

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Jenor Steel Incorporated v. 466372 B.C.
Ltd.*,
2026 BCSC 30

Date: 20260109
Docket: S209046
Registry: Vancouver

Between:

Jenor Steel Incorporated

Petitioner

And

466372 B.C. Ltd. and Sonic Holdings Ltd.

Respondents

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Petitioner:

E.J.S. Aitken
G. Rincon

Counsel for the Respondents:

E.B. Clavier

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 2–4, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 9, 2026

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Introduction

[1] This application is one step in the longstanding litigation between these parties. The issue at this hearing is the possible expiration of a limitation period on a mortgage loan.

[2] As described in several prior decisions, the petitioner and the respondents are former business partners. They ran a business together based at a property they co-purchased in Chilliwack. To purchase that property, they borrowed funds and allowed a mortgage to be registered against it.

[3] The parties' relationship turned toxic in 2014 when their joint business filed for bankruptcy. As of 2014, the petitioner Jenor Steel Incorporated ("Jenor") wanted to sell the property. The respondents wanted to keep it. The bank declared the mortgage in default and accelerated the loan. The respondent 466372 B.C. Ltd. ("466") incorporated a new company, Sonic Holdings Ltd. ("Sonic"). Sonic then paid out and took an assignment of the mortgage loan, which remained in default.

[4] In the years that followed, the parties did not communicate except through litigation. 466 acted as landlord on the Chilliwack property, leasing it out to a number of tenants. The principals of 466 and Jenor pursued litigation against each other, but that litigation did not involve the mortgage.

[5] Years passed.

[6] On this application, Jenor argues that the limitation period for Sonic (as mortgagee) to sue the petitioner (as mortgagor) has expired. Sonic asserts that Jenor is still liable on the mortgage.

[7] The respondents concede that no action has been commenced on the mortgage. They say the limitation period has been extended by:

- a) payment of rent that has been attributed to Jenor and applied to the mortgage; and

b) acknowledgements of the debt in Jenor's financial statements.

[8] For the reasons set out below, I grant the relief sought by Jenor. I grant the declaration that the claims of Sonic relating to the BDC Mortgage (described below) are barred pursuant to the provisions of the *Limitation Act*, S.B.C. 2012, c. 13.

Issues

[9] Below, I address the following issues:

a) Can Sonic establish the evidence that is necessary to extend the limitation period? Specifically:

1. What does the affidavit evidence establish on a balance of probabilities?
2. What do the financial statements establish?

b) Based on the answer to question 1, has the limitation period been extended by:

- a) payment of rent?
- b) acknowledgment of the debt in Jenor's financial statements?

[10] I note at the outset that there is significant relevant history to this petition. Much of the chronology described below is based upon Jenor's written submission supplemented by prior findings of this Court. The respondents take no issue with the chronology of events. As described below, the parties diverge on the importance of some of the evidence.

[11] To foreshadow, the principal of the respondents, Mr. Ray Roussy, has, at times, taken positions in the litigation and then reversed his position. On certain points, Jenor relies on Mr. Roussy's first position and submits that any later reversal of that position is not supported by clear and cogent evidence. In reply, the respondents say that any confusion caused by Mr. Roussy's prior affidavits has

been cleared up by the financial statements. For that reason, the respondents focus on the financial documents and not the earlier affidavits and pleadings.

Factual Background

[12] This litigation flows from two men going into business together: Mr. Roussy and Mr. Savage. Their common history started in the 1970s. As noted by the Court of Appeal in *Sonic Holdings Ltd. v. Savage*, 2021 BCCA 441:

[8] Mr. Roussy and Mr. Savage met in the 1970s while working in the sonic technology development group at the company Hawker Siddeley. Mr. Savage left in 1980 to start TCS. Mr. Roussy left to work at an energy company for which Mr. Savage, through TCS, performed machine design services. Their relationship continued through the 1980s and 1990s, with Mr. Roussy hiring Mr. Savage to convert his drawings of sonic drill equipment into a digitized format.

[13] In 2003, Mr. Roussy and Mr. Savage went into business together to build drilling rigs with sonic drill heads. The drill heads were a new technology capable of fast and clean drilling through rock.

[14] Mr. Roussy and Mr. Savage each incorporated a holding company:

- a) 466 (by Mr. Roussy), and
- b) Jenor (by Mr. Savage).

[15] In turn, 466 and Jenor incorporated Sonic Drill Systems Inc. (“SDSI”) to design and build the drilling rigs. 466 and Jenor each held 50% of the shares in SDSI.

[16] In 2007, 466 and Jenor purchased a property at 43833 Progress Way in Chilliwack (the “Chilliwack Property”). The purchase price was \$2,500,000. It was to be used as the manufacturing site for SDSI.

[17] To purchase the Chilliwack Property, 466 and Jenor obtained mortgage financing from the Business Development Bank of Canada (“BDC”). The balance of

the purchase price was paid equally by 466 and Jenor. SDSI granted a 25% guarantee on the mortgage debt.

[18] The mortgage registered by BDC secured two separate loans: a \$2,125,000 loan to fund the purchase of the Chilliwack Property, and a \$100,000 loan to purchase an overhead crane. Both loans had monthly payment obligations and a fixed balance due date (July 23, 2032, for the acquisition loan; and July 23, 2017, for the crane loan). I do not distinguish between the two loans in these reasons, and I refer to them collectively as the “BDC Mortgage”.

[19] The BDC Mortgage incorporated BDC’s “standard mortgage terms” that BDC filed with the Land Title Registry.

[20] SDSI also borrowed approximately \$500,000 from the Royal Bank of Canada (“RBC”). Jenor, 466, Mr. Roussy, and Mr. Savage each guaranteed RBC’s loan to SDSI.

[21] By November 2013, SDSI’s business was struggling. A receiver was appointed. Ultimately, SDSI was assigned into bankruptcy in March 2014 leaving a debt of approximately \$4,000,000. MNP Ltd. was appointed as SDSI’s trustee in bankruptcy.

[22] In addition, RBC commenced a debt action and obtained judgment against each of SDSI, Mr. Roussy, and Mr. Savage. Mr. Roussy and Sonic later paid out that RBC judgment and took an assignment of RBC’s security against SDSI. The RBC loan is not in issue on this hearing.

[23] Mr. Roussy and Mr. Savage agreed to list the Chilliwack Property for sale to raise the funds required to pay off the BDC Mortgage. The Chilliwack Property was listed for sale at \$2.55 million. Offers were received in 2013 and the first half of 2014. In a prior decision in this proceeding, Justice Kirchner found, “at this stage, Mr. Savage wanted to sell the property to pay the company’s debts, but Mr. Roussy wanted to hang on to it.”: 2022 BCSC 1135 at para. 15.

[24] In the face of the failed attempt to sell the Chilliwack Property in 2014, Mr. Savage advised Mr. Roussy that he would not be contributing further to the BDC Mortgage or the expenses on the Chilliwack Property.

[25] On April 2, 2015, BDC sent a letter to Jenor and 466 declaring a default under the terms of the BDC Mortgage, invoking the acceleration clause and demanding repayment of the loans in full.

[26] It is not disputed that:

- a) the borrowers defaulted on the BDC Mortgage;
- b) the first event of default was in April 2015;
- c) BDC accelerated the loan; and
- d) the standard mortgage terms (Clause 11.1) provide that: “[u]pon the occurrence of an Event of Default we may declare any or all of the Secured Obligations immediately due and payable, and our security will immediately become enforceable” (the “Acceleration Clause”).

[27] As discussed below, Jenor submits that the significance of the Acceleration Clause is that the limitation period for BDC (and later Sonic) to commence a claim to enforce the BDC Mortgage and sue the borrowers on the underlying debt obligation was two years after April 2015. The respondents agree that the limitation period began running but submit that it was extended.

[28] Mr. Roussy has always blamed Mr. Savage for SDSI’s failure. Since 2015, Mr. Roussy and his companies have been involved in litigation against Mr. Savage and his companies. There is significant animosity between the main protagonists, and it plays out in the litigation. To describe the litigation as “hard fought” would be an understatement. There have been more than 11 written decisions of this Court plus one decision of the Court of Appeal and one application for leave to the Supreme Court of Canada (which was denied).

[29] In March 2015, Mr. Roussy and Sonic sued Mr. Savage and Jenor, along with Mr. Savage's wife, his two children, and his daughter-in-law. The lawsuit alleged that Mr. Savage and his family committed fraud and that Mr. Savage misappropriated funds and business opportunities. In correspondence dated March 11, 2015, Mr. Roussy's counsel made it clear that Mr. Roussy would take all steps necessary to hang onto the Chilliwack Property, including taking an assignment of the BDC Mortgage.

