Docket: 2019-2709(IT)G

BETWEEN:

BLEEMAN HOLDINGS LIMITED,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

2026 TCC 203 (CanLII)

Appeal heard on January 19, 20, 21, 22, 26, 27, 28 and 29, 2026, at Toronto, Ontario and March 2 and 3, 2026 at Calgary, Alberta, and written submissions received from the appellant on March 10, 2026, from the Crown on April 7, 2026, and the appellant on April 13, 2026

Before: The Honourable Justice Perry Derksen

Appearances:

Counsel for the Appellant:	Jehad Haymour Sophie Virji Anna Lekach
Counsel for the Respondent:	Craig Maw Amin Nur

JUDGMENT

In accordance with the attached Reasons for Judgment;

The appeals from reassessments made under the *Income Tax Act* in respect of the Appellant's taxation years ending on October 31, 2008, October 31, 2009 and October 31, 2010 are dismissed.

The matter of costs is deferred.

If there is no agreement on costs, the parties shall have until January 11, 2027 to provide submissions on costs. Submissions are to be limited to five pages at 1.5 spacing. The parties shall file reply submissions, if any, limited to three pages at 1.5 spacing on or before February 12, 2027.

Signed this 20th day of November 2026.

"Perry Derksen"

Derksen J.

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REASONS FOR JUDGMENT

Derksen J.

I. **Introduction**

[1] The appellant carries on business related to real estate. This appeal concerns reserves for doubtful debts and impaired loans that the appellant deducted in its 2008, 2009, and 2010 taxation years under ss. 20(1)(l)(i) and (ii) of the *Income Tax Act*, R.S.C., 1985 c. 1 (5th Supp.) (the Act).

[2] The reserves relate to three types of loans that the appellant made in connection with the activities of BHL (U.S.) Inc. (BHL US), a wholly owned subsidiary based in New Jersey. BHL US was involved in real estate development in the United States.

[3] Before 2008, BHL US and Castellar Properties Inc. (Castellar) had entered into projects for the development, construction, and sale of real estate in New Jersey (the Projects) through single-purpose US limited liability corporations (the Project Entities) under the name "Paramount Homes." BHL US and Castellar entered into operating agreements for certain Project Entities, which governed their ownership interests and funding arrangements. The shares of Castellar were owned by Jeffrey Fernbach (Fernbach), an arm's length party.

[4] The appellant advanced amounts to BHL US in connection with the Projects (the BHL US Loans). In turn, BHL US used the advances to fund its contributions to the Project Entities, as well as to facilitate the funding of some of Castellar's contributions.

[5] The parties agree that the BHL US Loans were loans. As well, the parties agree that as at October 31, 2007—which was the end of the appellant's fiscal period—the appellant was owed US$42,525,123 in principal and US$2,539,824 in accrued and unpaid interest on the BHL US Loans and the appellant did not make any further BHL US Loans during its 2008, 2009, and 2010 taxation years.

[6] The Project Entities also obtained US bank financing to complete the development, construction, and sale of the Projects (the US Bank Loans). One of the conditions for the US Bank Loans was that each of the appellant, BHL US, Castellar, and Fernbach were jointly and severally liable to the US banks under payment guarantees and completion guarantees respecting the Projects (the Guarantees).

[7] In 2007, at the onset of the global financial crisis, BHL US and Castellar—through the Project Entities—had several Projects in various stages of development or construction that were subject to US Bank Loans. But the US banks were unwilling or unable to provide additional loans. The repayment terms for some of the US Bank Loans were extended, but generally the US banks did not provide new funding. Further complicating matters, Castellar effectively became insolvent. This left the appellant more exposed under the Guarantees.

[8] After considering these circumstances, the appellant entered into a loan agreement with the collective Project Entities, effective January 1, 2008, (the Project Loan Agreement) under which the appellant agreed to lend funds to the collective Project Entities for the completion of the outstanding Projects, with interest at the prime lending rate plus 1% per year (the Project Loans).

[9] The appellant also entered into a loan agreement with Fernbach, effective January 1, 2008, (the Castellar Loan Agreement) under which the appellant agreed to lend funds to Fernbach, which funds were to be on-lent to Castellar and then to the collective Project Entities for the completion of the outstanding Projects (the Castellar Loans). The Castellar Loans also bore interest at the prime lending rate plus 1% per year. As expected, Fernbach lent the funds to Castellar at the same rate, and Castellar then lent the funds to the Projects Entities at the same rate.

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[10] Substantial funds were needed to keep the Project Entities afloat in a rapidly changing real estate market during the financial crisis. Thus, many millions of US dollars were advanced under the Project Loan Agreement and Castellar Loan Agreement during the appellant's 2008, 2009, and 2010 taxation years.

[11] In computing its income for those taxation years, the appellant deducted reserves under s. 20(1)(l) in respect of the BHL US Loans, Project Loans, and Castellar Loans. Since there were three types of loans, and many Projects, the reserve computations are detailed. Fortunately, the parties entered into a Partial Agreed Statement of Facts (PASF), which delineates the amounts claimed. The PASF is attached as Appendix A.

[12] For reasons that remain unexplained, the Canada Revenue Agency (CRA) auditor concluded that the appellant had claimed deductions for bad debts under s. 20(1)(p)(ii), and not under s. 20(1)(l). And so, in reassessing the appellant for the 2008, 2009, and 2010 taxation years, the Minister of National Revenue disallowed deductions that were not actually claimed. This resulted from a misapprehension of the facts; it has complicated everything.

[13] The key issues are whether the appellant is entitled to deduct the reserves under s. 20(1)(l) and, if so, how the reserve amounts should be determined.

