

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *5YP, LLC v Patterson*,
2026 BCSC 1591

Date: 20260821
Docket: S247990
Registry: Victoria

Between:

5YP, LLC

Plaintiff

And

Heather Patterson and Sean McQuillan

Defendants

Before: The Honourable Justice Ormiston

Reasons for Judgment

Counsel for the Plaintiff: J.C. McCaskill

Counsel for the Defendants: W.E. Pedersen

Place and Dates of Hearing: Victoria, B.C.
February 10, 2026
March 27, 2026
April 15, 2026

Written Submissions Received: April 28, 2026
May 13, 2026

Place and Date of Judgment: Victoria, B.C.
August 21, 2026

Table of Contents

INTRODUCTION	3
FACTUAL FOUNDATION	4
ISSUES.....	6
Summary Trial	6
Jurisdiction.....	8
Alleged Breaches of Natural Justice	9
Notice	9
Challenge to the Nevada Judgment	16
Criminal Rate of Interest.....	18
Should the Judgment be Enforced?.....	24
Post-Judgment Interest.....	24
Conclusion	25

Introduction

[1] This is an application by the plaintiff for summary trial. They seek to enforce a default judgment made in Nevada, USA, against the defendants. The Nevada judgment was made by a judge of the 8th Judicial District Court of Clark County Nevada, USA (“the Nevada judgment”) and flowed from a promissory note requiring the defendants to pay \$320,299.41USD plus interest for funds loaned to them by the plaintiff. The promissory note was made in furtherance of the defendants purchasing a property in Nevada from the plaintiff. There can be no question that the defendants entered this agreement, and that after making the first payment of \$2,040 they failed to make any further payments.

[2] The relief sought by the plaintiff is governed by principles that have developed in the common law. Canadian courts have focussed on providing judicial assistance to foreign litigants as opposed to weighing the merits of the underlying claim: *Pro Swing v Elta Golf Inc.*, 2006 SCC 52 at para 89. The only requirement to enforce a final judgment from a foreign court for a fixed sum of money is that there be a ‘real and substantial connection’ between the cause of action and the foreign court: *Beals v Saldanha*, 2003 SCC 72 at para 20; *Pro Swing* at para 10; and *Chevron Corp. v Yaiguaje*, 2015 SCC 42 at paras 27, 43-44.

[3] If the grounds for enforcement have been satisfied, there are limited circumstances in which a foreign order will not be registered in Canada. These are where the defendants establish fraud, a breach of natural justice, or where enforcement would run contrary to public policy: *Beals* at paras 28, 31-32, 39-41.

[4] There is no real dispute over the Nevada court’s jurisdiction. The defendants resist enforcement on the basis of alleged breaches of natural justice arising from procedural deficiencies with proper notice, and from substantive deficiencies related to jurisdiction, errors in the Nevada judgment, criminal interest rates, and the conduct of the plaintiff in attempting to collect the debt.

[5] For the reasons that follow, I do not find that enforcing the foreign order would run contrary to public policy or result in a breach of natural justice. I have come to

this conclusion because I am satisfied the defendants were aware of the legal action the plaintiff brought against them after they swiftly defaulted on the promissory note. I have also concluded that while the late fee that forms part of the judgment does increase the applicable interest rate above the 35% rate of criminal interest in Canada, it can be notionally severed from the judgment for the purposes of enforcement. The other grounds on which the defendants resist enforcement are substantive attacks on the order itself and are an insufficient basis to refuse the order sought.

Factual Foundation

[6] The defendants Heather Patterson and Sean McQuillan agree that they purchased a property in Nevada from the plaintiff for \$340,000USD. The property was financed in part by the plaintiff. The reliable and unchallenged documentary evidence, which includes legal documents and correspondence between the parties, establishes that the defendants borrowed \$320,299.41USD from the plaintiff to finance the property. The parties executed the promissory note in Nevada on December 22, 2015. The promissory note required monthly payments of \$2,040 commencing on January 26, 2016. The evidence shows that the defendants defaulted when they missed their second scheduled payment.

[7] The plaintiff issued a notice of breach and election to sell. There was email communication between the plaintiff and Mr. McQuillan between April and July 2016, showing that Mr. McQuillan was aware of the missed payment. The parties discussed possible alternatives, however they were unable to come to an agreement about the defendants curing the default. The property was foreclosed upon and sold at a trustee's auction on August 1, 2016.

[8] It was the defendants who initiated litigation about their financial relationship with the plaintiff. On October 28, 2016, the defendants filed a lawsuit in Nevada against the plaintiff alleging wrongful foreclosure, quiet title, slander of title and related relief. The defendants were represented in this action by a Nevada law firm. On January 9, 2017, the defendants voluntarily dismissed their own action after a

certificate of *lis pendens* related to the property was successfully expunged on application by the plaintiff.

[9] On January 24, 2017, the plaintiff commenced proceedings against the defendants with a 'complaint' that resulted in the judgment at issue (also referred to herein as the plaintiff's 'action'). On March 1, 2017, the defendants' counsel acknowledged receipt of the complaint, although specifically pointed out to the plaintiff's counsel that it had not been formally served. This acknowledgement was made by the defendants' counsel in their motion opposing the plaintiff's application to consolidate the defendants' and plaintiff's Nevada claims. On March 23, 2017, the defendants' counsel applied to be removed as counsel of record given unpaid legal fees and a breakdown in communication. On April 18 and 19, 2017, the plaintiff attempted to personally serve the defendants with their complaint at the defendants' last known address in Vancouver. This address had been provided by the defendants' former counsel in their March 23 application.

