

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Millgate Limited v. Plaza 500 Hotels Ltd.*,
2026 BCSC 991

Date: 20260601
Docket: S193148
Registry: Vancouver

Between:

Millgate Limited, Penrose Properties Limited

Plaintiffs

And

Plaza 500 Hotels Ltd.

Defendant

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

Counsel for the Plaintiffs:

T.C. Louman-Gardiner
M.K. Shergill
P. Armstrong Articled Student

Representatives for the Defendant
Company, appearing in person:

A. Popat
J. Popat

Place and Date of Trial:

Vancouver, B.C.
August 11–15, 18–22, 2025
December 1–5, 2025

Place and Date of Judgment:

Vancouver, B.C.
June 1, 2026

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Introduction

[1] This is a debt claim with an unusual procedural history. The plaintiffs, Millgate Limited and Penrose Properties Limited, are part of a relatively complex structure of trusts, corporations, and business interests established by the late Abdul Karim (commonly known to his family and others as “AKC”) Popat, a successful and wealthy businessman based in Nairobi, Kenya. For ease of reference, I will identify the various members of the Popat family by their first names in these reasons. I intend no disrespect in doing so.

[2] The plaintiffs were incorporated in the British Virgin Islands for the purpose of holding the Popat family’s investments in Portugal and Canada. The defendant, Plaza 500 Hotels Ltd., is a B.C. company with three shareholders: KBK No. 85 Ventures, as the controlling shareholder, and the plaintiffs, who each hold non-voting shares. KBK’s shareholders are AKC’s son Azim, Azim’s wife, and the plaintiffs. In short, the plaintiffs and AKC’s son Azim and his family are, directly or indirectly, the shareholders in Plaza 500. Azim and his wife are the directors of Plaza 500.

[3] AKC lived in Nairobi for most of his life. He had three sons: Azim, Adil, and Alnashir. All three sons, as well as other members of AKC’s family, were involved in AKC’s business enterprises in different ways and to different extents. Of the three brothers, Adil was by far the most closely involved in AKC’s overall day to day business activities. Azim was responsible for managing the Popat family’s Canadian interests, including development of a property owned by Plaza 500 in Vancouver, British Columbia (the “Property”), which was originally a hotel and was then converted into rental accommodations.

[4] The plaintiffs’ debt claim relates to money provided to Plaza 500 to facilitate acquisition and development of the Property. There is no dispute that the Popat family provided significant funds to Plaza 500 for that purpose. There is also no dispute that Plaza 500 and the plaintiffs entered into loan agreements in 2004 and 2012, the terms of which require that Plaza 500 repay certain funds it had received

to the plaintiffs (the “Funds”). The loan agreements are secured by a mortgage that was registered against the Property in 2004 and modified in 2012.

[5] This proceeding was originally a foreclosure petition, commenced in 2019 by Institutional Mortgage Capital Canada Inc. (“IMC”). At that time, Plaza 500 was in significant debt and IMC was the primary lender, with a mortgage in first priority position. The plaintiffs’ mortgage was in second priority position. A mortgage granted to Leo Montis Ventures Inc. was in third position. The plaintiffs and Leo Montis were respondents to IMC’s foreclosure petition.

[6] In 2020, Madam Justice Fitzpatrick ordered the sale of the Property: *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2020 BCSC 888, leave to appeal to BCCA ref’d 2020 BCCA 193. IMC’s mortgage and other priority claims were paid out of the sale proceeds. The remaining sale proceeds—approximately \$8.17 million—were paid into court to the credit of this proceeding. Millgate and Penrose say the outstanding debt owed under their mortgage greatly exceeds the amount paid into court. They seek to recover what they can from the remaining sale proceeds now held in court, as Plaza 500 has no other assets of any value.

[7] To that end, in their capacity as respondents to the foreclosure petition, Millgate and Penrose applied for an order paying the sale proceeds to them. Plaza 500 opposed that application, arguing that there was no debt owing to Millgate and Penrose under the loan agreements and mortgage. The result was an order converting the petition to an action to decide that issue, with the parties being Penrose and Millgate as plaintiffs and Plaza 500 as defendant: *Institutional Mortgage Capital Canada Inc. v. Plaza 500 Hotels Ltd.*, 2021 BCSC 582. This proceeding has since continued as an action under the same court number as the original foreclosure petition.

