Court of King's Bench of Alberta

Citation: Easy Legal Finance Inc. v Downes, 2026 ABKB 682

Date: 20260929
Docket: 2403 08232
Registry: Edmonton

2026 ABKB 682 (CanLII)

Between:

Easy Legal Finance Inc. also known as Settlement Lenders

Appellant

- and -

Tammy Lynn Downes and McCourt Law Offices

Respondents

Reasons for Decision
of the
Honourable Justice K.H. Oviatt

Overview

[1] This is an appeal under Rule 6.14 of the *Alberta Rules of Court* from a decision of an Applications Judge, cited as ***McCourt Law Offices v Downes***, 2025 ABKB 268.

[2] The Applications Judge held that the terms of a series of loan agreements were unconscionable. In 2016 and 2017, the Lender advanced $4,500 to Tammy Lynn Downes (the Debtor), added fees equal to 25% of that amount, and charged annual interest of 19.95%, compounded monthly, for the first year and 29.95%, compounded monthly, thereafter. As a result, by March 2024 the debt had grown to more than ten times the amount advanced.

[3] The Applications Judge exercised the Court's discretion under section 2 of the *Unconscionable Transactions Act* RSA 2000, c U-2 to reopen the transaction and reduce the amount payable to the principal plus simple interest.

[4] Easy Legal Finance Inc. also known as Settlement Lenders (the Lender) appeals the Decision. The Respondent, Tammy Lynn Downes (the Debtor), asks that the appeal be dismissed. McCourt Law Offices did not participate in the appeal.

[5] For the reasons that follow, the appeal is dismissed.

Background and Procedural History

[6] The Debtor obtained the loans while pursuing a personal injury claim from a motor vehicle accident. After fees were added, the contractual principal was $5,625.

[7] The Debtor's lawyer at the time signed an undertaking to repay the loans and all interest to the Lender before providing any settlement funds to the Debtor.

[8] The Debtor resolved the motor vehicle accident litigation in early 2024. As of March 26, 2024, the total amount owing on the loans was $47,006.76. This amount would significantly reduce the settlement proceeds the Debtor will ultimately receive.

[9] McCourt Law Offices, which represented the Debtor in the motor vehicle accident litigation, brought an originating application for an interpleader order permitting it to pay the settlement proceeds into court rather than to the Lender. It asserted that the interest claimed appeared to be criminal and that the Debtor intended to retain separate counsel to seek relief under the *Unconscionable Transactions Act*. The Debtor later abandoned the argument that the interest rate was criminal

[10] The interpleader order was granted, and the settlement proceeds were paid into court. The Applications Judge then assessed whether the terms of the loans were unconscionable in all the circumstances. This is the decision under appeal.

Issues

[11] The ultimate question on the merits of the appeal is whether the Court should provide relief under section 2 of the *Unconscionable Transactions Act*. This requires the Court to find two essential elements described in that section: (1) the cost of the loan was excessive, and (2) the transaction was harsh and unconscionable.

[12] Determining whether the second element is satisfied requires reference to the common law test for unconscionability described in ***Uber Technologies Inc. v Heller***, 2020 SCC 16 [***Uber***]. That includes a finding of unequal bargaining power and a resulting improvident bargain.

[13] Accordingly, the Court must answer the following questions:

1. What is the standard of review?
2. Was the cost of the loan excessive?
3. Were the terms of the loan agreements harsh and unconscionable because there was:
    a. an inequality of bargaining power;
    b. a resulting improvident bargain?

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4. If so, what is the appropriate remedy?

Standard of Review and Burden of Proof

[14] The standard of review for an appeal of a decision of an applications judge is correctness, with no deference: ***Bahcheli v Yorkton Securities Inc.***, 2012 ABCA 166 at paras 19, 30 [***Bahcheli***].

[15] Rule 6.14(3) contemplates both that an appeal from an applications judge will proceed on the record and that new evidence may be considered. New evidence presented on appeal necessarily requires a fresh assessment of the facts: ***Bahcheli*** at paras 17 and 30; ***Gudzinski Estate v Allianz Global Risks US Insurance Company Limited***, 2012 ABCA 5 at para 24.

[16] New evidence was filed in this appeal. The Lender submitted an affidavit from Larry Herscu, its corporate president, addressing the Applications Judge's concern about the absence of evidence concerning the broader litigation-finance market. Therefore, I conduct a fresh assessment considering all the evidence, including both the record before the Applications Judge and the new evidence.

[17] On the original application, and in a fresh assessment, the Debtor bears the burden of establishing that the cost of the loans was excessive and that the transactions were harsh and unconscionable. The burden of proof is on the balance of probabilities.