[10] On July 5, 2017, a district court judge in Nevada granted leave to extend the time for the plaintiff to serve their complaint, and ordered service could be satisfied by publication, and by mail directed to the defendants' last known address. The plaintiff complied with the service order and on May 8, 2018, the defendants were noted in default for failing to file any response to the complaint. On September 25, 2018, the plaintiff obtained the default judgment against the defendants that they now seek to enforce.

[11] The order grants judgment against the defendants, jointly and severally, as follows:

- (i) a 'deficiency judgment' of \$362,755.76USD (comprised of principal owing, pre-judgment interest, and a late fee);
- (ii) post-judgment interest of \$152.30 per day from the date of Notice of Entry of Judgment by Default until the judgment is satisfied; and
- (iii) \$1,381.60 for the balance of costs owing.

[12] I am satisfied that the Nevada order is a monetary judgment for a fixed sum. I am also satisfied that the judgment at issue is final. The defendants have not appealed it, and there is reliable evidence that the time allowed for appeal has expired. Given the history of the litigation between the parties in Nevada, I find the plaintiff has established that the Court issuing the default judgment had jurisdiction to do so. The promissory note was entered into in Nevada, where the defendants completed a real estate transaction with the plaintiff to purchase property in that state. The record shows the defendants elected to start litigation in Nevada pertaining to the financing extended by the plaintiff.

Issues

[13] The issues to be decided on this application are:

1. Can this matter be resolved by summary trial?
2. If so, does this Court have jurisdiction to enforce the Nevada judgment?
3. If so, have the defendants established a breach of natural justice occurred because they were not personally served with notice of the plaintiff's complaint that the defendants had defaulted on their promissory note?
4. Should the defendants be given the opportunity to attempt to set aside the Nevada default judgment before it is enforced in Canada?
5. Did the Nevada judgment impose a rate of interest that is criminal in Canada?
6. If so, should the judgment be enforced in this jurisdiction?
7. If so, what is the amount of post-judgment interest owing?

Summary Trial

[14] Summary trial is governed by Rule 9-7(15) of the *Supreme Court Civil Rules*, BC Reg 168/2009, which allows a court to grant judgment unless it is unable to find

facts necessary to decide the necessary issues of fact of law, or it would be unjust to decide the issues summarily: *Brisette v Cactus Club Cabaret Ltd.*, 2017 BCCA 200 at para 22. The views of the parties and practical realities of this case favour summary disposition, and I find it is a matter suitable for summary trial. The legal basis for the plaintiff's claim is settled, and applications of this sort are often resolved on the basis of a summary trial including the leading cases in this area: *Pro Swing Inc.*; *Wei v Li*, 2019 BCCA 114.

[15] There is no issue arising from the evidence in this case about whether there is a 'real and substantial connection' between the cause of action and the foreign court. The live issue is whether the defendants have successfully raised a defence based on public policy or a breach of natural justice. The existence of a triable issue or defence does not necessarily defeat a summary trial application: *Gichuru v Pallai*, 2013 BCCA 60 at para 30. In my view, the issues raised on this application are fit for summary trial, and resolvable based on the affidavit and *viva voce* evidence before this Court.

[16] I am mindful that this application requires some assessment of credibility when it comes to the evidence of Mr. McQuillan. For example, he deposes that the defendants were not served with notice of the legal action the plaintiff brought against them, or the subsequent default hearing and order. The defendants disagree. While the reliability of Mr. McQuillan's evidence must be assessed, I find the matter remains appropriate for summary disposition for three reasons.

[17] First, the issues with Mr. McQuillan's evidence are discrete and relate to the defendants' knowledge of the Nevada legal actions. Second, to the extent that Mr. McQuillan's evidence appears to be in conflict with the evidence advanced by the plaintiff, it is important to consider that the plaintiff's evidence is comprised of independent documentary evidence and affidavits from the defendants' former counsel. Finally, Mr. McQuillan was permitted to file a supplementary affidavit to clarify his evidence about the notice issue, and he was cross-examined on this evidence as well.

[18] The defendants in this case did not defend the application based on opposition to a summary mode of trial, however, they do point out reasons for this Court to be cautious in their responding materials. These include the fact that proper service is disputed; an alleged error in the default judgment; and the assertion that the interest accrued is exorbitant. These are all factors to be considered in the context of the defendants' natural justice defence. However, they do not preclude a summary trial.

[19] The defendants have had ample opportunity to provide all of the available evidence on the issue of notice and the application generally. They have not made submissions about how it would assist their case to have a more fulsome investigation of factual issues that could happen at a full trial. I am satisfied that a full trial is not required to achieve a fair hearing in the circumstances of this case.

Jurisdiction

[20] While it was not the focus of this application, the defendants' response to civil claim raises an issue with respect to the jurisdiction of this Court to enforce the Nevada judgment. I am satisfied that there are no jurisdictional issues that bar the orders sought by the plaintiff.

