

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Eng v. Sit*,
2026 BCCA 194

Date: 20260508
Docket: CA50557

Between:

Edward Eng

Appellant/
Respondent on Cross Appeal
(Plaintiff)

And

Sit Kin Cheung and Gregory Wong

Respondents/
Appellants on Cross Appeal
(Defendants)

And

Canada Construction Lift (2009) Ltd.

Respondent
(Defendant)

Before: The Honourable Justice Riley
The Honourable Justice Warren
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated
February 25, 2025 (*Eng v. Canada Construction Lift (2009) Ltd.*, 2025 BCSC 298,
New Westminster Docket S198188).

The Appellant/Respondent on Cross
Appeal, appearing in person:

E. Eng

Counsel for the Respondents/Appellants on
Cross Appeal:

J. Liu

Place and Date of Hearing:

Vancouver, British Columbia
March 2, 2026

Place and Date of Judgment:

Vancouver, British Columbia
May 8, 2026

Written Reasons by:

The Honourable Justice Francis

Concurred in by:

The Honourable Justice Riley

The Honourable Justice Warren

Summary:

This is an appeal and cross-appeal from a trial judgment in a debt collection claim. The trial judge ordered that the defendant guarantors, Mr. Sit and Mr. Wong, were liable to repay the plaintiff lender, Mr. Eng, the outstanding principal of the loan with simple interest from the loan's due date to trial. Mr. Eng appeals on the grounds that the trial judge erred: (a) in finding he had abandoned his claim under a penalty clause in the loan agreement; (b) in interpreting the loan to provide for simple rather than compound interest; and (c) in failing to award other costs provided for in the loan agreement, including legal costs. The defendant guarantors cross-appeal on the ground that the trial judge erred in failing to apply the doctrine of promissory estoppel, or alternatively, failing to find a collateral agreement freezing interest accrual. Held: Appeal and cross-appeal dismissed. Mr. Eng does not dispute that at trial his counsel abandoned his claims for amounts beyond the loan principal and interest. The judge did not err in relying on his lawyer's representations. Mr. Eng has not demonstrated any palpable and overriding error in the judge's conclusion that the loan provided for simple interest. The errors raised in the cross-appeal are new arguments on appeal and are not appropriate, on this record, for determination by this Court.

Reasons for Judgment of the Honourable Justice Francis:**Introduction**

[1] Mr. Eng sued on a \$15,000 loan he made to the defendant, Canada Construction Lift (2009) Ltd. ("CCL"), in 2011 (the "Loan"). At trial, he sought repayment from two guarantors, Mr. Wong and Mr. Sit, for the \$10,000 outstanding balance on the Loan plus interest at a rate of 24%, compounded annually. The total amount he sought to recover at the time of the 2024 trial was approximately \$238,000.

[2] The trial judge ordered that the balance of the Loan was outstanding, but she found that simple interest, rather than compound interest, was payable on the outstanding Loan.

[3] Mr. Eng appeals, arguing that he is entitled to compound interest. He also appeals the trial judge's dismissal of his attempt to enforce a penalty clause and her interpretation of other provisions in the Loan agreement. Mr. Wong and Mr. Sit cross-appeal, arguing that Mr. Eng was estopped from seeking interest or penalty

payments because he had previously promised that such amounts were not payable.

[4] For the reasons that follow, I would dismiss both the appeal and the cross-appeal.

Facts

[5] The Loan arose out of negotiations amongst Mr. Eng, Mr. Sit, and Mr. Wong for Mr. Eng to become a shareholder in Mr. Sit and Mr. Wong's company, CCL.

[6] Mr. Eng drafted the agreement to advance the Loan (the "Loan Agreement"), which is reproduced in its entirety below:

LOAN AGREEMENT

10 May, 2011

This loan agreement is made this date 10 May, 2011 in between **Canada Construction Lifts (2009) Ltd.**, which is a body duly incorporated under the Company Acts of British Columbia, Canada, having its registered address at #120-12500 Vickers Way, Richmond, B.C. V6V 1H9 (hereinafter "borrower"), **Mr. Sit Kin Cheung**, of #120-12500 Vickers Way, Richmond and **Mr. Gregory Wong**, of #120-12500 Vickers Way, Richmond (both Mr. Sit Kin Cheung and Mr. Gregory Wong, will be individuals making jointly and severally personal guarantee to the loan repayment from the borrower to the lender pursuant to this loan agreement, hereinafter "the guarantors") and **Edward Eng** of 419 Garrett St., New Westminster, B.C. (hereinafter "lender") in which the borrower borrows the sum of Canadian dollars fifteen thousand only from the lender (hereinafter "the loan") with the following terms and conditions:

- (a) The amount of loan – C\$15,000.00, of which loan is hereby acknowledged received by the borrower.
- (b) Interest rate on this loan – 6% p.a.
- (c) Loan period – 11th August, 2011. This loan, including accrued interest, must be paid back in full to the lender on or before 11 August 2011.
- (d) [T]he guarantors will jointly and severally guarantee the lender of the full repayment of the loan that becomes due and payable to the lender, including interests payments, penalty, full cost of collection, including 100% recovery of legal fee the lender may incur in the collection of the loan, interest, penalty, collection and legal costs, etc.