[14] I begin by reviewing the reassessments. Further complicating matters, the Crown urges me to conclude that an assumption of fact pleaded in the Reply to the Second Amended Notice of Appeal (the Reply) is accurate. Plus, the parties do not agree on who has the onus of proof. My task is also made more difficult in another way: neither the Crown nor the appellant called the appeals officer, Ms. C. Lee Chan, as a witness and I am, in effect, being left to interpret her working papers that were entered into evidence on consent (see Ex. AR-2, Joint Book of Documents (JBOD)).[1]

[1] Under the document agreement, the parties admitted that these documents "reflect the work product of the Minister's representatives."

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II. **Background Context**

A. **The appellant claimed reserves under s. 20(1)(l)**

[15] The following summarizes the amounts outstanding in respect of the BHL US Loans, Project Loans, and Castellar Loans as at the appellant's fiscal periods ending October 31, 2008, 2009, and 2010:

Year	BHL US Loans Principal	BHL US Loans Accrued & Unpaid Interest	Project Loans Principal	Project Loans Accrued & Unpaid Interest	Castellar Loans Principal	Castellar Loans Accrued & Unpaid Interest
2008	US$44,046,848	US$3,034,579	US$14,731,016	US$482,567	US$3,291,479	US$121,109
2009	US$41,304,570	US$2,898,284	US$24,742,048	US$1,422,250	US$4,914,809	US$357,387
2010	US$41,835,570	US$3,442,689	US$33,641,357	US$2,588,201	US$8,205,247	US$647,091

[16] It is worth mentioning upfront that there are several rounding, typographical, or transposing errors in the evidentiary record, generally involving a few dollars, and as such, some computations will not balance. Generally, I used the amount stated in the source document. Since these errors are immaterial, I will not always point them out.

[17] As mentioned, the appellant claimed reserves under s. 20(1)(l) in computing its income for the taxation years in issue. And each year, in accordance with s. 12(1)(d), the appellant included in its income the reserves deducted under s. 20(1)(l) in the prior year. The appellant had also claimed a reserve in the 2007 taxation year under s. 20(1)(l) in respect of the BHL US Loans totalling $10,619,614, being the Canadian dollar equivalent of US$11,241,255.

[18] For now, it is sufficient to aggregate the amounts claimed, first in US dollars (if relevant) and then restated in Canadian dollars, as follows:

Taxation Year:	2008	2009	2010
Income inclusion re prior year reserves – s. 12(1)(d)	$10,619,614	$30,839,014	$36,482,804
Less: total reserves deducted – s. 20(1)(l)	[US$25,602,089]	[US$33,721,050]	[US$42,289,742]
	$30,839,014	$36,482,804	$43,143,993
Net impact in computation of income	$20,219,400	$5,643,790	$6,661,189

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[19] The fact that the appellant had claimed reserves under s. 20(1)(l) totalling $30,839,014, $36,482,804, and $43,143,993 in the 2008, 2009, and 2010 taxation years, respectively, is made clear on Schedules 1 and 13 of the appellant's income tax returns for those years.[2]

B. **The CRA audit**

[20] The CRA auditor mistakenly concluded that the appellant had claimed deductions for bad debts under s. 20(1)(p)(ii) of $14,963,566, $9,496,637, and $8,896,872 in the 2008, 2009, and 2010 taxation years, respectively.

[21] So, where did these amounts come from?

[22] The appellant had recorded these amounts as an "allowance for loan impairments" in its income statements for financial statement purposes. But the appellant added the amounts back when reconciling its net income in the financial statements with its net income for tax purposes on Schedule 1.

[23] This is illustrated by reference to Schedule 1 of the appellant's 2008 return. The appellant added $26,763,137 to its financial statement income (i.e., the sum of the prior year financial statement allowance of $11,799,571 plus the current year-end allowance of $14,963,566) and then deducted $11,799,571. The net effect was that its financial statement income was increased by $14,963,566. And then a "tax reserve" was claimed and deducted on Schedule 1, with the computations under ss. 12(1)(d) and 20(1)(l) set out in Schedule 13.

[24] The auditor's misapprehension culminated in reassessments by the Minister on March 27, 2013, that in part increased the appellant's net income for the 2008, 2009, and 2010 taxation years by $14,963,566, $9,496,637, and $8,896,872, respectively. The Minister reassessed on the basis that the amounts were not deductible under s. 20(1)(p)(ii)(A). In so reassessing, the Minster assumed that the appellant's ordinary business did not include the lending of money. And since the Minister was oblivious to s. 20(1)(1), no consequential adjustments were made under s. 12(1)(d).

[2] The parties used three different amounts in the PASF for the total reserve claimed in 2008. I have used $30,839,014, as stated in Schedule 13: see JBOD, Tab 130(b).

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C. **The notices of objection**

(1) <u>Delineating the issues</u>

[25] The confusion was unending: in its notices of objection dated June 20, 2013, the appellant stated that deductions were claimed for certain uncollectible debts under s. 20(1)(p)(ii) for the 2008, 2009, and 2010 taxation years of $20,219,400, $5,643,790, and $6,295,190, respectively.

[26] The appellant also stated that the Minister never explained why bad debt deductions of $14,963,566, $9,496,639 (sic), and $8,896,872 for the 2008, 2009, and 2010 taxation years, respectively, were disallowed and argued that the conditions in s. 20(1)(p)(ii) were satisfied. Why the appellant made those representations remains unexplained; the misapprehension was not one-sided.

[27] The objection process was interrupted when the Minister reassessed the appellant for the 2009 taxation year on September 29, 2014, regarding an adjustment that is not in issue. The appellant filed a new notice of objection and once again made submissions on the basis that amounts were claimed under s. 20(1)(p)(ii).

[28] In time, the appeals officer, Ms. Lee Chan, was considering the appellant's objections and requested more information. And by this point, Mr. Haymour had become involved as counsel for the appellant. Mr. Haymour wrote to Ms. Lee Chan and advised that the Minister had reassessed on the erroneous assumption that bad debt expenses had been claimed under s. 20(1)(p) when—in actuality—reserves were deducted under s. 20(1)(l) in the 2008, 2009, and 2010 taxation years of $20,219,400, $5,643,790, and $6,661,189, respectively. These amounts were computed by netting the total reserve deducted under s. 20(1)(l) against the s. 12(1)(d) income inclusion. The appellant took the position that the Minister was statute-barred from reassessing to deny a further amount for the 2008 taxation year.