[21] The defendants plead that do not currently live in British Columbia and have no meaningful connection to this province. They have provided no legal authority to support their position that the plaintiff must establish a current connection with this province in order to proceed. On the other hand, the applicant submits the only jurisdictional connection required is between the defendants and the jurisdiction in which the foreign judgment was made: *Chevron Corp.* at para 27. Given the incontrovertible fact that the defendants purchased property in Nevada, retained counsel, and started legal actions related to that property, there can be no dispute that the defendants had a real and substantial connection to Nevada at the relevant time. Based on the reasoning in *Chevron Corp.* I am satisfied that having served the defendants by mail to a British Columbia address according to court order is sufficient to grant this Court jurisdiction over the defendants.

Alleged Breaches of Natural Justice***Notice***

[22] The following timeline related to service and notice is either accepted by the defendants or otherwise established by the independent documentary evidence produced at the hearing.

[23] On January 24 2017, the plaintiff filed their action against the defendants that led to the judgment in issue.

[24] The plaintiff did not personally serve the defendants with notice of their action.

[25] On February 17, 2017, the plaintiff filed a motion to consolidate their action with the Nevada action that had been started by the defendants. Exhibited to the plaintiff's motion was the complaint that commenced their action, filed on January 24, 2017.

[26] On March 1, 2017, counsel for the defendants prepared and filed an opposition to the motion to consolidate, which included the following statement:

Neither the plaintiffs nor their counsel have been served with the Complaint which 5YP purportedly filed on January 24, 2017. Indeed the plaintiffs were not even aware of the Complaint until they received 5YPs Motion to Consolidate, which includes a copy of the Complaint as Exhibit 'A': "For purposes of the instant opposition, the plaintiffs will operate under the assumption that the Complaint attached to the motion to consolidate is, in fact, the complaint that 5YP intends to serve at a later date ..." [emphasis added.]

[27] 'Exhibit A' to the plaintiff's motion for consolidation is the January 24, 2017 complaint, the substance of which was ultimately enforced with the default judgment at issue.

[28] On March 20, 2017, the defendants' counsel prepared a declaration to be removed as counsel of record. In this declaration, counsel states the defendants have not paid for their legal services, and 'there is now' a lack of communication between counsel and their clients. They also state that the defendants have 'repeatedly failed to respond to emails and phone calls.'

[29] In the same March 20, 2017 declaration, the defendants' counsel provided the Court with the last known address of the defendants in Vancouver.

[30] On April 18 and 19, 2017, the plaintiff unsuccessfully attempted to serve the defendants at this Vancouver address.

[31] On July 5, 2017, the plaintiff was granted an order allowing them to serve the defendants by sending a copy of the complaint to the Vancouver address, and by repeated publications in Nevada. The plaintiff complied with these orders before being granted default judgment.

[32] Canadian law recognizes the necessity of adequate notice in legal proceedings: *Beals* at paras 63, 64. If a party is not aware of a legal action, they cannot participate or defend themselves. As the Court in *Congqing Shenggang Trading Co., Ltd. v Yang*, 2024 BCSC 2102 observes, “[i]n considering what constitutes ‘adequate notice’ ... courts have generally focused on ... (1) whether there was actual knowledge of the claim, and (2) whether ... notice was ‘received’ by the defendant such that knowledge ... can reasonably be imputed.” (at para 76).

[33] Lack of adequate notice is a reason to find that enforcing a foreign order would violate principles of natural justice: *Congqing*; *Cortés v Yorkton Securities Inc.*, 2007 BCSC 282; *Al-Marzouq v Nafissah*, 2019 BCSC 1759.

[34] While this Court has a ‘heightened duty’ to ensure minimum standards of fairness have been met by the foreign court, minimum standards of fairness do not necessarily require personal service: *Al-Marzouq* citing *Abokasem v Benjamin*, 2015 BCSC 2300, aff’d 2017 BCCA 70 at para 55. Rather, the guiding authorities suggest the affected party must have either actual or imputed knowledge of the claim against them. As Newbury J.A. explains in *Wei*, a foreign legal system may have rules for service that are different than our own. This does not necessarily preclude enforcement, but it is necessary for a court to find the defendants have been “made aware of the case they had to meet” and be “given an opportunity to meet it.” (at para 27) [Emphasis added.]

[35] In my view, the question to be answered in relation to this issue is whether the defendants were made aware of the plaintiff's action against them, or whether they were in receipt of notice such that their knowledge can reasonably be imputed. The only answer that emerges from the evidence before me is that the defendants did know about the action that led to the judgment in issue. I have come to this conclusion for the following reasons.

[36] First, the independent evidence marshalled by the plaintiff shows that the defendants were aware of the plaintiff's action against them. On March 1, when the defendants were represented by counsel, that counsel filed an opposition to the plaintiff's motion to consolidate the two outstanding Nevada actions – one of which was the plaintiff's action that led to the judgment to be enforced. Inherent in the defendants' motion to oppose is knowledge of the plaintiff's action. This knowledge is made explicitly clear in counsel's declaration that the defendants became 'aware' of the plaintiff's action when they received the motion to consolidate, despite the fact that they had not been formally served.