[30] Mr. Roussy then incorporated the respondent Sonic. On June 12, 2015, Mr. Roussy caused Sonic to pay out and take an assignment of the BDC Mortgage (loan and security) for \$1,892,814.10. Jenor was given notice of the assignment by BDC on June 15, 2015. Thus, Sonic had taken assignments of both RBC's and BDC's security. Sonic was the main secured creditor of SDSI.

[31] In November 2015, Sonic leased the Chilliwack Property to DC Machine Parts Inc. The respondents say that, thereafter, Sonic would collect the rent, but only as agent for the owners. This is the foundation of Sonic's first extension argument.

[32] In October 2015, Sonic (in its capacity as a secured creditor of SDSI) applied for leave in SDSI's bankruptcy, to sue (on behalf of SDSI) Mr. Savage. On November 5, 2015, Sonic (on behalf of SDSI), having obtained leave, commenced a derivative action against Mr. Savage for breach of fiduciary duty, breach of trust, misappropriation of funds, and misappropriation of corporate opportunities. This was in addition to Mr. Roussy and Sonic suing in a separate action against Mr. Savage and his family.

[33] In the derivative action, the plaintiffs alleged that Mr. Savage had committed fraud and that Mr. Savage was responsible for SDSI's failure. Among other things, Mr. Roussy alleged that Mr. Savage misappropriated funds and business opportunities of SDSI in breach of his fiduciary duties to SDSI and Mr. Roussy personally. Mr. Roussy and his companies sought damages and compensation of more than \$3 million.

[34] Mr. Roussy's two actions proceeded to an 18-day trial before Justice Watchuk in 2019: *Roussy v. Savage*, 2019 BCSC 1669. Justice Watchuk dismissed both actions and awarded the defendants costs, assessed as uplift costs. Justice Watchuk found the following on Mr. Roussy's credibility:

[380] With regard to Mr. Roussy's credibility I also conclude that, although he intended to be truthful, his passion for SDSI and the emotional impact of his intense disappointment and frustration with the failure of the business at times clouded his memory and interfered with his intention to tell the truth. This trial was for Mr. Roussy a difficult process and an important process in the devastating history of the company incorporated to market his prized invention. In his often combative responses in his necessarily lengthy cross-examination I cannot find that he was a credible witness on many key issues. However, in some respects, after his memory was refreshed Mr. Roussy was reliable in his lengthy answers, if at times reluctant to make clear statements.

[35] Sonic appealed the dismissal of its derivative action. On November 23, 2021, the Court of Appeal dismissed Sonic's appeal: 2021 BCCA 441. Its application for leave to the Supreme Court of Canada was also denied: *Sonic Holdings Ltd. v. Thomas Charles Savage*, 40031 (16 June 2022); 2022 CanLII 51805 (S.C.C.).

[36] The BDC Mortgage was not at issue in those two actions.

[37] On September 4, 2020, following the dismissal of Mr. Roussy's derivative action, Jenor commenced this proceeding under s. 6 of the *Partition of Property Act*, R.S.B.C. 1996, c. 347, Jenor sought partition and sale of the Chilliwack Property and an accounting inquiry. Sonic was named as a respondent because it had two charges registered on title: the BDC Mortgage and the RBC judgment which was registered against Jenor's share of the Chilliwack Property. The RBC judgment had been assigned to Sonic.

[38] Jenor's application for partition and sale came before Justice Kirchner in May, 2022: *Jenor Steel Incorporated v. 466372 B.C. Ltd.*, 2022 BCSC 1135. Justice Kirchner granted the order for the sale of the Chilliwack Property. He also ordered an accounting by the Registrar of the revenues and expenses associated with the use of the Chilliwack Property. He further ordered that 466 and Sonic "not interfere

with the listing and sale of the Chilliwack Property” and that 466 and Sonic “cooperate fully” with the listing agent and others involved in the sales process.

[39] On July 14, 2021, prior to the hearing before Kirchner J., Jenor amended the petition to seek a declaration that all claims relating to a mortgage on the Chilliwack Property are statute-barred as against Jenor. That issue was not resolved by Kirchner J.

[40] As noted above, after 2014, Jenor did not participate in the management of the Chilliwack Property. Jenor did not receive any (visible) benefit, nor did it contribute to the expenses.

[41] Following the order of Kirchner J., with some delays, the Chilliwack Property was sold on May 2, 2023, for a price of approximately \$7.5 million. Ultimately, \$2.5 million was paid into trust to secure two charges registered to the respondent Sonic: the RBC judgment (assigned to Sonic in November 2014), and the (now disputed) BDC Mortgage (assigned to Sonic in June 2015). On the closing of the sale, the BDC Mortgage and the RBC judgment registered to Sonic were discharged from title.

Evidence Relating to the BDC Mortgage

[42] For this hearing, the main events and the disputed evidence arise after the July 14, 2021 amendment to the petition which raised the limitation period issue. To put that evidence in context, I have set out here the positions of the parties.

Position of the Petitioner

[43] Jenor’s position is that the BDC Mortgage is not enforceable against Jenor. Jenor submits that Sonic, as mortgagee, is statute-barred from enforcing the BDC Mortgage and the debt obligation it secured.

[44] Jenor’s position is that the limitation period was not extended by the payment of rents:

- a) Jenor was a mortgagor on the BDC Mortgage beginning in 2007.

- b) Until May 2023 (when it was sold), Jenor was a 50% owner in the Chilliwack Property.
- c) The BDC Mortgage had been in default since April 2015.
- d) The limitation period to commence an action on the BDC Mortgage expired in April 2017, unless it was extended.
- e) Sonic, as mortgagee, has not brought any action against Jenor on the mortgage or the debt.
- f) Although 466 may have made payments on the BDC Mortgage, Jenor did not.
- g) Hence, no event extended the limitation period as against Jenor.

[45] In the alternative, Jenor submits that if the Court should find (on the respondents' evidence) that rent was collected and paid on behalf of Jenor, then it is certain that no rent has been paid since the sale of the Chilliwack Property, which occurred more than two years ago. Hence, the limitation period has run since the sale.

[46] Jumping ahead, in answer to the submissions of 466 and Sonic, Jenor says:

- a) Mr. Roussy has, in the past, sworn affidavits that support the position that Jenor takes on this application. Mr. Roussy then purported to reverse his evidence.
- b) The evidence that the respondents rely upon to establish that rental payments were attributed to Jenor does not amount to clear and convincing evidence (in the face of Mr. Roussy's prior affidavits).
- c) The financial statements of 466 and Sonic, at best, establish that "notional" payments were attributed to Jenor.

- d) Finally, Jenor's own financial statements are not evidence of an acknowledgment of the debt.

[47] As discussed below, Jenor points to inconsistencies and credibility problems in Mr. Roussy's evidence about accounting matters.

Position of the Respondents

[48] In reply, the respondents take the following positions:

- a) Jenor has been paying towards the BDC Mortgage by way of rent collected on the Chilliwack Property.
- b) The rental payments (that were attributed to Jenor), were paid over to Sonic to pay the interest and principle on the BDC Mortgage.
- c) 466 points to its own financial statements and tax returns as evidence of Jenor's payments.
- d) 466 further says that Jenor has acknowledged the debt on the BDC Mortgage in Jenor's own financial statements.

[49] In its submissions, 466 acknowledges that:

- a) prior affidavits and pleadings contained inconsistent information and positions regarding whether Jenor had contributed to the BDC Mortgage; and
- b) the Chilliwack Property was sold in April 2023 (more than two years ago). Hence, 466 and Sonic must rely on a combination of the two positions set out above for the mortgage claim to survive to the present.

[50] In support of these positions, 466 says:

- a) 466 has been managing the Chilliwack Property since 2015 (with no involvement by Jenor).

- b) In the course of managing the Chilliwack property,
 - (i) 466 (acting through its agent, Sonic) leased the premises and collected rents.
 - (ii) 466 paid the expenses of the property including property taxes, utilities, and maintenance.
- c) In accounting for the income and expenses of the Chilliwack Property, 466 attributed half of the rent to Jenor.
- d) Hence, Jenor has continued to pay the BDC Mortgage by way of rental payments on the Chilliwack Property.

[51] I also discuss below Sonic's position that the financial statements of Jenor constitute an acknowledgement of the validity of the BDC Mortgage.

The Pleadings and the Affidavit Evidence

[52] The main evidentiary question for me to decide is whether the financial documents produced by the respondents are more convincing than the combination of Mr. Roussy's prior affidavits and the respondents' prior pleadings. As noted above, there are significant inconsistencies.

