

Citation: *Business Development Bank of Canada v 696590 N.B. Inc., Howe, Howe and Howe*,
2024 NBKB 128

IN THE COURT OF KING'S BENCH OF NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF FREDERICTON

FC-69-2023

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

PLAINTIFF

-and-

**696590 N.B. INC., TERRANCE GORDAN HOWE,
CAROLYN GERTRUDE HOWE and STUART ANDREW
HOWE**

DEFENDANTS

CORRIGENDUM – SEPTEMBER 9, 2024

BEFORE: Justice Maya Hamou

DATE OF HEARING: June 4, 2024

DATE OF DECISION: June 19, 2024

APPEARANCES: Tony Richardson, counsel on behalf of the Plaintiff, Business
Development Bank of Canada
John J. MacGillivray, counsel on behalf of the Defendants, Terrance
Gordan Howe and Carolyn Gertrude Howe

CORRIGENDUM

Pursuant to Rule 60.03(4) of the *Rules of Court*, and on consent of the parties, paragraphs 61 and 62 of the Decision are replaced with the following which more accurately and precisely reflect the decision of the Court.

61. The Business Development Bank of Canada shall have judgment against Terrance Gordan Howe in the amount of \$23,520.00 and Carolyn Gertrude Howe in the amount of \$13,897.85 in addition to total costs of \$1,500 and allowable disbursements.

62. For clarity, the judgments against Terrance Gordan Howe in the amount of \$23,520.00 and Carolyn Gertrude Howe in the amount of \$13,897.85 are joint and several with the default judgment against Stuart Andrew Howe and 696590 N.B. Inc. in the amount of \$22,282.40. The respective liability of each Defendant is however subject to a different monetary limit.

DATED at Moncton, New Brunswick, this 9th day of September 2024

Justice Maya Hamou
Court of King's Bench of New Brunswick

DECISION

INTRODUCTION

1. This matter concerns a motion by the Plaintiff, Business Development Bank of Canada ("Plaintiff BDC") for summary judgment. The underlying claim brought pursuant to Rule 79, concerns the default on loans provided to 696590 N.B. Inc. ("Defendant Corporation") and personal guarantees given by Terrance Gordan Howe ("Defendant Terrance"), Carolyn Gertrude Howe ("Defendant Carolyn") and Stuart Andrew Howe ("Defendant Stuart").
2. Default judgment was entered against the Defendant Corporation and the Defendant Stuart in the amount of \$22,282.40. The Plaintiff BDC seeks summary judgment against the Defendant Terrance and the Defendant Carolyn pursuant to the personal guarantees plus interest and costs.

3. The Defendant Terrance and the Defendant Carolyn assert the Plaintiff BDC is estopped from recovering on their personal guarantees. The Defendant Terrance and the Defendant Carolyn sold their shares of the Defendant Corporation to their son, the Defendant Stuart, and were relying on assurances that their personal guarantees would be “swapped” for that of the Defendant Stuart.
4. A review of the Record suggests that no express or implied assurances or guarantees were provided to the Defendant Stuart, the Defendant Terrance, or the Defendant Carolyn. Further, the Defendant Terrance and the Defendant Carolyn sold their shares in the Defendant Corporation before obtaining written consent from the Plaintiff BDC as required by the covenants in the loan agreements.
5. This matter constitutes an appropriate case for Summary Judgment as there remains no genuine issue for trial. Judgment is granted against the Defendant Terrance and the Defendant Carolyn in favour of the Plaintiff BDC.