[37] The defendants submit that the plaintiff's evidence about knowledge remains unclear, and that it cannot displace Mr. McQuillan's evidence that the defendants had no such knowledge. The defendants seek to undermine the strength of the plaintiff's evidence by emphasizing the March 20th declaration by the defendants' Nevada counsel about a lack of communication between them and their clients. The defendants also suggest that counsel prepared the declaration that includes the statement about the defendants' awareness of the plaintiff's action without instructions from their clients. I cannot accede to these submissions.

[38] The March 1 statement by the defendants' Nevada counsel makes a clear and positive statement that the defendants were aware of the plaintiff's action. It is one that is consistent with the documentary proof of the plaintiff's January 24, 2017 'complaint' being attached to their motion to consolidate. The defendants counsel's subsequent declarations about the troubled solicitor/client relationship does not disturb the reliability of their previous assertions about the defendants' knowledge. In

their application to be removed as counsel of record, counsel does say that they prepared the March 1 motion to ‘minimize prejudice and reduce delays.’ However, this is also consistent with counsel’s initial reason for applying to be removed as counsel: they were not being paid for their services.

[39] Counsel’s explanation about minimizing prejudice does not provide a reasonable basis to find that counsel was being untruthful or inaccurate in the substance of their motion, when they said that the defendants had become ‘aware’ of the plaintiff’s action. In fact, it would be difficult to accept that the defendants’ former counsel included this statement about their client’s knowledge without a firm foundation to do so. Counsel was clear that they were preserving the defendants’ right to insist on formal service, so conceding their client’s awareness of the action clearly had the potential to be adverse to their clients’ interests. There is no positive evidence from the defendants’ former counsel that they did not make their clients aware of the plaintiff’s action as stated in their motion. In these circumstances the Court will presume that counsel was acting in accordance with their professional obligations.

[40] It is in the context of this reliable evidence that the defence evidence about notice must be assessed. The defendants’ evidence about notice is either non-existent or deeply unreliable. Ms. Patterson has not provided any direct evidence about her knowledge, and the Nevada court documents show that the Vancouver address at which the plaintiff attempted service was hers.

[41] Mr. McQuillan provided three affidavits. His second affidavit asserts that he has “no record of having been served with a copy of 5YP’s January 24, 2017 complaint, and [does] not believe that Heather or I were ever provided a copy of this from our former counsel in Nevada.” He also asserts that the last correspondence the defendants received from their Nevada counsel was on January 18, 2017, and it related to the draft order to expunge their *lis pendens* certificate, not the motion to consolidate.

[42] These depositions fall short of any kind of clear statement that the defendants were unaware of the plaintiff's action against them. Having 'no record' of being served is not the same as saying it did not happen. Mr. McQuillan goes on to qualify his statement about service by saying he does not 'believe' that they were provided a copy of the complaint itself. While this latter statement may be consistent with his evidence that the last correspondence he received from his counsel was on January 18, the determinative issue on this application is not whether the defendants were formally served, but whether they had adequate notice of the legal action against them to comport with rules of natural justice.

[43] It was only at the hearing of this application, after the plaintiff had argued their case (including raising concerns about the limited scope of Mr. McQuillan's initial affidavit), that Mr. McQuillan sought leave to file a clarifying affidavit on this precise issue. In his third affidavit, Mr. McQuillan says that he and Ms. Patterson 'had no knowledge' of 5YP's January 24, 2017 complaint until February 2025.

[44] Given the circumstances under which the third affidavit was prepared, counsel for the plaintiff was permitted to cross-examine Mr. McQuillan. Cross-examination revealed Mr. McQuillan to be a most unreliable and self-serving witness when he addressed the apparent inconsistencies between his two affidavits. The only logical explanation that emerged from Mr. McQuillan's cross-examination was that his memory of the whole ordeal with the plaintiff was altogether compromised. This does not assist the reliability of his evidence. Moreover, Mr. McQuillan's attempt to maintain that his admittedly poor memory at discovery was actually an attempt to leave his options open to answer differently at a later time does not assist his credibility as a witness.

[45] It is important to note that both affidavits were prepared while Mr. McQuillan was represented by counsel, and there is no suggestion that either was drafted under the pressures of time or other circumstances that would warrant a relaxed reading of the words Mr. McQuillan chose to use in his initial statement about knowledge. To the extent that Mr. McQuillan asserts he had no knowledge

whatsoever of the Nevada action before default judgment was granted, I do not find his evidence to be credible or reliable. His evidence must be considered in the context of the other reliable evidence tendered on this application.

[46] Mr. McQuillan's statement that his last correspondence from counsel was on January 18 is irreconcilable with counsel's later declaration that had been trying to contact the defendants by phone and email without success. It is also incompatible with the presumption that counsel was acting diligently both in advising their clients of a pending claim and in filing documents on March 1 to 'mitigate prejudice' that explicitly referenced their clients' awareness of the plaintiff's action.

