

Court of King's Bench of Alberta

Citation: Lorrelind Holdings Ltd v Bosecke & Associates, 2026 ABKB 694

Date: 20261002
Docket: 2403 06686
Registry: Edmonton

Between:

Lorrelind Holdings Ltd.

Plaintiff/Applicant

- and -

Bosecke & Associates, Carl Bosecke and Salvador Tinajero

Defendants/Respondents

Reasons for Decision of the Honourable Justice E.C. Lew

Introduction

[1] The parties seek summary adjudication. The Plaintiff (**Lorrelind**) applies for summary judgment against the Defendant lawyers for damages arising from professional negligence. The Defendants apply for summary dismissal, asserting immunity from liability under the *Limitations Act*, RSA 2000, c L-12 (*Limitations Act*).

[2] The matter was heard as a special chambers application on affidavit evidence, cross-examination transcripts, and undertaking responses. Both parties relied on Part 7 of the *Alberta Rules of Court*, Alta Reg 124/2010 (*Rules*): Lorrelind on *Rule* 7.3(1), and the Defendants on *Rules* 7.2 and 7.3.

[3] Lorrelind commenced this Action on April 5, 2024, claiming more than \$1.9 million in damages. This Action alleges that the Defendants were negligent in provided legal services to Lorrelind concerning the preparation and enforcement of security in respect of commercial loans for which Lorrelind was the lender. The allegations of negligence include steps taken in relation to litigation seeking collection of a loan (the **Loan**) in Court of King's Bench Action No. 1703 20576 (the **Underlying Litigation**).

Background

[4] In 2014, Lorrelind advanced funds for an Edmonton condominium development comprising a series of duplexes known as the MacEwan Grove project (the **MacEwan Grove Project**). The Defendants acted as Lorrelind's counsel in relation to those loans.

[5] The borrowers defaulted on the loans. In response, the Defendants, acting on behalf of Lorrelind, instigated the Underlying Litigation. In the Underlying Litigation, Lorrelind sought enforcement of the mortgage and guarantees securing the Loan. Lorrelind filed its Statement of Claim in that action on October 18, 2017, amended it on November 16, 2017, and obtained two consent foreclosure orders in April 2018 (the **Consent Foreclosure Orders**).

[6] The Defendants ceased acting for Lorrelind in September 2019 and Lorrelind retained its current counsel. This Action against the Defendants was commenced more than four years later.

[7] Lorrelind relies on the July 18, 2023 decision of Applications Judge L.R. Birkett (the **Birkett Decision**) in the Underlying Action as the date on which it first knew, or ought to have known, both that the Defendants had caused an injury and that the injury warranted a proceeding. It submits that this date triggered the limitation period for the present Action.

[8] Lorrelind submits that the Action was commenced in time, and that the evidentiary record establishes the Defendants' negligence and resulting damages of \$2,007,427.29.

[9] The Defendants dispute that the Birkett Decision triggered the limitation period. They contend that the limitation period began to run no later than November 20, 2020, when the borrower and guarantors, 1827956 Alberta Ltd., 1476403 Alberta Ltd., 1777043 Alberta Ltd., Harpreet Singh, and Joginder Singh (the **Responding Parties**) served a brief in the Underlying Litigation. In that brief, the Responding Parties asserted that the Consent Foreclosure Orders had extinguished the Loan under s 48 of the *Law of Property Act*, RSA 2000, c L-7 [*Law of Property Act*].

Facts

[10] After the Defendants commenced the Underlying Litigation, they made efforts to resolve the dispute with the Responding Parties. They prepared a Forbearance Agreement which was executed effective November 27, 2017. The Forbearance Agreement confirmed the amount owing and provided alternative security (the **Forbearance Agreement**).

[11] On April 11, 2018, the Defendants, acting on behalf of Lorrelind, and pursuant to the terms of the Forbearance Agreement, obtained the Consent Foreclosure Orders respecting Units 5 and 6 of the MacEwan Grove Project. Title to those properties was transferred to Lorrelind as a result.

[12] Sometime after entry of the Consent Foreclosure Orders, when further payments due pursuant to the Forbearance Agreement went unpaid, Lorrelind asserted that the Responding Parties were in default of those payments. The Defendants, on Lorrelind's behalf, engaged in further efforts to collect amounts owing on the Loan. As discussed below, the amount, if any, owing on the Loan was disputed by the Responding Parties.

[13] After September 2019, when Lorrelind retained new counsel, its new counsel took over pursuit of collection of the outstanding Loan amount. New counsel could not obtain agreement on payment terms or the amount owing. New counsel then sought entry of a consent judgment (the **Consent Judgment**), executed concurrently with the Forbearance Agreement. The Responding Parties opposed its entry. In the context of that application, the Responding Parties filed an amended brief on November 20, 2020 (the **Amended Brief**). In the Amended Brief, the Responding Parties argued that the April 2018 Consent Foreclosure Orders had extinguished the Loan debt under s 48(1) of the *Law of Property Act*. On July 18, 2023, Applications Judge Birkett accepted that argument and dismissed Lorrelind's application to enter the Consent Judgment (the **Birkett Decision**). Lorrelind did not appeal the Birkett Decision.

