes that the parties did not intend it to be perpetual (or intended it to be terminable), then the contract may be considered indefinite and courts may find a term that termination may be done upon reasonable notice (either by construction of the agreement or by implying a term): *Edmonton Kenworth* at para 43 (and cases cited therein); *Mann v Paras Fashions Ltd*, 2026 BCSC 391 at para 43. These principles were recently summarized by the English Court of Appeal in *Zaha Hadid Limited v Zaha Hadid Foundation*, [2026] EWCA Civ 192 at paras 27-43.

[109] Analogous principles are sometimes applied in the context of the repayment of loans.

[110] It has been said that it is highly doubtful that anyone making a loan (as distinct from a gift or share purchase) intends that the repayment of the loan be potentially deferred forever at the unilateral discretion of the borrower: *Koch v Cactus Cafe Jasper Ave Ltd*, 1995 CanLII 2165 (BC SC) at para 16. Therefore, if funds are advanced without any express agreement as the terms of repayment, the law may by a matter of construction or implication find an obligation to repay within a reasonable time: *Surette v Surette and Sullivan*, 1980 CanLII 4407 (NS SC) at para 22; *Animal House Investments Inc v Lisgar Development Ltd*, 2009 CanLII 23886 (ON SC) at para 40, aff’d 2010 ONCA 322; *Cass v Seidel*, 1998 CanLII 4355 (ON CA); *Koch* at paras 15-16; *Burgess et al v 041497 (NB) Ltd*, 1993 CanLII 9155 (NB QB).

[111] Similarly, if a loan advance includes express terms of repayment based on a contingent future event, then a repayment term may be included in the agreement as a matter of construction or implication.

[112] For example, in *Brunie v Royal Bank of Canada*, 1922 CanLII 715 (AB KB), the terms of a loan were held to include that the funds would be repaid when the French franc/Canadian

dollar exchange rate “has dropped to a more normal rate”. The Court granted judgment against the borrower for the amount of the loan, stating as follows (emphasis added):

In regard to the payment , of money on a contingency which may never happen see *Nunez v. Dantel*, 19 Wallace 560.

This was a case in the Supreme Court of the United States. The defendant acknowledged that he owed the plaintiff a certain sum of money and promised to pay it as soon as the crop should be sold or the money could be raised from any other source. It was held that the money was due within a reasonable time. The Court said:

“No time having been specified within which the crops should be sold or the money raised otherwise, the law annexes as an incident that one or the other should be done within reasonable time, and that the sum admitted to be due should be paid accordingly. Payment was not conditional to the extent of depending wholly and finally upon the alternative mentioned.”

In considering the possibility of the conditions upon which payment should be made never happening, the Court said:

“It could not have been the intention of the parties that if the crops were destroyed, or from any other cause could never be sold and the defendant could not procure the money from any other source, the debt should never be paid. Such a result would be a mockery of justice.”

Payment in this case is not conditional to the extent of depending wholly and finally upon the alternative of the rate of exchange becoming more normal. It was not the intention of the parties that if the rate of exchange did not become more normal they were not to repay the loan. I think that their real intention was to borrow the money for a reasonable time in the hope that they would be benefited by a more favourable rate of exchange before they were called upon to pay off the loan. **The law will, I think, annex an incident to an agreement for the repayment of a loan contingent upon the happening of an event which may never occur, that if it does not happen within a reasonable time then the money shall become due and payable after the expiration of such reasonable time, unless it is very clear that the intention of the parties is that the liability is conditional only upon the happening of the particular event.**

[113] The Court went on to find that “a reasonable time elapsed between the advance and the demand for repayment”, but did not provide its reasoning for the conclusion.

[114] This is the only Alberta case I am aware of on this point. However, there are several cases from other provinces to a similar general effect: *Berry v Page*, 1989 CanLII 2780 (BC CA); *Better Off Dead Productions* at paras 27-28; *Roberts v Heavy Metal Marine Ltd*, 2011 BCSC 256 at paras 60-63, 66-67, aff'd 2011 BCCA 435; *Bellamy v Ward* 2011 BCSC 551 at paras 32-37;

Kharoud v Sekhon, 2015 BCSC 333 at para 28; *Iannuzzi v Couper*, 2020 ONCA 426 at para 7; *Cultivate Capital Corp v 1011173 BC Ltd*, 2021 BCSC 1258 at paras 71-73; *Lee v UpMeals Technologies Inc*, 2024 BCSC 888 at para 45.

[115] These cases illustrate that there is not necessarily a consistently applied general principle and that what constitutes a reasonable time has been dependent on the circumstances based upon a consideration of the purpose for the loan, interpretation of the loan agreement (if there is one), the parties' dealings at the time of the loan, and an assessment of the time between the advancement of funds and the attempt to enforce repayment.