[8] Millgate and Penrose, in their new capacity as plaintiffs, then applied to have their debt claim determined by way of summary trial. That application was dismissed

as not suitable for summary determination: *Millgate Limited v. Plaza 500 Hotels Ltd.*, 2023 BCSC 1808 [*Summary Trial Decision*].

[9] As a preliminary issue, Plaza 500 suggests that certain findings were made on the plaintiffs' summary trial application that are binding on me. With respect, that reflects a misunderstanding of the summary trial decision, which expressly concludes that the issues cannot be determined on affidavit evidence and leaves the issues to be decided by the trial judge: *Summary Trial Decision* at paras. 87, 99, 101–102.

Issue

[10] The claim advanced by Millgate and Penrose, now as plaintiffs, is effectively unchanged from that advanced in their application in the foreclosure petition and in their summary trial application. They say that their claim is straightforward: Plaza 500 received the Funds, signed the loan agreements, gave security in the form of a mortgage over the Property, and failed to make payment to the plaintiffs on demand. Given these undisputed facts, the plaintiffs seek judgment on the loan agreements and payment of the remaining sale proceeds out of court to them, pursuant to their mortgage.

[11] Plaza 500 denies that it owes any money to the plaintiffs. Plaza 500 acknowledges having received the Funds, but says that the Funds were provided by AKC, either directly or indirectly, and not by the plaintiffs. Plaza 500 says that AKC never expected to be repaid and, further, that AKC agreed that Plaza 500 did not have to repay the Funds. Plaza 500 says that the Funds are equity, intended as an *inter vivos* gift from AKC to Azim, and there is no debt.

[12] Plaza 500 does not deny signing the loan agreements and mortgage documents. However, it alleges that those documents do not reflect the reality of the situation. Plaza 500 says that the formal documentation was simply prepared and executed as part of the Popat family's wealth preservation and investment strategy, which involved using a debt structure to take advantage of potential advantageous tax treatment and to protect the Funds from creditors. Plaza 500 says that the

parties and the Popat family understood that the documentation did not actually secure any payment obligation.

[13] Plaza 500 has had lawyers at various times throughout the course of this proceeding but no longer had counsel of record by the time of trial. It was instead self-represented by Azim, assisted by his adult son. Azim conducted all cross-examinations and delivered Plaza 500's closing submissions. In those submissions, Plaza 500 suggests that the Court must adopt a "substance over form inquiry" in determining the character of the Funds. Plaza 500 submits that the "substance" of the financial dealings reveals that there was no loan and that the Funds were instead equity that was never meant to be repaid.

[14] The plaintiffs say there is no merit to Plaza 500's position. They argue that the evidence does not support Plaza 500's characterization of the Funds and that there is no evidence that AKC intended that the Funds were provided to Plaza 500 as a gift to Azim. The plaintiffs say that the formal documentation is dispositive of this proceeding.

[15] In addition to the defences summarized above, Azim raises various other issues in the submissions he advances on behalf of Plaza 500 that are not relevant to the plaintiffs' debt claim. Some of the issues Azim advances are not relevant to Plaza 500's position at all, either in this litigation or otherwise, but instead to his own financial interests. All the other issues raised by Azim, whether related to Plaza 500 or to himself, pertain to other disputes or proceedings involving the Popat family and its assets, including a separate proceeding in this Court commenced by Plaza 500 against the plaintiffs, Adil, and the entity that administers the plaintiffs, Louvre Trust (Guernsey) Limited.

[16] In these reasons I will not address Plaza 500's submissions on issues that are not relevant to deciding the plaintiffs' claim. The only claim before me is for judgment on the loan agreements and mortgage, as well as a corresponding claim for payment of the Property sale proceeds out of court to the plaintiffs. In my assessment, there is only one issue that I must resolve to determine that discrete

claim: is there a repayable debt owed by Plaza 500 to the plaintiffs under the loan agreements and mortgage documents?

Discussion

The documentation

[17] The plaintiffs rely on the loan agreements and mortgage documents signed by the parties in 2004 and 2012. There is no dispute that those documents were properly executed and registered. As set out above, Plaza 500's defence relates only to the characterization of the Funds, which it says are not a repayable debt despite the formal documentation. I will therefore only provide a general summary of the relevant documents, for context.

