SUPREME COURT OF NOVA SCOTIA

Citation: *Full Throttle Power Sports Limited v. MacIntosh*, 2021 NSSC 206

Date: 20210615
Docket: Halifax, No. 470039
Registry: Halifax

Between:

Full Throttle Power Sports Limited

Applicant

v.

Brandi Anne MacIntosh

Defendant

Decision

Judge:	The Honourable Justice Glen G. McDougall
Heard:	March 10, 2021, in Halifax, Nova Scotia
Counsel:	Tim Hill, Q.C. and Megan Kells, for the Applicant Aaron Schwartz, for the Defendant

By the Court:

Background

[1] The applicant, Full Throttle Power Sports Limited, is a Nova Scotia company that sells power sports vehicles and equipment. The respondent, Brandi MacIntosh, was a customer of Full Throttle. On June 26, 2017, Ms. MacIntosh visited Full Throttle and asked about the purchase and financing of a 2017 GTI SI 130 Sea-Doo. At that time, Full Throttle used an outside financing agent – LMG Finance – to obtain financing for its customers. Through LMG, Ms. MacIntosh submitted an application to Crelogix Acceptance Corporation and was pre-approved for financing. On June 30, Ms. MacIntosh returned to the dealership where she and Full Throttle executed several documents, including a consumer promissory note and two bills of sale. Once the documents were completed, Ms. MacIntosh left Full Throttle with the sea-doo.

[2] With Ms. MacIntosh now in possession of the sea-doo, Full Throttle sent the completed documents to LMG for review. LMG then sent the documents to Crelogix for the loan to be processed, after which Crelogix would pay the purchase price to Full Throttle. Before Crelogix received Ms. MacIntosh's financing documents and processed the loan, however, it went into receivership. Since the financing process was not completed, Full Throttle never received payment for the sea-doo from Crelogix and no payments have ever been taken from Ms. MacIntosh's account.

[3] Full Throttle has filed this application against Ms. MacIntosh for payment of the purchase price. Ms. MacIntosh says Full Throttle has no right to recover against her because her contract is with Crelogix. Ms. MacIntosh further suggests that Full Throttle and LMG caused or contributed to Full Throttle's loss by failing to ensure that Crelogix was in good financial standing at the time the financing was arranged.

[4] At the conclusion of the hearing, I told the parties that I had found in favour of Full Throttle, and that Ms. MacIntosh would be ordered to pay for the sea-doo. However, my reasons and the specific payment terms would follow in a written decision. This is that decision.

The evidence

[5] The parties agree on the material facts which are set out, together with the relevant documents, in affidavits sworn by Christine Bell, a director and secretary of Full Throttle, and by Brandi MacIntosh.

[6] On June 26, 2017, Ms. MacIntosh completed an application for financing with Crelogix. The one-page form identifies Full Throttle as the "Merchant" and describes the item to be financed as a "2017 Watercrafts Sea-Doo GTI SE 130". The "amount to finance" is listed as $14,806.60. Ms. MacIntosh provided her personal information (including SIN), employment information, gross monthly income ($7,500), property value ($238,000) and mortgage balance ($187,000), and monthly mortgage payment amount ($741). Based on this information, Crelogix pre-approved Ms. MacIntosh for financing.

[7] On June 30, 2017, Ms. MacIntosh returned to Full Throttle to purchase the sea-doo. The total purchase price of the sea-doo was $14,806.60, comprised of the following:

a. Purchase price - $11,500.00;
b. Freight/handling - $850.00;
c. PPSA Fee - $145.25;
d. LMG Document Fee - $399.00; and,
e. Tax - $1,912.35

[8] Before leaving with the sea-doo, Ms. MacIntosh and Full Throttle executed a consumer promissory note which identifies Ms. MacIntosh as "Buyer" and Full Throttle as "Seller". Under the heading "Financial Terms", the price of the sea-doo is listed as $11,500, or $14,806.60 with taxes and fees. The amount financed is $14,806.60. Under "Term & Contract Payment Dates", the contract term is 120 months, with the first regular payment due on August 1, 2017, and the final payment due on July 1, 2027. Under "Regular Payments & Cost of Borrowing", the regular monthly payment is $195.59. The annual interest rate is 9.99%. The cost of credit is $8,664.20, resulting in a total finance cost for the sea-doo of $23,470.80. Under "Acknowledgement and Execution", the note states:

> You acknowledge: … (5) this Note may be assigned to Crelogix and may [*sic*] reassigned thereafter and consenting to the assignment and reassignments, …

[9] On the second page of the promissory note, the terms and conditions include the following:

> For value received, you promise to pay, as set out below, to the Seller (and you acknowledge this Note has been assigned to Crelogix), at the above address of Crelogix or such other address as Crelogix may direct, the Amount Financed and interest calculated and compounded monthly in arrears at the Annual Percentage Rate, after as well as before maturity, default and demand, with the interest on overdue interest at the Annual Percentage Rate. Interest will begin to accrue from the date of this Note.

The note is signed by Ms. MacIntosh as "Buyer" and by Randy MacDow, Sales Advisor at Full Throttle, as "Seller". Ms. MacIntosh also provided a void check to enable payments to be taken from her account.

[10] In addition to the promissory note, Ms. MacIntosh and Full Throttle signed two bills of sale. These documents identify Full Throttle as the "Dealer" and Ms. MacIntosh as the "Applicant" and "Purchaser". The bills of sale summarize the purchase details and the terms of the financing.

[11] Finally, Full Throttle provided Ms. MacIntosh with a "Client Summary" document. The summary sets out the contract and product details, identifies Ms. MacIntosh's dealer as Full Throttle, and states:

> Your contract is with:
>
> | | |
> |---|---|
> | Bank Name | Crelogix Acceptance Corporation |
> | Address | Suite 900, 4445 Lougheed Hwy
Burnaby, British Columbia
VC5 0E4 |

[12] According to Christine Bell's affidavit, when financing documents are completed by customers, the normal course is for Full Throttle to send the documents to LMG for review. After review, LMG then sends the documents to Crelogix for the loan to be processed and then funded back to Full Throttle.

[13] Ms. MacIntosh's documents were sent to LMG for review. Shortly thereafter, Ms. Bell was advised by a representative at LMG that before Crelogix received the documents from LMG, it went into receivership and therefore never accepted the financing or processed the loan. As a result, Full Throttle was never paid by Crelogix for the sea-doo.

[14] On August 16, 2017, Ms. Bell emailed Marianna Lee at Alvarez & Marshal Canada Inc., the receiver for Crelogix, in relation to the loan agreement with Ms. MacIntosh. Ms. Bell referenced an earlier phone conversation with Ms. Lee and

attached a copy of the contract executed by Full Throttle and Ms. MacIntosh. On August 18, Ms. Lee replied to Ms. Bell as follows:

> Crelogix does not have in their records a loan with Full Throttle or Brandi Anne MacIntosh.

[15] Ms. Bell responded on the same date, asking Ms. Lee to confirm that there was no loan under LMG's name. On August 21, 2017, Ms. Lee confirmed that Crelogix had no loan under LMG, either. On August 29, Ms. Bell emailed one final time to confirm that no payments were coming out of Ms. MacIntosh's account. On August 31, Ms. Lee replied:

> There is no record of a loan with or payments being withdrawn from Brandi MacIntosh's account.

[16] Ms. MacIntosh's evidence is that in August 2017, she noticed that the first payment to Crelogix had not been debited from her bank account. She attempted to contact Crelogix by telephone but was unable to reach a representative.

[17] On August 30, 2017, she received a phone call from Michael MacPhee, a representative of LMG. Mr. MacPhee advised that Crelogix had been placed into receivership, but was still debiting client accounts. According to Ms. MacIntosh, Mr. MacPhee advised her to contact her bank and issue a "stop payment" order in relation to Crelogix. Ms. MacIntosh said she did not contact her bank because she believed that she had a valid agreement with Crelogix.

[18] On September 15, Mr. MacPhee told Ms. MacIntosh that LMG had not forwarded the consumer promissory note to Crelogix. On September 27, Mr. MacPhee presented Ms. MacIntosh with several options to finance the purchase of the sea-doo. One option was for Ms. MacIntosh to return the sea-doo to Full Throttle. Another option was for Ms. MacIntosh to finance the purchase of the sea-doo with LMG for a term of five years at zero percent interest. This option would have increased Ms. MacIntosh's monthly payment by $42.11, but would have saved her over $8,000 in interest. Ms. MacIntosh's evidence was that she refused this offer because the payments were higher than what she agreed to in the promissory note. She further stated that LMG did not offer to indemnify her in the event that Crelogix or its receiver attempted to collect payment from her. There is no evidence before the court that Ms. MacIntosh asked for indemnification from LMG.