[116] The loan agreements at issue in this Action are not agreements where there is no repayment term. As noted above, there are several ways a right of repayment is triggered, including the contingent event of resolution of the 0801 Action and receipt of Settlement Funds. As noted above, BridgePoint has not adduced much extrinsic evidence of the parties' dealings prior to the K/K Loan Agreements to assist in its interpretation. Further, the K/K Loans were advanced in a unique situation unlike any of the cases referenced above, either to fund litigation or to tie repayment to the prosecution of a litigation claim. They were advanced under loan agreements which may have been contracts of adhesion in circumstances where BridgePoint arguably could have taken steps to protect itself or impose clear repayment terms. As noted, there is no evidence of industry standard or custom in this context to assist the interpretive process.

[117] In the circumstances, I find that BridgePoint has not met its threshold burden and, further, it would be unfair on this record to interpret the K/K Loan Agreements and determine how or whether the delay in achieving resolution of the 0801 Action impacted repayment obligations.

[118] I further find that there is a genuine issue about whether "it is very clear that the intention of the parties is that the liability is conditional only upon the happening of the particular event", as contemplated by *Brunie*. Further, if an obligation that the 0801 Action must be resolved within a reasonable time is imposed by construction or implication of terms, I find that there is a genuine issue about what constitutes a reasonable time in these circumstances, including given the complex procedural nature of civil litigation, its inherent delays, the lack of unilateral control of its pace by any party, and the *Rules* which provide guiderails for when litigation will be struck for delay.

[119] The parties' positions in this matter raise important questions. If a loan is made based on a litigation claim, is a reasonable time based on an unnamed reasonable end date decided by the lender or the Court after-the-fact, or is it based on whether the borrower continues to reasonably prosecute the litigation or is prosecuting the litigation in accordance with the *Rules*, or something else? Does it create an unrealistic result or commercial absurdity for the lender to wait until the litigation is completed, no matter how long it takes?

[120] On the record before me, BridgePoint has not met its burden to show no merits. The questions noted above raise issues that have not been adequately addressed on the record before me to permit a fair summary adjudication.

2. If BridgePoint Has Met its Initial Burden, Has Klym's Professional Corporation Established a Genuine Issue Requiring a Trial?

[121] As I have found that BridgePoint did not meet its initial burden, I need not go further. However, I find that the Klym Defendants' evidence and position further support my decision.

[122] The Klym Defendants' amended statement of defence pleads, at paragraph 2, that Klym's professional corporation had an existing financial relationship with BridgePoint. In questioning, Klym testified that the K/K Loan Agreements were an arrangement between Klym and John Rossos (**Rossos**), with whom Klym, at the time, had a "very good and close association or relationship",²¹ and that the loan was "done by [Klym]" because he felt Kostic had been an egregious victim of the legal system and the 0601 Action.²² Klym testified:

So [Rossos] and I had a very good relationship at that point. And that's why when we talked about this particular Kostic situation, it was on the basis of what John and I discussed.

[123] The "basis of what [Klym and Rossos] discussed" can be inferred from Klym's evidence of his understanding of the loan terms, namely that "the matter would proceed to a resolution, either by way of a settlement or a judgment at trial, and if that were insufficient, then the guarantor [sic] would have effect".²³ There is no evidence from Rossos before me. The contents of those discussions may be important to resolve ambiguity or, if necessary, to determine a reasonable time for payment. Summary judgment cannot fairly be granted on this record.

[124] The Klym Defendants' evidence and arguments (as summarized earlier) further confirm that, on the record before me, there are genuine issues relating to the purpose of the K/K Loans, the interpretation of their terms, whether there was an obligation by Kostic or Klym's professional corporation to repay the Loan Amount at the time the Demand was made, whether the Demand was permitted at that time or made in good faith, and whether the Klym Defendants have a present obligation to repay the Loan Amount.

D. Should BridgePoint be Granted Summary Judgment against Klym Personally?

[125] BridgePoint's claim against Klym personally is dependent on its position against Klym's professional corporation. Therefore, for the same reasons noted above, since summary judgment is not appropriate as against Klym's professional corporation, it is also not appropriate as against Klym.

[126] In case I am wrong, I have also considered whether summary judgment against Klym personally is appropriate if it is assumed that summary judgment is appropriate as against Klym's professional corporation.

²¹ Based on the pleadings in the BridgePoint Action, I understand that Rossos may have been the President of BridgePoint at the time.

²² Transcript of Klym questioning at p 19.

²³ Transcript of Klym questioning at p 15.