[18] There are a series of relevant agreements that are each titled "loan agreement" or some close approximation of that phrase. The first and most comprehensive is dated October 22, 2004. In the 2004 loan agreement, Plaza 500 agrees that it has received \$6,391,544.24 CAD and \$3,500,000 CAD from the plaintiffs, agrees to repay those amounts to the plaintiffs, and agrees to provide security in that regard. The plaintiffs, in turn, agree to subordinate the security to a third party lender.

[19] Azim testified that the amounts specified in the 2004 loan agreement are not accurate, because they include \$800,000 that was intended as payment for preferred shares issued in 2000. The plaintiffs accept that there is evidence of the share issuance in 2000 but says that is not sufficient to displace the express provisions of the 2004 loan agreement. I agree. In any event, Plaza 500 has taken no steps to rectify the 2004 loan agreement and it did not press the \$800,000 difference in its submissions.

[20] As contemplated in the 2004 loan agreement, Plaza 500 executed the mortgage at issue in this proceeding. There is nothing unusual about the mortgage. Its material terms include Plaza 500's promise to pay the amounts specified in the

2004 loan agreement, a grant of security over the Property, and a warranty that the statements in the mortgage are true.

[21] The 2004 loan agreement and mortgage were drafted by Plaza 500's solicitors on Azim's instructions. Plaza 500's solicitors attended to the registration of the mortgage.

[22] Between approximately 2009 and 2011, Plaza 500 encountered very significant financial issues. Azim requested further funds from AKC on various occasions, either directly or through Adil, to help keep Plaza 500 afloat. Funds were provided, and each time Plaza 500 and Penrose executed what the plaintiffs fairly describe as a "bare bones" agreement setting out the amount that was required to be repaid.

[23] The parties then signed what they referred to as "loan consolidation agreements" in 2012. There are four such agreements, which set out the total principal amounts owed by Plaza 500 to each of the plaintiffs: \$6,391,544.24 CAD and \$324,952.04 USD to Millgate, and \$5,900,000 CAD and \$1,020,000 USD to Penrose.

[24] In these 2012 loan agreements, Plaza 500 agrees to repay the amounts specified therein to Millgate or Penrose, and to provide security "to be detail [sic] separately". In cross-examination, Azim confirmed that the reference to security "to be detail[ed] separately" was to the 2004 loan agreement. In other words, the intended security was as set out in the 2004 loan agreement—that is, the mortgage. That conclusion is supported by the fact that soon after signing the 2012 loan agreements, the parties took steps to secure the total amounts set out therein by executing and registering a modification to the mortgage that increased the principal amount secured by the mortgage.

Credibility and reliability

[25] Three witnesses testified at trial: the plaintiffs' director, Jonathan Bachelet; Adil; and Azim. I have assessed their credibility and reliability having considered the

parties' submissions and the relevant legal principles: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 356–357, 1951 CanLII 252 (B.C.C.A.); *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 185–187, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013).

[26] Mr. Bachelet presented as a neutral and objective witness, both in his direct evidence and under cross-examination. His testimony focused on explaining the Popat family wealth structure and establishing the evidentiary foundation for various documents on which the plaintiffs rely. Mr. Bachelet was transparent about his lack of knowledge about the details underlying many of the documents and specific transactions giving rise to this proceeding and, more generally, about his lack of knowledge of Popat family discussions and interactions related to the Property. I consider his evidence credible and reliable.

[27] I cannot reach the same conclusion regarding the testimony of Adil and Azim. Neither brother presented as neutral or objective in their evidence. Instead, it appeared to me that their testimony was influenced by their respective interests in the outcome of this proceeding, as well as the other proceedings and disputes in which they are or have been involved. This significantly impacts the reliability of their evidence.

[28] In Adil's testimony, the influence of this and other disputes on his testimony was most apparent in his obviously careful and vague responses to questions, especially in cross-examination. Plaza 500 submits that Adil's evidence was a "litigation-constructed narrative" and "not a reflection of historical reality". I do not accept that characterization of Adil's evidence. It is more accurate to say Adil's testimony about relevant events was generally vague and he very often claimed to have no or limited memory of events Plaza 500 considers significant to its defence to the plaintiffs' claim. His inability to recall these events struck me as strategic and not genuine, given the degree of involvement he had in AKC's business affairs at the relevant times.

