

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Millgate Limited v. Plaza 500 Hotels Ltd.*,  
2025 BCSC 1158

Date: 20250530  
Docket: S193148  
Registry: Vancouver

Between:

**Millgate Limited, Penrose Properties Limited**

Plaintiffs

And

**Plaza 500 Hotels Ltd.**

Defendants

Before: Associate Judge Robertson

## Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

M. Shergill

Representatives for the Defendant  
Company, appearing in person:

A. Popat  
J. Popat

Place and Date of Hearing:

Vancouver, B.C.  
May 30, 2025

Place and Date of Judgment:

Vancouver, B.C.  
May 30, 2025

[1] **THE COURT:** When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.

[2] The application before the court today is for an adjournment of a trial management conference (“TMC”) that is currently scheduled for June 3, 2025.

**Background and History of Litigation**

[3] By way of very brief background, and I say brief because this is a relatively complex matter, financially speaking. It ultimately involves the dispute as to whether or not a loan which was secured against real and personal property known as the Plaza 500 Hotel (the “Plaza 500 Hotel”) is, in fact, a security for a loan or whether or not the advances made thereunder were advanced for different purposes such as a gift or a contribution to the equity in the venture itself.

[4] The issue first arose in the context of prior foreclosure proceedings involving the first mortgagee. In those proceedings the property was ultimately sold, the first mortgagee paid out, and approximately \$8.2 million was left remaining to satisfy the second mortgage as held by the plaintiff, if found to be a valid mortgage properly securing loan advances, as alleged.

[5] Based on an order, I believe pronounced by Master Cameron, the dispute as to the validity of the plaintiff’s mortgage was converted to a trial for that issue to be determined. As a result of that, this action was commenced on April 1, 2021. The response was filed May 20, 2021.

[6] Thereafter, on January 4, 2023, the plaintiffs sought to have this matter determined by summary trial. That application was heard before Justice Forth in April, 2023 with reasons being released on October 16, 2023, indexed as 2023 BCSC 1808. Justice Forth ultimately found in her reasons that the matter was not suitable for summary determination.

[7] Shortly thereafter, the plaintiff secured a 10-day trial date, commencing January 27, 2025.

[8] No significant steps were taken by the defendants after those events, until they retained their former counsel in November 2024 who attended the TMC that had been scheduled for late November in respect of the January trial date.

[9] At that TMC, counsel for the defendants sought an adjournment of the trial which the presider of the TMC refused to grant without evidence, requiring an application to be made. As such, the defendants subsequently brought a formal application to adjourn the trial. That application was dismissed on January 15, 2025. As such, the parties appeared at the courthouse on January 27, 2025 for the purposes of starting the trial. Due to unavailability, the trial was bumped and did not proceed.

[10] Thereafter, the plaintiffs sought to obtain new trial dates, and for that purpose reached out to the defendants by email of January 29, 2025. Counsel provided four dates that were available from the court website noting that he was unavailable on one of those dates, as identified. The response from the defendant's representative was sent the following day. The defendant's representative indicated that he was only available on that one date that counsel had clearly indicated was not available for him.

[11] The defendant's representative did not, however, provide any indication of why he was unavailable. As such, counsel asked for particulars of the commitment or reason why the defendants were not available on the three dates that otherwise would have been suitable for trial. The response was: "I have other commitments related to my family".

[12] Finding that answer to be unsatisfactory, counsel for the plaintiffs advised that they had unilaterally set the matter for one of those three dates; namely, August 11, 2025, and indicated that they would deliver their notice of trial shortly, which was then delivered on February 10, 2025.

[13] In the January 31, 2025 email advising that the August 11, 2025 dates had been secured, counsel specifically indicated: “If you wish to bring an adjournment application you may do so.”

[14] No such adjournment application has been brought and, as such, the trial of this matter remains scheduled to commence on August 11, 2025 for 10 days.

[15] Thereafter, the TMC was scheduled for June 3, 2025.