[127] BridgePoint relies on section 133 of the *Legal Profession Act*, RSA 2000 c L-8 to found personal liability against Kym. It provides (emphasis added):

133(1) Notwithstanding anything to the contrary in the *Business Corporations Act*, every person who is **a voting shareholder of a corporation during the time that it is the holder of a permit** or of a corporation during the time that it acts in contravention of section 106(1) **is liable to the same extent and in the same manner as if the voting shareholders of the corporation were during that time carrying on the business of the corporation as a partnership or, if there is only one voting shareholder, as an individual practising as a barrister and solicitor.**

(2) The liability of any person in carrying on the practice of a barrister and solicitor is not affected by the fact that the practice of a barrister and solicitor is carried on by that person as an employee and on behalf of a professional corporation.

[128] The history, interpretation and application of this provision was considered in some detail by the Court of Appeal in *Horst Tyson Dahlem Professional Corporation v John F Schneider Professional Corporation (Canmore Legal Services)*, 2017 ABCA 97. After summarizing various cases under the *Legal Profession Act*, and in the context of other professional corporations, the Court stated, at paras 23-24:

[23] Professional corporations were originally created to allow professionals to access tax advantages available to other small businesses. At the same time, the traditional rule that professionals are personally liable for the obligations of their practices was maintained, “notwithstanding anything to the contrary in the *Business Corporations Act*”. While personal liability to the professionals’ clients and the protection of the public are central issues addressed in the legislation, the general rule set out in s 133 is that the shareholder would remain personally liable for all the debts of the professional practice. *Bourbonnais* and *Sandilands* delineate the outer boundary of that personal liability. *Bourbonnais* confirms that tax liability of the corporation remains that of the corporation, if only because access to the separate taxation regime was the primary point of professional corporations. *Sandilands* holds, in essence, that capital transactions relating to the purchase of the professional practice are not included.

[24] *Bourbonnais* and *Sandilands* are factually distinguishable because, unlike this case, neither decision involved an ongoing professional practice. As stated in *Corkery*, “practising as a barrister or solicitor” is not confined to professional services provided to clients but includes the business context in which those professional services are provided.

[129] On its face, Klym’s professional corporation executed the K/K Loan Agreements as “counsel and guarantor” when he was Kostic’s counsel for the 0801 Action. On Klym’s own evidence, the loan was not to be repaid until that action, over which he had carriage as counsel, was resolved. BridgePoint has established that the K/K Loan Agreements were directly related to the business context in which Klym’s professional legal services were provided and that, to the

extent his professional corporation is liable, there is no merit to any defence of Klym personally, and no genuine issue requiring a trial, in respect of section 133 of the *Legal Profession Act* applying to make Klym liable under the K/K Loan Agreements.

[130] Klym did not provide any evidence to contradict this aspect of BridgePoint’s claim. He did not even make any written or oral submissions about this issue. He did not put any foot forward, let alone his best foot forward. He did not establish any genuine issue requiring a trial on this issue.

[131] Had I found summary judgment was appropriate against Klym’s professional corporation, I would have found it extended to Klym personally.

E. Is it Possible or Appropriate to Grant Summary Judgment against the Klym Defendants?

[132] Based on my findings above, I do not need to consider this question. However, in my view, it is appropriate to briefly address it because there are more reasons not to grant summary judgment.

[133] Ultimately, the Court must consider whether summary adjudication is inappropriate or potentially unfair because the record is unsuitable, or a summary disposition may not lead to a “just result” (including because it may cause procedural or substantive injustice): *Weir-Jones* at paras 21(c), 47. I have already highlighted several reasons why the current record is unsuitable for summary determination.

[134] There is another problem. The BridgePoint SJ Application only seeks summary judgment against the Klym Defendants. BridgePoint argues that it is “entitled to seek judgment against Mr. Klym’s Prof Corp alone and before proceeding against Ms. Kostic”.²⁴ However, the BridgePoint Action is also against Kostic, in respect of the K/K Loans and in respect of the 2009 Loans (the latter of which do not involve the Klym Defendants).

[135] In these circumstances, BridgePoint effectively seeks partial summary judgment. I summarized some of the considerations that arise when partial summary judgment is sought in *Kudzin v APM Construction Services Inc*, 2023 ABKB 425 at paras 181-183, citing the various factors described in *DIRTT Environmental Solutions Ltd v Falkbuilt Ltd*, 2021 ABQB 252 at para 23. In *Kudzin* at para 181, I stated:

[181] Third, I must consider not only fairness as between DCR/Rowe and the plaintiffs, but in respect of the Actions as a whole: *Hryniak* at para 60. Partial summary determination, either in respect of partial claims for or against a particular plaintiff or defendant, or in respect of only dealing with claims against one party where there are numerous other parties involved, risk inefficient and duplicative proceedings or the potential for inconsistent findings: *Hryniak* at para 60. It must be demonstrated that partial summary judgment would achieve a just result: *JBRO Holdings Inc v Dynasty Power Inc*, 2022 ABCA 140 at para 50; *Stankovic v 1536679 Alberta Ltd*, 2019 ABCA 187 at para 54. Summary judgment is not meant to encourage inefficient litigation by instalment, especially in complex multi-party

²⁴ BridgePoint Brief at para 64.

construction cases: *Pure Environmental Waste Management Ltd v Lonquist Field Service (Canada)*, *ULC*, 2022 ABQB 30 at para 100; *O'Connor v Bains et al*, 2021 MBQB 255 at para 22; *Hamilton (City) v Thier + Curran Architects Inc*, 2015 ONCA 64 at paras 17-22; [*Condominium Corporation No 0321365 v Cuthbert*, 2016 ABCA 46] at paras 1, 6, 29.

[136] Since these cases, the Court of Appeal has provided further guidance. Most recently, in *Calgary Co-operative*, it stated at para 26:

[26] In *JBRO*, paras 47-53, this Court applied those principles to partial summary judgment. Partial summary judgment is appropriate provided the issue can be decided discretely and fairly: *Baim v North Country Catering Ltd*, 2017 ABCA 206, paras 10, 11; *O'Chiese Energy Limited Partnership v Bellatrix Exploration Ltd*, 2019 ABQB 53 at para 57, 83, 83 Alta LR (6th) 300; *Love v Parmar*, 2023 ABKB 30 at para 133. The chambers judge must be aware of a risk of duplicative proceedings or inconsistent findings of fact, but resolution of an important claim against a key party could significantly advance access to justice and be the most proportionate, timely, and cost-effective approach, achieving a just result: *Hryniak*, para 60; *JBRO*, para 50; *Stankovic v 1536679 Alberta Ltd*, 2019 ABCA 187, para 54, 88 Alta LR (6th) 1; *Malik v Attia*, 202 ONCA 787, paras 61, 62, 29 RPR (6th) 215; *Canadian Natural Resources Limited v Harvest Operations Corp*, 2024 ABCA 3, para 17, leave to appeal denied 2024 CanLII 74739 (SCC). The overarching issue is whether the record allows the judge to make the necessary findings of fact and apply the law in a manner that is fair and achieves a just result: *Weir-Jones*, para 25; *Canadian Natural Resources Limited*, para 18.

[137] BridgePoint chose to pursue summary judgment against the Klym Defendants alone. Further, Kostic was ordered by a previous CMJ not be permitted to participate in the BridgePoint SJ Application. Since then, the Kostic Dismissal Application has been set by me to be heard in May 2026, where no party's participation has been restricted.

[138] I find that some of the very same issues engaged in the question of determining liability of the Klym Defendants under the K/K Loan Agreements will also apply to Kostic's liability under the K/K Loan Agreements, and likely the 2009 Loan Agreements.

[139] BridgePoint has fairly acknowledged that there is a risk of inconsistent findings, but that Kostic will not be bound by the result because she did not participate. This latter argument may be technically correct, but it fails to address the practical reality of the effect a determination in relation to the Klym Defendants would have on Kostic's position. Further, it would not be just for one party to a loan agreement to be liable, and another party to the same agreement, not to be liable.

[140] Further, it is clear that Kostic's pleadings and affidavits filed to date in this Action raise additional issues with which the parties to this application have not materially engaged and which, if they are successful, could affect the Klym Defendants' liability to BridgePoint. For example, Kostic asserts that BridgePoint's claim is barred by limitations. It is not appropriate for me to comment on the strength of those matters at this stage given Kostic's lack of participation. Further,

Kostic's evidence filed, to date, raises additional questions about who drafted at least some of the loan agreements at issue in the Action, among other things. It seems highly likely that Kostic will have additional surrounding circumstances evidence.

[141] This is not a situation where determining this BridgePoint SJ Application now, without Kostic, would determine "an important claim against a key party" that could significantly advance access to justice and be the most proportionate, timely, and cost-effective approach. Based on the record, and my experience in the Case Managed Actions, it would likely do the opposite.

VI. Conclusion

[142] BridgePoint's application for rectification of the K/K Loan Agreements is granted, subject to the terms noted above. BridgePoint's application for summary judgment against the Klym Defendants is dismissed. If the parties to the BridgePoint SJ Application cannot agree on costs within one month of these reasons, they may contact my office and I will set a process for determining the costs of the application.

Heard on October 22nd, 2025.

Dated at the City of Calgary, Alberta this 26th day of March, 2026.

M.A. Marion
J.C.K.B.A.

Appearances:

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