Forbearance Agreement and Consent Judgment

[14] Following are relevant terms of the Forbearance Agreement:

- It was between Lorrelind the lender, the mortgagor 1827956 Alberta Ltd. (**Mortgagor**), as well as the guarantors, 1476403 Alberta, Ltd, 1777043 Alberta Ltd., Harpreet Singh and Joginder Singh (the **Guarantors**), as parties;
- It related to two mortgages and various guarantees (para 1.1(a));
- The outstanding Loan debt was \$1,811,046.39 (para 1.1(b));
- It confirmed that the Mortgagor was in default (para 1.1(e));
- It stated: "So long as the Borrower [Mortgagor] or the Guarantor have not breached this Agreement, the Lender [Lorrelind] has agreed to accept the lesser sum of \$425,000.00, exclusive of legal fees incurred thereafter, which are payable on a solicitor and own client basis by the Borrower [Mortgagor] to the Lender [Lorrelind], as full satisfaction of the Indebtedness."(para 1.1(f));
- The Mortgagor and Guarantors were to provide Consent Foreclosure Orders for the secured properties and Deficiency Judgments (para 1.3);
- The Mortgagor was to pay the Loan debt from June 30, 2018 to December 31, 2019, with semi-annual payments of \$50,000, plus interest and legal fees, with the remaining balance due on March 31, 2020 (para 1.4(b) and (c));
- Consent Foreclosure Orders (described as a Consent Final Order For Foreclosure) were to be provided for Unit 5 and Unit 6, to be filed as soon as practicable (para 1.5(a));
- It provided that, while the Mortgagor and Guarantors were not in breach of the agreement, Lorrelind agreed not to take any further steps in proceeding with the Underlying Litigation. (para 1.6).

[15] There is a lack of clarity in the Forbearance Agreement as to what was intended with respect to the balance of the debt owing after entry of the Consent Foreclosure Orders.

[16] Mr. Tinajero gave evidence on this point. He deposed that the intent of the Forbearance Agreement was:

- a. to confirm that the total debt owing under the Loan as of September 20, 2017 was \$1,811,046.39; and
- b. As a compromise, and in full satisfaction of the indebtedness, Lorrelind would obtain:
 - i. Consent Foreclosure Orders in relation to Units 5 and 6 of the MacEwan Grove Project,
 - ii. plus an additional \$425,000 to be paid by way of four semi-annual payments of \$50,000 each, with the balance due on March 31, 2020.

[17] The Consent Judgment was consented to by all relevant parties on December 8, 2017, but the judgment amount was left blank. Lorrelind's new counsel attempted to enforce the Consent Judgment, resulting in the Birkett Decision. The record in these Applications does not detail the reasons for the time delay between entry of the Consent Foreclosure Orders in April 2018, and the Birkett Decision in July 2023.

Fact Summary

[18] The facts most germane to these Applications can be summarized as follows:

- Lorrelind loaned money to the Responding Parties which included the Mortgagor and Guarantors;
- Security for the Loan was provided in the form of a land mortgage over two units (Units 5 and 6) as well as guarantees and Guarantor security, such as a Guarantor collateral mortgage;
- Payment of the Loan went into default in 2017;
- Lorrelind negotiated a Forbearance Agreement with the Responding Parties (Mortgagor and Guarantors) in November 2017, the significant terms of which included Consent Foreclosure Orders of Units 5 and 6, and compromise of the debt amount by payment of \$425,000.00;
- There was a lack of clarity in the evidence or in the Forbearance Agreement:
 - a. as to whether the Forbearance Agreement intended that the Mortgagor pay \$425,000.00 in addition to Lorrelind obtaining title to Units 5 and 6; and
 - b. how to calculate the debt owing in the event that Lorrelind obtained title to Units 5 and 6, but the Morgagor defaulted in payment of the \$425,000.00.
- The Defendants, acting for Lorrelind, had the Consent Foreclosure Orders entered in April 2018 in respect of Units 5 and 6;
- The Defendants ceased acting for Lorrelind in September 2019 on the basis that they were in a conflict of interest with the Responding Parties in the Underlying Action and

therefore could not continue acting. Lorrelind then retained new counsel shortly thereafter;

- The Consent Judgment was never entered. Lorrelind attempted to do so, with new counsel, on July 18, 2023, which application was dismissed by Judge Birkett. In the Birkett Decision, she found that the debt was extinguished by filing the Consent Foreclosure Orders pursuant to s 48 of the *Law of Property Act* as a consequence of which there was no debt for which to grant judgment.

Defendants' Summary Dismissal Application

[19] I will address the Summary Dismissal Application first. If successful, it will be dispositive of this Action.

[20] The Defendants' position was that Lorrelind knew, or in the circumstances ought to have known, that the injury for which it seeks a remedial order in this Action had occurred, that the injury was attributable to the conduct of the Defendants, and that the injury, assuming liability on the part of the Defendants, warranted bringing a proceeding, in accordance with s 3(1)(a) of the *Limitations Act*, more than two years prior to issuance of this Action. As a result, the Defendants are entitled to immunity from liability pursuant to s 3(1)(a) of the *Limitations Act*.

Limitations Act: Law

[21] In application of the test in s 3(1)(a) of the *Limitations Act*, the Court assumes liability on the part of the Defendants: *Limitations Act*, s 3(1)(a)(iii). The claimant, Lorrelind, has the burden of proving that the remedial order was sought within the two-year limitation period: *Limitations Act*, s 3(5)(a).