[29] As well, in cross-examination Adil was often dismissive, non-responsive, or argumentative. While I attribute that in large part to the brothers' strained relationship and the fact that Azim was conducting the cross-examination, and not to an intention to mislead the Court, it makes it very difficult to have any confidence in the reliability of Adil's evidence.

[30] On the other hand, I find that much of Azim's testimony (and the submissions he made on behalf of Plaza 500) did have the quality of "litigation-constructed narrative", specifically in relation to the characterization of the Funds. In fairness, Azim appeared overall to be less strategic in his testimony than Adil. I agree with the plaintiffs' submission that Azim's evidence was generally reliable, consistent, and detailed with respect to Plaza 500's business and operations. However, Azim's evidence about how and why he says the Funds were a gift was general, vague, and largely based on unproven assumptions and guesses about AKC's intentions rather than direct personal knowledge. His testimony on that issue appeared to be influenced by his desired outcome in this litigation.

[31] That said, the issues I have identified with the reliability of Adil's and Azim's evidence are ultimately of little consequence to my decision.

[32] Plaza 500 says this is a credibility-driven case because "there are few arm's length documents evidencing any loan" and because the plaintiffs' theory depends almost entirely on the testimony of Adil and Mr. Bachelet. With respect, that is not an accurate description of the evidence or the plaintiffs' position, which depends almost entirely on documentation, including, specifically, on the signed loan agreements and registered mortgage.

[33] As will be apparent from my reasons below, I agree with the plaintiffs' submission that this case does not turn on the credibility or reliability of any of the witness testimony. Ultimately, there is little to no conflict on the facts I consider determinative of the issue of whether there is an enforceable debt. To the extent there is conflict in the evidence on relevant matters, I will address it in my reasons below.

Burden of proof

[34] The plaintiffs of course have the burden of proving their claim. However, given the undisputed facts in this case—Plaza 500 received the Funds, the parties signed loan agreements in respect of those Funds, and Plaza 500 granted security in the form of a mortgage—I find that they have met that burden, subject only to Plaza 500’s allegation that the Funds are not a repayable debt despite the express terms of the formal, signed documentation.

[35] As I understand it, Plaza 500 says it is the plaintiffs who have the burden of proving the Funds are a repayable debt. I do not agree, given the documentary evidence described above.

[36] In this case, Plaza 500 effectively seeks to recharacterize the Funds as something other than what the loan agreements and mortgage documents say they are. The issue of burden of proof in the context of re-characterizing debt claims was addressed in *U.S. Steel Canada Inc. (Re)*, 2016 ONSC 569, leave to appeal to ONCA ref’d 2017 ONCA 99. While *U.S. Steel* is a *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 [CCAA], proceeding and therefore involves a different context than the circumstances of this case, I consider the following comments of the Court on the burden of proof instructive:

[141] First, in a claims process under the CCAA, a creditor bears the onus of proving the validity and amount of its debt claim. It is not required to go further and prove the negative. In other words, it does not have to demonstrate that a claim is not an “equity claim”. If another creditor chooses to assert such an argument, I think it must bear the onus of proving that an otherwise proven debt claim is more properly characterized in substance as an “equity claim”.

[37] I agree with that reasoning. As the party seeking to depart from the express words of the loan agreements and mortgage, Plaza 500 has the burden of proving the Funds are something other than a repayable debt.

Is there a repayable debt owed by Plaza 500 to the plaintiffs?

[38] Plaza 500 says that despite what the loan agreements and mortgage documents say, the Funds are not now, and never were, a repayable debt.

[39] Plaza 500 emphasizes that the plaintiffs had no money to lend and were simply conduits for AKC, who provided the Funds to Plaza 500. Plaza 500 further submits that the “substance” of the financial transactions reveals that the “form” of the documentation is not what it seems. Instead, Plaza 500 submits that the Funds were an *inter vivos* gift from AKC to Azim by way of an equity investment in Plaza 500. Azim explained in his testimony that the loan agreements and mortgage were simply an administrative structure, put in place as a strategy to gain tax advantages and to protect family equity from creditors. Plaza 500 says that AKC knew about and agreed to this strategy, and that he never expected to be repaid. Plaza 500 says there was therefore no mutual intent to create a repayable debt.