[53] I have divided the evidence adduced at the hearing into the following five sections:

- a) Initial Pleading and Evidence of the Respondents;
- b) Whether Payments Toward the BDC Mortgage were "Notional" and "Unfunded";
- c) Redacted Financial Statements of 466 and Sonic;
- d) Unredacted Financial Statements of 466 and Sonic; and

e) Last Alleged Payment on the BDC Mortgage on of \$12,124.35 on February 3, 2023.

[54] I then discuss Jenor's financial statements.

Initial Pleading and Evidence of the Respondents

[55] A significant portion of Jenor's argument relates to the credibility problems raised by the respondents' pleadings and Mr. Roussy's affidavit material. Mr. Roussy acknowledges that he has made factual errors in his affidavits. Ultimately, Mr. Roussy relies on the financial statements of 466 and Sonic as the factual basis to establish the necessary evidentiary onus.

[56] Jenor says that the respondents should be bound by their first position that Jenor has not contributed to the BDC Mortgage.

[57] To establish that the respondents committed to that first position, Jenor points to the original response to petition.

[58] Jenor filed this petition on September 4, 2020. The respondents filed their response to petition on October 6, 2020. It contained, at para. 13, the following allegation of non-payment by Jenor on the BDC Mortgage:

No payments have been made by Jenor or 466 on the loan assigned to Sonic Holdings. The principal and interest that is owing to Sonic Holdings on the loan is estimated to be in the approximate amount of \$2,200,000.

[59] The respondents' position as stated in the response to petition was "supported" by Mr. Roussy's Affidavit #1 filed October 15, 2020, which made the same statement:

14. Neither the Petitioner nor 466 have made any payments on the BDC mortgage assigned to [Sonic] in June 2015. It is acknowledged the petitioner is entitled to 50 percent of the net revenues generated by tenants of the Chilliwack property, however it is also responsible for 50% of the principal and interest payments owed to [Sonic]. The accounting will determine who owes what to whom, but it is very complex. There were many months after SDSI closed when the building was vacant. Jenor was not paying anything and 466 was paying everything. I wasn't able to lease it out until summer 2015 when I bought the BDC security. I don't believe the rental income has

ever been sufficient to cover the mortgage principal and interest, let alone all the other expenses associated with maintaining the property. The property taxes alone are \$30,000 per year. Currently the office portion isn't leased largely because the air-conditioning/heating system is defective and the only tenant who has been there left December 2019 and owes over \$50,000 in unpaid utilities and other expenses. Since then the shop portion isn't generating enough income to cover all the expenses. I strongly believe the accounting will show Jenor owes 466/SHL money, and perhaps a large amount. The amount on the mortgage alone I believe will be about \$2,200,000.

[Emphasis added.]

[60] Jenor focuses on the first and last sentence in that paragraph plus para. 13 of the response to petition. Jenor submits that the two sentences contain at least two admissions as of October 6, 2020:

- a) Jenor had made no payments on the BDC Mortgage; and
- b) The principal of the BDC Mortgage had increased from the date of default. (*i.e.*, if the mortgage principal had increased, that fact should indicate that no payments had been made.)

[61] As discussed below, I find that para. 14 from Mr. Roussy's Affidavit #1 is more nuanced than Jenor suggests.

[62] On July 14, 2021, Jenor filed its amended petition. The amendment includes the claim seeking a declaration that any claims by Sonic against Jenor related to the BDC Mortgage are barred by the *Limitation Act*.

[63] On July 22, 2021, the respondents filed their amended response to petition. The only amendment was an additional sentence in para. 13 (above) stating that the BDC Mortgage "is a good and valid charge against the Chilliwack Property".

[64] On January 18, 2022, after retaining new counsel, the respondents delivered two new affidavits: one from Mr. Roussy (Affidavit #2) and one from Sonic's external accountant, Mr. Rick Montgomery. These affidavits purported to clarify the statement in para. 14 of Mr. Roussy's Affidavit #1 (above). Mr. Roussy's Affidavit #2 says that what he intended to convey in his Affidavit #1 was that 466 and Jenor had not

directly made payments on the BDC Mortgage “in addition to rent”. Mr. Roussy says that the true state of affairs was that Sonic had been collecting rents from tenants and applying those rental payments to the BDC Mortgage to the credit of both 466 and Jenor. On that basis, the respondents assert that the rental payments qualified as acknowledgements sufficient to extend the limitation period.

[65] Mr. Roussy’s Affidavit #2 states:

It was incorrect of me to say that Jenor and 466 have not made any payments on account of the BDC Mortgage. What I had intended to convey through this statement was that, from the time of the BDC Mortgage Assignment, neither Jenor nor 466 had made any payments on account of the BDC Indebtedness in addition to rent. The first sentence of paragraph 14 of Mr. Roussy #1 amounts to my communicating this idea poorly. ...

[Emphasis in original.]

[66] Mr. Roussy continues at para. 32:

Although leases in respect of the Chilliwack Property are and have been entered into by Sonic as lessor, total rental revenue received by Sonic in respect of the Chilliwack Property (“**Gross Rent**”) is an amount owing by Sonic to 466 and Jenor as the registered owners...

[67] Mr. Roussy in Affidavit #2 acknowledges that he was mistaken in his Affidavit #1 when he swore that Jenor had not made payments on account of the BDC Mortgage. Mr. Roussy’s Affidavit #2 explains that the collection of rents and allocation of expenses was recorded through complex accounting and interrelated accounts. I address the financial records below.

[68] Jenor says that Mr. Roussy’s two affidavits cannot be reconciled. Jenor submits that Jenor either did, or did not, pay toward the BDC Mortgage. Mr. Roussy has sworn to both positions.

[69] Jenor also notes that in his Affidavit #2, Mr. Roussy stated at para. 19 that the BDC Mortgage, as of May 29, 2015, sat at \$1,892,814.10. Hence, if the amount outstanding at the date of Mr. Roussy’s Affidavit #1 was \$2,200,000 (as Mr. Roussy’s Affidavit #1 stated), then no payments had been made against principal or interest on the BDC Mortgage.

[70] In answer to Jenor’s submissions, the respondents submit that Mr. Roussy’s Affidavit #1 was more nuanced than the petitioner suggests. After the first sentence of para. 14, Mr. Roussy specifically discusses the rental income allocated to Jenor:

... It is acknowledged the petitioner is entitled to 50% of the net revenues generated by tenants of the Chilliwack property, however it is also responsible for 50% of the principal and interest payments owed to [Sonic]. The accounting will determine who owes what to whom, but it is very complex...

[71] In his Affidavit #2, Mr. Roussy acknowledges that the company’s accountant, Mr. Montgomery, has better information. In fact, Mr. Roussy says that he relies completely on Mr. Montgomery.

[72] Mr. Montgomery’s Affidavit #1 sets out the manner in which the income and expenses of the Chilliwack Property have been recorded. He concludes:

20. Again, and to sum up: since the BDC Indebtedness was assigned to Sonic pursuant to the BDC Mortgage Assignment, the Financial Statements show that: (a) amounts owing by 466 and Jenor in respect of the BDC Indebtedness have been reported and accounted for on 466’s balance sheets and income statement; and (b) 466 and Jenor have, through the amounts comprising the Gross Rent, made payments to Sonic on account of the BDC Indebtedness.

[73] Having reviewed the affidavit evidence, I am satisfied that there was some significant nuance in Mr. Roussy’s Affidavit #1. In para. 14, he alludes to rental payments and the complex accounting that was performed. He pushes the accounting over to Mr. Montgomery when he says, “I strongly believe the accounting will show Jenor owes 466/SHL money, and perhaps a large amount.”

[74] On that basis, I accept that the respondents did not commit to the position that Jenor had not paid any money towards the BDC Mortgage. It follows that the financial documents disclosed by Sonic and 466 will determine whether the payments were made. In other words, Mr. Roussy’s pleadings and affidavits do not bind the respondents to the position that Jenor paid no amount towards the BDC Mortgage.

Payments Toward the BDC Mortgage were “Notional” and “Unfunded”

[75] In addition to the shifting narrative of the respondents, Jenor says that the respondents’ evidence, at best, establishes that no payments were actually made on the BDC Mortgage. Instead, any movement of funds that appears in the financial records was “notional” and “unfunded”.

[76] As noted, the accountant, Mr. Montgomery, swore his Affidavit #1 in support of the respondents’ position. The petitioner points to Mr. Montgomery’s words at para. 19:

In order to balance 466’s balance sheet, since the Annual BDC Mortgage Payable is accounted for as a liability under the Intercompany Account ... the “long term debt” liability (i.e. the Notional Principal Owing) is decreased each fiscal year by an amount equal to the Principal Amount. This decrease reflects a “notional” payment that is required for accounting purposes lest the Annual BDC Mortgage Payable be counted twice as a liability on the balance sheet.

[Emphasis added.]