[29] I digress to further emphasize that even though the issue is whether the appellant is entitled to deduct the full reserves claimed under s. 20(1)(l), the parties frequently netted the s. 20(1)(l) deduction against the s. 12(1)(d) income inclusion. This added complexity; it meant that much of their analysis was down to the T7W-C level for computing adjustments to the revised net income.

[30] Nonetheless, the following illustrates the effect of the Minister's reassessments made on March 27, 2013, and will help make sense of the numbers:

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Taxation Year:	2008	2009	2010
As Filed:			
Income inclusion re prior year reserves – s. 12(1)(d)	$10,619, 614	$30,839,014	$36,482,804
Less: total reserves deducted – s. 20(1)(l)	[US$25,602,089]	[US$33,721,050]	[US$42,289,742]
	$30,839,014	$36,482,804	$43,143,993
Net reduction to income	$20,219,400	$5,643,790	$6,661,189
Audit Reassessments — March 27, 2013:			
Total reserve deducted – s. 20(1)(l)	$30,839,014	$36,482,804	$43,143,993
Less: amount disallowed per s. 20(1)(p)	$14,963,566	$9,496,637	$8,896,872
Reserve allowed under s. 20(1)(l) in effect	$15,875,448	$26,986,167	$34,247,121
Increase to net income due to Audit's reassessment	$14,963,566	$9,496,637	$8,896,872
Actual prior net reduction to income (as filed)	($20,219,400)	($5,643,790)	($6,661,189)
Difference:	($5,255,834)	$3,852,847	$2,235,683

[31] In effect, the reassessment for the 2008 taxation year allowed the appellant to reduce its net income by $5,255,834 because the upward adjustment to net income was less than the net amount claimed. As mentioned, the appellant said the Minister could not take this amount away by reassessing to increase the amount denied from $14,963,566 to the net amount of $20,219,400. This limitation is not disputed by the Crown.

[32] The reassessment for the 2009 taxation year overstated the appellant's income by $3,852,847 considering the appellant deducted a net amount of $5,643,790 and the Minister added $9,496,637 to the appellant's net income. For the 2010 taxation year, the reassessment overstated the appellant's income by $2,235,683.

[33] The appellant defined the issues under objection as whether it was entitled to deduct reserves under s. 20(1)(l) for the 2008, 2009, and 2010 taxation years of $14,963,566, $5,643,790, and $6,661,189, respectively. Again, the appellant netted the ss. 20(1)(l) and 12(1)(d) amounts.

[34] After considering the appellant's objection, Ms. Lee Chan made substantial revisions to the computations, which now go to the core of this appeal. She first concluded that the appellant could not claim a reserve under s. 20(1)(l)(ii) in respect of the principal owing on the BHL US Loans and so she recalculated the reserves. And due to her methodology, Ms. Lee Chan also recalculated the reserves under s. 20(1)(l) respecting the following:

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a) the interest accrued and owing on the (i) BHL US Loans, (ii) Project Loans, and (iii) Castellar Loans; and

b) the principal owing on the (i) Project Loans and (ii) Castellar Loans.

[35] In recalculating the reserves, Ms. Lee Chan accepted some elements of the appellant's methodology.

[36] There was some back and forth. On February 5 and 6, 2018, Ms. Lee Chan provided schedules detailing her analysis. In response, by letter dated March 5, 2018, Mr. Haymour referred to prior telephone discussions with Ms. Lee Chan and stated that during these discussions it was noted that the appellant was agreeable to excluding the BHL US Loans' principal amounts. But he emphasized that the appellant did not agree with Ms. Lee Chan's methodology.

[37] It seems Ms. Lee Chan moved forward in the belief that consensus had been reached, and specifically that no reserve would be allowed relating to the principal owing on the BHL US Loans. In any event, the Minister reassessed the appellant for the 2008, 2009, and 2010 taxation years by notices of reassessment dated May 11, 2018. The reassessments also involved other matters that are no longer in issue. The appellant filed new notices of objection, and the Minister confirmed those reassessments on April 18, 2019.

[38] To understand the Minister's reassessments after the first objections, it is essential to note that the appellant had also claimed reserves under s. 20(1)(l) for other loans known as "Baka" and "Fiore". These reserves were not questioned by the Minister, but the amounts must be reconciled to the adjustments, as discussed next in mind-numbing detail considering the confusion in the computations and certain mistakes in Schedule A to the Reply.

(2) Appeals Division — 2008 taxation year

[39] For the 2008 taxation year, Ms. Lee Chan concluded that the appellant would have been entitled to a reserve under s. 20(1)(l) totalling $3,514,192, but she accepted the appellant's liability for tax could not be increased by adjusting upward. As mentioned, the Minister's prior reassessment on March 27, 2013, had in effect allowed a reserve of $15,875,448.

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[40] Ms. Lee Chan instead allocated the $15,875,448 (subject to a rounding or typographical error). In respect of s. 20(1)(l)(i), she allocated $2,892,543 as a reserve for accrued but unpaid interest on the BHL US Loans, Project Loans, and Castellar Loans, plus another $1,417,042 for accrued but unpaid interest on the Baka loan for a total of $4,309,585 (see read-ins from discovery of Ms. Lee-Chan, Ex. A-3 (appellant's read-ins), Tab 49, U/T 5). This had the effect of allowing the appellant to deduct the full reserve claimed for accrued interest under s. 20(1)(l)(i) for the 2008 taxation year.

[41] Ms. Lee Chan allocated the remainder of $11,564,563 as a reserve under s. 20(1)(l)(ii) respecting principal owing on the Project Loans and Castellar Loans, plus $1,298 for principal owing on the Baka or Fiore loan for a total of $11,565,861 (computed as $15,875,446 − $4,309,585; appellant's read-ins, Tab 49, U/T 5).