[16] Counsel for the plaintiffs sought available dates from the defendants by email of April 14, 2025 for a proposed June 2025 TMC, but none were given. Rather, the defendant’s representative asked plaintiffs’ counsel to advise as to the purpose of the TMC, which the plaintiffs’ counsel answered, although noting that he could not give legal advice, by way of a very general indication of what the purpose is; namely, to ensure that the matter is ready for trial. As no dates were provided by the defendant’s representative thereafter, the TMC was unilaterally scheduled with the requisition to secure the date being filed April 16, 2025.

[17] The next step occurred on May 14, 2025 at which time the defendant filed an application, which is referred to by the defendant as an application to strike. The specific orders that are being sought in that application are as follows:

- (1) Orders for document disclosure in which the order being sought is that all documents in the plaintiff’s possession or control as demanded in a document demand be provided with them being particularized.
- (2) Inquiry into plaintiff counsel’s conduct. Specifically, “the court conduct an inquiry into the conduct of plaintiff’s counsel, Tim Louman-Gardiner, to determine the circumstances and reasons for his submission of
  - (a) the affidavit of Jonathan Ross Bachelet dated July 23<sup>rd</sup>, 2019 containing false claims regarding the purpose, interest, dividends, shareholding, and financial status of the alleged \$13.8 million loan;
  - (b) the letter dated April 29<sup>th</sup>, 2021 falsely claiming litigation and share ownership admonished by the court with reference to Justice Forth’s reasons; and
  - (c) pleadings in the notice of civil claim dated April 1<sup>st</sup>, 2021 falsely alleging a secured interest-bearing loan contradicted by the plaintiff’s January 7<sup>th</sup>, 2025 revealed so-called financial statements.

- (3) Striking pleadings and trial management conference.
  - (a) An order pursuant to Rule 9-5(1) that the pleadings of Penrose Properties Limited and Millgate Limited in this action asserting a secured interest-bearing loan for the specified amounts therein be struck as disclosing no reasonable claim, scandalous, frivolous, vexatious, prejudicing, or delaying a fair trial and an abuse of process given Justice Forth's ruling that the advances were subordinated, referencing Justice Forth's reasons, specifically paragraphs 24 and 95. Their so-called financial statements and the advances were unsecured interest very akin to equity and required no priority agreements. Therefore, joint misrepresentations including falsified minutes claiming a loan to a non-existent Plaza 500 Limited and Azim Popat's foreclosure actions causing over a hundred million in losses rendering a false secured loan claim untenable and barring equitable relief under the clean hands doctrine with amendments prohibited to prevent recharacterization as equity.
  - (b) Any amendment to claim an unsecured interest-free loan be prohibited as the plaintiff's fraudulent conduct including falsified minutes and false share strike-off claims bars relief despite such amendment facilitating recharacterization as equity or a gift.
  - (c) Upon striking the plaintiff's notice of civil claim an order that all funds held in court to the credit of the foreclosure action be released to the defendant as the plaintiff's claim to these funds is untenable.
  - (d) The court adjourn or prohibit any trial dates or trial management dates unilaterally set by the plaintiff's counsel until disclosure, inquiry, and striking issues are resolved.
- (4) Additional relief. The plaintiffs pay special costs to the applicant forthwith for their non-compliance with the demand for additional documents and for "counsel's submission of false documents and pleadings."
- (5) Piercing the corporate veil. A declaration that Azim Popat is the controlling mind of Penrose and Millgate and that the corporate veil be pierced to hold them personally liable for their actions on the grounds that he exercised complete control and used their corporate form for fraudulent purposes including orchestrating the foreclosure of Plaza 500, misrepresenting the 13.8 million advances, and engaging in self-dealing.

[18] The position of the defendant is, at its simplest, that the TMC should be adjourned until after the defendant's extant application is heard. The defendant relies on R. 12-2(5) in support of its application.