[22] Lorrelind argued that the circumstances did not warrant bringing proceedings against the Defendants until the Birkett Decision.

[23] The Alberta Court of Appeal, in *Aseniwuche Winewak Nation of Canada v. Ackroyd LLP*, 2023 ABCA 60 [*Aseniwuche*], articulated the legal test with respect to when a claim warrants bringing a proceeding pursuant to the *Limitations Act*:

Determining when a claimant becomes aware of an injury that “warrants bringing an action” is a fact specific exercise turning on the facts of each case. ...
(par. 11);

Whether there is an “injury” sufficient to entitle a claimant to a remedial order, and whether all the circumstances warrant commencing a legal action, requires an application of the law to the facts. The primary source of the law is the wording of the statute...
(par. 12)

...The Supreme Court held that time begins to run when the claimant has actual or constructive knowledge, through the exercise of reasonable diligence, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn. Mere suspicion of a claim is not enough, but certainty of liability is not required to start the clock running. The statute requires knowledge of the

material facts, not complete knowledge of the legal implications of those facts.
(par. 13)

...The provision in the Alberta statute that the claimant should “assume liability on the part of the defendant” primarily signals that an action may be “warranted” without an assurance that the claim will be successful. ...
(par. 14)

[24] Lorrelind’s position was that it was not subjectively aware, and could not objectively have been aware, that it had suffered an injury attributable to the conduct of the Defendants which warranted bringing a proceeding until Judge Birkett’s Decision. The Defendants disagree and argued that the Defendants knew or ought to have known that bringing a proceeding was warranted by November 20, 2020, at the latest, prior to Judge Birkett’s Decision, when the position was first clearly articulated in writing by the Responding Parties to the Underlying Action.

S 48 of the Law of Property Act

[25] Judge Birkett’s Decision ruled that Lorrelind’s debt was extinguished by operation of law, in particular, by operation of s 48(1) of the *Law of Property Act*.

[26] S 48(1) of the *Law of Property Act* reads in part as follows:

48(1) The effect of an order of foreclosure of a mortgage or encumbrance is to vest the title of the land affected by it in the mortgagee or encumbrancee free from all right and equity of redemption on the part of the owner, mortgagor or encumbrancer or any person claiming through or under the owner, mortgagor or encumbrancer subsequent to the mortgage or encumbrance, and

(a) the order operates as full satisfaction of the debt secured by the mortgage or encumbrance,

[emphasis added]

[27] The history, genesis, and rationale behind s 48 of the *Law of Property Act* was discussed at length in ***Canada Permanent Trust Company v. King Art Developments Ltd.***, 1984 ABCA 182 [***Canada Permanent***]. The following history is summarized from that case.

[28] Under common law, a mortgagee had the luxury of choosing which remedy to enforce, the covenant to pay or the land, and in which order. This led to inequities if the mortgagee enforced its security against the land and then pursued payment on the covenant to pay. Any money recovered after the mortgagee took the land created or increased the risk that the mortgagee would be overcompensated. Common law then allowed the mortgagor to have the foreclosure decree set aside in order to redeem the land by payment of money. (***Canada Permanent***, para 14).

[29] The problem was more complicated if the mortgagee sold the mortgaged land to a third party prior to the mortgagor seeking redemption. In that circumstance, the common law identified two options: value the property and apply that value to the debt, permitting the mortgagee to recover the balance owing only, and no more; or enjoin the mortgagee from suing on the covenant to pay on the assumption that the mortgagee had taken the property in full

satisfaction of the debt. This led to a common law rule in which a mortgagee who had foreclosed on the land and taken it as his own was prevented from suing on the covenant to pay, unless the mortgagee was in a position to return the land to the mortgagor. (*Canada Permanent*, para 16). However, had the mortgagee sold the land through a judicial sale, the mortgagee would be entitled to the value the land sold for, and the balance if any owing on the debt, by enforcement of the covenant to pay against the mortgagor, even if the mortgagee acquired the land through the judicial sale. (*Canada Permanent*, para 21).

[30] Under the Torrens land titles system, this process was amended by statute, such that the mortgagee was able to acquire title to the land, and extinguish the entitlement by the mortgagor to redeem it. The term “foreclosure” in Alberta law in this context came to mean foreclosure by the mortgagee of the mortgagor’s equity of redemption, i.e. foreclosing the mortgagor’s right to obtain return of the land. (*Canada Permanent*, para 22).

[31] The Court in *Canada Permanent* concluded that, in Alberta, a mortgagee who acquired title through a judicial sale could still collect any balance owing on the covenant to pay (para 44), but a mortgagee who acquired title through foreclosure could not. In the latter case, the debt was extinguished by operation of [current] s 48 of the *Law of Property Act*. (*Canada Permanent*, para 29)

[32] See also *Daniels v. Mitchell*, 2005 ABCA 271 [*Daniels*], paras 18 to 27 for a similar historical explanation.

[33] It has not been suggested that the law has changed since *Canada Permanent*.

Limitations Act: Analysis

[34] The Defendants’ argument was that Lorrelind had knowledge of all of the facts from which it could conclude that it ought to seek a remedial order by no later than November 20, 2020, when it received the Amended Brief from the Respondents in the Underlying Action.