[77] The petitioner notes the use of the term “notional”.

[78] Mr. Montgomery was also cross-examined on his affidavit. He testified that between the fall of 2020 and the summer of 2021, he undertook an investigation into expenses associated with the Chilliwack Property, including the estimated amount owing on the BDC Mortgage.

[79] As part of that investigation, on February 16, 2021, the respondents’ prior counsel produced a spreadsheet prepared by Mr. Montgomery showing income and expenses related to the Chilliwack Property. On February 17, 2021, counsel provided a further one-page spreadsheet purporting to show debt servicing figures for the BDC Mortgage.

[80] After reviewing the spreadsheet, Jenor’s counsel asked whether the spreadsheets were purporting to show actual payments that had been made, or amounts that were calculated as owing. Mr. Montgomery answered that question by email:

Sorry Blair,

I thought it was self evident from the schedule that the balance owing from Jenor Steel was comprised of the net rental income/loss each year PLUS the required (but unfunded) payments to service the debt assumed by Sonic from BDC. In other words we notionally applied payments from 466372 and Jenor Steel at 50% each of the scheduled debt payment to reduce the Sonic Holding assumed debt with a corresponding increase to the balance owing by Jenor Steel and 466372.

[Emphasis added.]

[81] Mr. Montgomery was later cross-examined on the spreadsheet. He testified that the document was not based on actual payments made to Sonic on the BDC Mortgage. Rather, the spreadsheet showed “notional” payments based on the amounts owing under the original loan agreements:

Q Yes. And so you weren't -- when you prepared the schedule, you weren't intending to show payments that had been made by 466 and Sonic; you were intending to show notional payments based on the monthly amounts required under the loan agreements?

A Yes.

[82] Jenor submits that Mr. Montgomery's references:

- a) in his Affidavit #1 to “notional” payments;
- b) in his June 15, 2021, email to the debt being “unfunded” and the spreadsheet showing “notional” payments; and
- c) in his cross-examination

are all consistent with Mr. Roussy's evidence in his Affidavit #1 that no payments had been made on the BDC Mortgage since June 2015.

[83] On that basis Jenor submits that, in fact, no payments had been made on behalf of Jenor. Hence, the limitation period was not extended.

[84] In response, Sonic points to other evidence from Mr. Montgomery. He has noted that the flow of funds is somewhat complex. Part of that complexity arises from the fact that it was Sonic, as mortgagee, not 466 as owner, that leased the

Chilliwack Property. I made that finding in *Jenor Steel Incorporated v. DC Machine Parts Inc.*, 2022 BCSC 2307.

[85] Hence, Sonic collected the rents because it was acting as agent for the owners. Mr. Montgomery explains:

14. 466 maintains an account to record amounts that it owes to Sonic (the “Intercompany Account” that is mirrored by a corresponding ledger maintained by Sonic. Until fiscal year 2018 the Intercompany Account was recorded on 466’s balance sheet under the heading: “Due to Related Parties”. Thereafter, this account was renamed for greater specificity: “Due to Sonic Holdings Ltd.”

...

17. ... since at least 2015, all expenses relating to the Chilliwack Property (i.e. the Gross Property Expenses and the amounts comprising the Annual BDC Mortgage Payable) have flowed through the Intercompany Account so as to track the cost of the Chilliwack Property to Sonic both as payor and lender in respect of such amounts. Under the Intercompany Account, the amount owing by 466 to Sonic *increases* with the addition of accruing costs of the Chilliwack Property (i.e. in each fiscal year the gross property expenses plus the annual BDC mortgage payable) and *decreases* on account of amounts paid by 466 and Jenor against these amounts (i.e. each fiscal year, the Gross Rent). In this way, the Intercompany Account reflects a running account of all amounts owing by 466 and Jenor in respect of the Chilliwack property, including the BDC indebtedness. ...

[86] I address the evidence derived from the financial statements and tax returns below. However, it is clear from Mr. Montgomery’s affidavit that it was Sonic that received the rental payments and dealt with them through the intercompany account.

[87] My understanding of Jenor’s “notional” argument is that 466 received the rent and only notionally paid it to the related company Sonic. In my opinion (pending my finding below on the evidence in the financial documents), the fact that Sonic received the rent payments means that the payments are not “notional”. The funds flowed into a bank account held, at least in part, in the name of Sonic. The attribution of the funds to 466 and Jenor may have been “notional”, but the money was in Sonic’s bank account.

[88] On that basis, I do not accept Jenor’s submission that the payments towards the BDC Mortgage were “notional” or “unfunded”.

Redacted Financial Statements of 466 and Sonic

[89] On the issue of the sufficiency of the respondents' evidence, Jenor also places emphasis on the steps taken by Mr. Roussy when disclosing the financial records of 466 and Sonic.

[90] After the sale of the Chilliwack Property closed in May 2023, Jenor requested the financial and tax documents of 466 and Sonic. These documents were needed to prepare for the cross-examinations of Mr. Roussy and Mr. Montgomery on the affidavits that I discussed above.

[91] On November 15, 2023, Associate Judge Hughes ordered the respondents to produce 466's and Sonic's financial statements and various communications between counsel, Mr. Roussy, and Mr. Montgomery. Then, on January 18, 2024, Justice Hori ordered the respondents to produce Sonic's tax returns for the years 2015–2023 (the "Hori Order"). The order permitted Sonic "to redact information not related in any way" to the Chilliwack Property.

[92] Sonic, via Mr. Roussy, produced its tax returns for the years 2015–2023 on January 31, 2024. Every bit of financial information reported in the tax returns was redacted. Essentially, no information was disclosed.

[93] Jenor says the total blackout of these documents indicated that there was no information in the financial statements or tax returns about the Chilliwack Property or the BDC Mortgage. Hence, it must be that there were no rental payments, no expenses, and no payments toward the BDC Mortgage.

[94] Jenor notes that, according to Mr. Roussy, he made the redactions on advice from Mr. Montgomery. On January 29, 2024, Mr. Roussy emailed Mr. Montgomery asking what should be redacted on the tax returns. Mr. Montgomery advised that the "entire T2 should also be redacted for Sonic Holdings". Mr. Montgomery stated that Sonic only received rental income as a "banking intermediary" for 466 and that Sonic reports none of the rental property information on its financial statements or T2. Mr. Montgomery's email stated:

As a reminder, Sonic Holdings is only involved as the banking intermediary for 466372. Ideally 466372 would have received the rental income and paid the rental expense directly. Unfortunately, these amount [sic] flowed through the Sonic Holdings bank account and required us to post an adjusting entry to allocate all of these amounts to 466372. Sonic Holdings reports none of the rental property info in its financial statements or T2.

[Emphasis added.]

[95] Mr. Montgomery was cross-examined on November 21, 2024. He confirmed the information in his email but went into substantially more detail. Mr. Roussy was in attendance throughout Mr. Montgomery’s cross-examination.

[96] Mr. Roussy says that he realized during Mr. Montgomery’s cross-examination that his full redaction of the financial records was incorrect. In other words, he realized that the full redaction of all financial information in Sonic’s tax returns indicated that there was no information relevant to the Chilliwack Property. Hence, his redactions would indicate that no payments had been made on the BDC Mortgage. That would be consistent with Mr. Roussy’s initial evidence in his Affidavit #1 that Sonic received no payments on the BDC Mortgage, but inconsistent with his Affidavit #2. Mr. Roussy then set about producing another copy of the financial documents, with some entries unredacted. That is the evidence upon which the respondents now rely.

[97] On March 11, 2025, Mr. Roussy swore his Affidavit #8, which exhibited extracts of Sonic’s tax returns from the 2016–2023 fiscal years with certain information unredacted. I discuss the financial information below. However, Jenor argues that Mr. Roussy did not have the necessary knowledge to take this step.

[98] Jenor submits that the respondents breached the Hori Order by redacting information that they were not permitted to redact. In his Affidavit #8 Mr. Roussy “apologizes” to the Court for this “error”. Further, Mr. Roussy blamed Mr. Montgomery for the errors in over-redacting. Mr. Roussy deposed that he originally consulted Mr. Montgomery on the proper redactions to make (as noted above) and had relied on Mr. Montgomery’s advice to redact everything. Mr. Roussy claims that, after attending Mr. Montgomery’s cross-examination on November 21,

2024, it “appeared” to Mr. Roussy that Mr. Montgomery’s evidence and advice was “wrong”:

4. When it comes to the preparation of Sonic’s and 466’s financial statements and income tax returns, I rely entirely on accountants retained to prepare such documents. To assist me to comply with the Hori Order, I wrote to Sonic’s accountant, Rick Montgomery (“Mr. Montgomery”), on January 23, 2024, to ask his advice about what should be redacted from Sonic’s tax returns and financial statements in order to comply with the Hori Order...

