

CITATION: Royal Bank of Canada v. Dahalan, 2024 ONSC 7209
COURT FILE NO.: CV-24-297-00
DATE: 20241227

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ROYAL BANK OF CANADA, Plaintiff

AND:

ISSAMEDDIN DAHALAN, Defendant

BEFORE: Justice B. MacFarlane

COUNSEL: Gregory Bowden, for the Plaintiff

Latania Dyer, for the Defendant

HEARD: September 13, 2024

ENDORSEMENT

Overview

[1] The Plaintiff moves for summary judgment for the collection of a liquidated debt owed by the Defendant in the amount of \$361,144.04, being principal and interest owing until the date the claim was issued. The Defendant does not dispute the principal amount on the debt owing being \$350,000, but he disputes the interest rate expected under his loan agreement with the Plaintiff. On this motion, the Defendant’s position is that there is a triable issue on whether the loan agreement was to be a fixed interest rate rather than a variable rate, which requires a credibility assessment.

[2] For the reasons outlined below, I find that it is appropriate to determine this issue on summary judgment. The Plaintiff will have judgment in accordance with the draft judgment provided.

Background Facts

[3] It is not disputed that Defendant entered into a line of credit loan agreement with the Plaintiff on August 20, 2021, with an initial credit limit of \$350,000 and an interest rate at the time of signing of 2.20%, based on the prime rate of interest of 2.45%, minus 0.25% (the “Loan Agreement”).

[4] On this motion, there is a disagreement between the parties as to whether it was a fixed rate of interest of 2.20% or a variable rate of interest based on prime interest, minus 0.25% as pled by the Plaintiff.

- [5] The Plaintiff relies on the Loan Agreement signed by the Defendant on August 20, 2021, which it says sets out the terms that the Defendant agreed to, including a variable rate of interest based on a prime rate, minus 0.25%¹. A copy of the signed Loan Agreement was entered as Exhibit “A” in the Motion Record.
- [6] The Loan Agreement signed by the Defendant sets out the following terms relating to interest payable on the amounts owing:

Annual Interest Rate

Interest is compounded monthly and is payable monthly.

Your annual interest rate is based upon our Prime Rate, plus or minus an adjustment factor.

Your interest rate is: **Prime Rate plus 0.000000%**

As of the date of this Agreement our Prime Rate is: **2.450000%**

This means your variable interest rate is: **2.450000% until** our Prime Rate changes.

Your interest rate will vary automatically as our Prime Rate varies.

See the section entitled: *Charging you interest* for details regarding the interest rate and how it is calculated.

Accrued interest is calculated based on the amount outstanding on each day multiplied by the interest rate in effect for that day. Interest is calculated daily and is payable monthly. See the section entitled: *How we calculate interest* for details of the interest calculation.

Prime Rate means the variable annual interest rate announced by us from time to time as a reference rate for determining interest rates on Canadian dollar commercial loans in Canada.

...

Charging you interest

We charge you interest on all amounts you borrow on your Account, and on all overdue interest. We charge you interest at an annual rate of our Prime Rate plus or minus an adjustment factor. The adjustment factor for your Account, and the variable interest rate we charge you as of the date of this Agreement, are shown in the information box under “Annual Interest Rate”. ... We will not give you notice of any change of our Prime Rate.

You agree that we may increase or decrease your interest rate whenever we choose. We will give you at least 30 days written notice of any increase of your interest rate (other than a change because of a change of our Prime Rate). . .

¹ The agreement actually states prime rate, minus 0.00% but the Plaintiff’s pleading accepts that it was prime rate, minus 0.25%.

Our Prime Rate and therefore the interest rate we charge you may change from time to time. We will not give you prior notice of a change to our Prime Rate. Our Prime Rate is the variable annual rate of interest announced by us from time to time as a reference rate for determining interest rates on Canadian dollar commercial loans in Canada. Our Prime Rate is posted at all or our branches and on our website. If it is necessary for us to prove the interest rate we charge you in effect at any time, you agree that our written certificate setting out the interest rate at that time is conclusive proof for that purpose.

Your signature

By signing below, you hereby confirm that you have consented to being provided with your Account in accordance with the terms set out herein and acknowledge receipt of a copy of this Agreement....