FACTS

Factual Background

6. The Court received briefs on law, oral submissions, and the following Affidavits outlining the relevant factual background in this matter.
 - a. Affidavit of Marius Caissie, sworn August 23, 2023
 - b. Affidavit of Stuart Andrew Howe, sworn January 23, 2024
 - c. Affidavit of Terrance Gordan Howe, sworn to January 25, 2024
 - d. Affidavit of Carolyn Gertrude Howe, sworn January 25, 2024

Personal Guarantees

7. In 2017, the Plaintiff BDC offered “Terrance Howe TBI” a \$50,000 loan (“the First Loan”) in respect of a business which was to be incorporated (Section 12 of the *Business Corporations Act*, SNB 1981, c B-9.1 allows for a corporation to enter into an agreement and obtain financing in advance of incorporation). The business, a bakery, was subsequently incorporated as the Defendant Corporation. The guarantors for the First Loan were identified as Village Square Bake Shop Ltd. and Terrance G. Howe.

8. Of note, the Defendant Terrance signed the First Loan on behalf of the Village Square Bake Shop Ltd. The Defendant Terrance purchased assets from the Village Square Bake Shop Ltd. but had no signing authority for the Village Square Bake Shop Ltd. On this basis, the Plaintiff BDC did not pursue a Claim against the Village Square Bake Shop Ltd.
9. In 2019, the Plaintiff BDC offered the Defendant Corporation a \$12,000 loan (“the Second Loan”) upon receipt of personal guarantees signed by the Defendant Terrance and the Defendant Carolyn.
10. In 2020, the Plaintiff BDC offered the Defendant Corporation a \$12,000 loan (“the Third Loan”) upon receipt of personal guarantees signed by the Defendant Terrance and the Defendant Carolyn including a provision indicating the Defendant Terrance and the Defendant Carolyn had waived legal advice.
11. The provisions of the First Loan, the Second Loan, and the Third Loan provided that the individuals providing a personal guarantee would be responsible for the full amount of the loans to the Defendant Corporation including interest, fees, and costs upon default by the Defendant Corporation.

Transfer of Business and Additional Personal Guarantee

12. In early 2021, the Defendant Stuart purchased the shares of the Defendant Corporation from his parents, the Defendant Terrance and the Defendant Carolyn, through his company Saint John Bakery Limited. The transaction was performed through a share purchase agreement.
13. Starting in April 2021, the Defendant Stuart reached out to creditors of the Defendant Corporation, including the Plaintiff BDC, to notify them of the change in ownership of the Defendant Corporation and to obtain a release of the personal guarantees provided by the Defendant Terrance and the Defendant Carolyn.
14. In March of 2022, the Plaintiff BDC approved the change in ownership of the Defendant Corporation to the Saint John Bakery Limited provided the Defendant Stuart execute a personal guarantee in addition to the existing personal guarantees.
15. The amendments were outlined in an Amendment Letter (“Amendment Letter”) dated March 21, 2022. The Amendment Letter lays out amendments to the three loans by way of the addition of a personal guarantee from the Defendant Stuart and the change in shareholders of the Defendant Corporation to Saint John Bakery Limited. The Defendant Stuart, the

Defendant Terrance and the Defendant Carolyn all signed the Amendment Letter under the heading of guarantors.

Defaults

16. The Defendant Corporation ceased operations in February of 2023 and defaulted on the three loans by failing to make the required payments to the Plaintiff BDC.
17. The Plaintiff BDC issued demands for payment on February 22, 2023, to the Defendant Corporation, Defendant Stuart, Defendant Terrance, and Defendant Carolyn requiring them to pay the amounts owing under the three loans and the personal guarantees.
18. The demands were sent by registered mail to the Defendant Corporation at its business address but was never collected and was returned to the sender. Defendant Stuart, Defendant Terrance and Defendant Carolyn were also sent demands at their last known addresses and the demand correspondences were all returned to sender. The demands were also sent by email to the Defendant Stuart and the Defendant Terrance at the email addresses provided to the Plaintiff BDC. The Defendant Terrance and the Defendant Carolyn do not dispute they received a copy of the demand letter.
19. Payment of the First Loan was requested from the Defendant Stuart and the Defendant Terrance while payment of the Second Loan and the Third Loan were requested from the Defendant Stuart, the Defendant Terrance and the Defendant Carolyn.