[42] The appellant says Ms. Lee Chan "reverse engineered" these allocations. As well, an astute reader will notice that the amounts set out in the table under paragraph 47 of the PASF for the "Total Amount Allowed by CRA Appeals…" totalling $3,514,192 reflects what the Appeals Division would have allowed if the appellant's liability for tax could have been increased; it does not show the reserve of $15,875,448 that was in effect allowed.

(3) <u>Appeals Division — 2009 taxation year</u>

[43] For the 2009 taxation year, Ms. Lee Chan concluded that the appellant was entitled to a reserve under s. 20(1)(l) of $13,484,295, with $2,637,472 allocated as a reserve under s. 20(l)(l)(i) respecting accrued but unpaid interest owing on the BHL US Loans, Project Loans, and Castellar Loans, plus interest owing on the Baka loan of $1,953,481 for a total of $4,590,953. (The difference between the s. 20(1)(l)(i) reserve claimed and allowed is $1,092,414 computed as $3,729,886 − $2,637,472.)

[44] She allocated the remainder of $8,893,342 as a reserve under s. 20(1)(l)(ii) respecting principal owing on the Project Loans and Castellar Loans (see appellant's read-ins, Tab 50, U/T 6, correcting Schedule A to the Reply).[3]

(4) <u>Appeals Division — 2010 taxation year</u>

[3] The Crown did not amend Schedule A to the Reply prior to the hearing, and the corrections were buried in the appellant's read-ins.

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[45] For the 2010 taxation year, Ms. Lee Chan concluded that the appellant was entitled to a reserve under s. 20(1)(l) of $18,674,425, with $3,593,698 allocated as a reserve under s. 20(l)(l)(i) respecting accrued but unpaid interest owing on the BHL US Loans, Project Loans, and Castellar Loans, plus interest owing on the Baka loan of $2,790,814 for a total of $6,384,512. (The difference between the s. 20(1)(l)(i) reserve claimed and allowed is $1,769,729 computed as $5,363,427 − $3,593,698.)

[46] She allocated the remainder of $12,289,913 as a reserve under s. 20(1)(l)(ii) respecting principal owing on the Project Loans and Castellar Loans (see appellant's read-ins, Tab 51, U/T 7, correcting Schedule A to the Reply).[4]

(5) Summary of reassessments made on May 11, 2018

[47] In summary, the Minister, acting through the Appeals Division, allowed reserves under s. 20(1)(l) as follows:

Taxation Year:	2008	2009	2010
Reserves claimed − s 20(1)(l)(i) and (ii)	$30,839,014	$36,482,804	$43,143,993
Reserves allowed − s. 20(1)(l)(i) and (ii)	$15,875,448	$13,484,295	$18,674,425
Disallowed:	$14,963,566	$22,998,509	$24,469,568

[48] To understand the Crown's position, it is necessary to acknowledge that the reassessments for the 2009 and 2010 taxation years decreased the appellant's net income by $1,461,697 and $7,425,813, respectively, computed by Ms. Lee Chan as set out below:

Taxation Year:		2009	2010
As filed:			
Total reserve deducted – s. 20(1)(l)		[US$33,721,050] $36,482,804	[US$42,289,742] $43,143,993
Less: income inclusion re prior year reserve – s. 12(1)(d)		$30,839,014	$36,482,804
Net reduction to income	[A]	$5,643,790	$6,661,189
Revised s. 20(1)(l) reserve per Appeals:			

[4] Ms. Lee Chan's computations are also set out at JBOD at Tabs 162 to 167.

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Baka		$1,953,481	$2,790,814
"Paramount" (i.e., the loans in issue)		$11,530,814	$15,883,611
Total reserve - s. 20(1)(l)		$13,484,295	$18,674,425
Less: revised s. 12(1)(d) income inclusion		$15,875,447	$13,484,295
Net change to income	[B]	($2,391,152)	$5,190,130
Required net adj. to income per Appeals	[A] − [B]	$8,034,942	$1,471,059
Previous adj. to income by Audit		$9,496,639	$8,896,872
Change to net income per reassessment		($1,461,697)	($7,425,813)

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III. **The Issues**

[49] The appellant says the issue is whether it is entitled to the full reserves claimed under s. 20(1)(l) regarding the principal and interest that was owing on the BHL US Loans, Project Loans, and Castellar Loans. The appellant also says if the Minister did not err in disallowing the reserve claimed regarding the principal owing on the BHL US Loans, then the Minister nonetheless erred in calculating the other reserves.

[50] The Crown approaches this appeal on a net basis—collapsing s. 20(1)(l) and s. 12(1)(d)—and says the issue is whether the Minister properly disallowed $14,963,566 in 2008, $8,034,940 (sic) in 2009, and $1,471,059 in 2010. (For 2009 and 2010, see "Required net adj. to income per Appeals" in the table above, Reply at para. 21; and Crown's written submissions at para. 82.) The difficulty with the Crown's approach is that any adjustment under s. 20(1)(l) would result in a consequential adjustment in the next year under s. 12(1)(d).

[51] Before turning to the statutory scheme, I must deal with another issue that the appellant raised concerning the assumptions of fact pleaded by the Crown. The thrust of the appellant's argument is that the Appeals Division, in reassessing, made certain assumptions of fact that should reduce what the appellant is required to establish under s. 20(1)(l).

IV. **Assumptions of Fact & Burden**

A. **New assumptions of fact during the objection stage**

[52] The Crown pleaded that the Minister assumed the appellant's ordinary business did not include the lending of money (see Reply at para. 24(e)).

[53] The appellant argues that the Appeals Division, on behalf of the Minister—in reassessing the appellant under s. 165(3) by notices of reassessment dated May 11, 2018, and in confirming the reassessments on April 18, 2019—did not make the assumption of fact stated in paragraph 24(e) of the Reply; the appellant says that the Appeals Division assumed the opposite.