[35] The Consent Foreclosure Orders were obtained in April 2018. Those Consent Foreclosure Orders related to certain property, in particular Unit 5 and Unit 6 in Condominium Plan 1523613 (**Units 5 and 6**). Units 5 and 6 were described in the Underlying Action as the secured properties mortgaged by the Mortgagor to the mortgagee (Lorrelind) pursuant to a single mortgage agreement (the **Mortgage**) to secure debt of \$1,425,000.00. This same Mortgage was referenced in the Forbearance Agreement.

[36] There was no dispute that the Consent Foreclosure Orders were in the nature of foreclosure orders, as opposed to an order for a judicial sale (order nisi for sale): see *Daniels*, para 26 for the distinctions between orders.

[37] Lorrelind’s allegations of negligence against the Defendants can be summarized as follows:

- (a) Acting while in a conflict of interest in the Underlying Action from 2017 to 2019;
- (b) The Defendants drafted the Forbearance Agreement and Consent Judgment and there is ambiguity in those documents;
- (c) Entering the Consent Foreclosure Orders;

- (d) Failing to follow Lorrelind's instructions in relation to the filing of the Consent Judgment and delay in its filing; and
- (e) Failing to advise Lorrelind that the Consent Foreclosure Orders would extinguish the Loan debt.

Judge Birkett's Decision

[38] Lorrelind described the injury it suffered as the discovery that the Consent Judgment could not be enforced as the result of Judge Birkett's Decision.

[39] Judge Birkett's Decision was an oral decision. Judge Birkett flagged evidentiary challenges in dealing with the application before her.

[40] She began as follows:

THE COURT: Okay. So in my opening remarks, because I had made some remarks to prepare for today, I got up to the point where I said that I am not sure we are any further ahead since November 26, 2020, in gaining an understanding of the factual matrix or context surrounding the entering into the Forbearance Agreement, how it was to be followed and what was to be done with the Consent Judgment.

[41] She returned to evidentiary issues later in her decision:

So proceeding directly to obtaining the foreclosure orders may be in conflict with the Forbearance Agreement or it may have been contemplated. The evidence is not before me. ...

There is notes produced in the blue binders which are not in evidence in any shape or form, and they ought to have been, in an effort to the put the best foot forward. But they seem to suggest that there was a deal with the defendants to settle for foreclosure on units 5 and 6 and 425,000, plus some other terms. Maybe it was just the payment of the 425 and the entering of the Consent Judgment that was in forbearance and not the foreclosure orders. Again, we don't know. The evidence is not before me. ...

Mr. Kandola says the steps taken in the action with the noting in default in the foreclosure orders is a breach of the Forbearance Agreement by Lorrelind. Without more, I cannot make that determination on a summary judgment basis. The material facts are not available to me. Or in other words, to do so with the record before me would not result in a just determination to either party.

[emphasis added]

[42] Judge Birkett's Decision must be read with her comments on gaps in the evidentiary record in mind. Her decision was not appealed. One can infer from that that supplementing the evidentiary record was unlikely to assist Lorrelind. New evidence can be tendered on appeal from an Application's Judge: *Rule 6.14(3); Liberty Land Corporation v Kinnear*, 2026 ABKB 248, paras 9 and 67.

Limitations Act: Analysis Cont'd

[43] For the purpose of this *Limitations Act* analysis, it is not necessary to determine if the Defendants' conduct was negligent, or whether the record is sufficient to make that determination. The *Limitations Act* analysis assumes liability of the Defendants: *Limitations Act*, s 3(1)(a)(iii).

[44] S 3(1)(a) reads as follows:

3(1) Subject to subsections (1.1) and (1.2) and sections 3.1, 3.2 and 11, if a claimant does not seek a remedial order within

- (a) 2 years after the date on which the claimant first knew, or in the circumstances ought to have known,
 - i. that the injury for which the claimant seeks a remedial order had occurred,
 - ii. that the injury was attributable to conduct of the defendant, and
 - iii. that the injury, assuming liability on the part of the defendant, warrants bringing a proceeding,

[45] For the purpose of the *Limitations Act* analysis, in order to determine from what date to begin counting the limitation period, it is necessary to determine the date by which Lorrelind knew or ought to have known that the injury:

- had occurred (3(1)(a)(i));
- was attributable to the Defendants' conduct (3(1)(a)(ii)); and
- assuming the Defendants' liability, warranted bringing a proceeding (3(1)(a)(iii)).

The Injury

[46] Lorrelind characterized the Defendants' negligent conduct, in part, as negligence in drafting of the Forbearance Agreement as well as the Consent Judgment. In my view, assessing the injury requires determination of what was intended by the Forbearance Agreement, Consent Foreclosure Orders and Consent Judgment.

[47] The Defendant Mr. Tinajeros' evidence was summarized above on this point. The intention, according to him, was that the Loan debt of approximately \$1.8 million then owing would be paid by transfer to Lorrelind of Units 5 and 6, and payment of cash (i.e. not property) of \$425,000, paid over time, and that this was a compromise resolution. There was evidence that the value of the additional security provided when the Loan was funded, in particular the collateral mortgage security, was, at that time, of questionable if any value: Memo dated July 13, 2017, Affidavit of Donald Fulcher sworn July 8, 2024, Exhibit B. This memo provides insight into the parties intentions, at that time, with respect to the Forbearance Agreement and Consent Judgment. It identified challenges in collecting the whole of the debts owing and suggested preparation of a Forbearance Agreement and Consent Judgment to act as new security.