[19] After speaking with Mr. MacPhee on September 27, 2017, Ms. MacIntosh contacted Ms. Bell at Full Throttle to inquire about her payments to Crelogix. Ms. Bell advised that Full Throttle had not submitted any documentation to Crelogix.

[20] On October 3, 2017, then-counsel for Full Throttle received a letter from Ms. MacIntosh. After describing her conversation with Mr. MacPhee at LMG, Ms. MacIntosh wrote:

> After the above conversation ended I phoned Christine at Full Throttle and asked her what the issue was [*sic*] she explained that the below had occurred and it was a very difficult situation as due to the fact that Crelogix were not presented with the original signed documentation I am assuming she was referring to the Consumer Promissory Note Contract Number: 39939510 and that Crelogix did not recognize my loan prior to them entering receivership. I was not aware that original documents needed to be received from Full Throttle/LMG to Crelogix to make this a binding contract the day in which I signed nor is this reference [*sic*] on the Consumer Promissory Note Contract Number 3993510. When I departed Full Throttle's facility on June 30th, 2017 with my machine I was in a legal contract with Crelogix.
>
> The above situation was beyond my control and I feel that I have become the victim in this situation. At this time I am not willing or able to accept any other financing terms other than the term in which I agreed/signed to within the Consumer Promissory Note Contract Number: 39939510. Please advise your client Full Throttle not to contact me in the future regarding this matter. As I mentioned above I feel I have signed [*sic*] legal binding contract between myself and Crelogix the day in which Full Throttle released the machine to me. I think it is in your best interest as legal counsel on behalf of Full Throttle that you advise them that Merchandise from their facility should not be released if they have not fulfilled other obligations with the financing company such as sending original documentation. …

[21] On March 6, 2019, Full Throttle's former solicitor, Geoff Franklin, sent Ms. MacIntosh an email attaching a copy of a report prepared by the receiver for Crelogix. Mr. Franklin noted that the report, dated June 8, 2018, and filed with the Alberta Court of Queen's Bench, confirmed that Crelogix did not have a credit agreement with Ms. MacIntosh and could not claim against her for payment. Ms. MacIntosh said that, prior to Mr. Franklin's email, Full Throttle had not provided her with any documentation or information regarding Crelogix having gone into receivership.

[22] On cross-examination, Ms. Bell was asked whether Full Throttle or LMG performs any due diligence with respect to the financial standing of lenders before

they are presented to customers as potential sources of financing. Ms. Bell had no knowledge of LMG's practices, but stated that Full Throttle does not investigate the financial health of lenders. She further stated that she has worked in the industry for over 30 years and that this is the first and only time she has seen a lender go bankrupt.

[23] On re-direct, Ms. Bell said that, in her experience, it was not industry practice for dealers to check on the credit-worthiness of lenders. She was also asked by her counsel whether anyone at Crelogix had ever advised her that it had accepted the assignment of the consumer promissory note. Ms. Bell replied, "No."

The law

[24] Although Full Throttle claimed against Brandi MacIntosh in both breach of contract and unjust enrichment, its written and oral submissions focused entirely on the claim in unjust enrichment. At the hearing, Full Throttle did not take the position that a valid contract exists between it and Ms. MacIntosh.

[25] A successful claim for unjust enrichment requires proof of an enrichment to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the benefit. In *Kerr v. Baranow*, 2011 SCC 10, Cromwell J., for the court, summarized the doctrine as follows:

> [31] At the heart of the doctrine of unjust enrichment lies the notion of restoring a benefit which justice does not permit one to retain ... For recovery, something must have been given by the plaintiff and received and retained by the defendant without juristic reason. A series of categories developed in which retention of a conferred benefit was considered unjust. These included, for example: benefits conferred under mistakes of fact or law; under compulsion; out of necessity; as a result of ineffective transactions; or at the defendant's request …
>
> [32] Canadian law, however, does not limit unjust enrichment claims to these categories. It permits recovery whenever the plaintiff can establish three elements: an enrichment of or benefit to the defendant, a corresponding deprivation of the plaintiff, and the absence of a juristic reason for the enrichment … By retaining the existing categories, while recognizing other claims that fall within the principles underlying unjust enrichment, the law is able "to develop in a flexible way as required to meet changing perceptions of justice": *Peel*, at p. 788.
>
> [Emphasis added]

[26] The parties agree that there has been a benefit to Ms. MacIntosh (possession of the sea-doo), and a corresponding deprivation to Full Throttle (no payment for the

sea-doo). The outcome of the application therefore turns on whether there is a juristic reason for Ms. MacIntosh's enrichment.