- [7] The Plaintiff filed evidence to show that principal funds were advanced by it to the Defendant, plus interest charges on the outstanding balance, based upon a prime rate of interest, minus 0.25%. The prime interest rate varied over the course of the two years before the Defendant defaulted.
- [8] In his Amended Statement of Defence, the Defendant admits entering into the Loan Agreement with the Plaintiff but denies the balance owing. He asserts that the “claimed amount of \$361,144.04 does not accurately reflect the balance of the loan. The original loan amount and subsequent payments made by the Defendant have not been properly accounted for by the Plaintiff”.
- [9] The Defendant pleads that he paid the monthly interest owing under the Loan Agreement for approximately two years, but the interest rate “significantly and unexpectedly increased”, causing a financial hardship to him. As a result, the Defendant was unable to keep up the payments under the Loan Agreement.
- [10] The Defendant alleges that the Plaintiff “raising the interest rate without adequate notice or negotiation constitutes a breach of the duty of good faith and fair dealing”.
- [11] In his affidavit filed in response to this motion, the Defendant states that when he signed the line of credit agreement on August 20, 2021:

I was verbally informed by their Financial Services Representative that my interest rate would be Prime Rate minus 0.25%, which at the time was 2.20%. This understanding was reinforced by information on RBC’s own website...I relied on the information provided to me during my meeting with RBC and the advertisement on their website when I entered into this line of credit agreement. I would not have agreed to the terms had I known that the interest rate applied would be Prime plus 0.00% instead of Prime minus 0.25%.

- [12] In argument, the Defendant took the position that he was misled by a representative of the Plaintiff into believing the interest rate was 2.20% rather than the variable rate based upon the prime rate of interest.
- [13] The Defendant has not made payments under the Loan Agreement since approximately September 2023.
- [14] On January 15, 2024, the Plaintiff sent a demand for payment of the outstanding balance under the Loan Agreement in the amount of \$360,396.26 as at that date, with a per diem rate of \$67.98.
- [15] The Defendant denies that he received the notice of demand dated January 15, 2024. An affidavit of service was filed which shows service on the Defendant by registered mail and regular mail on January 15, 2024. The Defendant filed a return to sender an unclaimed registered mail notice as an exhibit. The Defendant did not deny that it was his mailing address.

Law

- [16] Rule 20.01 of the *Rules of Civil Procedure* permits the plaintiff to move for summary judgment, with supporting evidence. Rule 20.04(2)(a) provides: “The court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”.
- [17] Rule 20.04(2.1) sets out the court's powers on a motion for summary judgment as follows:
- In determining under clause (2)(a) whether there is a genuine issue requiring a trial, the court shall consider the evidence submitted by the parties and, if the determination is being made by a judge, the judge may exercise any of the following powers for the purpose, unless it is in the interest of justice for such powers to be exercised only at a trial:
1. Weighing the evidence.
 2. Evaluating the credibility of a deponent.
 3. Drawing any reasonable inference from the evidence.
- [18] The leading case of *Hryniak v. Mauldin*, 2014 SCC 7 (S.C.C.), at para. 66, sets out a road map/approach to a motion for summary judgment. A Judge must first determine if there is a genuine issue for trial based only on the evidence, *without* using the new fact-finding powers under r. 20.04(2.1). There will be no genuine issue requiring a trial where, on the evidence, a motion judge can fairly and justly adjudicate the dispute in a timely, affordable and proportionate manner. If a genuine issue appears to require a trial, the Judge should determine whether the new powers can be used to avoid the need for a trial. The discretionary use of the new powers should lead to a fair and just result to serve the goals

of timeliness, affordability and proportionality. It should not be against the interest of justice.

- [19] A trial is unnecessary when a summary judgment motion (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.²
- [20] In *Joshi v. Chada*, 2022 ONSC 4910, at paragraph 66, Glustein J. set out the relevant legal principles applicable to summary judgment as follows:
- (i) The purpose of r. 20 of the *Rules* is to (a) eliminate claims that have no chance of success at trial, and (b) provide judges with fact-finding powers to be used on a summary judgment motion: *Hryniak*, at paras. 44-45, and 66;
 - (ii) The evidence on a summary judgment motion must enable the motion judge to be confident that they can fairly resolve the dispute: *Hryniak*, at para. 57;
 - (iii) The motion judge’s enhanced powers allow the court to weigh evidence, evaluate credibility, and draw reasonable inferences from the evidence: *Mega International Commercial Bank (Canada) v. Yung*, 2018 ONCA 429, 141 O.R. (3d) 81, at para. 83;
 - (iv) The focus of a summary judgment motion is not on what kind of evidence could be adduced at trial, but rather on whether a trial is required: *Hryniak*, at para. 56;
 - (v) The court is entitled to assume that it has all the evidence that would be available at trial related to the matters at issue: *Portuguese Canadian Credit Union v. Pires*, 2011 ONSC 7448, at para. 11, aff’d 2012 ONCA 335;
 - (vi) The moving party has the onus of proving that there is no genuine issue requiring a trial. Then, the onus shifts to the responding party to provide evidence of specific facts showing that there is a genuine issue requiring a trial: *Sweda Farms Ltd. et al. v. L.H. Gray & Son Limited et al.*, 2013 ONSC 4195, at paras. 26-27, leave to appeal refused, 2014 ONSC 3016;
 - (vii) Summary judgment is not appropriate if the credibility of the parties is squarely in issue and requires a trial: *Demetriou v. AIG Insurance Company of Canada*, 2019 ONCA 855, 97 C.C.L.I. (5th) 204, at para. 9;
 - (viii) The more important credibility disputes are to determining key issues, the harder it will be to fairly adjudicate those issues solely on a paper record. “It is not always a simple task to assess credibility on a written record. If it cannot be done, that should be a sign that oral evidence or a trial is required”: *Cook v. Joyce*,