...

7. I relied on Mr. Montgomery’s advice when having Sonic’s T2 returns redacted prior to delivery to the petitioner...

...

10. During Mr. Montgomery’s cross-examination, counsel for the petitioners canvassed with him how interest earned by a company would be reported in its tax returns. In particular, what would be expected in Schedule 100, Schedule 125, and line 032 of Schedule 7.

11. It appeared to me from the questions put to Mr. Montgomery and his answers that his advice to me in his email of January 29, 2024, was wrong. I went back to review Sonic’s T2 tax returns from 2015 to 2023, and have identified as best as I can those line items that track the BDC Indebtedness arising from the BDC Mortgage.

[99] Jenor notes three things about this (further) reversal by Mr. Roussy:

- a) Mr. Roussy has previously acknowledged that he relies completely on Mr. Montgomery in matters of accounting.
- b) Mr. Montgomery has not provided any evidence to suggest that any of the redactions to Sonic’s tax returns were made in error.
- c) There is no evidence from Mr. Montgomery stating that Sonic received payments on the BDC Mortgage and declared interest income on those payments.

[100] Jenor submits Mr. Roussy does not depose that his new evidence about the appropriateness of the redactions was made on information and belief from Mr. Montgomery or anyone else.

[101] The original (complete) redactions were based on Mr. Montgomery's advice that Sonic "reports none of the rental property info in its financial statements or T2". Mr. Roussy confirmed at his cross-examination (on his Affidavit #8) that no one at Mr. Montgomery's office has told Mr. Roussy that Mr. Montgomery's advice was incorrect.

[102] I consider this issue (below) within the context of the documents that were disclosed and the unredacted information contained therein. However, in short, I rely on the information disclosed in the unredacted documents and not the fact that Mr. Roussy redacted the original disclosure.

Unredacted Financial Statements of 466 and Sonic

[103] Ultimately, despite the changes in position, the question for me to decide is factual. Returning to para. 14 of Mr. Roussy's Affidavit #1, and given that the accounting is "very complex", the evidentiary issue is whether the financial documents disclosed by the respondents establish, on a balance of probabilities, that either 466 or Sonic have been:

- a) receiving rental payments on the Chilliwack Property;
- b) paying the property expenses with that rental income; and
- c) with the remainder of the available funds, paying:
 - (i) amounts toward the BDC Mortgage that were attributable to each of 466 and Jenor;
 - (ii) during times that would preserve or extend the limitation period.

[104] 466 and Sonic have produced a limited number of documents. Sonic's tax returns are significantly redacted. I am viewing all of these documents as an objective and neutral third party. In light of prior Mr. Roussy's affidavits, in order to displace his prior position which suggested that Jenor paid nothing to Sonic toward

the BDC Mortgage, I would expect the 466's and Sonic's financial documents to establish that:

- a) 466 (either on its own or through Sonic as agent) collected rents and paid:
 - (i) the property expenses, and
 - (ii) amounts toward the BDC Mortgage;
- b) 466 recorded its interest payments on the BDC Mortgage;
- c) 466 recorded its debt on the BDC Mortgage;
- d) the amount owed on the BDC Mortgage declined over time;
- e) Sonic recorded the receipt of interest income; and
- f) Sonic recorded a reduction in the asset value of the BDC Mortgage.

[105] In discussing the figures below, I note that the fiscal year-ends of 466 and Sonic are not the same. Hence, the figures do not match exactly.

[106] First, I review the financial statements of 466.

[107] A review of the 466 financial statements shows the following amounts recorded as "Due from Related Party". The "related party" is Jenor. For an unexplained reason, the amount owing was recalculated (halved) in 2017.

2015	2016	2017	2018	2019	2020	2021
\$414,454	\$542,674	\$615,642	\$344,803	\$362,521	\$392,282	\$421,245
		Revised down to \$306,594				

[108] I note that the figure (*i.e.*, Jenor’s debt to 466) grows each year. Recently, it has grown by approximately \$30,000 per year. This increase might suggest that 466 is paying amounts on Jenor’s behalf, as opposed to Jenor paying amounts to Sonic. However, as discussed below, an examination of Sonic’s documents suggests otherwise.

[109] Within the same series of financial statements, 466 recorded its “Long Term Debt” in the following amounts:

2015	2016	2017	2018	2019	2020	2021
\$902,450	\$860,300	\$814,100	\$772,109	\$730,100	\$688,100	\$646,100

[110] According to these figures, 466’s long-term debt reduced by approximately \$42,000 each year. This reduction in the principal would be in addition to interest payments. In my opinion, 466’s financial statements generally correspond with Sonic’s accounting (below).

[111] The same documents record that 466 paid “Interest on Long Term Debt” in the following amounts:

2015	2016	2017	2018	2019	2020	2021
\$54,024	\$41,166	\$44,008	\$42,639	\$39,359	\$37,280	\$36,685

[112] If 466 paid both interest and principal in the amounts described above, it would amount to approximately \$80,000 per year in payments to Sonic. That would represent half of the annual amount owing to Sonic, with the other half attributable to Jenor. 466’s financial statements (properly) do not address the amounts received or paid on behalf of Jenor.

[113] I now turn to Sonic’s income tax returns. As noted, they are heavily redacted and only disclose “Total Long Term Assets” and “Investment Income”. They are also somewhat muddled, because until fiscal year 2019, Sonic’s tax documents did not

differentiate between the BDC Mortgage and other Sonic investments. Hence, the “Total Long Term Assets” fluctuated between \$3,041,358 and \$1,794,749 between 2015 and 2019. In some years the asset value increased. If this accounting item recorded only the BDC Mortgage, that would indicate interest had been charged but not paid. Because other assets were included under that heading through 2019, I do not take into account the years before 2020 when the BDC Mortgage was separated out as a separate item.

[114] The Sonic income tax returns over the years disclose the following:

2015	2016	2017	2018	2019	2020	2021
\$3,041,358	\$1,731,914	\$2,152,092	\$1,727,973	\$1,794,749	\$1,369,200	\$1,285,200
Prior to assignment of BDC Mortgage to Sonic	BDC Loan not separated out	BDC Loan not separated out	BDC Loan not separated out	BDC Loan not separated out	BDC Loan separate	

[115] In the 2020 tax return, there are multiple entries (all but one redacted) under the heading “Total Long Term Assets”. The only asset that is unredacted is “Long-term Loans”. The 2020 income tax return records the 2019 “Long-term Loans” amount at \$1,453,200.

[116] From 2020 onward, the loan amount approximately corresponds with 466’s statements, with 466 reporting half of the debt.

[117] It is not disputed that the BDC Mortgage, when assigned to Sonic in June 2015 was at \$1,892,814.10. By the end of fiscal year 2021, it had been paid down to \$1,285,200 (more than \$500,000).

[118] In addition, Sonic declared “Interest from other Canadian sources” (or similarly described income) as follows:

2016	2017	2018	2019	2020	2021	2022	2023

\$87,323	\$87,550	\$86,368	\$86,368	\$76,949	\$74,920	\$70,173	\$62,972
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[119] Again, Sonic’s documents record interest income that is approximately twice the amount shown in 466’s financial statements as “Interest Paid”. Thus, it supports my expectation that these entries should account for Jenor’s share of the interest.

[120] In my opinion, the logical conclusion from these documents is that:

- a) In November 2015, the Chilliwack Property was rented by Sonic to DC Machine Parts Inc.
- b) After 2015, Sonic would receive the rent as agent for the owners. (I accept the information in paras. 14 and 17 of Mr. Montgomery’s affidavit.)
- c) Thus, 466 and Jenor were “receiving” the rental income.
- d) 466 was paying the expenses on the Chilliwack Property and attributing half of those expense payments to Jenor.
- e) 466 was also paying the interest and principal on the BDC Mortgage and attributing half of those expense payments to Jenor.
- f) Sonic received payments from both 466 and Jenor, which:
 - (i) paid the interest on the BDC mortgage; and
 - (ii) reduced the principal by the end of fiscal year 2021 to \$1,285,200.
- g) Those rental payments commenced in November 2015 and terminated in February 2023, with the departure of the tenants and then the sale of the Chilliwack Property.

[121] I make those findings of fact. In other words, despite Mr. Roussy’s changes of position, I am satisfied by the financial statements and tax returns that Jenor, unwittingly, was paying down the BDC Mortgage via the collection of rent and the payment of expenses by 466.

[122] I noted above that 466 recorded amounts that were “Due from [a] related party” (Jenor). Those amounts are unexplained. However, they do not mirror the amounts of interest paid or the reduction in the principal amount.