The borrower and the guarantors hereby expressly accept and agree that there will be Penalty in the sum of \$7,000.00 as late payment penalty in the event this full or part of the loan and the accrued interest of the loan is not repaid in full on or before 11th August, 2011.

The borrower and the [guarantors] further accept that the interest charged on any unpaid balance on the loan, including interest and any other costs as stated above, will be charged at the interest rate of 24% p.a.

[Emphasis in original.]

[7] The Loan was not repaid by August 2011. The trial judge found that Mr. Eng told Mr. Sit in the fall of 2011 not to worry about the penalty or the interest under the Loan Agreement. She found that Mr. Sit repaid \$5,000 in October 2011, and Mr. Eng was content to leave \$10,000 with CCL in anticipation of future opportunities.

[8] In January 2013, Mr. Eng started a small claims action against CCL, Mr. Sit, and Mr. Wong, seeking repayment of the outstanding Loan. The action was transferred to the Supreme Court in January 2018.

Trial Judgment

[9] One of the issues before the trial judge was whether an agreement reached to settle a related dispute (the “Settlement Agreement”) also settled the Loan.

[10] The trial judge concluded that the Settlement Agreement did not settle the Loan, for two primary reasons. First, Mr. Wong, one of the personal guarantors of the Loan, was not a party to the Settlement Agreement. Second, a term of the Settlement Agreement was that Mr. Eng would repay the full settlement amount if he later refused to vacate the property that was the subject matter of the related dispute. At trial, the defendants could not explain why Mr. Eng would agree to repay the full settlement amount if that sum included at least \$10,000 to which he was entitled as repayment of the Loan.

[11] The trial judge concluded that Mr. Eng had proven on a balance of probabilities that Mr. Sit and Mr. Wong were jointly and severally liable for the outstanding amount of \$10,000 under the Loan, as guarantors of the Loan. She then turned to determining what rate of interest should apply to the Loan.

[12] The trial judge addressed two preliminary issues. First, the defendants argued that the penalty clause and the 24% interest rate cumulatively yielded a criminal

interest rate. The judge found this was not an issue because Mr. Eng had abandoned his claim to the penalty clause. Second, she addressed the issue of Mr. Eng's 2011 assurance to Mr. Sit that he need not worry about the penalty or the interest. She reasoned that the defendants could have pleaded estoppel to "stop the clock" on interest payments, but found that they had not done so. She therefore did not address whether promissory estoppel applied.

[13] The trial judge concluded that the 24% annual interest provided for in the Loan Agreement was simple interest. She reasoned that the language in the Loan Agreement was analogous to the clauses at issue in *Laidar Holdings Ltd. v. Lindt & Sprungli (Canada) Inc.*, 2019 BCSC 83 and *Tri-City Contracting Ltd. v. Brighton Land Development Corp.*, 1994 CanLII 166, [1994] B.C.J. No. 1001 (S.C.), both of which were found to provide for simple interest. The judge also considered that Mr. Eng had drafted the contract, and that he had failed to stipulate that the interest was to be compounded despite it being in his control to do so.

[14] She ordered the respondents to repay the \$10,000, along with:

- 6% simple interest on \$15,000 from 10 May – 11 August 2011;
- 24% simple interest on \$15,000 from 12 August – 15 October 2011; and
- 24% simple interest on \$10,000 from 15 October 2011 to the date of judgment.

[15] She ordered that the defendants were entitled to their costs at Scale B.

Issues on Appeal

[16] The appellant raises the following issues on appeal:

- a) Did the trial judge err in finding that Mr. Eng had abandoned his claim to the penalty clause?

- b) Did the trial judge err in failing to find that under the Loan Agreement the respondents were liable to Mr. Eng for all costs, including legal fees and collection costs, plus interest?
- c) Did the trial judge err in concluding that the interest owing on the Loan was simple, and not compound, interest?
- d) Did the trial judge err in her costs award?

[17] The issues raised in the respondents' cross-appeal are:

- a) Did the trial judge err in holding that interest was payable on the Loan after October 2011, by either:
 - i. failing to apply the doctrine of promissory estoppel, or
 - ii. failing to find a collateral agreement about the freezing of interest or penalty payments?