**Legal Framework**

[19] Although not specifically referenced by either party, the factors for consideration for any adjournment are well known. They have been set out in *Navarro v. Doig River First Nation*, 2015 BCSC 2173, at paras. 18 to 22, They have been held to apply not only to adjournments of trial, but applications. In my view, they are equally applicable to an adjournment of a TMC, or any other court conference.

[20] While those factors include matters such as the timeliness of the request, the overall context and history of the matter, including any history of delay, the grounds for the request, and balancing of the prejudice to the parties, that being both the prejudice of potentially proceeding in a matter when a party is not ready versus the prejudice of it being delayed.

[21] Ultimately, the court must be satisfied that it is in the interests of justice that an adjournment be granted with the goal ultimately being that any hearing, or in this case conference, can proceed in a fair way with both parties being able to present their positions fully.

[22] In addition, the general principles are that courts are generally generous in granting adjournments provided there is no prejudice to the opposing party.

[23] I would add one further consideration that is applicable given what is being sought to be adjourned, namely the considerations that arise given the nature and purpose of a TMC. The TMC is not only an opportunity for the parties to assess their trial readiness, but also an opportunity for the court to do so having regard to the stretched availability of judicial resources.

[24] For that reason, R. 12-2(1)(b)(ii) sets out the circumstances in which a TMC is required. Those include, as applicable in this case, where there is a self-represented party. Quite simply, given the procedural complexity of a trial, it is important that the parties, and the court, have an opportunity to assess trial readiness.

[25] Rule 12-2(1.1) requires that the TMC occur at least 28 days prior to trial. The timing requirement is to ensure that if matters are not on track, that the court can provide the necessary directions and guidance to ensure that the trial can in fact proceed, and can proceed as efficiently as possible. It is not in the interest of justice to have parties appear on the first day of a trial, when they are not ready, if it can be avoided through a prior trial management process and the directions given, generally, a month or more in advance of the trial date.

[26] During this application, the defendant spent a significant amount of their submissions making their argument as to the merits of the extant “strike” application itself. As examples of this, they referred to Justice Forth’s reasons at paras. 94 to 97 with respect to her summary of the evidence that may support that the advances made by the plaintiff under its mortgage loan were not, in fact, loans at all. However, as I noted to the defendant’s representative during his submissions, in para. 92 Justice Forth also set out the evidence that support that the advances may have been a loan.

[27] All of this is to say that Justice Forth was setting out the conflicts in evidence for the purpose of determining whether this matter was suitable for summary determination. She found that it was not. She did not in any way make any findings as to the merits of the claim itself; namely, whether these advances were loans, a gift, or were of some other character.

[28] The defendant’s representative also referred to various documents, including transcripts of family meetings where they say that certain admissions were made that support, in their view, that the advances made were not loans. Much of that was presented by way of exhibits to an affidavit that was filed in one of the other actions, which is under Vancouver Registry No. S182964. In the interests of time, after attempting to address admissibility with the defendant’s representative multiple times, I allowed the defendant to make submissions based on that evidence notwithstanding that it is not properly filed in this action.

[29] It was more efficient to allow the defendant to refer to it and address admissibility later if necessary. In my view, I do not have to address the admissibility of it as it is not relevant to today's application even if it is admitted.

[30] Regardless of the merits of the extant application to strike, this application to adjourn is one guided by the principles as set out in *Navarro, supra*. It is sufficient for me to say that the "strike" application is not, based on my limited review of it, necessarily bound to fail. It may succeed. It may not. I cannot determine that one way or the other on this application, nor is it necessary for me to do so on this application.

[31] The defendant says the "mere certainty" of the success of their application is a basis on which the adjournment ought to be granted, arguing that having a TMC when the claim is "likely to be struck" is a waste of resources, not only their own resources, but judicial resources.

[32] Secondly, they argue that they will be prejudiced by having to incur costs and attending a TMC when the claim will "likely be struck." They argue that, conversely, there is no prejudice to the plaintiff if the TMC is adjourned, because their claim will be struck in any event.