Excessive Cost of the Loan

[18] The first requirement of section 2 of the *Unconscionable Transactions Act* is that the cost of the loan must be excessive.

[19] Excessiveness is relative. The Court must consider all relevant factors when determining whether the cost of a loan was excessive in the circumstances. These factors may include prevailing market conditions, the nature and extent of the security available to the lender, the rates charged for comparable loans, and the terms governing repayment of the principal and interest: ***AdvanceXpress Inc v Stephenson***, 2009 ABPC 365 at para 29 [***AdvanceXpress***].

[20] Particularly relevant to the circumstances here is the type and extent of the security provided to secure the loans, including the existence of a promissory note. In ***Chadwick Randy Kelly et al v Bridgepoint Financial Services Limited Partnership I***, 2025 ONSC 614 at para 51 [***Chadwick***] the Ontario Superior Court explained that the cost of a loan is assessed by considering both its overall cost and the risks borne by each party.

[21] ***Chadwick*** relied on ***Milani v Banks***, 1997 CanLII 1765 (Ont CA) [***Milani***], in which the Ontario Court of Appeal observed that the level of risk assumed by a lender is vital to assessing the suitability of a loan and the security taken for it. In assessing that risk, the Court should examine the circumstances surrounding the loan to determine whether taking the security was "not only wise on the part of the lender, but also fair from the point of view of the borrower": ***Milani*** at para 26.

[22] In ***Chadwick***, the lack of security contributed to the court's finding that the cost of the loans was not excessive. In that case, interest rates were 20% and 24% per annum, compounded semi-annually. The loans were to be repaid from damages received in personal injury claims, but

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there was no other security. The Ontario Superior Court found that interest rates were not criminal and reflected the lender's risks, including delayed repayment contingent on what happened in the litigation. The interest, while significant, was a foreseeable consequence of the loan terms.

[23] In contrast, in ***Rhino Legal Finance Inc v Pappas***, 2019 ABQB 525 [***Rhino Legal***], an applications judge of this Court found that two loans were excessive where there was both a high rate of interest and general security against the debtor's present and after acquired property. This made the loans "very low risk" to the lender because they were fully secured.

[24] I agree with the Lender that a high interest rate does not automatically make the cost of a loan excessive. The Court must look to all the circumstances.

[25] Here, the cost of the loans was excessive due to the significant fees and the interest charged considering the overall risk to the Lender. The Lender charged $1,125 in fees on the $4,500 advanced. Those fees increased the amount treated as principal by 25%, from $4,500 to $5,625.

[26] The interest rates were also high. The Lender charged annual interest of 19.95% for the first year and 29.95% thereafter, but the actual cost of the loans was impacted more by how interest compounded than by their rates alone. Here, the resulting interest was particularly high because it compounded monthly.

[27] Additionally, the cost of the loans was excessive because these loans were secured by promissory notes for each loan. The parties disagreed about the effect of the promissory notes on the risk to the Lender.

[28] The Lender argued that the loan documents must be read together and interpreted as the promissory notes having no effect due to the application of section 97 of the *Fair Trading Act*, SA 1998, c F-1.05. This provision requires that an inconsistency among credit agreement documents to be interpreted in favour of a borrower. The Lender submitted that because the disclosure statements expressly provided for forgiveness if no compensation was awarded, that provision overrode the demand language in the promissory notes.

[29] The Lender relied on Herscu's affidavit, which was sworn in 2025 as the Lender's then president. Herscu was not involved with the Debtor's loans in 2016 and 2017 or with the original lending company, which the Lender subsequently acquired in 2021. His evidence was directed at the nature of litigation lending generally, the usual risk profile of injury loans, and the general market pricing for such products. Herscu's evidence explained that litigation loans should be understood as contingent litigation financing rather than conventional consumer lending.

[30] I accept Herscu's evidence that rates in this range may be charged in the litigation-finance market when loans are unsecured and truly contingent. That evidence is relevant but not determinative. However, when reviewing the entire package, there was security given here. That security changes the nature of the risk to the Lender.

[31] The disclosure statements state: "if compensation is denied, the loan is forgiven. In all other circumstances repayment occurs according to the promissory note." They do not say that the Lender could not demand repayment before the litigation ended or that, notwithstanding the promissory notes, repayment was contingent on the resolution of the litigation. The Lender asks the Court to infer those consequences, but the contractual language does not expressly provide for them.