Procedural Background

20. An action was commenced against the collective Defendants in March of 2023, and a Statement of Defence was filed in May of 2023 by the Defendant Terrance and the Defendant Carolyn.
21. In May of 2023, the Defendant Corporation and the Defendant Stuart failed to respond to the claim and were noted in default. Default judgment was entered against both in the amount of \$22,282.40. The Defendant Stuart has since voluntarily assigned himself into bankruptcy in May of 2023. The judgment has not been set aside or paid and the Plaintiff BDC has not recovered on the judgment.

Position of the Parties

22. The Plaintiff BDC seeks summary judgment against the Defendant Terrance and the Defendant Carolyn and in the alternative requests a mini trial or a trial on the question of damages. In addition, the Plaintiff BDC seeks costs.
23. The Defendant Terrance and the Defendant Carolyn argue the Plaintiff BDC is estopped from recovering the loans from them as their personal guarantees were to be replaced by the personal guarantee of the Defendant Stuart. The Defendant Terrance and the Defendant Carolyn further suggest the Plaintiff BDC agreed to fully release them and delayed in fully releasing them from all obligations under the personal guarantees once the Defendant Stuart took over ownership of the Defendant Corporation.
24. The Defendant Terrance and the Defendant Carolyn also assert that the Plaintiff BDC is not simply a lending institution but an organization investing in businesses of its entrepreneurial clients. Defendant Terrance referenced his belief that the Plaintiff BDC was not a standard lender, but a government sponsored bank that helped inexperienced people with business ventures.

ISSUES

25. Is there a genuine issue for trial?
 - a. Is the Plaintiff BDC estopped from recovering on the personal guarantees of the Defendant Terrance and the Defendant Carolyn? Should the Court draw an adverse inference from the absence of an affidavit from Christopher Daigle?
 - b. What amount is owed by the Defendant Terrance and the Defendant Carolyn?
26. What costs may the successful party recover?

ANALYSIS

Summary Judgment

27. The Plaintiff BDC seeks summary judgment or alternatively a mini trial to address narrow issues.

28. Rule 22 of the *Rules of Court* provides that summary judgment shall be granted where there is no genuine issue for trial and allows the Court to weigh the evidence, evaluate credibility and draw inferences.

22.04 Disposition of Motion

General

(1) The court shall grant summary judgment if

(a) the court is satisfied there is no genuine issue requiring a trial with respect to a claim or defence, or

[...]

Powers

22.04(2) In determining whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and may exercise any of the following powers for the purpose, unless it is in the interests of justice for those powers to be exercised only at a trial:

(a) weighing the evidence;

(b) evaluating the credibility of a deponent; and

(c) drawing a reasonable inference from the evidence.

29. Additionally, the Court may order that oral evidence be presented and may direct a trial on the amount if it is the only issue in the context of a motion for summary judgment in accordance with Rules 22.04(3) and 22.04(4) of the *Rules of Court*.

Oral Evidence (mini-trial)

(3) For the purposes of exercising the powers set out in this subrule, a judge may order that oral evidence be presented by one or more parties, with or without time limits on its presentation.

If Only Genuine Issue is Amount

(4) If the court is satisfied the only genuine issue is the amount to which the moving party is entitled, the court may direct a trial of that issue.

30. Justice Morrison in *Gaudet v Rogers et al*, 2022 NBQB 87, at paragraph 20, summarized the key considerations arising from the New Brunswick Court of Appeal decisions addressing summary judgments (*O'Toole v Peterson*, 2018 NBCA 8 and *Russell et al v Northumberland Co-Operative Ltd.*, 2019 NBCA 70).

[20] [...]