[123] I also noted above that Kirchner J. ordered an accounting of all amounts received and expended by 466 on behalf of Jenor. That accounting will, in part, address the rents received and the payments to Sonic. It is not within the purview of this hearing to conduct that accounting. However, 466 and Sonic have produced documents, and I have made findings of fact based upon those documents. To that extent, the parties in the accounting hearing will be bound by my findings (*i.e.*, the amounts of the payments). It is possible that further document disclosure may shift the sands from underneath my findings above. Should that occur, I would grant leave to Jenor to bring a further application on the limitation issue. I say this because of the significant history of prevarication in this litigation and the significant redactions of 466’s and Sonic’s documents.

[124] Hence, having reviewed the affidavit evidence of Mr. Roussy and Mr. Montgomery, as well as the financial disclosure of 466 and Sonic, and in answer to Jenor’s positions at the commencement of this section, I find on a balance of probabilities that:

- a) the information in the financial documents outweighs the fact that Mr. Roussy has sworn inconsistent affidavits and reversed the respondents’ positions;
- b) the evidence that the respondents rely on to establish that rental payments were attributed to Jenor, constitutes clear and convincing evidence and it satisfies me on a balance of probabilities;
- c) although there is no evidence of the actual transfer of funds from 466 to Sonic, the existence the financial statements of 466 and Sonic establish that 466 and Sonic were recording their assets, liabilities and interest income in a manner that indicates that the payments were made. The

interest income was recorded by Sonic. The amount owing on the BDC Mortgage was decreasing over time.

[125] It follows that Jenor did make payments toward the BDC Mortgage. It further follows that those payments extended the limitation period.

Last Alleged Payment on BDC Mortgage on February 3, 2023

[126] The petitioner’s final argument regarding the rental payments is that more than two years have passed since the last rental payment was received. Hence, even if the respondents’ arguments regarding rental payments are accepted, the limitation period has passed.

[127] The evidentiary basis for this argument derives from Associate Judge Hughes’ November 15, 2023, order, which required the respondents to produce “copies of documents showing payments made by tenants or occupants of the Chilliwack Property to Sonic or 466, for rent or otherwise, related to the Chilliwack Property, for the period from January 1, 2015 to May 2, 2023.”

[128] The last documented rental payment received by Sonic (as agent) and alleged to have been applied, at least in part, to the BDC Mortgage, was a deposit of rent in the amount of \$12,124.35 on February 3, 2023.

[129] On that basis, Jenor submits that the last part-payment on account of the BDC Mortgage took place more than two years ago, on February 3, 2023. Sonic has yet to commence an action against Jenor seeking to enforce the BDC Mortgage or the underlying debt obligation. Jenor submits that this gap in time is fatal to Sonic’s position.

[130] The respondents accept that more than two years have elapsed since the last mortgage payment. For the extension of the limitation period during the period since February 2023, the respondents rely on Jenor’s financial statements, which I discuss below.

[131] Hence, I accept Jenor’s submission that, without further evidence to extend it, the limitation period expired as of February 4, 2025, two years after the last rental payment.

Jenor’s Financial Statements

[132] The respondents’ final position is derived from Jenor’s financial statements. Sonic says that Jenor’s financial statements extend the limitation period by acknowledging the BDC Mortgage debt.

[133] I note that this position was not pleaded in the respondents’ response to petition. It is a late developing argument triggered by an order requiring the production of Jenor’s financial statements. During the hearing, Jenor’s counsel indicated that the matter was not properly before me without an amendment to the respondents’ pleading. However, all counsel agreed that such an amendment should be allowed. I granted that order and heard Sonic’s submissions on the merits.

[134] Jenor is a privately held company. It is not required to prepare annual financial statements. According to Mr. Savage’s Affidavit #6, Jenor has an inconsistent record of preparing financial statements. The financial statements for the year ending December 31, 2016, were prepared on April 9, 2018. Thereafter, Jenor did not prepare financial statements until the fall of 2023. At that time, Jenor’s external accountant, MNP LLP, prepared unaudited financial statements for the fiscal years ending 2017 to 2023.

[135] Mr. Savage deposed:

13. When Jenor had MNP LLP, in 2023, prepare internal financial statements for the 2017 - 2023 fiscal years, Jenor’s position in this proceeding was, and had been going back two years, that the limitation period for Sonic Holdings to enforce the BDC Mortgage or sue Jenor on the debt had expired. Jenor’s position is detailed in Jenor’s Amended Petition filed on July 14, 2021. Jenor has maintained that position ever since.

...

15. With the enforceability of the BDC Mortgage a contested issue in this proceeding, Jenor’s 2017-2023 financial statements, prepared in 2023, record the information about the loan in “long-term debt”. In documenting that contingent liability in its 2017-2023 financial statement Jenor was not

recognizing an obligation owing to Sonic Holdings. Jenor's position when the financial statements were prepared in 2023 was, and remains today, that Jenor has no liability to Sonic Holdings. But given that is contested by Sonic Holdings, Jenor retained information about the contingent liability in its 2017-2023 financial statements to ensure Jenor cannot later be said to have underreported liabilities to its creditors ... if Jenor is unsuccessful and the BDC loan is found by the court to be a valid debt (which again is denied).

[136] The respondents' position is that a company's balance sheet is capable of containing an acknowledgement that will extend the limitation period: *Freeway Properties Inc. v. Genco Resources Ltd.*, 2012 BCCA 258 [*Freeway*]:

[21] However, it is well-settled that a company's balance sheet is capable of containing an acknowledgment of "a cause of action, right or title of another": see *Re Atlantic and Pacific Fibre Importing and Manufacturing Co. Ltd.*, [1928] 1 Ch. 836; *Re The Coliseum (Barrow) Ltd.*, [1930] All E.R. 221, [1930] 2 Ch. 44; *Ledingham v. Bermejo Estancia Co. Ltd.*, [1947] 1 All E.R. 749; *Jones v. Bellegrove Properties Ltd.*, [1949] 2 All E.R. 198, [1949] 2 K.B. 700 (C.A.); *Consolidated Agencies Ltd. v. Bertram Ltd.*, [1964] 3 All E.R. 282, [1965] A.C. 470 (P.C.); *Re Gee & Co. (Woolwich) Ltd.*, [1974] 1 All E.R. 1149, [1975] 1 Ch. 52; *Miller v. Belmil Products Ltd.*, [1976] N.Z.L.R. 311; *Re Compania de Electricidad de la Provincia de Buenos Aires Ltd.*, [1978] 3 All E.R. 668, [1980] 1 Ch. 146; *Stage Club Ltd. v. Millers Hotels Pty. Ltd.*, [1981] HCA 71, 150 C.L.R. 535 (H.C.A.).

[22] The judge was correct that the balance sheet must be construed objectively but, with respect, she was not clear in her application of this test, as appears from para. 66 of her reasons.

[23] In *Ryan v. Moore*, 2005 SCC 38, [2005] 2 S.C.R. 53 at para. 45, it was stated that "a party can only be held to have acknowledged the claim if that party has in effect admitted his or her liability to pay that which the claimant seeks to recover." And, as stated in *Podovnikoff v. Montgomery* (1984), 1984 CanLII 52 (BC CA), 14 D.L.R. (4th) 716 at 721, 58 B.C.L.R. 204 (C.A.),

... I am ... of the view that ... a bare acknowledgment of the existence of a cause of action is quite insufficient to meet the requirements of s. 5(2)(a)(i) of the *Act*. Those provisions provide that a person confirms a cause of action only if he "acknowledges a cause of action, right or title of another". The acknowledgment of a right or title must, in my view, involve the acknowledgment of some liability. The word "acknowledgment" must have the same meaning when used with reference to a cause of action. It follows, therefore, that what binds a defendant and activates s. 5(2)(a)(i) is an acknowledgment in writing of a cause of action which admits some liability thereunder.

[24] Thus, what must be decided objectively is whether the "maker" of the alleged acknowledgment intended by it to admit liability. This rule is exemplified by *Nguyen v. Johnson*, 2008 BCCA 218 at para. 47, 82 B.C.L.R.

(4th) 76, where, after referring to *Podovnikoff* for the same rule, this Court said,

[47] The test to be applied to determine if there is an acknowledgement of the cause of action is an objective one. The question is whether a reasonable person, reading the concluding sentence in the context of the letter and in the circumstances of I.C.B.C. paying for the deductible on the husband's collision coverage, would take it that the insurer was admitting liability for the appellant's personal injury claim.

[25] In the case at bar, Genco listed the \$73,402 item in its balance sheet as a current liability and described it as "Due to related parties". Thus, Genco clearly admitted liability for that amount to the "related parties", whoever they might be. There was no need for any objective analysis of whether a reasonable person in JBP's circumstances would have understood the entry to be an admission of liability for JBP's cause of action. Whether it was such was a matter for proof by extrinsic evidence.