[47] There is also a logical inconsistency in Mr. McQuillan's late and skeletal assertion that he had no knowledge of the plaintiff's originating action, insofar as it fails to account for the defendants' inaction when they knew they had defaulted on their promissory note. The agreement with the plaintiff contained clear provisions for a failure to pay, and it was the defendants who started the Nevada litigation accusing the plaintiff of improperly foreclosing on the property. Mr. McQuillan submits that at some point he learned the plaintiff was able to purchase the foreclosed property at a much reduced price, only to re-sell it for substantially more. Mr. McQuillan says, on this basis, he believed there was no reason for the plaintiffs to take legal action.

[48] This evidence does nothing to detract from the inference that the defendants must have known the promissory note would be enforced. While the correspondence between Mr. McQuillan and the plaintiff shows that the defendants knew the property was likely to be subject to a foreclosure sale, there is no basis in the evidence for the defendant to have known it would be sold to the plaintiff, or for what price. All that emerges from the 2016 correspondence is that Mr. McQuillan clearly knew that his proposals for curing the default were not being accepted by the plaintiff.

[49] The reliability of Mr. McQuillan's evidence is undermined by its lack of detail on key factual issues. For example, his carefully worded affidavit of February 2, 2026, does not say when he realized the plaintiff had sold the property for a profit.

The documents the defendant relies on reflect a sale in September 2017. Mr. McQuillan's assertion that he had no knowledge of the originating action commenced in January 2017, but did know about this sale in September is highly implausible.

[50] Mr. McQuillan also deposed that the defendants did not live at the Vancouver address at the time the plaintiff attempted to personally serve them with notice of their action, but there is no evidence before the court about when the defendants' ties to that residence were terminated. In December 2016, the defendants' Nevada counsel referred to his clients' Vancouver address as 'their address in Vancouver' in documents related to the *lis pendens* certificate. The defendants did not take this opportunity to say they no longer lived at the Vancouver address, rather counsel added as a footnote that their clients were 'in Canada travelling for the holidays.'

[51] Mr. McQuillan attempts to rely on the hearsay statements in the affidavit of attempted service made by the person at the Vancouver address who refused to accept service. That person told the process server the defendants had 'moved out a year ago.' However, this statement made in April 2017 is strangely inconsistent with the fact less than a month earlier the defendants' Nevada counsel filed their motion to be removed as counsel of record, listing the Vancouver address as the defendants' last known address.

[52] The defendants lean heavily on the submission that they are public figures who can easily be found on the internet. They argue that the steps taken by the plaintiff to serve the originating notice would have been found to be insufficient by a Court in this province. However, I cannot find that the circumstances of this case align with the authorities the defendants have submitted. While it is relevant to consider whether the foreign order about service accords with principles of natural justice, the question is not whether a B.C. judge would have made the precise same ruling.

[53] The Nevada substitutional service order was made in the context of the defendants leaving the state, and terminating their relationship with counsel by

failing to pay or respond to correspondence. The plaintiff had already tried to serve them at an address that had been (less than a month earlier) their address for service with their counsel. In these circumstances, the order to substitutionally serve through a Nevada publication is not unjust.

[54] The defendants' submission that the plaintiff could have easily emailed them instead falls flat in light of the declaration of the defendants' Nevada counsel, who makes clear that they were trying to reach the defendants through email without success. In addition, the defendants' Nevada motion about the *lis pendens* certificate in December 2016/January 2017 shows that they knew the plaintiff had been sending them legal documents to this same Vancouver address. Mr. McQuillan filed a declaration in relation to these earlier proceedings containing the conclusory statement that the defendants did not receive the foreclosure notice mailed to their Vancouver address, but he does not explain why. In my view, the documentary evidence before this Court taken as a whole reflects the recency of the Vancouver address, and distinguishes the case at bar from those where there are limited attempts made to serve at a 'defunct' address.

[55] While this may not be a clear-cut case of evading service, on the factual matrix before this Court, where there is an ample basis to find or impute the defendants' knowledge of the legal action, and where the steps that were taken by the plaintiff to serve the defendants were in accordance with Court orders, is not one in which enforcing the foreign judgment would be contrary to principles of natural justice.

Challenge to the Nevada Judgment

[56] The defendants submit that it would be a breach of natural justice to enforce a judgment they are actively taking steps to challenge. I disagree. For the reasons given, the defendants have not established they were unaware of the plaintiff starting a legal action against them for failure to pay according to the promissory note. While the defendants may not have known the details of the judgment that flowed from those proceedings, no breach of natural justice occurs in the

circumstances of this case where the defendants left the jurisdiction and took no steps to act with respect to the originating legal action or to advise former counsel of their whereabouts.

[57] Mr. McQuillan deposes that shortly after he was personally served with notice of the judgment in February 2025, he took steps to set it aside. He provides an affidavit from a Nevada county sheriff deposing that he twice tried to serve Anthony Perkins, the manager employed by 5YP in July 2025, without success. The plaintiff notes that there is no court stamp affixed to these documents. In addition, the address of attempted service differs from the address provided in Mr. Perkins' September 2025 affidavit. Current counsel for the plaintiff advises that they have been willing to accept service on behalf of their client.

[58] More importantly, Mr. McQuillan's assertion that he in fact 'filed' the motion to set aside the default order is contradicted by reliable evidence. Mr. Sharprio, a practising lawyer in Nevada, has given evidence that the last item filed in the Nevada action was on February 20, 2024. The docket is attached to Mr. Sharprio's affidavit. The last filing appears to have been a renewal of the default judgment at issue in these proceedings.