1. **The only test for summary judgment is whether there is a genuine issue requiring a trial;**
2. The burden of proof is on the moving party to establish there is no genuine issue requiring a trial and it is on the balance of probabilities;
3. The importance of the parties putting their best foot forward and leading trump or risk losing is more significant under the new Rule 22;
4. The rule provides for a two-step process to determine whether there is a genuine issue requiring a trial;
5. In step one the judge must determine if the evidence presented reveals a genuine issue requiring a trial. If, on the filed evidence alone, the judge can fairly and justly adjudicate the dispute there will be no genuine issue requiring a trial and the judge **must** grant summary judgment;
6. If the judge cannot adjudicate the dispute on the filed evidence, he will proceed to step two. A judge only proceeds to step two if the assessment of the filed evidence leads to the conclusion that there **may** be a genuine issue requiring a trial. The judge will then determine if a trial can be avoided by resorting to the fact-finding powers of Rules 22.04(2) and (3) (the “mini-trial”);
7. The guiding principle is that it will always be in the interest of justice for a judge to make use of the mini-trial where possible.

[Emphasis added]

31. In recent years the New Brunswick Court of Appeal has encouraged the Court of King’s Bench to resolve matters at the summary judgment stage where appropriate. Consequently, judges from the Court of King’s Bench have granted summary judgments in the context of debt actions on personal guarantees on several occasions (*Bank of Nova Scotia v 22 King St. Inc.*, *Rodney Gillis*, *John Gillis*, *David Rogers*, 2017 NBQB 172 (affirmed 2018 NBCA 16), *Farm Credit Canada v Dobson*, 2019 NBQB 272, *Royal Bank of Canada v Sibley and Naeem*, 2022 NBQB 131 (affirmed 2023 NBCA 18)).

Estoppel

Legal Principles

32. The heart of Defendant Terrance and Defendant Carolyn's defence focuses on the estoppel argument. The Defendant Terrance and the Defendant Carolyn assert estoppel precludes the Plaintiff BDC from collecting on their personal guarantees as the Plaintiff BDC did not advise them that the personal guarantee "swap", between the Defendant Stuart and the Defendant Terrance and the Defendant Carolyn, had been refused. In addition, the Defendant Terrance and the Defendant Carolyn assert the Plaintiff BDC is not a typical lending institution, relying on the purpose of the Plaintiff BDC outlined in section 4 of the *Business Development Bank of Canada Act*, SC 1995, c 28.

4(1) The purpose of the Bank is to support Canadian entrepreneurship by providing financial and management services and by issuing securities or otherwise raising funds or capital in support of those services.

33. For the concept of promissory estoppel to come into play, there needs to be a promise or assurance. While the statement or promise may be inferred, such treatment by the Court is exceptional (*The "Henrik Sif"*, [1982] 1 Lloyd's L.R. 456 (Q.B.)). The second requirement of promissory estoppel is the notion of detrimental reliance on the promise. In *Ryan v Moore*, 2005 SCC 38 at paragraph 69, Justice Bastarache speaking for the Supreme Court of Canada wrote:

69 Detrimental reliance encompasses two distinct, but interrelated, concepts: reliance and detriment. The former requires a finding that the **party seeking to establish the estoppel changed his or her course of conduct by acting or abstaining from acting in reliance upon the assumption, thereby altering his or her legal position**. If the first step is met, the second requires a finding that, **should the other party be allowed to abandon the assumption, detriment will be suffered by the estoppel raiser because of the change from his or her assumed position** (see Wilken, at p. 228; *Grundt v. Great Boulder Property Gold Mines Ltd.* (1937), 59 C.L.R. 641 (Australia H.C.), at p. 674).

[Emphasis added]

Adverse Inference

34. Discussions regarding changes to the First Loan, the Second Loan and the Third Loan arose when the Defendant Stuart contacted the Plaintiff BDC in April of 2021. The Defendant Stuart contacted the Plaintiff BDC in and around that time to negotiate with the Plaintiff BDC and other suppliers and creditors of the Defendant Corporation to release the guarantees from the

Defendant Terrance and the Defendant Carolyn. At this time, the Defendant Stuart spoke with Christopher Daigle, an employee of the Plaintiff BDC.