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[32] Further, the disclosure statements expressly state, “the loan falls due on the earlier of the first anniversary date and settlement of the claim, with the possibility of renewal and extension.” That language is consistent with the anniversary-date repayment feature and the Lender’s renewal discretion.

[33] Section 97 of the *Fair Trading Act* applies when information in a disclosure statement is inconsistent with a term of the credit agreement. I am not satisfied that the anniversary-date repayment provision is inconsistent with the ultimate forgiveness provision. The documents can be read as providing that a loan becomes due on an anniversary date unless renewed, while preserving forgiveness if a court ultimately denies compensation. Section 97 therefore likely does not apply because the clauses can operate together.

[34] I recognize that the record does not establish the realizable value or any registration of that security, but its existence distinguishes these loans from those without any security. The Lender’s argument that the promissory notes do not give the security they purport to give raises the question of why the Lender would then require them. The anniversary-date, demand, and all-assets security provisions must be given some operative meaning.

[35] Viewed cumulatively, the circumstances here created a marked disparity between the risk undertaken and the cost imposed. The cost of the loans was excessive in the circumstances.

Harsh and Unconscionable Transaction

The Legal Test

[36] The second requirement for relief under s 2 of the *Unconscionable Transactions Act* is that the transaction be “harsh and unconscionable.”

[37] The leading case on unconscionability of contracts is the Supreme Court of Canada’s decision in ***Uber***. “Unconscionability is an equitable doctrine that is used to set aside unfair agreements [that] resulted from an inequality of bargaining power”: ***Uber*** at para 54.

[38] The purpose of the unconscionability doctrine is to protect the vulnerable. It “is meant to protect those who are vulnerable *in the contracting process* from loss or improvidence to that party in the bargain that was made”: ***Uber*** at para 60, emphasis in original.

[39] Unconscionability can be established without proof that the stronger party knowingly took advantage of the vulnerable party: ***Uber*** at para 84. Requiring proof of deliberate wrongdoing would undermine the doctrine’s protective purpose because inadvertent exploitation may disadvantage a weaker party as much as deliberate exploitation: ***Uber*** at para 85.

[40] The Canadian doctrine of unconscionability has two elements: an inequality of bargaining power, stemming from some weakness or vulnerability affecting the claimant, and an improvident transaction or bargain: ***Uber*** at para 62; ***Norberg v Wynrib***, [1992] 2 SCR 226, 1992 CanLII 65 (SCC); ***Douez v Facebook, Inc.***, 2017 SCC 33 at para 115.

Unequal Bargaining Power

[41] An inequality of bargaining power will exist when one party cannot adequately protect their interests in the contracting process: ***Uber*** at para 66.

[42] “There are no ‘rigid limitations’ on the types of inequality that fit this description”: ***Uber*** at para 67. The question is whether “the relevant disadvantages impaired a party’s ability to

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freely enter or negotiate a contract, compromised a party's ability to understand or appreciate the meaning and significance of the contractual terms, or both": ***Uber*** at para 68.

[43] ***Uber*** reviewed the types of situations where inequality of bargaining power has been demonstrated at paras 68-72. Those relevant to the circumstances in this case include where:

(a) differences in wealth, knowledge, or experience may have compromised a party's ability to understand or appreciate the meaning and significance of the contractual terms;

(b) a party is vulnerable due to financial desperation; or

(c) only one party may be able to understand and appreciate the full significance of the contractual terms, creating a form of "cognitive asymmetry." This may arise from personal vulnerability or disadvantages specific to the contracting process, including dense or difficult-to-understand contractual terms.

[44] The Lender argued that there was no inequality of bargaining power because the Debtor had previous experience with this type of loan, was university educated, had a strong employment history, and had participated in multiple legal proceedings. According to the Lender, these factors suggested that she understood the general concepts of litigation financing and borrowing against an anticipated litigation recovery.

[45] The question is whether, at the time the impugned agreements were entered into, one party was unable to adequately protect their interests in the contracting process because of a personal or circumstantial vulnerability.

[46] Although the Debtor was educated, I am satisfied that she was experiencing profound financial and personal vulnerability when she obtained the loans. She was receiving long-term disability benefits at the time and experiencing ongoing health and financial difficulties. Her affidavit describes desperation and a need for funds for treatment, basic household expenses, and to support her daughter and granddaughter. Even if the family support was not strictly necessary, the overall evidence paints a picture of serious financial vulnerability. The Debtor's contemporaneous communications state that she lacked money for rent and was trying to avoid homelessness.