[59] Mr. McQuillan offers no response to this independent documentary evidence, other than submitting that his motion to set the default judgment aside has to be served before filing. This is inconsistent with the plain wording of his affidavit where he states that his motion was 'filed' after learning of the default judgment.

[60] Regardless of this inconsistency, the present application was filed in January 2026 and argued into April 2026. The defendants have not provided information about any further steps taken to advance their application to challenge the Nevada judgment. This is a judgment made eight years ago based on a complaint that the defendants have been aware of since 2017. A licensed member of the Nevada bar has deposed that the statutory appeal period is expired. I am satisfied that the defendants have had a fair opportunity to challenge the judgment on its merits and that enforcement would not be a breach of natural justice.

Criminal Rate of Interest

[61] Finally, the defendants argue that the Nevada judgment should not be localized because it imposes a rate of interest that is criminal in Canada. The plaintiff's primary position is that the rate of interest set out in the promissory note should be maintained, however, in the alternative the plaintiff submits this Court should impose whatever interest it sees fit.

[62] I am satisfied that the Nevada judgment involves a rate of interest that would violate s. 347 of the *Criminal Code of Canada*, RSC 1985, c C-46 [*Criminal Code*], and that the extent of the criminal interest should not be enforced. Section 347 makes it an offence to receive interest at a criminal rate. Section 347(2) defines a "criminal rate" as "an annual percentage rate of interest calculated in accordance with generally accepted actuarial practices and principles that exceeds 35 per cent on the credit advanced." This same sub-section defines interest as "the aggregate of all charges and expenses, whether in the form of a fee, fine, penalty, commission or other similar charge or expense or in any other form, paid or payable for the advancing of credit under an agreement or arrangement [...]".

[63] The Nevada judgment includes an express provision for interest that falls below 35%. Specifically, the judgment mirrors the agreement of the parties in the promissory note, which states that upon default the annual rate of interest will increase from 8% to 25%.

[64] However, the Nevada judgment also includes a late fee of \$63, 637.88. The materials filed in support of the default judgment explain that this late fee is provided for in the promissory note as follows:

In the event that any installment called for herein is not received by the holder hereof within 5 days of its due date, a late charge of 20% of the payment owing may be charged by the holder hereof.

[65] The basis for the order made is set out in the plaintiff's application for the default judgment, which I will summarize here. The defendants borrowed \$320,229.41 at 8% per annum. They made one payment of \$2,040. The defendants

missed their second scheduled payment. The principal owing at the time of the missed payment was \$318,189.41. The late fee of \$63,637.88 was calculated as 20% of the total payment owing of \$318,189.41.

[66] The promissory note applies a default rate of interest once a payment is more than 5 days late. Interest calculated at 25% began on March 5, 2016. From March 5 until August 1, 2016, the unpaid principal of \$318,189.41 accrued interest of \$32,691.00.¹ On August 1, 2016, the property sold for \$134,123.16. According to the promissory note, this eliminated the \$32,691.00 in interest and reduced the principal balance to \$216,757.25. From August 2, 2016 until March 6, 2017, the principal accrued \$32,215.82 in interest at 25%. On March 6, 2017, a bond posted by the defendants was applied to the principal reducing it by \$274.59, but on March 7, 2017, the principal increased by \$5,601.48 in costs recoverable from the plaintiff's default application. From March 7, 2017 until July 23, 2018, the principal owing was \$222,358.73. Accrued interest as of July 23, 2018 was \$76,759.20.²

[67] Accordingly, the principal and pre-judgment interest owing totals \$299,117.93. The quantum of the Nevada judgment is calculated as principal owing, plus pre-judgment interest (\$299,117.93), plus the late fee of \$63,637.88.

[68] I find that the late fee in this case, which was calculated as 20% of the principal owing at the time the installment was late, meets the definition of interest in s. 347 of the *Criminal Code*, which includes "all charges or expenses, whether in the form of a fee, fine or penalty [...] payable for the advancing of credit under an agreement." This interpretation finds support in the jurisprudence: *Kilroy v A OK Payday Loans Inc.*, 2007 BCCA 231.

[69] When the 20% late fee interest and the 25% default interest are combined, as they are in the Nevada judgment, the plaintiff is entitled to receive an annual percentage rate of interest that exceeds an annual percentage rate of 35%. While

¹ As calculated in the default application $\$318,189.41 \times 25\% = \$79,547.35$ annual interest / 365 days = \$217.94 daily interest

² Principal of \$222,358.73 x 25% = \$54,189.31 annual interest / 365 days = \$152.30 daily interest

the criminal rate of interest only applies to interest calculated for the year in which the defendants defaulted, the Nevada judgement entitles the plaintiff to receive a payment, or partial payment of interest at a criminal rate.

[70] The plaintiff's counsel invites the Court to lower the rate of interest to align with Canadian rules of natural justice, and the defendants' position is that this criminal rate of interest raises a complete defence to the plaintiff's application for enforcement. I find this dispute between the parties can be resolved by the majority ruling of our Court of Appeal in *Wei*. I have relied on *Wei* in deciding that application of a criminal rate of interest does not preclude enforcement of the Nevada judgment in Canada. However, the circumstances of the case at bar do limit the ability of the plaintiff to collect any interest that exceeds 35% per annum.