35. The Defendant Terrance and the Defendant Carolyn invite the Court to draw an adverse inference from the absence of evidence from Christopher Daigle. In *Fontaine et al v Royal Bank of Canada*, 2018 NBCA 75, the New Brunswick Court of Appeal faulted the trial judge for not drawing an adverse inference from the bank's failure to lead evidence of a person having personal knowledge of the wife's execution of a guarantee and specifically as it concerned an alleged misrepresentation that the guarantee was for one business rather than another.
36. Christopher Daigle did not provide affidavit evidence.
37. The Defendant Stuart, in his Affidavit details a conversation with Christopher Daigle and his conclusions based on those conversations.

[...] I was led to believe by Chris Daigle that swapping Terrance's and Carolyn's guarantees for mine was a "no brainer" so I proceeded on that basis.

As a result of my telephone conversations with Christopher Daigle, and later Marcus Caissie of BDC, I understood that they were working on the transfer of ownership of 696590 on the records of BDC. I took the "transfer of ownership" comments that I received from both account managers to mean a full transfer in ownership, including the release of Terrance and Carolyn from the guarantees of the BDC loans.

38. The lack of evidence from Christopher Daigle does not bring into play the adverse inference referenced in *Fontaine et al v Royal Bank of Canada*, 2018 NBCA 75. In the above noted passages from the Affidavit of Defendant Stuart, Defendant Stuart does not reference misrepresentations, assurances or promises provided by Christopher Daigle or other Plaintiff BDC employees, rather he recounts his interpretation and understanding of their discussions. There is no gap or conflict in the evidence which would cause an adverse inference to be drawn from the absence of evidence from Christopher Daigle.
39. Internal correspondence and notes from the Plaintiff BDC employees confirm BDC's intent to keep the Defendant Terrance and the Defendant Carolyn on as guarantors for at least another year despite the Defendant Stuart's intention to provide a personal guarantee in exchange for that of his parents in 2021. It is unclear whether this information was communicated to the Defendant Stuart, the Defendant Terrance and the Defendant Carolyn however it is clear that

the parties continued to operate for close to a year without any changes to the loan agreements.

Liability on Personal Guarantees and Estoppel

40. In March of 2022, the Defendant Stuart, on behalf of the Defendant Corporation, sought the postponement of a loan payment from the Plaintiff BDC which triggered a revisiting of the ownership and guarantees on the loans extended to the Defendant Corporation.
41. Marius Caissie, account manager for special accounts with the Plaintiff BDC, was involved in all aspects of this file and provided affidavit evidence which included contemporaneous notes detailing an intake call and his conversation with the Defendant Stuart in March of 2022. The notes confirm the Defendant Stuart was seeking to provide his own personal guarantee in exchange for the release of the personal guarantees of his parents.

Client confirmed SJ Bakery bought the shares from his parents (696590 NB). [...] I informed the client that technically BDC hasn't provided their consent to the change of ownership. I will look into it. Client is willing to provide personal guarantee in exchange to release his parents.

42. By all indications, at this juncture, the internal documents of the Plaintiff BDC suggests the plan consisted of updating the ownership of the Defendant Corporation and adding a personal guarantee from the Defendant Stuart.

Action Plan

- As part of our action plan, we don't expect much administration with this account other than to complete our due diligence on the change of ownership and add new personal guarantee.
43. Following these discussions with the Plaintiff BDC, the Defendant Stuart received an Amendment Letter on March 21, 2022, outlining the terms of the amendment. The letter was accompanied with the following email from Marius Caissie.

Hi Stuart,

As discussed last week, BDC never actually provided the written consent to the change of ownership that happened in January 2021. After review of the file, BDC is willing to provide its consent to the change of ownership conditional upon receiving your personal guarantee to these Loans. So,

could you please complete all documents attached and return on or before March 31, 2022?