Discussion

Issue 1: Penalty Clause

[18] The trial judge found that Mr. Eng had abandoned his claim to enforce the clause in the Loan Agreement which read:

The borrower and the guarantors hereby expressly accept and agree that there will be Penalty in the sum of \$7,000.00 as late payment penalty in the event this full or part of the loan and the accrued interest of the loan is not repaid in full on or before 11th August, 2011.

[19] Mr. Eng's position on the penalty clause has not been consistent. The amended notice of civil claim ("ANOC") refers to the \$7,000 payment in the Loan Agreement and says it is not a penalty and was incorrectly described as such in the Loan Agreement. This is different from the position Mr. Eng advances on appeal, where he argues that the Loan Agreement contained an enforceable penalty clause.

[20] At trial, Mr. Eng's counsel clarified in both oral and written submissions that he was not pursuing the penalty clause. In his written submissions he stated that the penalty clause was written off:

35. The plaintiff submits that the annual interest of 24% does not exceed the criminal rate of 60%. Firstly, there are no fees imposed on the lack of repayment. Any fee or penalty was written off completely. Secondly, the principle and the interest are not compounded monthly but annually.

[21] When asked by the judge what relief in the ANOCC was being pursued, Mr. Eng's lawyer told the court that "in the interests of time and having this matter resolved, my client just wants the loan amount paid back to him".

[22] Mr. Eng does not dispute that his lawyer abandoned the enforcement of the penalty clause in the course of the trial. He submits that he was sick prior to the trial and did not expect his lawyer to take this position. If Mr. Eng's lawyer took a position that Mr. Eng did not agree to, that would be a matter between Mr. Eng and his counsel. The judge was entitled to rely on the representation of counsel that Mr. Eng was no longer pursuing the enforcement of the penalty clause. In these circumstances, the judge made no error in accepting the submissions of Mr. Eng's counsel that the enforcement of the penalty clause was abandoned.

Issue 2: Collection Costs and Legal Fees

[23] Mr. Eng submits that the judge erred in not awarding him his legal fees and collection costs on the basis of paragraph (d) of the Loan Agreement, which states:

[T]he guarantors will jointly and severally guarantee the lender of the full repayment of the loan that becomes due and payable to the lender, including interests payments, penalty, full cost of collection, including 100% recovery of legal fee the lender may incur in the collection of the loan, interest, penalty, collection and legal costs, etc.

[24] As with the penalty clause, any claim Mr. Eng was making to be indemnified for his legal fees and collection costs pursuant to this term of the Loan Agreement appears to have been abandoned at trial. The ANOCC claims, as the third item relief sought, "costs of legal and other costs as stated in the loan agreement". However, when his counsel was asked by the Court at trial whether he was proceeding with

the second and third items of relief sought in the ANOCC, his counsel confirmed that he was not.

[25] There is therefore no basis on which Mr. Eng can now argue that the trial judge erred by not considering his claim for legal and collection costs under the Loan Agreement.

Issue 3: Simple v. Compound Interest

[26] The question of whether the Loan provided for simple or compound interest is a question of contractual interpretation — a question of mixed fact and law. Therefore, the judge’s interpretation of the Loan Agreement is reviewable on the standard of palpable and overriding error, absent an extricable error of law.

[27] In this case, Mr. Eng has identified no extricable question of law. Rather, he submits that the surrounding factual matrix should lend itself to a finding that the parties intended interest under the Loan to be compounded.

[28] When interpreting a contract, the Court is required to discern the intention of the parties with reference to the ordinary and grammatical meaning of the words used, consistent with the surrounding circumstances known to the parties at the time of formation of the contract: *Sattva Capital Corp. v. Creston Moly Corp*, 2014 SCC 53 at para. 47.

[29] In this case, the judge found it relevant that Mr. Eng drafted the Loan Agreement and that it was within his control to specifically state that the interest was compound. He did not do so. She found that the surrounding circumstances supported the conclusion that the parties intended interest under the Loan to be simple and not compound.

[30] The trial judge’s interpretation is supported by other clauses in the Loan Agreement, such as the term running from May 10, 2011 to August 11, 2011. The Loan Agreement stipulates that “[t]his loan, including accrued interest, must be paid back in full to the lender on or before 11 August 2011”. It does not make sense that

a loan that was always contemplated to be repaid in three months would have interest compounded annually.

[31] On appeal, Mr. Eng submits that it is important that the word “interest” is used repeatedly in the sentence “[t]he borrower and the [guarantors] further accept that the interest charged on any unpaid balance on the loan, including interest and any other costs as stated above, will be charged at the interest rate of 24% p.a.” (emphasis added). He submits that the only way this sentence can be reasonably interpreted is that it refers to “interest on interest”, which is the same thing as compound interest.