[54] I agree.

[55] The Minister may make assumptions of fact for the first time when considering an objection to an assessment and either reassessing or confirming the assessment: *Canada v. Anchor Pointe Energy Ltd.*, 2003 FCA 294 [*Anchor Pointe #1*]; *Canada v. Loewen*, 2004 FCA 146 [*Loewen*] at para. 10; and *Canada v. Anchor Pointe Energy Ltd.*, 2007 FCA 188 [*Anchor Pointe #2*] at paras. 26, 39, 40, and 44.

[56] The burden of proof in tax cases respecting assumptions of fact made by the Minister at the objection stage, either in reassessing or in confirming an assessment, is on the appellant: *Anchor Pointe #2* at paras. 28, 39, 40, and 44.

[57] But the Minister's assumptions of fact must be complete, precise, and accurate: see generally *Anchor Pointe #2* at paras. 27 and 29.

[58] Ms. Lee Chan was the Crown's nominee at the examination for discovery, and the appellant read into evidence substantial portions of her discovery evidence under rule 100 of the *Tax Court of Canada Rules (General Procedure)* (the Rules). During the examination, Ms. Lee Chan was asked to confirm whether, in reassessing, she agreed that the appellant carried on a money lending business in respect of some of the loans in issue. Ms. Lee Chan disagreed and said "no" (see, for example, appellant's read-ins, Tab 12, p. 79).

[59] The examination went in circles. Ms. Lee Chan confirmed that she allowed deductions under s. 20(1)(l)—at least in respect of the Project Loans and Castellar Loans—but refused to accept that the Appeals Division had agreed that the appellant carried on a money lending business as it related to those amounts. At one point, Ms. Lee Chan stated that it had been her opinion that the appellant was not entitled to a

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deduction under s. 20(1)(l). At other points, Ms. Lee Chan implied that she allowed amounts under s. 20(1)(l) in the hope of a "resolution, a settlement with the taxpayer" (see appellant's read-ins, Tab 12, p. 83).

[60] Later, Ms. Lee Chan was asked whether the Appeals Division, in reassessing, took the position that the s. 20(1)(l)(ii) amounts were impaired loans or lending assets that were made or acquired by the appellant in the ordinary course of the appellant's business of lending money. Here too she disagreed, emphasizing "I did not take that position" (see appellant's read-ins, Tab 29, p. 174).

[61] Some of the discovery evidence bears repeating:

> Mr. Haymour:
>
> Q. … you also said it wasn't an impaired loan or lending asset that was made or acquired during the course of the taxpayer's business that included the lending of money? Ms. Lee Chan?
>
> A. There's bits and pieces of – there is no doubt that I did not question whether these were doubtful or not. I would accept the fact that they are potentially doubtful. I did not dispute that moneys were loaned, but I maintained the position that was taken by audit that, Bleeman was not in the business of lending money, and it did not make these loans as a money lender.
>
> Q. Sorry. We just went through this, that you agree that the Minister allowed 20(1)(l)(ii) amounts for each of the 2008, 2009, and 2010 taxation years.
>
> A. Correct
>
> Q. And you're providing us a breakdown of that. And I'm asking you kind of on what basis that position was taken.
>
> A. It's a windfall to the taxpayer. (See appellant's read-ins, Tab 29, p. 175 and Tab 30.)

[62] In response to an undertaking for Ms. Lee Chan to review her file and provide a copy of any document that states the appellant was not in the money lending business, the Crown acknowledged that no such document existed (see appellant's read-ins, Tab 48, U/T 4).

[63] The Minister's assumptions of fact in reassessing on May 11, 2018, and in confirming those reassessments are disputed now, but were not well documented. In such circumstances, it may be necessary to look to the implications of the Minister's

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assessing action, specifically to the constituent factual elements underlying the reassessments under s. 165(3).

[64] In reassessing under s. 165(3) to allow additional amounts under s. 20(1)(l)(ii), the Minister must have assumed that the appellant's ordinary business included the lending of money and that the Project Loans and Castellar Loans were made by the appellant in the ordinary course of the appellant's business of the lending of money. This follows from the fact that reserves were allowed in respect of some principal owing on the Project Loans and Castellar Loans; a reserve under s. 20(1)(l)(ii) is only available here if the appellant's ordinary business included the lending of money and if the loans were made in the ordinary course of that money lending business, as will be discussed later.

[65] For example, if I ignore Ms. Lee Chan's allocation of the $15,875,448 for 2008 as a "fallout" and consider only the reserve of $3,514,192 that she would have allowed, it is clear that she allowed a reserve under s. 20(1)(l)(ii) for some principal owing on the Project Loans and Castellar Loans for the project known as Reed Road II (Maple Crest) since the US$400,743 in her analysis exceeds the reserve claimed for accrued and unpaid interest (see PASF at para. 47; JBOD at Tab 162, p. 2416). This becomes even more clear in her analysis for the project known as Asbury Beach Blk 207 in 2009 and 2010.

[66] The Minister must apply the Act based on the Minister's understanding of the facts and the law: *Harris v. Canada*, [2000] 4 F.C. 37 (FCA) at para. 37; and *Canada v. Hutchison Whampoa Luxembourg Holdings S.À.R.L.*, 2025 FCA 176 at para. 106.

[67] There may have been some "windfalls" in Ms. Lee Chan's mind, but since the Minister can make new assumptions of fact in confirming a reassessment or in reassessing under s. 165(3), I must instead look to the implications of the reassessments. Despite the misapprehension of the facts during the CRA audit, the Minister's hands were not tied when the reassessments were under objection.