[Emphasis added.]

[137] As to the test to be applied, the respondents concede that:

- a) they bear the onus of proving that the financial statements comprise an acknowledgment sufficient to reset the limitation period;
- b) a bare acknowledgement of the cause of action is not sufficient; and
- c) an acknowledgment cannot confirm (or revive) a claim that is statute-barred by the expiration of the limitation period.

[138] With those concessions in mind, the respondents submit that:

- a) Jenor's financial statements should be viewed objectively to determine whether they acknowledge the BDC Mortgage or are intended to admit liability;
- b) the financial statements were "published" to the respondents by counsel following the order for their production;
- c) as a creditor, Sonic is entitled to take the position that financial statements must be regarded as implicitly being addressed to those creditors whose debts are referred to in it; and

- d) the financial statements are evidence that the debtor acknowledged the debt on the date the financial statements were signed, not the date they were received by the creditor.

[139] In the circumstances, the respondents say that the financial statements reflect Jenor’s belief that it had a liability to pay the underlying debt. To that extent, the financial statements extend the limitation period.

[140] Jenor makes four arguments in response to Sonic’s position on the extension of the limitation period by Jenor’s financial statements:

- a) Jenor’s 2017–2023 financial statements, objectively read, and with a view to the surrounding context at the time they were prepared, cannot be taken as evincing an intention to acknowledge liability to Sonic within the meaning of s. 24 of the *Limitation Act*.
- b) Jenor’s financial statements were not “made” to Sonic within the meaning of s. 24(6)(d) of the *Limitation Act*.
- c) Jenor did not prepare its 2017–2023 financial statements until November 9, 2023, well after the applicable limitation period had already expired.
- d) The limitation period has expired since the applicable date of the 2023 financial statement.

[141] I deal with each argument in order.

Jenor’s Financial Statements Do Not Acknowledge Liability to Sonic

[142] Jenor’s first position is that its 2017–2023 financial statements, objectively read, with a view to the surrounding context at the time they were prepared, cannot be taken as evincing an intention to acknowledge liability to Sonic within the meaning of s. 24 of the *Limitation Act*.

[143] Jenor submits the principles for interpreting an alleged acknowledgment were set out by Justice Sharma in *Royal Bank of Canada v. Sun*, 2025 BCSC 599:

[17] In [*Forjay Management Ltd. v. 0981478 B.C. Ltd.*, 2020 BCSC 637], at paras. 23–47, Fitzpatrick J. further discusses the case law addressing whether acknowledgments are regarding both the debt and security aspects of a mortgage. Among others, the following principles arise from her discussion:

- a) The onus lies on the mortgagee to establish that a mortgagor made an acknowledgement in time to avoid the expiry of a limitation period: at para. 29.
- b) A bare acknowledgement as to the existence of a cause of action is not sufficient; instead, there must be an admission of some liability: at para. 31, citing *Podovnikoff v. Montgomery*, 1984 CarswellBC 385 at para. 11, 1984 CanLII 52 (C.A.).
- c) The intention of the person making the acknowledgement is critical. The person must admit some liability, and that intention must be evident on the face of the document: at paras. 32–33, citing *Ryan v. Moore*, 2005 SCC 38 at para. 45; *Brons v. 622943 B.C. Ltd.*, 2006 BCSC 193 at paras. 26, 29.
- d) A document will postpone a limitation period “if a reasonable person would construe the words as an acknowledgement of ‘some liability’”: at para. 34, citing *Trombley v. Pannu*, 2016 BCCA 324 at paras. 18–28; *Nguyen v. Johnson*, 2008 BCCA 218 at paras. 44–47.
- e) The court takes a broad contextual analysis of the written document and overall circumstances to determine whether an acknowledgement occurred, but doing so must “not overwhelm the actual words found in the document”: at paras. 35–36, citing *Grimsley v. Roe*, 2018 BCSC 985 at para. 65; *George et al v. McMahon et al*, 2006 BCSC 1394 [*George*]; *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 57.

[144] Jenor submits that there is nothing on the face of Jenor’s financial statements that says Jenor owes a debt to Sonic. There is no specificity in the documents such that a reader of the financial statements could conclude that Jenor was intending to admit liability to Sonic.

[145] In that regard, the financial statements record an amount for “long-term debt”:

- a) of \$858,175 in 2015;
- b) increasing over time to \$1,078,935 in 2017; and
- c) staying static through the 2023 financial year.

[146] The only evidence as to the purpose of the updated financial statements is Mr. Savage's Affidavit #6 which states they were done to complete an amalgamation with a related company. Mr. Savage says that Jenor retained information about the BDC Mortgage in its financial statements given that its enforceability remains a contested issue in this proceeding.

[147] Jenor argues that the context for the 2017–2023 financial statements is critical. They were prepared in 2023, by which time Jenor had:

- a) pleaded that any claim by Sonic relating to the BDC Mortgage was unenforceable;
- b) sought a declaration to that effect; and
- c) Sonic plainly was aware of Jenor's position.

[148] Jenor further notes that the financial statements were only provided to Sonic under compulsion (*i.e.*, court order). When the financial statements were provided to Sonic, Sonic was advised in the accompanying cover letter that the documents were not an acknowledgement of liability. Jenor submits that the intention with which the debtor shares a document with a creditor is relevant.

[149] In my opinion, it is the financial statement, and not the cover letter, that is relevant. I am required to view the financial statements objectively and determine whether they constituted an acknowledgement of debt to Sonic. In my opinion, the financial statements could acknowledge a debt to Sonic, and they could extend the limitation period.

[150] However, I accept the submission of the petitioner. As discussed below, I find that the timing of the financial statements adds important context. Specifically, Jenor had already pleaded in this proceeding that the limitation period had expired. I address this in more detail below.

The Acknowledgment Was Not Made to Sonic

[151] Jenor's second argument is that the financial statements were not directed toward Sonic.

[152] Jenor notes that s. 24(6)(d) of the *Limitation Act* requires that the acknowledgment be "made to the person with the claim". Jenor submits that the decision in *Freeway* at para. 32 clarifies that the document must be "actually received by the creditor" to be an acknowledgment. Jenor notes that Sonic cannot cite any cases where a balance sheet produced in the context of litigation served as an acknowledgment of a debt and, thus, met the requirement in s. 24(6)(d).

[153] Jenor ultimately submits the purpose of the acknowledgment provisions in the *Limitation Act* is so that a creditor can rely on an acknowledgment made by a debtor and delay bringing an action. Hence, the *Freeway* decision stands for the proposition that the debtor should be held to their word, having given that assurance to the creditor. Jenor says that that is clearly not the case here when the financial statements were disclosed with a covering letter.

[154] I do not agree with Jenor's position regarding the covering letter. However, I do find the context and timing of the disclosure to be important.

[155] On the covering letter issue, in my opinion, *Freeway* resolves the question. The Court of Appeal noted that the decision of Justice Fitzpatrick was "unassailable" (all of which is ultimately *obiter*):

[31] On the question whether there was a confirmation to JBP, the second issue, Mr. Shields submitted that there had been no communication of the acknowledgment to JBP *qua* creditor as required by s. 5(6)(a) of the *Act*. Madam Justice Fitzpatrick rejected this submission. She quoted from *Re Compania de Electricidad, supra*, at 193-94, where it was said that a company's balance sheet must "be regarded as implicitly addressed to (among other persons) those creditors whose debts are referred to in it" and that an acknowledgment is effective in respect of any creditor who can establish he actually received the balance sheet signed by the company's directors and that he is one of the "sundry creditors" referred to in the balance sheet (para. 72). She distinguished *Blackline* and Mr. Justice Brown's decision in *Freeway*, stating,

[73] Justice Prowse in *Blackline* concluded that the confirmation had not been established because, in part, the financial statements were not specifically written to the plaintiff. In para. 32, the Court in *Blackline* indicated that the financial statements were not specifically written to the plaintiff, but, rather to the shareholders. No authority is cited for this proposition.

[74] In *Freeway*, Freeway contended that since it was a shareholder, Genco must be taken to have known that the financial statements would be sent to it: para. 21. In the end result, Justice N. Brown concluded at para. 31 that the financial statements had not been specifically addressed to Freeway, citing *Blackline*.

[75] In this case, JBP did receive the financial statements as a shareholder. I must say that I have some difficulty with the conclusion in *Freeway*, following *Blackline* on this point, in that such a communication must be specifically addressed to the plaintiff *qua* creditor. The *Act* does not require that either the communication be specifically written to the plaintiff, or that the communication be addressed to the plaintiff. In addition, the English authorities were not considered in either case.