[27] In *Moore v. Sweet*, 2018 SCC 52, Côté J., writing for the majority, reviewed the two-stage juristic reason analysis first articulated in *Garland v. Consumers' Gas Co.*, 2004 SCC 25:

> [55] This understanding of juristic reason is crucial for the purposes of the present appeal. The third element of the cause of action in unjust enrichment is essentially concerned with the justification for the defendant's retention of the benefit conferred on him or her at the plaintiff's expense - or, to put it differently, with whether there is a juristic reason for the transaction that resulted in both the defendant's enrichment and the plaintiff's corresponding deprivation. If there is, then the defendant will be justified in keeping or retaining the benefit received at the plaintiff's expense, and the plaintiff's claim will fail accordingly. At its core, the doctrine of unjust enrichment is fundamentally concerned with reversing transfers of benefits that occur without any legal or equitable basis. As McLachlin J. stated in *Peter* (at p. 990), "It is at this stage that the court must consider whether the enrichment and detriment, morally neutral in themselves, are 'unjust'."
>
> [56] In *Garland*, this Court shed light on exactly what must be shown under the juristic reason element of the unjust enrichment analysis - and in particular, on whether this third element requires that cases be decided by "finding a 'juristic reason' for a defendant's enrichment" or instead by "asking whether the plaintiff has a positive reason for demanding restitution" (para. 41, citing *Garland v. Consumers' Gas Co.* (2001), 57 O.R. (3d) 127 (C.A.), at para. 105). In an effort to eliminate the uncertainty between these competing approaches, Iacobucci J. formulated a juristic reason analysis that proceeds in two stages.
>
> [57] The first stage requires the plaintiff to demonstrate that the defendant's retention of the benefit at the plaintiff's expense cannot be justified on the basis of any of the "established" categories of juristic reasons: a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations (*Garland*, at para. 44; *Kerr*, at para. 41). If any of these categories applies, the analysis ends; the plaintiff's claim must fail because the defendant will be justified in retaining the disputed benefit. For example, a plaintiff will be denied recovery in circumstances where he or she conferred a benefit on a defendant by way of gift, since there is nothing unjust about a defendant retaining a gift of money that was made to him or her by (and that resulted in the corresponding deprivation of) the plaintiff. In this way, these established categories limit the subjectivity and discretion inherent in the unjust enrichment analysis and help to delineate the boundaries of this cause of action (*Garland*, at para. 43).
>
> [58] If the plaintiff successfully demonstrates that none of the established categories of juristic reasons applies, then he or she has established a *prima facie* case and the analysis proceeds to the second stage. At this stage, the defendant

> has an opportunity to rebut the plaintiff's *prima facie* case by showing that there is some residual reason to deny recovery (*Garland*, at para. 45). The *de facto* burden of proof falls on the defendant to show why the enrichment should be retained. In determining whether this may be the case, the court should have regard to two considerations: the parties' reasonable expectations and public policy (*Garland*, at para. 46; *Kerr*, at para. 43).
>
> [59] This two-stage approach to juristic reason was designed to strike a balance between the need for predictability and stability on the one hand, and the importance of applying the doctrine of unjust enrichment flexibly, and in a manner that reflects our evolving perception of justice, on the other.
>
> [Emphasis added]

[28] Full Throttle says this case falls within the list of categories set out in *Kerr* where retention of a conferred benefit has been considered unjust. In particular, it says the benefit in this case was either conferred under a mistake of fact – that Crelogix would process the loan and pay Full Throttle – or as a result of an ineffective transaction. Ineffective transactions are discussed in John D. McCamus, *The Law of Restitution*, Looseleaf Edition (Online: WestlawNext Canada, 2021) at 3:400:20:

> An unjust enrichment may occur where benefits are conferred through performance of obligations imposed by bargains which are ineffective for some reason or in anticipation of an agreement which fails to materialize. Apparent agreements may fail for want of formality, lack of capacity of one of the parties, want of authority on the part of an agent purporting to bind a principal, by reason of mistake, misunderstanding or uncertainty, or by reason of being induced by a misrepresentation. As well, contracts validly formed may be discharged by the breach of one of the parties or on grounds of frustration. In all such cases, the general approach taken both at common law and in equity is to grant recovery of benefits conferred through performance of such agreements. Generally, recovery is also allowed of benefits conferred in reasonable anticipation of the creation of an agreement under which the benefits in question will be paid for or in circumstances where a gift or other legacy is reasonably expected as a reward for services rendered.
>
> [Emphasis added]

[29] The applicant says if there was a valid contract formed between Ms. MacIntosh and Crelogix, the contract was frustrated when Crelogix went into receivership, making it an ineffective transaction.

[30] Ms. MacIntosh says there is a juristic reason for her enrichment – she has a valid contract with Crelogix. In the alternative, she says Full Throttle should have

sued LMG, since it was responsible for Full Throttle's failure to receive payment for the sea-doo. In the further alternative, Ms. MacIntosh says Full Throttle's own system for financing purchases has caused or contributed to its loss.

[31] Before deciding whether there is a juristic reason for Ms. MacIntosh's enrichment, I will deal with her alternative arguments. LMG was not added as a party to this application, an option that was as available to Ms. MacIntosh as it was to Full Throttle. The court has no evidence that the standard of care applicable to LMG or to Full Throttle required either of them to investigate the financial health of lenders, or that any such "due diligence" would have, in fact, revealed what was about to happen with respect to Crelogix. I am not prepared to attribute any liability to either LMG or Full Throttle on the facts before me. I would add that in any potential claim by Full Throttle against LMG, Full Throttle would be required to establish that it had suffered a loss, a finding available only if it was unable to recover as against Ms. MacIntosh. Such a scenario could have arisen if Crelogix had processed the loan documents and commenced debiting Ms. MacIntosh's account without paying Full Throttle – a situation that many merchants apparently found themselves in, according to the receiver's report filed by both parties.

[32] As to Full Throttle's claim in unjust enrichment, I find that Ms. MacIntosh has not established that her retention of the sea-doo at Full Throttle's expense is justified on the basis of contract or any other established category of juristic reason. In my view, it is disingenuous for Ms. MacIntosh to maintain the position that she has a valid and enforceable contract with Crelogix when she knows that Crelogix did not process her loan before it went into receivership. Once in receivership, Crelogix could not accept any assignment of the promissory note or debit Ms. MacIntosh's account. In other words, performance of the contract as the parties intended became impossible.

[33] I find that any alleged binding agreement between Full Throttle, Ms. MacIntosh and Crelogix was frustrated when Crelogix went into receivership, and I adopt the following comments at paras. 21-23 of Full Throttle's brief:

> If a contract was formed with Crelogix, it is now void as the required terms of the contract of payment from Ms. MacIntosh have never occurred and can now never occur as a result of Crelogix' [*sic*] receivership. This makes the essence of the contract unperformable and the contract itself frustrated.
>
> The Supreme Court of Canada in *Naylor Group Inc. v. Ellis-Don Construction Ltd*. states at paragraphs 53 and 55:

> 53 Frustration occurs when a situation has arisen for which the parties made no provision in the contract and performance of the contract becomes "a thing radically different from that which was undertaken by the contract": *Peter Kiewit Sons' Co. v. Eakins Construction Ltd.*, [1960] S.C.R. 361, *per* Judson J., at p. 368, quoting *Davis Contractors Ltd. v. Fareham Urban District Council*, [1956] A.C. 696 (H.L.), at p. 729.
>
> …
>
> 55 More recent case law, including Peter Kiewit, adopts a more candid approach. The court is asked to intervene, not to enforce some fictional intention imputed to the parties, but to relieve the parties of their bargain because a supervening event (the OLRB decision) has occurred without the fault of either party. For instance, in the present case, the supervening event would have had to alter the nature of the appellant's obligation to contract with the respondent to such an extent that to compel performance despite the new and changed circumstances would be to order the appellant to do something radically different from what the parties agreed to under the tendering contract: *citations omitted*.
>
> The insolvency of Crelogix could not have been reasonably predicted by either party when the promissory note was signed. However, the consequences of Crelogix being placed in receivership meant that the very nature of the agreement between the parties had changed. No payments have been or will be deducted. The agreement was created for the purpose of financing the Sea Doo. The payments are not going to be debited; the Sea Doo is not going to be financed. As the contract has been frustrated, the parties are now released of their obligations thereunder.