[40] Many of Plaza 500’s arguments in support of its position are unsupported by legal authority. In any event, as explained below, Plaza 500’s position is simply not supported by the evidence. Specifically, the evidence does not establish that the Funds were a gift or that they were not intended to be repaid. Rather, I find that the evidence establishes that the Funds were intended to be and are a repayable debt, for the following reasons.

Source of the Funds

[41] Plaza 500 argues that because the plaintiffs did not “possess real financial substance”, they cannot be parties to a loan agreement. It cites no authority for that proposition.

[42] I accept that the evidence demonstrates that AKC—either directly or indirectly through sources he effectively controlled—was the originating source of the Funds, and not the plaintiffs. As Plaza 500 points out and the evidence supports, the plaintiffs had no money of their own to loan. However, Plaza 500 cites no authority for its assertion that the plaintiffs cannot be parties to a loan agreement in those circumstances, and I am unaware of any.

[43] I consider it reasonable, on the evidence, to infer that the plaintiffs were the named parties to the loan agreements and mortgage documents, rather than AKC himself, for reasons related to the AKC’s overall family wealth management strategy.

I am unaware of any legal impediment to AKC choosing to structure his affairs in this way.

[44] Plaza 500's submission that the plaintiffs could not have intended to lend money because they did not have money to lend is not persuasive, because I consider the relevant contractual intention to be the creation of the debtor-creditor relationship. The fact that the plaintiffs signed the formal documentation is clear evidence of their intention to enter a debtor-creditor relationship with Plaza 500. There is no evidence to suggest that the plaintiffs did not have that intention. I am unaware of any legal requirement that the plaintiffs must be the original source of the Funds for the loan agreements and mortgage to be enforceable.

[45] In summary, I am not persuaded that the source of the Funds is a basis for finding that there is no repayable debt owed to the plaintiffs in this case.

"Substance over form" analysis

[46] Plaza 500 says that the Court must apply a "substance over form" analysis to the loan agreements and mortgage to determine whether the Funds were in fact a repayable debt. In that regard, Plaza 500 relies on *Tudor Sales Ltd. (Re)*, 2017 BCSC 119. While Plaza 500 does not cite to the decision, *Tudor Sales* was upheld by the Court of Appeal in *Eggertson v. Cascade Steel Rolling Mills Inc.*, 2024 BCCA 349. Plaza 500 says that applying the analysis adopted by the Court in *Tudor Sales*, it is clear that the Funds are equity and not a debt.

[47] I do not accept that *Tudor Sales* analysis is applicable in the circumstances of this case. *Tudor Sales* arose in the context of proceedings under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 [BIA], and is therefore distinguishable from the circumstances of this case. Other cases relied upon by Plaza 500 in this regard also arise under the CCAA or BIA and are therefore similarly distinguishable. Further, Plaza 500 does not cite any authority for the proposition that a mortgage is unenforceable or loses priority if it secures an equity obligation. The plaintiffs advise they are unaware of any such authority.

[48] In any event, even applying the “substance over form” analysis proposed by Plaza 500, I find that the evidence does not establish that the Funds were anything other than a repayable debt.

[49] There is no merit to Plaza 500’s submission that the plaintiffs’ claim rests on mere administrative labels. The plaintiffs rely on signed agreements and registered mortgage documents that expressly and clearly state the Funds are a repayable debt. That distinguishes this case from cases, including *Tudor Sales*, that apply a “substance over form” analysis in circumstances where there is no formal documentation regarding the funds in question and where the courts must therefore consider whether to give weight to internal administrative descriptions of financial advances.

[50] Throughout its submissions, Plaza 500 emphasizes that the relevant transactions and the relationship between the plaintiffs and Plaza 500 lack the usual and expected characteristics of a “commercial” transaction. I consider Plaza 500’s focus on whether the evidence meets a standard that would be expected in a commercial loan case to be unhelpful. The plaintiffs do not suggest the Funds were provided in a commercial lending context. They do not purport to be arm’s length, commercial lenders. However, the fact that loans are non-arm’s length or non-commercial does not mean that they are unenforceable. Plaza 500 cited no authority in support of its submissions to the effect that it cannot be indebted to the plaintiffs because of their relationship, and I am unaware of any.