[47] I do not accept the Lender's submission that the Debtor's decision to reject a settlement offer in separate ongoing litigation necessarily undermines her claim of financial vulnerability. The fact that she made a strategic litigation decision does not establish that she was not simultaneously experiencing serious financial pressure, nor does it eliminate the possibility that she felt she had little practical alternative but to seek short-term financing.

[48] The Debtor's litigation history, previous borrowing and refinancing, and rejection of a settlement offer demonstrate that she could make litigation and financial decisions. However, her circumstances, considered together, suggest that she was not fully able to protect her interests in this contracting process.

[49] The Debtor's prior experience cuts both ways. On the one hand, she did have some experience with litigation and litigation loans, but, on the other, she was not in a position to identify differences in the terms or risks to her in entering these loans. The previous litigation loans were documented differently, had semi-annual compounding interest rather than monthly, and were not secured.

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[50] I also place weight on the complexity of the loan documentation and the lack of clarity around what the actual interest calculations would look like over time. While the documents disclosed the annual interest rates and stated that interest would compound monthly, the overall loan structure was complex, and the Lender provided no projection calculations for the compounded interest.

[51] Canadian courts have recognized difficulty for many borrowers to fully understand the long-term effect of compounding interest: see for example ***Klein v Viscount Mobile Homes Ltd.*** (1998), 72 OTC 161, [1998] OJ No 3065 (ON Ct J (GD)), at para 77; ***Lexfund Inc v Ferro***, 2016 ONSC 4113, para 101.

[52] The Debtor's financial vulnerability and personal circumstances of living with a disability, the complexity of the loan documents, and the failure to provide clear projection calculations are all factors that together support that the Debtor could not protect her own interests in the bargaining process. Those concerns are heightened here because there was no independent legal advice.

[53] Whether a party receives independent legal advice is a particularly relevant consideration of whether there was unequal bargaining power: ***Settlement Lenders Inc. v Blicharz***, 2016 ABCA 33 at paras 27-28 [***Settlement Lenders***]; ***Chadwick*** at para 78.

[54] Unlike with the Debtor's other litigation loans, there was no lawyer's acknowledgment confirming that the terms, costs, and consequences of the borrowing had been explained to her. The Debtor's lawyer at the time signed an undertaking concerning the assignment of proceeds but attested that he did not provide independent legal advice. He also stated in his affidavit that he generally advised clients against litigation loans because of their significant cost.

[55] A general warning that litigation loans are expensive is not equivalent to advice concerning the legal and financial effect of these instruments. In the circumstances, I am satisfied the Debtor did not have the benefit of advice capable of mitigating any imbalance between herself and the Lender.

[56] The Lender argued that providing financing to people who cannot obtain conventional loans promotes access to justice. I accept that litigation financing may allow some claimants to pursue meritorious litigation. That policy consideration, however, does not displace the individualized inquiry required by s 2 of the *Unconscionable Transactions Act* or establish that the cost of every product in that market is proportionate to the risk assumed in every case.

[57] Considering the totality of the circumstances, I conclude that there was an inequality of bargaining power between the Debtor and the Lender at the time the loans were entered.

Improvident Bargain

[58] The second branch of the ***Uber*** analysis asks whether the inequality of bargaining power resulted in an improvident bargain. "A bargain is improvident if it unduly advantages the stronger party or unduly disadvantages the more vulnerable": ***Uber*** at para 74.

[59] The assessment must be made contextually, having regard to the circumstances that existed when the contract was formed: ***Uber*** at para 74.

[60] Several features of the loans created the potential for a substantial advantage to the Lender. Although the Debtor received only $4,500, fees immediately increased the principal by

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25%. Interest then accrued at 19.95% annually during the first year and 29.95% annually thereafter, compounded monthly.

[61] By 2024, the amount owing was more than ten times the original loan advanced. While the mere passage of time does not render a bargain unconscionable, the scale of the increase is relevant in determining whether the potential for undue advantage inherent in the transaction was ultimately realized.

[62] The Lender submits that these terms reflected the inherent risks in litigation financing. As previously discussed, the promissory notes significantly reduced that risk. The loans were therefore not dependent solely on the success of the litigation in the same way as conventional unsecured litigation loans. Although the Lender assumed some risk, it also obtained significant contractual protection.

[63] In ***Uber***, the Supreme Court held that a bargain may be improvident when the weaker party is unduly disadvantaged by contractual terms whose significance that party does not reasonably understand or appreciate. That concern is present here. The eventual debt bears little resemblance to the modest amounts advanced. The interest produced a result that a vulnerable borrower in the Debtor's position could not reasonably have anticipated.