[71] The decision in *Wei* offers guidance here both in terms of its factual similarities and the legal principles to be applied. In *Wei*, the trial judge found the parties had agreed to a 73% rate of interest, which exceeded the criminal rate interest of 60% at the time. The trial judge recognized that disputes between parties about liability on a foreign money judgment are not subject to re-litigation in the enforcing jurisdiction. He went on to find that even though the foreign order specifically provided for interest to be paid at 73% in the event of default, s. 347 of the *Criminal Code of Canada* precluded enforcement at the agreed upon a rate.

[72] On appeal, the plaintiff took the same position as the defendants do here: that the criminal interest rate could not be excised from the foreign order. This submission was supported by case law that establishes interest as an integral part of a judgment for debt: *Pro Swing Inc.* at paras 22-24; *Dingwall v Foster*, 2013 ABQB 424 aff'd 2014 ABCA 89; *SHN Grundstuecksverwaltungsgesellschaft MBH & Co. v Hanne*, 2014 ABCA 168 [SHN], leave to appeal refused [2014] SCCA No. 349. However, the majority of the Court in *Wei* disagreed, and upheld the trial judge. In doing so the Court relied on *Transport North American Express Inc. v New Solutions Financial Corp.*, 2004 SCC 7 [*Transport v New Solutions*], which allows for 'notional severance' of criminal interest from the enforcement of an order or agreement.

[73] On my reading, *Wei* has resolved the 2 principles that appear to be in conflict in the prevailing authorities. Those being, on one hand, the general statements made in *Dingwall* that where a foreign judgment carries interest, the interest provision is “treated as an integral part of the judgment debt, and the rate is accordingly calculated in conformity with the requirements of that law, whatever that rate may be” (at para 24); and on the other hand, the more recent decision of *Transport v New Solutions* adopting a flexible approach to s. 347 of the *Criminal Code* and rejecting the argument that notional severance amounts to rewriting the parties’ contract.

[74] Essentially, the Court in *Wei* bridges the gap between a case that dealt with criminal interest (*Transport v New Solutions*), and others that dealt with foreign judgments (*Dingwall*; *Pro Swing*; and *SHN*). The result is the Court’s conclusion that if notional severance is made available as a remedy for domestic judgements, as it is in *Transport v New Solutions*, then it should be the same for foreign judgments as well, especially given that international comity is one of the objectives underlying the enforcement of foreign judgments: *Wei* at paras 42-43.

[75] As the trial judge found in *Wei*, the Court can notionally sever and excise illegal interest from a foreign judgment without stepping beyond its limited role of enforcement. While the dissent in *Wei* found this to be inappropriate given that the action was for enforcement and not for a determination of the original claim, the majority’s decision clearly upholds the trial judge’s reasoning. That said, an enforcing Court will not automatically lower the rate of interest to the maximum allowable rate. The way to approach this discretionary decision is guided by four public policy factors set out in *Transport v New Solutions*, which were applied by the trial judge in *Wei*.

[76] The majority in *Transport v New Solutions* allows trial judges remedial discretion that ranges from finding a contract void *ab initio* in the most egregious cases of loan sharking, through to substituting the maximum allowable domestic rate of interest. At para 42, the Court sets out four factors to be considered:

1. whether the purpose or policy of s. 347 would be subverted by severance;
2. whether the parties entered into the agreement for an illegal purpose or with an evil intention;
3. the relative bargaining positions of the parties and their conduct in reaching the agreement; and
4. the potential for the debtor to enjoy an unjustified windfall.

[77] The submissions and record before me that would assist with this analysis are quite limited; however on the basis of the correspondence between the parties and general background evidence that has been provided, I have determined this is not a situation where the entire foreign judgment should be found to be unenforceable by virtue of the additional interest imposed by the late fee.

[78] The first factor relates mainly to the prevention of loan sharking: See *Wei* at para 36. There is no basis on the record provided to find the plaintiff in this case engaged in business with the defendants in such a way that would undermine the utility of s. 347 if the enforceable interest rate were lowered. The promissory note related to the purchase of a 12-plex property purchased for \$340,000. These facts suggest that some degree of sophistication can be imputed to the defendants who engaged in this negotiation. In addition, both defendants says they are politicians who have campaigned for federal and provincial offices in Canada.

[79] The defendants were aware that the plaintiff was the owner of the property they were purchasing with the assistance of the promissory note. There is no suggestion that this was an exploitative enterprise born of desperation or financial need. Nor are there any facts to support a finding that the parties entered the loan agreement for an illegal purpose or with an evil intention. There is little known about the relative bargaining positions of the parties and their conduct in reaching the agreement, although it appears to have been a cooperative effort that would allow the defendants to buy a property the plaintiff wanted to sell. It is also apparent from the aftermath of the default that both parties were able to retain counsel to advise them about the default and enforcement of their agreement. Their correspondence following the default suggests some willingness to work towards a solution as

opposed to strict enforcement, however the defendants were not able to secure adequate financing.