[51] The plaintiffs acknowledge that there are some facts that *could* suggest the Funds are not a repayable debt. In particular, there was arguably an agreement that no interest was repayable on the amounts owing, there was no maturity date (though the Funds were repayable upon demand), and the parties agreed that the debt would be repaid behind any senior secured lender.

[52] However, I agree with the plaintiffs that these “non-commercial terms”, as Plaza 500 describes them, are not surprising given the non-arm’s length relationship between the parties. It may well be the case that no commercial lender would have

loaned money to Plaza 500 on the terms of the loan agreements in this case, as Plaza 500 submits. However, the plaintiffs are not commercial lenders and these were not commercial transactions. Those facts do not preclude the existence of a debt. Non-arm's length parties can agree to a loan on mutually acceptable terms, even if those terms would not normally be accepted by commercial lenders. The plaintiffs say that is what occurred in this case.

[53] Plaza 500 submits other commercial terms are conspicuously absent from the loan agreements, and says their absence suggests there is no real loan. Specifically, Plaza 500 points out that the plaintiffs had no independent voice in management, no oversight rights, no reporting obligations, no governance role, and no role in operational decisions. Even if the standard of commercial lending applied, the difficulty with Plaza 500's submission is that there is no evidence or authority before me to demonstrate that these missing terms are usual and expected in commercial lending agreements. In any event, as already discussed, this was not a commercial lending arrangement.

[54] Plaza 500 submits that the plaintiffs did not monitor or enforce the loan agreements and mortgage, and that the lack of monitoring and enforcement shows the Funds were not truly a debt. I consider there to be two problems with that argument. First, it is reasonable to expect that the plaintiffs would not closely monitor the status of the loans, given there was no maturity date, the Property was valuable, and the Funds were secured by a registered mortgage. Second, I find as a fact that the plaintiffs did take steps to enforce the loan agreements and mortgage. Enforcement is the very purpose of the steps the plaintiffs have taken in this proceeding. The plaintiffs took those enforcement steps at the appropriate time as contemplated in the loan agreements.

[55] Plaza 500 places significant emphasis on the undisputed fact that its lawyers, on Azim's instructions, were responsible for setting the terms of and drafting the loan agreements and mortgage documents. However, it cites no authority for the proposition that a borrower having drafted the loan documentation is a relevant

consideration in determining whether the underlying transaction is truly a loan. It is not surprising that Plaza 500 took the lead on preparing the formal documents and, in particular, the mortgage, given that it was located in the jurisdiction and the plaintiffs were not.

[56] Plaza 500's submission that the plaintiffs signed the formal documentation "blindly" is not supported by the evidence. There is no evidence to suggest that the plaintiffs did not understand and agree to the terms of the agreements and mortgage documents they signed. While the plaintiffs may not have been aware of the underlying motives and business considerations at play, I am not persuaded that such knowledge is relevant or necessary to the plaintiffs' ability to contract with Plaza 500 for payment of the Funds to them.

[57] Finally, the fact that the plaintiffs' financial statements and other administrative documents or communications may have described the balances under the loan agreements as unsecured does not prove that the Funds were not a debt. To the extent there are inaccurate descriptions or characterizations of agreements in administrative documents or communications, these do not overcome the actual words of the agreements. Further, Plaza 500's submission ignores evidence to the opposite effect, where the plaintiffs do describe the Funds as loans.

[58] On balance, and particularly when considered alongside the express language used in the loan agreements and mortgage documents, I find that the "substance over form" analysis does not lead to the conclusion that the Funds were equity and not a debt as alleged by Plaza 500.

Allegation that the Funds were a gift from AKC to Azim

[59] The evidence also does not support Plaza 500's submission that AKC had no expectation of repayment because the Funds were an *inter vivos* gift to Azim.

[60] In oral submissions, Azim explained that the Funds were family money that was to be transferred to him in the future—it was a "pending" gift. However, even if that was Azim's view of things, there is no evidence that AKC also considered the

Funds to be a “pending” gift to Azim at the time they were advanced. The evidence also does not establish that AKC ever intended that the Funds would be given to Azim as a gift.