² *Hryniak* at para. 49.

2017 ONCA 49, at para. 92, citing *Trotter Estate*, 2014 ONCA 841, 122 O.R. (3d) 625, at para. 55; and

- (ix) The court must take “great care” in assessing credibility and reliability on affidavit evidence, since “[e]vidence by affidavit, prepared by a party’s legal counsel, which may include voluminous exhibits, can obscure the affiant’s authentic voice”. Consequently, the motion court must “ensure that decontextualized affidavit and transcript evidence does not become the means by which substantive unfairness enters, in a way that would not likely occur in a full trial where the trial judge sees and hears it all”: *Baywood Homes Partnership v. Haditaghi*, 2014 ONCA 450, 120 O.R. (3d) 438, at para. 44.

Analysis

- [21] The Plaintiff relies on the Loan Agreement, signed by the Defendant, and the evidence of advancement of funds, monthly transactions and the demand for payment of the loan to support its case. Based on the banking documents, there is sufficient evidence to support no genuine issue requiring a trial.
- [22] However, the Defendant asserts the Plaintiff fundamentally misrepresented the interest rate in the Loan Agreement, which the Defendant relied on to his detriment. The Defendant argues that summary judgment is inappropriate because determining whether the documents signed were misrepresented requires assessing credibility and detailed factual findings. He contends that the alleged misrepresentations of the interest rate present a genuine issue that necessitates a trial.
- [23] On the face of the defence argument, it would suggest that credibility is squarely in issue regarding the Loan Agreement such that it may necessitate a trial. However, I am permitted to exercise my discretion with the new powers under Rule 20.04(2.1) and (2.2.), even if there appears to be a genuine issue for trial.
- [24] I am not convinced the Defendant has presented sufficient evidence to establish a genuine issue warranting a trial relating to the expected interest rate at the time of entering into the Loan Agreement. It is the Defendant’s onus of proof on this issue.
- [25] I do not find that credibility of the parties is a key issue relating to the dispute between the Plaintiff and Defendant, namely whether the interest rate was fixed or variable, based on prime rate minus 0.25%.
- [26] The pleadings do not disclose misrepresentation or detrimental reliance on a fixed interest rate of 2.20%. Rather, the Statement of Defence alleges that he relied on the plaintiff’s representations that the interest rate would be prime rate minus 0.25% versus the prime rate, minus 0.00%. It does not discuss a fixed rate versus a variable rate.