[68] There are other issues with how the Reply sets out the Minister's assumptions of fact. Paragraphs 24(t) and (u) read as follows:

> 24(t) Bleeman's capital contributions to the Projects were recorded in the Owners' Capital Account recorded as General Ledger 1405 [Capital Properties];

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> 24(u) Bleeman claimed at least $14,963,566, $8,034,940, and $1,471,059 for the 2008, 2009, and 2010 Tax Years, respectively, of its capital contributions to the Capital Properties as doubtful debts;

[69] The parties agree that the BHL US Loans were recorded to general ledger account 1405 (see PASF at para. 37). The Project Loans and Castellar Loans were recorded to different accounts. This implies that the assumption of fact stated in paragraph 24(t) of the Reply might concern only the BHL US Loans, and not the Project Loans and Castellar Loans.

[70] Regarding paragraph 24(u) of the Reply, the references to $8,034,940 and $1,471,059 for the 2009 and 2010 taxation years, respectively, reflect the difference between variable [A] minus [B], where A is the net amount of the deduction claimed by the appellant (i.e., the s. 20(1)(l) deduction net of s. 12(1)(d) inclusion), and B is the net amount of the deduction allowed by the Appeals Division (see the table further above; and JBOD at Tab 163, p. 2457). But those computations reveal little; what is in issue are the amounts claimed under s. 20(1)(l). The amounts under s. 12(1)(d) are consequential and based on the amount claimed and allowed in the prior year under s. 20(1)(l).

[71] No specific assumptions were pleaded respecting the conclusions of the Appeals Division about whether the interest and principal on the Project Loans and Castellar Loans was doubtful or impaired.

[72] In the grounds relied on section of the Reply, the Crown pleaded that the appellant was not entitled to deduct capital contributions made to the "Capital Properties" because its ordinary business did not include the lending of money (see Reply at para. 31(b)).

[73] The following are my conclusions about the Minister's assumptions of fact and what is stated in the Reply:

a. Paragraph 24(e) of the Reply was drafted based on the auditor's assumption of fact. But that assumption was superseded by the reassessments made on May 11, 2018, and the subsequent confirmation of those reassessments on April 18, 2019.

b. In reassessing on May 11, 2018, the Minister accepted that by the 2008 taxation year the appellant's ordinary business included the lending of money

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and that the Project Loans and Castellar Loans were made by the appellant in the ordinary course of the appellant's business of the lending of money.

c. The Minister accepted some amount of the BHL US Loans, Project Loans, and Castellar Loans were impaired.

d. Regarding paragraphs 24(t) and (u) of the Reply, the drafter tried to plead assumptions of fact made by the Appeals Division but did not understand Ms. Lee Chan's analysis, likely because it was poorly documented or the computations were confusing.

[74] And so, what happens now? Must some facts be accepted as true and thus be no longer in issue? I turn to that question next.

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B. **The onus of proof**

[75] The appellant argues that this Court should first consider whether the Minister made the necessary assumptions of fact to support the reassessments.

[76] The appellant cites the Exchequer Court's decision in *MNR v. Pillsbury Holdings Limited*, [1965] 1 Ex CR 676 [*Pillsbury Holdings*] at p. 686 and submits that a taxpayer may challenge or demolish the Minister's assumptions of fact by establishing that: (a) the specific assumptions of fact were not made by the Minister; (b) one or more assumptions of fact are wrong; or (c) even if the assumptions of fact are correct, the assumptions of fact do not support the assessment.

[77] Thus, in respect of s. 20(1)(l)(ii), the appellant argues the issues are narrower because the Minister—in reassessing—accepted the appellant was in the money lending business and that the BHL US Loans, Project Loans, and Castellar Loans were made in the ordinary course of the appellant's money lending business.

[78] In my view, the answer is found in *Eisbrenner v. Canada*, 2020 FCA 93 [*Eisbrenner*].

[79] In *Eisbrenner*, a unanimous Federal Court of Appeal looked to the established rule in civil cases that the person who alleges must prove: *Eisbrenner* at para. 47.

[80] This means that an appellant must prove on a balance of probabilities the material facts pleaded in the notice of appeal that would lead to the relief sought respecting the correctness of the assessment, subject to any admissions by the Crown: *Eisbrenner* at paras. 32, 41, 48, and 51. Where the Crown has denied

allegations of fact or pleaded no knowledge and put the facts in issue, then an appellant is on notice of those facts in issue.

[81] In *Sarmadi v. Canada*, 2017 FCA 131 [*Sarmadi*], Webb J.A., similarly expressed the view that a taxpayer should have the burden to prove, on a balance of probabilities, any facts that are alleged in the notice of appeal. He also noted that in most cases this should end the discussion of the onus of proof since the assumptions of fact made by the Minister in reassessing the taxpayer would generally be inconsistent with the facts pleaded in the notice of appeal: *Sarmadi* at para. 61.

[82] There were three sets of concurring reasons in *Sarmadi*, with Woods J.A. and Stratas J.A. declining to express a definitive opinion on the reasons of Webb J.A. Nonetheless, the subsequent decision in *Eisbrenner* was unanimous (leave to appeal to the SCC denied, 2021 CanLII 1093).

[83] I digress to acknowledge an exception. In *Eisbrenner* and *Sarmadi*, Webb J.A. noted that if the Minister alleges a fact that is not part of the facts that were assumed by the Minister in reassessing a taxpayer or in confirming an assessment, then the Minister will have the onus of proof with respect to such facts (see *Eisbrenner* at para. 25; *Sarmadi* at para. 36, both citing *Loewen* at para. 11). In *Loewen*, the Federal Court of Appeal said this exception was explained in *Schultz v. Canada*, [1996] 1 F.C. 423 (FCA) [*Schultz FCA*], leave to appeal to the SCC refused, [1996] SCCA No. 4. And so, a brief discussion about *Schultz FCA* is necessary.

[84] The Minister assessed Mr. Schultz on the basis that the income from certain hedging transactions was to be included in his income because Mrs. Schultz was acting as his agent. In the appeal to this Court, Mr. Schultz alleged that the Minister improperly included in his income the income earned and received by another taxpayer—Mrs. Schultz. This Court found that Mrs. Schultz was not the agent of her husband (*Schultz v. Canada*, [1993] 2 CTC 2409 (TCC). However, the Crown had alleged in the alternative that the transactions constituted a joint venture or a partnership in which each partner had an equal interest. And this Court found that Mr. and Mrs. Schultz were equal partners such that their profits and losses were to be shared equally.