[61] The evidence Plaza 500 relies on in support of the Funds being a gift to Azim and not a loan to Plaza 500 does not involve the Funds at all. Rather, Plaza 500 relies on evidence that AKC told Azim that *Plaza 500* was his.

[62] Azim’s evidence and Plaza 500’s submissions emphasize a meeting in 2010 where AKC told Azim that Plaza 500 would be transferred to him. Adil and Azim had a brief conversation about the transfer that same day, during which the only thing decided was that the transfer would not happen immediately. Later that day, AKC repeated to Azim’s wife that Plaza 500 would be transferred. There is also evidence of some written communications between 2009 and 2011 wherein AKC or Adil reference an intention or plan that Plaza 500 will belong to Azim and his family.

[63] Azim now characterizes the transfer of Plaza 500 as a gift or an advance on Azim’s eventual inheritance from AKC. However, there is no evidence that the potential transfer was described or considered in that way by AKC or Azim at the time.

[64] I consider that the circumstances in the period between 2009 and 2011 make it unlikely that AKC would have characterized the transfer of Plaza 500 as a gift to Azim. I reach that conclusion because the evidence establishes that in around 2009, AKC became very concerned about and unhappy with Plaza 500’s dire financial situation, the state of the Property, and Azim’s decision making. That is the context in which AKC told Azim that Plaza 500 was now his. I consider it reasonable to infer that AKC’s transfer of Plaza 500 to Azim was motivated by a desire to sever ties with Plaza 500 and the Property at that point, not by a desire to give a gift to Azim or to provide an advance on Azim’s inheritance.

[65] In any event, even if AKC did intent to transfer *Plaza 500* to Azim as a gift, there is no evidence that anyone ever discussed *the Funds* and how they were to be

treated as part of the contemplated transfer of Plaza 500. There is no evidence that AKC said that, as part of the transfer of Plaza 500, he or the plaintiffs would not require repayment of the Funds. There is no evidence that AKC told Azim that he would become the beneficiary of the Funds in some other way, such as by transferring ownership of the plaintiffs to Azim. There is no evidence that they discussed the loan agreements or the mortgage at all in the meetings that Plaza 500 relies on.

[66] In fact, the evidence is to the contrary. The evidence is that no one discussed specific details about how the intended transfer of Plaza 500 would be achieved and what it would involve. How the Funds would be treated in the transfer of Plaza 500 to Azim was simply not addressed. There is nothing in the evidence to suggest that AKC or Azim even turned their minds to it at the time.

[67] AKC never followed through on transferring Plaza 500 to Azim before his sudden and unexpected death. For the purpose of this proceeding, I need not make any finding as to why that is.

[68] Plaza 500 says that various correspondence between 2010 and 2014 confirms the understanding among everyone that the Funds were not a debt. I do not agree that inference is available on the documents. Nothing in the correspondence suggests that the Funds are not to be repaid.

[69] Instead, more money was advanced to Plaza 500 after the 2010 meeting between AKC and Azim and Plaza 500 again signed loan agreements for the repayment of those various advances. The parties signed the loan consolidation agreements in 2012 and agreed to increase the amount secured by the mortgage. Azim's evidence is that Plaza 500 increased the amount of the mortgage on AKC's instruction, because AKC wanted to secure his investment.

[70] There is no evidence that AKC told Azim that the post-2010 advances were a gift and there is no evidence that AKC communicated to Azim that those advances did not need to be repaid. Contrary to Plaza 500's pleading, there is no evidence of

any agreement or understanding that the mortgage, as modified, did not secure any payment obligation.

[71] Plaza 500 submits that I can infer the Funds were a gift because AKC had an aversion to debt and would not “deliberately saddle” Azim with debt owed to the plaintiffs. I do not accept that inference is available on the evidence before me. In any event, the debt is owed by Plaza 500, not Azim.

[72] Plaza 500 submits that characterizing the Funds as a gift is consistent with AKC’s pattern of *inter vivos* advancements to his other sons. It says that the Funds could not have been loans because that would result in unequal advances to AKC’s children. In my view, the evidence is not sufficient to establish the inference Plaza 500 seeks. On the evidence before me, I cannot make findings about the nature or extent of advances received by each of AKC’s sons during his lifetime or after his death. Further, the evidence suggests that AKC did treat his sons differently during his lifetime, at least in terms of their respective roles in the family business empire.