- [27] The Plaintiff actually pled in the statement of claim that the terms of the Loan Agreement were that the interest rate was the prime rate, minus 0.25% and seeks interest for that amount.
- [28] It was on this motion when the Defendant alleged that the Plaintiff misrepresented to him that it was a fixed rate of interest (i.e., 2.20%) rather than a variable rate.
- [29] The Defendant's evidence on this motion also does not outline representations regarding a fixed rate of interest promised. Furthermore, regarding detrimental reliance he stated: "I would not have agreed to the terms had I known that the interest rate applied would be Prime plus 0.00% instead of Prime minus 0.25%", as represented to him. The evidence does not reference the 2.20% was represented to be a fixed rate of interest.
- [30] However, the Loan Agreement signed by the Defendant specifically references a variable interest rate tied to the Prime Rate of interest. For example, within the box created for **Annual Interest Rate** in the Loan Agreement the words "Prime Rate" is stated about 5 times and the words "vary/varies/variable" are stated about 4 times. Prime Rate is defined within that box marked with an asterisk stating: "*Prime Rate means the variable annual interest rate announced by us from time to time as a reference rate for determining interest rates on Canadian dollar commercial loans in Canada".
- [31] A reasonable interpretation of the Loan Agreement indicates that the interest rate would fluctuate based on the Prime Rate. The Defendant pled, and his evidence was, that the rate of interest was to be determined based on the prime rate, minus 0.25%.
- [32] The Loan Agreement provides an example calculation to illustrate how the interest rate is calculated using the prime rate of interest, minus the agreed upon reduction (in this case 0.25%).
- [33] It is uncontroverted that the Defendant signed the Loan Agreement. It specifically required the Defendant to acknowledge that he consented to receiving the line of credit account in accordance with the terms of the agreement, and that he would have received a copy of the Loan Agreement at the time of signing the document.
- [34] Additionally, the evidence is that the Defendant continued to make interest payments even after the rate increased beyond 2.20% to 2.45% and subsequently to higher rates, including 6.95%. This conduct suggests the Defendant was aware of the variable nature of the interest rate, rather than believing it was fixed at 2.20%.
- [35] The Defendant has not provided evidence beyond their own assertion that an unnamed representative of the Plaintiff misled him about the interest rate being fixed rather than variable. I am not persuaded that the Plaintiff misrepresented or induced the Defendant into the Contract. I do not find that a credibility dispute exists between the parties warranting a trial.

- [36] I also find that there is no genuine issue for trial relating to the defence assertion that there was lack of notice of the change in interest rates. The Loan Agreement stipulates that the prime rate, and therefore the interest rate, is subject to change without notice. The Plaintiff did not alter the interest rate from fixed to variable, as the rate was always variable. The Defendant was aware of the potential for rate fluctuations. I find that the Plaintiff was not required to provide notice of the change of interest rates based on the change in the prime rate. I find that the Plaintiff complied with the *Bank of Canada Act* and *Cost of Borrowing Regulations*.
- [37] I am not convinced the Defendant has a valid defence. Credibility is not a central issue that necessitates a trial. The Loan Agreement, which the Defendant signed, clearly outlines the terms, including the variable interest rate, subject to change without notice. If the Defendant preferred a fixed rate, he should have negotiated those terms before signing the agreement.
- [38] The case of *Royal Bank of Canada v. Aleksandar Mijailovic, Tatjana Mijailovic, and 7915381 Canada Inc.*, 2018 ONSC 6798, at para 31, is not helpful. In that case, it was undisputed that the corporation owed the bank, but the issue was whether the Defendants knew they were personally liable as guarantors. I am not convinced that the alleged misrepresentations in that case are similar to those in this case, given the clear terms of the Loan Agreement signed by the Defendant.
- [39] After reviewing the pleadings and evidence, I find that there is no genuine issue requiring a trial, and, in any event, using the new powers under r.20.04, granting summary judgment is fair and just, being a timely, affordable and proportionate procedure and not contrary to the interest of justice.
- [40] The Plaintiff shall have Judgment in the amount of \$361,144.04, payable by the Defendant, plus pre-judgment interest is payable at the contractual rate of interest from January 26, 2024, to the date of this Judgment. [See *America Canada v. Mutual Trust Co.*, 2002 CarswellOnt 1114].

Costs:

- [41] The Plaintiffs seek costs of the action, not only for having to commence the action but because there is a contractual obligation on the Defendant to pay costs on collection.
- [42] The Loan Agreement states that RBC is entitled to collection fees as follows:

If you don't make a payment on your Interest Payment Date or otherwise don't comply with the Agreement, you must pay any reasonable legal costs that we incur to collect or attempt to collect the payment from you, or in attempting to protect or realize on the property given as security for your Account. These costs include our legal costs on a solicitor-client or substantial indemnity basis.

- [43] The Plaintiff's Cost Outline sets out costs between \$3,669.59 on a partial indemnity basis or \$4,981.17 on a substantial indemnity basis. These amounts include disbursements totalling \$1,046.51 and are inclusive of HST. The Defendant's Cost Outline is between \$2,320.70 on a partial indemnity or \$3,094.39 for substantial indemnity basis.
- [44] After reviewing the parties' costs outlines and on hearing submissions, I order the Defendant to pay the Plaintiff's costs in the amount of \$4,100.00, inclusive of fees, disbursements and HST. This amount is fair and reasonable for the costs of the action. No additional fees are awarded.
- [45] I am not satisfied that post-judgment interest on the cost award should also be payable at the contractual rate, based on the evidence. Rather, post-judgment interest on the cost award will be at the rate prescribed by s.129 of the *Courts of Justice Act*.

Justice B.A. MacFarlane

Date: December 27, 2024