[32] Contrary to Mr. Eng’s submission, the phrase he focusses on does not refer to “interest on interest”. In any case, the judge found on the evidence before her that this phrase, and the contract on the whole, did not contemplate that compound interest was payable on the Loan. On the record before the judge, I cannot say this conclusion was palpably wrong.

[33] Therefore, I would not find that the trial judge made a palpable and overriding error when she interpreted the Loan Agreement, in light of the surrounding circumstances, as providing for simple, rather than compound, interest.

Issue 4: Costs

[34] This Court will not interfere with a trial judge’s exercise of discretion on the issue of costs “unless persuaded that the trial judge misdirected himself or herself on a matter of legal principle, or that the trial judge’s decision is so clearly wrong as to amount to an injustice”: *Seminoff v. Seminoff*, 2007 BCCA 403 at para. 2 (Chambers).

[35] In her reasons for judgment, the judge said the following with respect to costs:

[86] Unless there are matters the parties wish to draw to my attention, which must be done within 30 days of release of these reasons, the defendants are entitled to their costs at Scale B.

[36] After the reasons for judgment were released, Mr. Eng did not, within 30 days, or ever, make submissions to the judge about costs.

[37] On appeal, Mr. Eng argues that the costs order is unfair because he was successful in the claim. However, the primary issue at trial was whether compound interest should be awarded to Mr. Eng. He was unsuccessful in this regard. Therefore, even if it were open for Mr. Eng to argue costs on appeal when he made no costs submissions after trial, despite being invited to do so, I would not find that the judge misdirected herself on a matter of legal principle, nor that her costs decision is clearly wrong.

Cross-Appeal

[38] The respondents submit that the trial judge erred by failing to apply the doctrine of promissory estoppel, or, alternatively, by failing to find a collateral agreement about the freezing of interest and penalty payments.

[39] The respondents did not plead nor argue the doctrines of promissory estoppel and collateral agreement before the trial judge. However, they argue that promissory estoppel, or alternatively a collateral agreement, arose on these facts and one of these doctrines ought to have been applied by the trial judge.

[40] In their factum, in support of the argument that the trial judge should have found that Mr. Eng was estopped from enforcing the interest and penalty provisions of the Loan Agreement, the respondents submit that “the issue of freezing and postponement of penalty and interest payments were also addressed at great length” at trial. However, the pages of the transcript the respondents refer to in support of this assertion do not demonstrate that there was any legal argument at all about the concept of “freezing and postponement”, a phrase that appears to have been invoked but never explained by the respondents in their closing submissions. Therefore, it is not surprising that the trial judge did not devote considerable attention to the “freezing and postponement” argument because it was not an argument that was developed in any meaningful way by the respondents.

[41] The trial judge did not overlook promissory estoppel. Indeed, she noted in her reasons that neither Mr. Sit nor Mr. Wong raised a defence of promissory estoppel, either in their pleadings or arising from the evidence. This was why she did not consider the defence beyond a cursory mention of it.

[42] This Court does not generally consider issues raised for the first time on appeal: *Rhodes v. Surrey (City)*, 2018 BCCA 281 at para. 47. An appeal court should only allow a new issue on appeal where “the interests of justice require it and where the court has a sufficient evidentiary record and findings of fact” to decide the issue: *Quan v. Cusson*, 2009 SCC 62 at para. 37.

[43] The onus is on the appellant to persuade the court that all the facts required to address the issues of promissory estoppel and collateral agreement are before the court as fully as if the issue had been argued at trial: *Ulmer v. British Columbia Society for the Prevention of Cruelty to Animals*, 2010 BCCA 519 at para. 27, citing *R. v. Winfield*, 2009 YKCA 9 at para. 18.

[44] I am not persuaded that all the evidence required to address either promissory estoppel or collateral agreement is before this Court as fully as if the issues had been argued at trial. Had the respondents pleaded or raised either doctrine at trial, Mr. Eng may have had different evidence. Further, as the trial judge noted, the evidence revealed a “baffling tapestry” of dealings between Mr. Eng and Mr. Sit and both of their evidence was “generally difficult to follow” with a lack of clarity and certainty. In the context of these significant frailties in the evidentiary record, in my view, it would not be in the interests of justice to consider the two new doctrines the respondents wish to advance on their cross-appeal.

Disposition

[45] In all the circumstances, I would dismiss both the appeal and the cross-appeal.

“The Honourable Justice Francis”

I AGREE:

“The Honourable Justice Riley”

I AGREE:

“The Honourable Justice Warren”