[34] Although Full Throttle relies on both mistake of fact and frustration, I find that frustration best describes what occurred in this case. In *The Law of Contracts*, 3d ed. (Toronto: Irwin Law, Inc., 2020) John D. McCamus explains the distinction between the two concepts at p. 656:

> While mistaken assumptions cases deal with assumptions concerning facts in existence at the time of formation of the contract, frustration cases deal with assumptions concerning future events. The close relationship between mistaken assumptions and frustration cases can be neatly illustrated by reference to the coronation cases arising from the postponed coronation of Edward VII. If the contract entered into to rent rooms on Pall Mall had been entered into at a time when the originally planned coronation procession had already been cancelled, the case would be one of mistaken assumptions as to existing facts. If, however, the cancellation of the procession was announced only after the contract had been entered into, the case would be one of frustration.

[35] In *Canada (Attorney General) v. Northumberland General Insurance Co.*, 1988 CarswellOnt 723 (C.A.), at para. 2, the Ontario Court of Appeal put it this way:

> The established law requires that the suggested mistake of fact be in existence at the time of formation of the contract.

[36] In this case, Crelogix was a going concern at the time the parties entered into the contract. It was only after the contract was entered into that Crelogix went into receivership and performance of the contract as intended became impossible.

[37] Moving on to the second stage of the juristic reason analysis, Ms. MacIntosh has not raised any public policy considerations that support allowing her to keep the sea-doo without paying for it. Nor is such an outcome consistent with the parties' reasonable expectations at the time they entered into the contract. Ms. MacIntosh candidly admitted that when she signed the promissory note on June 30, 2017, she expected to have to pay for the sea-doo. It is obvious, however, that she subsequently convinced herself that a legal loophole entitled her to a windfall at Full Throttle's expense.

[38] While I agree that some unfairness might have resulted if Ms. MacIntosh had been required to accept less favourable financing terms in September 2017, the options LMG presented to her were entirely reasonable. The option to finance the sea-doo through LMG over a five-year term at zero percent interest would have saved Ms. MacIntosh more than $8,000 on the purchase price, in exchange for a small increase to her monthly payment. If, for some reason, she could not afford to pay the extra $42.11 per month, she could have returned the sea-doo to Full Throttle, after having enjoyed it for the summer months. This option would have allowed her to walk away from the whole deal. Ms. MacIntosh argues that she did not accept either of these options because LMG never offered to indemnify her if Crelogix or its receiver came after her for payment in the future. There is no evidence before the court that she requested indemnification. More importantly, Ms. MacIntosh could easily have contacted the receiver herself, as Ms. Bell did, to confirm that Crelogix had no loan account under her name. She did not want to do that, however, because she believed she had lucked into a free sea-doo.

[39] That said, both LMG and Full Throttle could have done more to satisfy Ms. MacIntosh that neither Crelogix nor its receiver would attempt to enforce the contract against her in the future. Ms. Bell confirmed in August 2017 that Crelogix had no loan account for Ms. MacIntosh, but there is no evidence that she, or anyone else on Full Throttle's behalf, shared that correspondence with Ms. MacIntosh. Full Throttle's former counsel did not provide Ms. MacIntosh with a copy of the receiver's report, filed in June 2018, until March 2019. For this reason, while I find that Full Throttle is entitled to the purchase price of the sea-doo (less certain fees), I

order that prejudgment interest – at the rate of 5% -- will be limited to the period from April 2019 until the date of judgment.

Conclusion

[40] Full Throttle is successful on its application. I order that Ms. MacIntosh pay to Full Throttle the amount of $14,262.35 ($14,806.60 less the LMG document fee ($399) and the PPSA fee ($145.25)), plus prejudgment interest at the rate of 5% for the period from April 2019 until the date of judgment. I ask applicant's counsel to prepare the order.

[41] As I said at the conclusion of the hearing, if counsel are unable to agree on costs, I will accept written submissions within 30 days of the release of this decision.

Justice Glen G. McDougall