[33] Finally, the defendants point to what they describe as a conduct of the plaintiff that they say has been abusive and supports an adjournment of the TMC. Among other things, they point to the unilateral scheduling of the TMC and what they describe as obstructive conduct, which includes the refusal to adjourn the TMC as requested.

[34] The "strike" application has been scheduled for June 25, 2025. It may or may not result in a resolution of this matter in its entirety. Reasons may be issued from the bench, or reserved, meaning a resolution may be later than that. Regardless, the earliest that issue will be resolved is June 25, 2025, that being approximately five weeks before the August 11, 2025 trial date. That timing, notably, lies solely at the defendant's feet, as they have been aware of the TMC since the end of April, 2025.

[35] They seek that the TMC be adjourned until after July 15, 2025, a date which they have selected in order to provide a reasonable period of time for reasons, in their view, to be released after the strike application. That would mean that the TMC would be held just shy of the 28-day requirement as set out in the *Rules of Court*.

[36] The 28-day requirement as set out in the *Rules* is an outside date. There are matters in which an earlier TMC is preferable given the inevitable procedural issues. This would be one of them. Specifically, this matter is a longer trial with it being set for 10 days, it is document heavy based on the materials before the court and the affidavit which, although not admissible on this application, exhibits a number of documents (some three inches thick) that are likely to be introduced into evidence at trial, and a series of advances that are alleged to have made up this loan.

[37] Having a TMC fall within the 28-day period would do a disservice to the parties as it would leave any procedural directions to be made being done in a hurried manner.

[38] While I acknowledge that, perhaps June 3, 2025, may be earlier than necessary, the difference between June 3, 2025 and July 15, 2025 makes the difference of whether or not the court will be able to exercise its function at the TMC; namely, to put enough safeguards in place and to make procedural directions to ensure, as much as possible, that the matter will be ready for trial.

[39] In this respect, I note that this is a second trial date with one already being lost due to trial unavailability. As such, further delay of the trial if this application is not struck because the parties are not prepared to proceed is more of a prejudice, in my view, than proceeding with a 30-minute TMC even it is moot because the claim is struck.

[40] Any potential prejudice can be addressed at the TMC through the timing for compliance with some of the procedural orders that will likely be made. However, again, I note that the fact that a time crunch may occur does lie at the feet of the defendant in that they could have brought the strike application earlier than they

have. I also note that did not seek to adjourn the trial date or take any steps to address it one way or the other since it was set.

[41] As such, in my view, having weighed the overall interests of justice, including those that raise as a result of the nature of the TMC and its purpose, I am not prepared to grant an adjournment of the TMC.

[42] That leads us to costs of this application. The defendants were unsuccessful in their application. The plaintiff rightly notes that it was not necessary to bring an application. An adjournment of the TMC could have been sought at the TMC itself without an application. And, as such, in my view, it is appropriate that the plaintiffs have their costs of today's application in any event of the cause.

[43] THE COURT: The application is dismissed. Costs are to the plaintiffs in any event of the cause. I will also dispense with the approval as to form of this order by the defendant. Anything arising from that?

[44] CNSL M. SHERGILL: No, Your Honour. Thank you.

[45] A. POPAT: We are rather confused with the fact that they are twisting their evidence. I mean, these are -- these are their own documents they presented for the trial on 27<sup>th</sup> of January. It is their own documents. Then they are twisting it from secured loans to unsecured.

[46] THE COURT: That may be, and you may be entirely successful at your application based on the evidence that is before the court, but I am not, as I said, determining the merits of that application. The merits are not relevant to the adjournment. I have proceeded on the basis that your application is not bound to fail.

[47] A. POPAT: Your Honour, we did bring the issue of the affidavit to their attention on March 14, 2025, and we did --

[48] THE COURT: If there is an issue as to its admissibility at trial, if you intend to introduce the affidavit itself, that will be raised at trial, but it is not -- as I said, it is not

before me today, or relevant to today's application. You have my decision. Thank you.

[49] THE CLERK: Order in chambers. Chambers is adjourned.

“Associate Judge Robertson”