[80] While the plaintiff advanced what appears to be an expansive interpretation of the late fee in their legal action against the defendants, it was adopted by the Court in the Nevada judgment. The defendants argue a different interpretation of the late fee provision at this enforcement application, suggesting that they agreed to a late fee that was 20% of the installment due and not the principal payment owing. Adopting this analysis would be tantamount to a review or appeal of the foreign judgment.

[81] It is nevertheless relevant that there is some dispute over whether the parties actually consented to a criminal rate of interest. According to the defendants, they did not. In my view, this position bolsters the plaintiff's position that the entire judgment should not be deemed unenforceable as a result. I find the preferable balance is achieved by excising the late fee that makes the otherwise legal rate of interest on default one that is unsustainable for public policy reasons. In the circumstances of this case, the uniform default interest rate of 25% will apply from the time of default until the date of this order.

[82] Finally, I must consider whether the defendants would enjoy an unjustified windfall if the agreed interest rate were to be lowered. This risk does not materialize on the facts of this case. As the defendants have pointed out, when the property they purchased using the promissory note was subject to foreclosure sale, the plaintiff purchased the property and was able to re-sell it at a substantial profit. I am mindful that the defendants argue the profit ultimately made by the plaintiff makes enforcing the Nevada judgment an unfair windfall for the plaintiff. However, what little is known about the circumstances of the sale do not suggest this was an anticipated or intended outcome. When considering enforcement of the foreign judgment, the Court is concerned with whether the proceedings that led to the judgment itself were inherently unfair. The fact that the plaintiff may have ended up with a windfall for other reasons has limited relevance on this action for enforcement.

[83] I find the enforceable pre- and post-judgment interest is payable at a rate of 25% per annum. With the exception of the \$63,637.88 late fee interest, this was the order made in the Nevada judgment.

Should the Judgment be Enforced?

[84] I am satisfied that a real and substantial connection has been established between the cause of action and the Nevada court, and that the defendants have failed to raise any defences that warrant dismissal of the orders being sought. The defendants have referenced various other factors in support of their submissions that a natural justice defence should preclude enforcement in this case. These factors are for the most part collateral attacks on the order itself and do not give grounds for this Court to refuse to recognize and enforce a lawfully made foreign judgment.

Post-Judgment Interest

[85] Post-judgment interest was ordered by the Nevada Court to begin “from the date of Notice of Entry of Judgment by Default.” Mr. McQuillan asserts that the defendants were first notified of the default judgment in February 2025, when they were served with the Notice of Civil Claim to enforce the foreign judgment. The plaintiff deposes that notice of the Nevada default judgment was properly served September 27, 2018, again by mailing the notice to the same ‘last known address’ of the defendants in Vancouver. However, the certificate of service exhibited to the plaintiff’s affidavit confirms service of the plaintiff’s *application* for default judgment on August 15, 2018. There is no basis to find that the certificate of service supports the plaintiff’s conclusory statement that notice of the entered judgment was given.

[86] This is significant because the language of the Nevada judgment stipulates that post-judgment interest will commence on the date of *notice* of entry, not simply on the date the order is entered. Even if the plaintiff were able to satisfy the factual foundation for the judgment being sought, it is arguable that the natural justice defence raised by the defendants about notice applies to post-judgment interest

differently than the principal and pre-judgment interest they owed as a result of defaulting on the promissory note.

[87] This is because, in contrast to the circumstances of the 2017 notice, the plaintiff has not marshalled evidence to challenge the factual assertion of the defendants that they were unaware of the default judgment being entered. The default judgment was entered in September 2018, a year-and-a-half after former counsel provided the defendants' last known address to the plaintiff, as opposed to the mere weeks that had passed when the plaintiff attempted to serve their January 2017 complaint. The overlapping relationship with counsel who could accept service on the defendants' behalf had long since ended by the time the default judgment was entered, and there is no basis to find the defendants had any actual awareness of a very consequential order that post-judgment interest would start accruing at a rate of \$152.30USD per diem. The plaintiff calculates \$410,296.10USD in post-judgment interest is owing as of February 9, 2026.

[88] The affidavit of service confirms the plaintiff's Notice of Civil Claim was formally served on the defendants on March 5, 2025. However, given Mr. McQuillan's concession that the defendants were aware of the order in February, interest will become payable on February 28, 2025.

Conclusion

[89] I find the plaintiff has established that the Nevada judgment is enforceable in British Columbia. The defendants are jointly and severally liable for the following:

1. Principal owing plus 25% pre-judgment interest to the plaintiff of \$299,117.93USD pursuant to the promissory note, as ordered in the Nevada judgment. \$299,117.93USD is the deficiency judgment as ordered, less the late fee interest, which would otherwise increase the amount payable to a criminal rate of interest.
2. Post-judgment interest at a rate of 25% as set out in the Nevada judgment at \$152.30USD per day from the date of notice of entry of judgment by

default, which I find to be February 28, 2025. The plaintiff is entitled to post-judgment interest from the time of this order until payment in full pursuant to the *Court Order Interest Act*, RSBC 1996, c 79.

3. The defendants must pay the plaintiff \$1,381.60USD for solicitor's costs as per the Nevada judgment.

[90] Costs of this application are ordered in favour of the plaintiff, payable on a scale of ordinary difficulty.

"Ormiston J."