[85] Considering that the assessments were based on the assumption that Mrs. Schultz was the agent of her husband, the issue before the Federal Court of Appeal concerned whether this Court had jurisdiction to decide that a partnership existed. In this context, the Federal Court of Appeal held that the Crown was not prevented from pleading the alternative since the Crown was merely asserting a

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different legal result flowing from the same set of facts, and if it could be said that new facts had been alleged, this was permitted but resulted in the Crown having the onus of proving those facts: *Schultz FCA* at p. 437.

[86] In my view, what is critical to the analysis in *Schultz FCA* is that Mr. Schultz had alleged that Mrs. Schultz was not her husband's agent; this was the material fact alleged to support the position and relief sought—that the Minister had included in his income, income that belonged to Mrs. Schultz. The Crown had introduced a new and different factual theory of the case—an alternative posture to support the Minister's reassessments: see *Schultz FCA* at p. 436–437.

[87] Returning to the assumptions of fact, where an assumption of fact is not inconsistent with a fact pleaded in the notice of appeal, or where the assumptions are not fully set out by the Crown, this equalizes the "scale" that otherwise starts out tipped in favour of the Minister in tax disputes under *Johnston v. Minister of National Revenue*, [1948] 1 SCR 486 by presuming the assumptions of fact to be true and requiring the taxpayer to demolish them. In effect, there is nothing to demolish (see also *Damis Properties Inc. v. The Queen*, 2021 TCC 24 at para. 246 where Owen J. said the "missing" assumption of fact has no bearing on the outcome, overturned at 2023 FCA 157 but not on this point). But this is subject to any admissions made by the Crown. And typically, although not always, the Crown would make admissions about facts that were accepted by the Minister.

[88] Turning to *Pillsbury Holdings*, the guidance of the Exchequer Court is useful where the Minister's assumptions of fact are inconsistent with the facts pleaded by a taxpayer. But adopting the appellant's approach by focusing only on the assumptions of fact and taking the unpleaded assumptions as true, would render meaningless an appellant's obligation to plead material facts in a notice of appeal and the Crown's obligation to state in a reply the facts that are admitted, denied or those of which the Crown has no knowledge and puts in issue (see ss. 21(1)(a) and 49(1)(b) and (c) of the Rules; and Form 21(1)(a)).

[89] My conclusion that there is nothing to demolish regarding paragraph 24(e) of the Reply and the "missing assumptions" should not be read as a blithe observation or indifference, or to suggest that I disagree with Associate Chief Justice Bowman, as he then was, in *Holm v. The Queen*, [2003] 2 CTC 2041 (TCC) at paras. 18–19 where he described the inaccurate pleading of assumptions as "improper and reprehensible." This Court can revisit the concerns here under rule 147 if there is no agreement on costs.

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[90] In sum, the appellant's approach was rejected in *Eisbrenner* (at para. 48; see also *Cadillac Fairview Corp. Ltd. v. R*, [1996] 2 CTC 2197 (TCC) at fn. 2, aff'd at 1999 CanLII 7417 (FCA) without discussion on this point). Instead, I must look to the allegations of fact pleaded in the appellant's "Second Amended Notice of Appeal" (the Notice of Appeal) and consider what the Crown denied or put in issue.

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C. **The allegations of fact in the Notice of Appeal**

[91] I have set out below the allegations of fact that were pleaded by the appellant and which are essential to the relief it seeks under s. 20(1)(l), together with the Crown's response. In some instances, I have abbreviated the allegations. The appellant referred to the Project Loans and Castellar Loans as the Project Loans in the Notice of Appeal.

Notice of Appeal	Reply
8. During the tax years ending October 31, 2008, October 31, 2009 and October 31, 2010 (the "Taxation Years") Bleeman's business included, but was not limited to, lending money and developing and leasing real estate properties.	5. With respect to paragraph 8…, the AGC… c) denies that the Appellant's business includes the lending of money with respect to the properties for which the Minister disallowed amounts claimed as impaired or doubtful debts for the 2008, 2009, and 2010 Tax Years.
9. At all relevant times, Bleeman had, as part of its business, a business that included the project/construction funding of real estate projects for profit and the lending of money to capture such profits.	6. With respect to paragraph 9…, the AGC denies the allegations to the extent the Appellant's business was lending money with respect to the projects for which the Minister disallowed amounts claimed as impaired or doubtful debts in 2008, 2009, and 2010 Tax Years and states that the Appellant was making capital contributions to fund those projects.
10. During the Taxation Years and as part of this money lending business, Bleeman had… two types of interest-bearing loans outstanding relating to financing of various U.S. projects:… [the BHL US Loans] and [the Project Loans]	7. [The AGC has no knowledge of and puts in issue the allegations of fact]
20. …Bleeman also decided, given its existing money-lending business, to act as financier of these U.S. Projects…	7. [The AGC has no knowledge of and puts in issue the allegations of fact]
29. The Project Loans were entered into with the view to financing the completion of various projects, as part of Bleeman's money lending business…	7. [The AGC has no knowledge of and puts in issue the allegations of fact]

35. Given the US financial crisis as described above, during the Taxation Years, Bleeman claimed and deducted a reserve for doubtful debts related to the BHL US Loans and the Project Loans which Bleeman reasonably concluded were doubtful debts (the "Doubtful Loans").	9. With respect to paragraph 35 …, the AGC: a) admits that the appellant claimed and deducted amounts it considered to be doubtful or impaired debts; and b) has no knowledge and puts in issue the remaining allegations of fact.
37. The Doubtful Loans formed part of the project financing arm of Bleeman.	3. The AGC has no knowledge of and puts in issue the allegations of fact stated in paragraphs… 37…

[92] The Reply is not a model of clarity. Moreover, paragraphs 5 and 6 of the Reply are confusing; it is not clear whether the Crown denied outright the allegation that the appellant's ordinary business included the lending of money or whether the denial was limited to the properties (i.e., loans) that the Minister said did not meet the conditions in s. 20(1)(l)(ii), which would not make sense.