1. Amending Letter
2. Guarantee documents for all 3 Loans for 696590 N.B. Inc.

Let me know if there's any issues.

44. In reference to the three loans, the following two paragraphs of the Amendment Letter reference the liability of prior guarantors.

Except for the modifications expressly mentioned above, nothing in the above amendments with respect to the Security shall in any way alter the rights which BDC now or hereafter has or may have and resulting from the Security nor shall it alter in any way the liability of the remaining obligant(s) and/or guarantor(s), as the case may be.

All other terms and conditions of your financing with BDC remain unchanged.

45. Of note, the Amendment Letter is short and succinct. The terms of the Amendment Letter were signed off by the three guarantors, the Defendant Terrance, the Defendant Carolyn, and the Defendant Stuart.

46. Further, for each of the loans referenced in the Amendment Letter, under the heading of security is noted "the following Security is **added** to this Loan".

47. From the evidence, there is no indication the Plaintiff BDC represented orally or in writing to the Defendant Terrance or the Defendant Carolyn that the "swap" had been accepted despite being considered in 2021 by the Plaintiff BDC.

48. The provisions in the First Loan Agreement and the Third Loan Agreement confirms the requirement of a written agreement between the parties to discharge the liability of guarantors.

a. The First Loan Agreement

The Guarantor warrants that there are no agreements, representations and conditions that have been relied upon by the Guarantor that are not expressed in this Guarantee.

[...] The Guarantor shall not rely upon any representation made by BDC in respect of the liability of Guarantor under this Guarantee unless such representation is in writing executed by BDC and no agreement has the effect of diminishing or discharging the liability of the Guarantor under this Guarantee unless the agreement is in writing and executed by BDC.

b. The Third Loan Agreement

The Borrower and the Guarantors, if any

[...]

Acknowledge that this is the entire agreement between the Borrower and BDC and that there are no other written or oral representations or warranties which apply to this agreement. This agreement may only be amended by agreement in writing signed by BDC.

49. In addition, any confusion that may have been created through the prior consideration of the “swap” would have been dispelled by an attentive review of the short and succinct Amendment Letter and its terms. On this basis, the Court concludes there were no express or implied assurances or guarantees of a “swap” communicated to the Defendant Stuart, the Defendant Terrance, or the Defendant Carolyn. The elements of promissory estoppel are not established.
50. In addition, the context in which the Amendment Letter arose must be considered. The Defendant Terrance and the Defendant Carolyn sold their shares in the Defendant Corporation which was prohibited without the consent of the Plaintiff BDC. The covenants in the First Loan Agreement, the Second Loan Agreement and the Third Loan Agreement required prior written consent.

Covenants

The Borrower

[...]

– Agrees to obtain BDC’s prior written consent (a) to change the nature of the business, (b) to amalgamate, merge, acquire or otherwise restructure the business or create an affiliated company, (c) to sell or transfer shares or any interest in a partnership or limited partnership or trust or change the effective voting control (as determined by BDC).

51. Given the context, the Defendant Terrance and the Defendant Carolyn come before the Court seeking equitable remedy of promissory estoppel without clean hands.
52. The Defendant Terrance and the Defendant Carolyn suggest that the Plaintiff BDC, by its nature, is to provide advice and guidance to borrowers. While the purpose and objective of the Plaintiff BDC’s operations may differ from other banks, the Court was provided no basis to suggest that its responsibility towards borrowers is different than that in other lending relationships.

53. Finally, the Defendant Carolyn suggested the Claim against her should have been brought before the Small Claims Court. The problem with this suggestion is that the Claim against the Defendant Terrance was above the monetary threshold recoverable before the Small Claims Court and given the two Claims were linked to the same documents and arise out of the same transaction, it was more appropriate for them to proceed before the same Court and in the same Claim.