[48] There was some uncertainty in Mr. Tinajero's evidence as to the amount to be attributed to the transfer to Lorrelind of Units 5 and 6 in the Forbearance Agreement. Mr. Tinajero's Affidavit sworn January 31, 2025 suggested that the appraised values of \$565,000 for Unit 5 and \$549,000 for Unit 6 were to be credited to the Loan value after they were transferred. However,

an email sent by Mr. Tinajero on July 12, 2021 suggested that the intention was to credit the Loan with a value of \$400,000 per unit for Units 5 and 6, for a total of \$800,000.00.

[49] Mr. Fulcher is the principal of Lorrelind. He offered no alternative evidence as to what was intended by the Forbearance Agreement and Consent Judgment.

[50] Neither party suggested that there was an intention to extinguish the balance of the Loan debt owing, whether its full value or some compromised value (greater than the compromise already in the Forbearance Agreement), by entering the Consent Foreclosure Orders. To the extent that a record exists of the intentions of the parties and the intentions of the Responding Parties to the Underlying Litigation, there was no indication that anyone anticipated that the Consent Foreclosure Orders would extinguish the whole of the Loan debt then owing.

[51] Lorrelind's position was that it did not intend to extinguish the whole Loan debt through foreclosure of Units 5 and 6. If this were not their position, there would be no injury. The injury was therefore the unintended extinguishment of the Loan debt. That was the result of the Consent Foreclosure Orders. Judge Birkett's Decision was confirmation of that, but the injury had already occurred in April 2018.

[52] Lorrelind attempted to characterize the date of the injury as Judge Birkett's Decision of July 2023. I do not accept that characterization. As stated, Judge Birkett's Decision was not the injury or the cause of it. The injury was caused when the Consent Foreclosure Orders were entered in April 2018. At that point, in law, the Loan debt was extinguished. Judge Birkett's Decision subsequently was confirmation of the effect of that prior event.

[53] I conclude that the injury was entry of the Consent Foreclosure Orders in April 2018.

Was the Injury Attributable to the Defendants' Conduct

[54] The Defendants drafted the Forbearance Agreement and Consent Foreclosure Orders. No one suggested that the injury was attributable to the conduct of anyone else.

[55] For the purpose of the *Limitations Act* analysis, liability is assumed. Liability in this case would be a failure to appreciate the implications of the Consent Foreclosure Orders rather than alternative orders or options which would preserve rather than extinguish the Loan debt. There was no evidence of any such consideration.

[56] The injury was attributable to the Defendants' conduct.

Did the Injury, Assuming Defendant Liability, Warrant Bringing a Proceeding

[57] Lorrelind argued that, until Judge Birkett's Decision, a proceeding was not warranted. Lorrelind's argument was that it was only when it was obvious that they could not rely on the Consent Judgment that a proceeding was warranted. Lorrelind has attempted to characterize the Defendants' negligent conduct as being focused on the Consent Judgment; either failing to fill in the amount in the first instance, failing to fill in the amount following a default or defaults, delay in filling in the amount or delay in having the Consent Judgment entered.

[58] I do not accept this characterization.

[59] First, Judge Birkett's Decision did not address any of those questions or issues in relation to the Consent Judgment. Her ruling addressed the effect of the Consent Foreclosure Orders. She stated as follows at para 3 of her ruling:

The plaintiff continued its foreclosure action against the borrower, 182, and the four remaining guarantors. It concluded that action with foreclosure orders. The effect of that step is set out in section 48(1) of the *Law of Property Act* and confirmed in the **Gottlieb** case at paragraph 66: (as read)

[...] It states that the effect of a final order of foreclosure was to vest the title of the land affected thereby in the mortgagee, [being Lorrelind] free from all right of equity of redemption on the part of the owner [182] or the mortgagor, and "operates as full satisfaction of the debt secured by the mortgage...". As a result, the foreclosing mortgagee could not recover on the covenant to pay contained in that mortgage.

[60] There was no finding that delay in entering the Consent Judgment, or the failure to insert a specific amount in the Consent Judgment, was material to her decision.

[61] Second, Lorrelind's position that the injury arose from the Consent Judgment or Judge Birkett's Decision is not logical. The injury was caused by the Consent Foreclosure Orders, not Judge Birkett's Decision; not any failure in relation to the Consent Judgment, delay in its entry, or the failure to draft it with an amount listed in it. There was no causal connection between the Consent Judgment, either in respect of delay in its entry or the blank outstanding amount, and the extinguishment of the Loan debt. The Loan debt was not extinguished by the Consent Judgment or any aspect of it, nor by Judge Birkett's Decision. The injury was confirmed by attempting to have the Consent Judgment entered, not caused by it. The Loan debt was extinguished by the Consent Foreclosure Orders.

[62] The date of the injury was the date the Consent Foreclosure Orders were entered, in April 2018. There was no suggestion that Lorrelind was not aware of the entry of these Orders at that time. I infer that it was aware of the entry of those Orders at or near that time.

[63] Lorrelind argued that time ought not to begin to run for the purpose of the *Limitations Act* analysis while they were represented by the Defendants. Lorrelind relied on **Aseniwuche**, para 37, as well as **Chuang v Fogler Rubinoff LLP**, 2022 ONCA 440 [**Chuang**] at para 24, for the proposition that Lorrelind was entitled to rely on professional advice and could not be expected to have appreciated that there was an injury, let alone one that warranted a proceeding. Lorrelind argued that it was not properly informed about the injury, or its cause, to warrant bringing proceedings, until the Judge Birkett Decision.