[73] Plaza 500 also submits that AKC’s practice was to label “family advancements” as “loans” for administrative or tax purposes, even when the funds were not intended to be repaid. I am unable to find, on the evidence before me, that AKC had or employed a usual practice of using the word “loan” to refer to funds that were not repayable.

[74] In summary, the evidence does not establish that AKC intended, at any point in time, that the Funds would be a gift to Azim.

[75] Rather, there is strong evidence, in the form of the loan agreements and the registered mortgage, that everyone involved—Azim, AKC, Plaza 500, and the plaintiffs—intended that the Funds would be repaid to the plaintiffs. That formal documentation is unambiguous and reduces the contract between the parties to writing. The documentation expressly states that repayment to the plaintiffs was the parties’ intention. Those documents were prepared on Azim’s instruction, with the benefit of legal and accounting advice, and with AKC’s knowledge. Plaza 500 and

the plaintiffs signed the various loan agreements and mortgage documents. While I accept that the purpose of this structure was to gain tax advantages and protect the Funds from creditors, those goals are not incompatible or inconsistent with the expectation of repayment. To the contrary, if the structure Azim decided to put in place was legitimate, as he says it was, it *requires* repayment to the plaintiffs.

[76] To the extent extrinsic evidence is relevant to interpreting the loan agreements and mortgage documents, there is ample evidence to suggest that the Funds were indeed repayable loans.

[77] Plaza 500's counsel, representatives of the plaintiffs, Azim, AKC, and Adil all described the Funds as loans in various communications over the years. There is no evidence that Plaza 500 or Azim referred to the Funds as equity until that characterization became beneficial for Azim, around the time of Plaza 500's foreclosure. At all times from 2004 to 2020, Plaza 500's audited financial statements described the Funds as loans secured by a mortgage and no documents have been produced wherein the parties refer to the Funds as anything other than loans. Further, the plaintiffs executed several priority agreements over the years, which presumably would not have been required if Plaza 500 did not have an enforceable debt obligation to the plaintiffs. Finally, I note that Plaza 500 seeks to enforce the loan agreements in other litigation it has commenced against the plaintiffs and others in this Court.

[78] There is simply no evidentiary basis for a finding that the Funds were ever intended to be anything other than a repayable debt.

Resulting trust

[79] Plaza 500 framed much of its submissions around the law of resulting trusts. The law of resulting trusts involves a legal presumption that would only benefit the plaintiffs in this case, who do not plead or rely on it. There is no allegation that a resulting trust was created or existed in relation to the Funds.

[80] As I understand it, Plaza 500 considers the law of resulting trusts relevant because the decisions that apply that doctrine very often address whether a gratuitous transfer is a gift, because proving that a transfer was a gift rebuts the presumption of a resulting trust. Whether a transfer was a gift such that the presumption of resulting trust is rebutted is a factual question, decided on the evidence before the Court in each case.

[81] I have already concluded above that, on the evidence before me, the Funds were not a gift. The resulting trust case law that Plaza 500 relies on is not otherwise relevant to the claim before me in this proceeding.

Conclusion and orders

[82] In summary, Plaza 500 has the burden of proving that there is no repayable debt owed to the plaintiffs despite the loan agreements and mortgage documents signed by both parties. I find that Plaza 500 has not met that burden on the evidence before me. I find that the Funds were intended to be, and are, a repayable debt.

[83] I therefore grant judgment against Plaza 500 in the amount owing under the loan agreements: \$12,291,544.24 CAD and \$1,344,952.04 USD. The plaintiffs advise they are not seeking interest.

[84] I understand that the current balance of funds held in court to the credit of this proceeding is \$8,286,917.87 CAD plus accrued interest, which was \$1,302,931.48 CAD as of December 2025. I order that the funds held in court to the credit of this proceeding, including all accrued interest, be paid to the plaintiffs in partial satisfaction of judgment.

[85] As the successful party, the plaintiffs are presumptively entitled to costs at Scale B. If either party seeks an alternative costs order, they have leave to request a further hearing before me within 30 days of the date of this judgment.

“Ramsay J.”