Amount

54. The amounts outstanding on the loans in addition to interest (to the date of the decision) are detailed below.

First Loan \$8,429.14 + per diem interest of \$2.47 for 483 days = \$9,622.15

Second Loan \$6,068.77 + per diem interest of \$1.62 for 483 days = \$6,851.23

Third Loan \$6,452.53 + per diem interest of \$1.23 for 483 days = \$7,046.62

55. The Defendant Terrance and the Defendant Carolyn do not dispute the calculation of these amounts which are outlined and detailed in the Record.

56. Based on the consideration of the issues and the weighing of the evidence, and as there remains no genuine issue for trial, Summary Judgment is granted against the Defendant Terrance in the amount of \$23,520.00 (amount owing on the First Loan, the Second Loan and the Third Loan) and the Defendant Carolyn in the amount of \$13,897.85 (amount owing on the Second Loan and the Third Loan).

Costs

57. In this matter, the Court did not hear a trial pursuant to the Simplified Proceedings Rule 79 which would be subject to the issuance of costs under Rules 79.11 and 59 of the *Rules of Court*.

79.11 Costs

(1) Scales 2 to 5 of Tariff 'A' of Rule 59 do not apply to the fixing of costs of an action that proceeded under this rule.

(2) For greater certainty, Rule 59.08(8) applies to the disbursements incurred by a party under Rule 79.06(1), (4), (5) or (7).

58. Rather, in this case, the Court heard a motion for Summary Judgment.

59. Rule 59.08(1)(b) of the *Rules of Court* provides guidance on the issuance of costs on a motion for summary judgment. The application of Rule 59.08(1)(b) of the *Rules of Court* in summary judgment motions was confirmed by the New Brunswick Court of Appeal (*Edmondson et al. v Edmondson et al.*, 2022 NBCA 4 at paragraph 81 and 82). The judge shall fix costs and must exercise its discretion judiciously.

59.08 Fixing and Assessing Costs

(1) Subject to Rules 59.01 and 59.02, on rendering a decision or making an order

(a) after trial of an action,

(b) on motion for judgment,

(c) disposing of a proceeding commenced by notice of application, or

(d) after hearing an appeal,

the court rendering the decision or making the order shall fix the costs relating to fees for solicitors' services in accordance with Tariff 'A' and direct by whom and to whom they are to be paid.

[Emphasis added]

60. Considering the value of the Claim around \$23,000 as it concerns the Defendant Terrance and \$13,000 as it concerns the Defendant Carolyn, considering Rules 79.11 and 59.08 of the *Rules of Court*, considering Scale 1 of Tariff A and considering the discretion of the Court, the Court directs costs of \$1,500 be payable to the Plaintiff BDC by the Defendant Terrance and the Defendant Carolyn in addition to allowable disbursements (see Rule 79.11(2) of the *Rules of Court*).

DISPOSITION

~~61. The Business Development Bank of Canada shall have judgment against Terrance Gordon Howe and Carolyn Gertrude Howe jointly and severally in the amount of \$13,897.85 for the amount outstanding under the second loan and third loan. The Business Development Bank of Canada shall have judgment against Terrance Gordon Howe in the additional amount of \$9,622.15. Costs are assessed against Terrance Gordon Howe and Carolyn Gertrude Howe in the total amount of \$1,500.00 and allowable disbursements.~~

62. For clarity, the judgments against Terrance Gordon Howe in the total amount of \$23,520.00 and against Carolyn Gertrude Howe in the amount of \$13,897.85 are joint and several with the default judgment against Stuart Andrew Howe and 696590 N.B. Inc. in the amount of \$22,282.40. The respective liability of each Defendant is however subject to a different monetary limit.

DATED at Moncton, New Brunswick, this 19th day of June 2024.

original signed
Justice Maya Hamou
Court of King's Bench of New Brunswick