[64] I do not accept Lorrelind's argument on this point.

[65] For Lorrelind to succeed on this argument, it must demonstrate that it relied on the Defendants for the entire time period between entry of the Consent Foreclosure Orders and the Birkett Decision.

[66] **Chuang** at para 24 explains the applicable reasoning. It is reasonable for a claimant to rely on the very parties against whom they are claiming negligent advice:

The motion judge was right to reject the appellants' position that, despite the professional advice they consistently received from the appellants, the respondents ought to have figured out for themselves that they had a claim against the very lawyers who were advising them. In essence, the appellants purport to rely on this misplaced trust to establish earlier knowledge of a potential claim.

[emphasis added]

[67] Lorrelind's argument is supported by **Chuang** but only up to the point that it retained new counsel. After that it can no longer attribute lack of appreciation of the injury, its cause, or that it warranted bringing a proceeding, to the Defendants.

[68] **Aseniwuche** dealt with the unique circumstance in which the injury was the dismissal of an action on the basis of the long delay provisions in the *Alberta Rules*. The initial application to dismiss the action for delay failed. That decision was reversed on appeal. (**Aseniwuche**, para 1)

[69] The Court of Appeal of Alberta reasoned that the question of whether the injury warranted bringing an action was dependent on the outcome of the chambers application to dismiss: **Aseniwuche**, para 35. The injury was uncertain until there was an order for dismissal. However, the injury was a known possibility as soon as the application to dismiss was initiated.

[70] The paragraph from **Aseniwuche** on which Lorrelind relies, para 37, addressed the argument raised by the respondents, but rejected by the Court, that the claimant ought to have issued a placeholder action at a time when it was not clear to the claimant whether or not the action would be dismissed. Lorrelind drew an analogy to this matter. It argued that it was not clear to it that an injury would result until Judge Birkett's Decision.

[71] I do not accept the analogy between the circumstances in **Aseniwuche** and this Action.

[72] Discoverability of the claim relates to the facts, not the applicable law or any assurance of success: **Aseniwuche**, para 18. Long delay under the *Rules* is not a clear, distinct event. It is a constellation of events and circumstances over time leading to a conclusion of delay. In contrast, entry of the Consent Foreclosure Orders was a distinct event. The injury occurred then and was completed then. The injury was not dependent on a finding of the Court.

[73] One can infer from Lorrelind's argument that it failed to appreciate the legal implication of the entry of the Consent Foreclosure Orders. Lorrelind was entitled to rely on the advice of its then counsel, the Defendants. Lorrelind could argue that it did not initially institute an action while the Defendants acted on its behalf, applying the principle articulated in **Chuang** at para 24, that it ought not to be expected to figure this out for itself. However, Lorrelind retained new counsel in September 2019 and has had new counsel since. The principle would no longer apply once it has retained new counsel.

[74] Lorrelind argued that the Defendants continued to provide legal services, albeit on other matters, to Lorrelind until May 2024. I am unable to conclude that Lorrelind has demonstrated, on that basis alone, that they continued to rely on the Defendants for advice in relation to the Loan and the ability to collect it. There was no evidence, other than this bare fact, to suggest that they may have. I find that there is no basis to conclude that Lorrelind relied on the Defendants' advice with respect to collection of the Loan, the Forbearance Agreement, or the Consent Judgment after retaining new counsel.

[75] Applying the principles articulated in both **Chuang** and **Aseniwuche** leads to the conclusion that, once Lorrelind retained new counsel, it was then in a position to determine that an injury had occurred and that a claim was warranted.

[76] I am mindful of the comments in **Daniels** at para 19:

Modern mortgage law is an amalgam of slowly developed legal and equitable principles, with an overlay of statutory provisions. The statute law itself is complex, having sometimes been amended in direct response to judicial decisions: **Canada Permanent Trust Company v. King Art Developments Ltd.** (1984), 1984 ABCA 182 (CanLII), 54 A.R. 172 (C.A.). The result is a highly technical area of the law that, in the context of limitations rules, poses interpretational challenges.

[77] The complexity of the mortgage law ought to be considered both in the analysis of the Defendants' conduct and in assessing when Lorrelind knew, or was in a position to know, that issuance of a claim for an injury caused by alleged negligence in relation to enforcement of a mortgage was warranted. In terms of subjective knowledge, I infer that the complexity of this area of mortgage law had an impact both on the Defendants' conduct in performing its services, and on Lorrelind, in appreciating whether it had suffered an injury, and that the injury warranted bringing proceedings.

[78] However, the Defendants have implicitly acknowledged the legal complexity inherent in this aspect of mortgage law in advocating their position. The Defendants' position, in effect, obviates the need to examine the question of when Lorrelind ought to have known prior to November 20, 2020. The Defendants' position was that the injury, its cause, and that proceedings were warranted, was or ought to have been obvious to Lorrelind by no later than November 20, 2020. That was the date on which the Responding Parties in the Underlying Litigation brought the injury explicitly to the attention of counsel for Lorrelind in a brief filed in the Underlying Action to enforce the balance of the Loan debt secured by the Mortgage. In effect, the Defendants argued that it is not necessary to determine whether, prior to that date, knowledge of the material facts of the injury ought to have been clear to Lorrelind because, on that date, those material facts were explicitly described in the brief.