[76] I note that the statutory requirement is simply that the confirmation be “made to the person”. In this case where there is a public company, dissemination of the financial documents would inevitably have occurred publicly just as Mr. Lepinski says they were. In *Blackline*, the issue arose because the creditor was not a shareholder of the company. Nevertheless, where a plaintiff is both a shareholder and a creditor, it seems logical to my mind that in communicating the financial statements, that communication takes place to all shareholders, and, implicitly to any shareholders who also happen to be creditors.

[77] I conclude that JBP has satisfied the fourth element relating to the requirement that the acknowledgement was made to it in accordance with the *Act*.

[32] As Madam Justice Fitzpatrick observed, there is nothing in the *Act* that requires that the acknowledgment be “specifically written to the plaintiff, or that the communication be addressed to the plaintiff.” In my view, an acknowledgment actually received by the creditor would be effective under s. 5(6)(a) of the *Act* whether or not the “maker” of the acknowledgment intended that the creditor should receive it, and it is not necessary to imply such an intention. However, there is no need to resolve that question in this case and I am satisfied that the judge’s conclusion that the acknowledgment was made to JBP is unassailable.

[Emphasis added.]

[156] In my opinion, the decision of the Court of Appeal in *Freeway* states that, in this case, Jenor’s financial statements must be regarded as implicitly being addressed to Sonic.

[157] However, there is significant context to Sonic's receipt of the Jenor's financial statements. By the time Jenor's financial statements were prepared, and certainly by the time they were disclosed, Sonic was aware of the position taken by Jenor in this litigation. Jenor's pleadings were directly in conflict with the concept of an acknowledgement. In my opinion, it would stretch the reasoning of *Freeway* too far to allow an entry in the Jenor's financial statements to displace the position that Jenor had specifically taken in its pleadings. To that extent, I distinguish the reasoning in *Freeway*.

[158] I note that *Freeway* cited *Ryan v. Moore*, wherein the Supreme Court of Canada stated: "a party can only be held to have acknowledged the claim if that party has in effect admitted his or her liability to pay that which the claimant seeks to recover." In my opinion, Jenor's pleadings in this case make it clear that Jenor was not admitting a liability to pay the BDC Mortgage.

[159] In other words: the cases that rule that the debtor's financial statements can extend a limitation period proceed from the base that the creditor is entitled to rely on that entry as an acknowledgment. Hence, the creditor does not need to commence an action. However, in this case, the debtor had already raised and pled that position in this petition. Sonic cannot rely on a later disclosed document as the basis for not having commenced its action on the BDC Mortgage.

[160] On that basis, I find that Sonic is not entitled to rely on the financial statements to extend the limitation period.

An Expired Claim Cannot Be Revived

[161] If I am wrong on the question above, I still find that the limitation period has expired for the following reason.

[162] As noted, Sonic concedes that an acknowledgment can only confirm a claim that is extant. If the two-year limitation period has expired, subsequent acknowledgements cannot revive the claim. Subsection 24(1) of the *Limitation Act*

expressly requires that an acknowledgment be made before the limitation period expires:

24(1) If, before the expiry of either of the limitation periods that, under this Act, apply to a claim, a person acknowledges liability in respect of the claim,

...

[Emphasis added.]

[163] Jenor submits this timing is fatal to Sonic's argument that Jenor acknowledged liability in its financial statements.

[164] Jenor's main argument relates to the period between the 2016 and 2023. However, I have ruled above that the payment of rent until 2023 extended the limitation period. Hence, Sonic must rely on the financial statements.

[165] In my opinion, the time period between the 2023 financial statement and this application is also fatal to Sonic's position.

[166] I accept the proposition that a financial statement is a backwards-looking document. There are three possible relevant dates on which the extension of time may be based:

- a) the fiscal period to which the acknowledgement relates (*i.e.*, the fiscal year end);
- b) the date the financial statements were signed; and
- c) the date when the confirmation was perfected by delivery of the written, signed acknowledgment to the other party.

[167] Jenor again relies on the Court of Appeal's decision in *Freeway* which held, at paras. 34–35 and 45, that the relevant date for calculating when an extended limitation period starts to run is the date at which the financial statements are directed (*i.e.*, the date of the fiscal year-end). Hence, the date of the signing of the financial statements is irrelevant. The facts in *Freeway* were as follows:

[5] The respondent (“Genco”) is a public company. The appellants Freeway Properties Inc. (“Freeway”) and John B. Pub Ltd. (“JBP”) are private companies. At all material times, one John Lepinski was the president and “principal” of JBP and was the controlling shareholder, president, and sole director of Freeway. He was also the president and a director of Genco from February 1980 until he resigned as president in December 2003 and as a director on June 22, 2004. As well, through JBP, he held a controlling share interest in Genco until 2002, when he transferred control to a new group of investors. In July 2004, JBP ceased to be a shareholder in Genco.

[6] Genco’s audited consolidated financial statements for the fiscal year ended July 31, 2004 contained, in the balance sheet, an entry of \$73,402 described as a current liability “Due to related parties”. The appellants say they are the “related parties” by reason of Mr. Lepinski’s common links to them and to Genco during the fiscal period and that this entry simply reports the sum of the amounts owing to them respectively. The financial statements were approved and signed by two directors of Genco on November 3, 2004. The accompanying auditors’ report, dated November 3, 2004 and addressed “To the Shareholders of Genco Resources Ltd.”, stated that “these consolidated financial statements present fairly, in all material respects, the financial position of the company as at July 31, 2004.” The statements were filed with the British Columbia Securities Commission in compliance with regulatory requirements and were disclosed to the public on December 17, 2004. On December 29, 2004, they were mailed to the shareholders, including JBP. They were received by the appellants in January 2005.

[168] To the extent that the balance sheet extended the limitation period, the issue on appeal was: Which of those three dates was relevant and binding on the debtor? Justice K. Smith noted that the lower court made the following finding:

[34] After rejecting Mr. Casey’s submission that the effective date should be the date the directors signed the financial statements on the basis there was no evidence “the directors were confirming the amount of the outstanding debt as of November 2004 or even January 2005” (para. 88), she concluded,

[89] I therefore conclude that the action was commenced outside of the limitation period which began after the confirmation arising by reason of the July 31, 2004 financial statements.

[169] The Court of Appeal then specifically approved the finding that the appropriate and relevant date was the date to which the financial statements were directed:

[45] ... Accordingly, it is my view that Madam Justice Fitzpatrick did not err in concluding that the date of confirmation of Genco’s indebtedness to JBP was July 31, 2004, the date to which the financial statements were

directed, and that JBP's action begun on October 11, 2010 was therefore statute-barred. I would dismiss the JBP appeal.

[170] As a result, when considering the import of the 2023 Jenor financial statement, I find that it constitutes, at best, an acknowledgement that the debt was owed to Sonic as of April 30, 2023. That is the end of the fiscal period to which the financial statements apply. In saying that, I am specifically not using the date that the document was signed, November 9, 2023 nor the date the respondents received the financial statements.

[171] This matter came on for hearing before me on September 2–4, 2025. As acknowledged above, Sonic has not commenced any action against Jenor. As a result, more than two years had passed since any acknowledgement by Jenor by way of financial statements. Again, this finding only matters if I am wrong on my finding regarding the context of the financial statements.

[172] In summary, and to be clear, my findings are that:

- a) The last payment of rent was in February 2023. That would extend the limitation period until February 2025.
- b) Jenor's last financial statement was for the period up to April 30, 2023. That would extend the limitation period until April 2025.
- c) No action had been commenced by April 30, 2025. Hence, the limitation period expired on May 1, 2025.
- d) The production of the 2023 financial statement by Jenor in August 2025 does not revive the limitation period.

[173] As a result, I find that the limitation period has expired.

Summary and Conclusion

[174] For the reasons set out above, I make the following findings:

- a) I accept Sonic’s position that Jenor made payments on the BDC Mortgage through the application of rental payments on the Chilliwack Property. Those rental payments ceased in February 2023.

- b) I reject Sonic’s position that Jenor’s 2023 financial statements extended the limitation period. By the time those initial statements were prepared, Jenor had already pleaded in this proceeding that the limitation period had expired. In my opinion, that context distinguishes this case from prior cases.

- c) If I am wrong on point b), then I find that more than two years have elapsed since the end of fiscal year 2023, the date to which the last financial statement was directed.

[175] It follows that Jenor’s application is granted. I grant the declaration that the claims of Sonic relating to the BDC Mortgage (described above) are barred pursuant to the provisions of the *Limitation Act*.

[176] I did not hear submissions on costs. If the parties would like to make those submissions, I will entertain a further application to be scheduled by the parties within 60 days of the date of this judgment.

“A. Ross J.”