[64] The Lender relies on ***Chadwick***, in which the Ontario Superior Court rejected an argument that a litigation loan constituted an improvident bargain after almost $1 million dollars in interest had accrued. Although the cases share some factual similarities, ***Chadwick*** is distinguishable:

- *Security*: In ***Chadwick*** the loan security was limited to litigation recovery. That is different than circumstances where the loans were secured by broad promissory notes.
- *Demand for Repayment:* In ***Chadwick*** the lender had no apparent ability to make a demand for repayment. In this case, the loan documents permit the Lender to demand repayment of the loan on annual anniversary dates.
- *Fees:* Here, fees equal to 25% of the net advance were added to principal before interest accrued. In ***Chadwick***, the court emphasized that the substantial cost followed from the disclosed interest terms with no discussion of the proportionality of any fees.
- *Legal Advice:* In ***Chadwick***, the agreements expressly stated that the borrower had an opportunity to obtain independent legal advice. Here, there was no comparable contractual acknowledgment.
- *Actual Costs:* In ***Chadwick*** interest was compounded semi-annually compared to the monthly compounding that happened here. Interest rates were similar to start, but overall were higher here in years following year one. Further, the monthly compounding led to more significant proportional increases than the semi-annual compounding in ***Chadwick***.

[65] Considering the totality of the circumstances, including the Debtor's vulnerability, the absence of independent legal advice, the structure of the loan documentation, the security obtained by the Lender, and the extraordinary growth of the indebtedness, I am satisfied that the loans constituted an improvident bargain within the meaning of ***Uber***.

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[66] Section 2 of the *Unconscionable Transactions Act* requires a transaction to be "harsh and unconscionable." Although the ***Uber*** test addressed unconscionability, it did not separately define "harsh." The authorities provided likewise contain little analysis of that term. I agree with the observation in ***Chadwick*** that "courts have addressed 'harsh and unconscionable' as one concept": at para 68.

[67] Alberta courts have described harsh and unconscionable loans as representing "a marked departure from community standards of commercial morality": ***Settlement Lenders*** at para 29; ***AdvanceXpress*** at para 32.

[68] In ***Settlement Lenders***, the Alberta Court of Appeal declined to grant relief under the *Unconscionable Transactions Act* because the borrower had received legal advice. Nevertheless, the Court was critical of this form of lending, describing it as appearing "to prey on already vulnerable personal injury victims who are unable to use conventional lenders or contingency-based personal injury lawyers": at para 29.

[69] To the extent that the legislation requires a transaction to be both harsh and unconscionable, I need not define the outer limits of "harsh." That requirement is met here because a net advance of $4,500, increased at inception by 25% in fees, attracted monthly compound interest at a stepped-up rate and was accompanied by anniversary-date demand rights and broad security, all without independent legal advice.

[70] Considered together, these features imposed consequences sufficiently severe and one-sided to be characterized as harsh and unconscionable.

Remedy

[71] Because I have found that the cost of the loans was excessive and that the transactions were harsh and unconscionable, relief under s 2 of the *Unconscionable Transactions Act* is appropriate.

[72] The legislation authorizes the court to provide several discretionary remedies, including to "reopen the transaction, take an account between the creditor and the debtor and relieve the debtor from payment of any sum in excess of the sum adjudged by the court to be fairly due in respect of the principal and the cost of the loan". That is the remedy the Applications Judge used, and I agree it is appropriate in the circumstances.

[73] The Debtor is directed to repay in full the principal amounts advanced plus the loan fees. Although the $1,125 in loan fees contributed to the excessive cost, I do not eliminate them. They were fixed and disclosed. However, I adjust how interest should be calculated.

[74] The Applications Judge directed the Debtor to pay interest at the contractual annual rates, but calculated as simple rather than compound interest. I agree with that remedy. Allowing the Lender to recover the contractual principal of $5,625, together with simple interest at the stated annual rates, recognizes the amount advanced, the disclosed transaction costs, and the risk assumed while removing the compounding feature that caused the disproportionate increase.

Conclusion

[75] The appeal is dismissed. The order of the Applications Judge is affirmed.

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[76] The Debtor is presumptively entitled to costs. If the parties cannot agree, they may file and serve written submissions not exceeding five pages, excluding a bill of costs. The Debtor must file and serve her submissions within two weeks after the date of this decision. The Lender must file and serve its submissions within one week after receiving the Debtor's submissions.

Heard on the 09th day of April 2026.
Dated at the City of Edmonton, Alberta this 29th day of September 2026.

K.H. Oviatt
J.C.K.B.A.

Appearances:

Derek Pontin
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