[79] The two-year time in *Limitations Act* s 3(1)(a) begins to run:

when the claimant has actual or constructive knowledge, through the exercise of reasonable diligence, of the material facts upon which a plausible inference of liability on the defendant's part can be drawn. Mere suspicion of a claim is not enough, but certainty of liability is not required to start the clock running. The statute requires knowledge of the material facts, not complete knowledge of the legal implications of those facts.

(**Aseniwuche**, para 13)

[80] I conclude that a claim against the Defendants was warranted as of November 20, 2020, on receipt of the Amended Brief. At that point, Lorrelind had knowledge of the material facts upon which a plausible inference of liability on the Defendants' part could be drawn. It is not necessary to find that Lorrelind had a complete knowledge of the legal implication of those facts, although the Amended Brief presented the argument of that legal implication explicitly.

[81] I therefore conclude that Lorrelind was in a position to conclude that a claim was warranted on November 20, 2020. The claim in this Action was issued on April 5, 2024. The claim against the Defendants was filed beyond the two-year limitation period and the Defendants are entitled to immunity from liability pursuant to the *Limitations Act*.

Lorrelind’s Application for Summary Judgment

[82] If I am wrong in the conclusion that this Action was filed after the relevant limitation period, I will address Lorrelind’s Application for Summary Judgment for negligence.

[83] In the analysis in respect of the *Limitations Act*, above, the law requires the assumption of liability on the part of the Defendants. I will now address the question of whether liability of the Defendants has been proven in Lorrelind’s Application.

[84] The record is not sufficient to make a determination of liability for negligence by the Defendants.

[85] Lorrelind relied on ***Kostic v Thom***, 2021 ABCA 406 [***Kostic***] to support its position that expert evidence may not be required for a summary judgment application seeking a finding of professional negligence against lawyers.

[86] Lorrelind also argued that the Defendants’ negligent was apparent on the face of the record and did not require expert evidence on the basis that the Defendants’ impugned actions were “so egregious that it is obvious that the Defendant’s conduct has fallen short of the standard of care without even knowing precisely the parameters of the standard of care” (quoting from ***495793 Ontario Ltd. (Central Auto Parts) v. Barclay***, 2016 ONCA 656 [***Barclay***], para 57).

[87] Lorrelind acknowledged that expert evidence of the standard of care is usually required for an action for professional negligence, but referenced ***Kostic*** at para 16 for the proposition that there are exceptions. The exceptions identified in ***Kostic*** include where the judge may take judicial notice of an obvious fact or where events have overtaken and justified counsel’s conduct of the case: ***Kostic***, para 16.

[88] The general rule, cited in ***Kostic***, is that “[t]here is a strong presumption that expert evidence is required to prove the standard of care expected of a professional”: ***Kostic***, para 15. In ***Kostic***, the Court of Appeal of Alberta set aside the case management judge’s decision to grant summary dismissal of an action in negligence against lawyers on the basis that expert evidence of the standard of care was required. The claim against the lawyers alleged that the lawyers had failed to bring an application for summary dismissal of a fraud claim. The example of events that have overtaken and justified counsel’s conduct given in ***Kostic*** was the hypothetical in which the claim for fraud against the claimant had ultimately proven successful. That result would have proven conclusively that the lawyer’s opinion, that an application for summary dismissal of that fraud claim was unlikely to succeed, was correct. The lawyers could then rely on that finding of fraud to seek dismissal of the negligence claim without the need for expert evidence.

[89] ***Kostic*** is not analogous to this matter. Lorrelind is confusing disproving negligence with proving negligence. The Birkett Decision is not an event from which the Defendants’ negligence is patently obvious. There is more to the enquiry than just the determination that the Consent Foreclosure Orders extinguished the Loan debt.

[90] **Barclay**, cited by Lorrelind, also does not assist Lorrelind. At para 55, the Court in **Barclay** stated that the general rule that expert evidence is required in a professional negligence action “is subject to the exception for ‘nontechnical matters or those of which an ordinary person may be expected to have knowledge’”. To the contrary, extinguishment of the Loan debt pursuant to s 48 of the *Law of Property Act* is a technical legal matter of which an ordinary person would not have knowledge. See also **Daniels** at para 19 quoted above.

[91] I am not satisfied that Lorrelind’s Action in negligence can be resolved without expert evidence. It does not meet any of the exceptions cited by Lorrelind in the case law. There are no obvious facts to take judicial notice of. As discussed, the Birkett Decision does not confirm negligence.

[92] The injury is apparent without expert evidence, as discussed above. However, the detailed cause of the injury, the reason it occurred, the how and why it occurred, and whether the Defendants’ conduct in these circumstances fell below the standard of care, were not sufficiently explored on the record to allow for a conclusion of negligence. Expert evidence is required to put this matter in proper context and allow the Court to weigh the Defendants’ conduct against the standard of care.

[93] Lorrelind argued that the Defendants are obliged in the face of a summary judgment application to put their best foot forward. However, Lorrelind still bears the burden of proof on summary judgment. The burden does not shift. I am not satisfied that Lorrelind has met that burden.

Adverse Inference for Failure to Tender Evidence from Mr. Bosecke

[94] The Defendants sought an adverse inference to be drawn from the failure by the Defendants to tender evidence from one of the Defendants, Mr. Bosecke. The Defendants argued that Mr. Bosecke’s evidence was necessary.

[95] The test for finding an adverse inference, cited by Lorrelind, is as follows:

An adverse inference may be drawn if a party without explanation fails to call a witness who would have had knowledge of the facts, particularly important information uniquely available to them, and that witness would be assumed to be willing to assist that party.

(Spartan Developments Ltd. v. Capital City Savings and Credit Union Limited, 2004 ABCA 12 [Spartan], para 9).

[96] The Court is not required to draw an adverse inference: **Spartan**, para 9. In other words, it is discretionary.

[97] I decline to draw an adverse inference for the failure to tender evidence from Mr. Bosecke.

[98] No facts were identified that were so important to these Applications which were uniquely available to Mr. Bosecke as compared to Mr. Tinajero, who provided evidence on behalf of the Defendants.

[99] Mr. Tinajero was involved with the enforcement of the debts. He testified that Mr. Bosecke’s role related to drafting the Loan documents while Mr. Tinajero’s role was

enforcement. Mr. Bosecke may have reviewed the Forbearance Agreement, but Mr. Tinajero drafted it. There were some communications in which Mr. Bosecke was a party and not Mr. Tinajero, but I am not persuaded that those communications were sufficiently material in these applications.

[100] Lorrelind also focused on Mr. Bosecke's unique knowledge of the potential conflict of interest issue. The conflict of interest issue, while relevant to the negligence allegations, was not of sufficient importance to these Applications to support an adverse inference.

Damages

[101] Lorrelind's evidence of damages consists of a spreadsheet calculating the outstanding Loan debt amount.

[102] This is only the first step in assessing damages. The evidence is not sufficient to make a finding on damages.

[103] Lorrelind's calculation of damages presumes that it would be wholly successful in collection of the Loan debt if the Loan debt had not been extinguished, and if it had been able to enter, rely on, and enforce the Consent Judgment. That presumption is far from obvious.

[104] There was evidence that Lorrelind was having difficulty collecting the Loan debt. There was evidence that there were many debts outstanding to Lorrelind from the Responding Parties, and related business entities, that were in default. (See for example documents reproduced in the Defendants' Brief dated July 8, 2026, at paras 1264 and 1268 to 1269 of that Brief, taken from the Answer to Undertakings of Mr. Tinajero, Undertaking 17, attachment 13, listing five loans in respect of which there were forbearance agreements between Lorrelind and the Mortgagor or related parties). There was also evidence of outstanding judgments against the Guarantors, including a judgment of \$601,824.54 against the Mortgagor's principal, the Guarantor Harpreet Singh, and that the second mortgage security originally granted was of no value. There was evidence of communications and negotiations with the Responding Parties for partial payments towards these debts, including the Loan debt, ongoing from 2017 into 2019. Mr. Tinajero's evidence was that he advised Lorrelind that collection was uncertain because the Guarantors had no assets or active business.

[105] There was no evidence that the Mortgagor or Guarantors had any, or sufficient assets, from which they could have satisfied the Loan debt in whole or part. The record shows that collection was difficult at best and that the likelihood of collection was poor.

[106] There is also an unresolved issue in the record as to how to deal with valuation of the credit to apply to the Loan debt in relation to foreclosure of Units 5 and 6. Lorrelind applied a credit of \$800,000 for those units in its calculation of the Loan debt on the basis that that value formed the foundation for the Forbearance Agreement. The appraisal evidence subsequently submitted at the time of the Consent Foreclosure Orders valued those units at a total of \$1,114,000.00. Also, Lorrelind did not reduce the Loan debt to the amount of \$425,000 owing pursuant to paragraph 1(f) of the Forbearance Agreement after entry of the Consent Foreclosure Orders. Lorrelind could argue that the \$425,000 was accepted as a compromise, acceptable only if the Responding Parties adhered to the payment terms. However, the Forbearance Agreement does not address the Loan debt value in the event of breach of the payment terms. Nor does it speak to valuation of Units 5 and 6 at all.

[107] A determination of the intention of the Forbearance Agreement in relation to valuation of Units 5 and 6 and the balance owing on the Loan debt, in the event of breach of the Forbearance Agreement payment terms, would require more evidence to properly interpret it. The record on these Applications was insufficient to permit the Court to engage in this interpretation exercise, and the parties did not address this question explicitly.

[108] On the evidentiary record available, I am unable to determine the value of damages if Lorrelind were successful in proving liability.

Conclusion

[109] The Action is dismissed pursuant to s 3(1)(a) of the *Limitations Act*. The Defendants are immune from liability in accordance with that section. The Action was started more than two years after Lorrelind knew, or ought to have known, that the injury warranted bringing a proceeding, which occurred as early as November 20, 2020.

[110] I make no alternative finding in respect of the Defendants' negligence. The evidentiary record is insufficient. Expert evidence is required.

[111] I am unable to determine a value for Lorrelind's damages, if it is able to prove liability. The evidentiary record is insufficient.

[112] Lorrelind's Application for Summary Judgment is dismissed. The Defendants' Application for Summary Dismissal is granted. This Action is dismissed.

Heard on the 14th day of August, 2026.

Dated at the City of Edmonton, Alberta this 2nd day of October, 2026.

E.C. Lew
J.C.K.B.A.

Appearances:

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