[93] When considered in light of the remainder of the Reply, it seems to me the Crown was seeking to put all the conditions in s. 20(1)(l)(ii) in dispute and at the same time was trying to make some sense over the fact that the Appeals Division had allowed some amounts. In effect, the Crown seems to have pleaded that the appellant was not entitled to any further deductions under s. 20(1)(l). This would require me to also read the reference in paragraph 31 of the Reply to the expression "Capital Properties" as a reference to the BHL US Loans, Project Loans, and the Castellar Loans.

[94] In argument, the Crown's position was clear: the appellant is not entitled to any further deductions under s. 20(1)(l). The Crown advanced three reasons: (i) the appellant's ordinary business did not include a money lending business; (ii) the loans were not made in the ordinary course of any money lending business of the appellant; and (iii) the appellant has not established that the loans became impaired or that the collection of interest was doubtful.

[95] In the end, and considering the Reply as a whole, I am satisfied that the appellant was on notice that the Crown's position differed from the approach of the Appeals Division. I find support for this in the appellant's written opening statement which acknowledged just that. The appellant also made full submissions on whether the conditions in ss. 20(1)(l)(i) and (ii) were met, if the inconsistency in the Minister's purported assumptions did not reduce its burden.

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[96] It is worth emphasizing that the onus of proof or burden does not play a part in the decision-making process if the trier of fact can come to a determinate conclusion on the evidence; if the evidence left me in a state of uncertainty, only then would the question of onus be applied (see Sidney N. Lederman, Michelle K. Fuerst & Hamish C. Stewart, *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 6th ed (Toronto, ON: LexisNexis Canada Inc., 2022), at 3.16).

[97] I turn next to the applicable statutory provisions.

V. **Applicable Statutory Scheme**

[98] Paragraph 20(1)(l) provides that a taxpayer, in computing income for a taxation year from business or property, may deduct a reserve determined as the total of two amounts.

[99] The first amount, under s. 20(1)(l)(i), is a reasonable amount in respect of doubtful debts (other than a debt to which s. 20(1)(l)(ii) applies) that have been included in computing the taxpayer's income for the year or a preceding year.

[100] The second amount, under s. 20(1)(l)(ii), is applicable where the taxpayer is a "financial institution" or where the taxpayer's ordinary business includes the lending of money. If either of these conditions are met, an amount may be deducted as a reserve in respect of properties that are (i) impaired loans or lending assets that are specified debt obligations (see s. 20(1)(l)(ii)(A)) or (ii) impaired loans or lending assets that were made or acquired by the taxpayer in the ordinary course of the taxpayer's business of insurance or the lending of money (see s. 20(1)(l)(ii)(B)).

[101] Since s. 20(1)(l)(ii)(A) applies only to certain types of loans made by banks, it is not applicable here and can be disregarded.

[102] If the taxpayer's ordinary business includes the lending of money and if the loans meet the condition in s. 20(1)(l)(ii)(B), the reserve is computed under s. 20(1)(l)(ii)(D). Simplified, the amount of the reserve is the lesser of a reasonable reserve in respect of the amortized cost of the debt at the end of the year and 90% of the amount of the taxpayer's reserve or allowance for impaired debts under generally accepted accounting principles (GAAP) in excess of a "specified reserve adjustment".

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[103] In more detail, the reserve is the taxpayer's "specified percentage for the year" as defined in s. 20(2.4) (and here 100%) of the lesser of two amounts determined under subclauses (I) and (II) of s. 20(1)(l)(ii)(D).

[104] The first amount—determined under subclause (I)—is the total of all amounts each of which is a reasonable amount as a reserve for a loan in respect of the amortized cost of the loan to the taxpayer at the end of the year.[5]

[105] The second amount—determined under subclause (II)—is the amount determined under the formula, 0.9M–N. The formula is 90% of the taxpayer's reserve or allowance for impairment for all loans that is determined for the year in accordance with GAAP (variable M), less the specified reserve adjustment (variable N and defined in s. 20(30)). The specified reserve adjustment in variable N represents 10% of the interest on the impaired loan.

[106] Here, the appellant did not reduce the amount claimed as a reserve under s. 20(1)(l)(ii) based on that formula. I will leave any discussion about that adjustment until later.

[107] The availability of a deduction for a reserve under s. 20(1)(l) is an exception to the general prohibition in s. 18(1)(e) against the deduction of reserves. Moreover, if a taxpayer deducts a reserve under s. 20(1)(l), the amount must be included in computing the taxpayer's income in the following year: s. 12(1)(d).

[108] In effect, where the conditions in s. 20(1)(l)(ii) are met, debts arising in the ordinary course of a money lending business are treated somewhat like an accounts receivable in respect of the business rather than as capital property of the business (see generally, Brian J. Arnold et al, *Timing and Income Taxation* (Toronto, ON: Canadian Tax Foundation, 2015) at p. 496).

[109] If a taxpayer holds a debt, such as a loan, on capital account and thus does not come within s. 20(1)(l)(l)(ii), the taxpayer cannot claim a reserve for the principal amount of the loan that is impaired. Instead, the taxpayer must look to the deeming rule in s. 50(1), which will trigger a deemed disposition if the debt becomes a bad

[5] In the case of a loan made by a taxpayer, the expression amortized cost of a loan or lending asset at any time to a taxpayer is defined in s. 248(1) to mean the total of all amounts advanced in respect of the loan at or before that time.

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debt in the year and will result in a capital loss under s. 39(1)(b), or a business investment loss for a small business corporation under s. 39(1)(c).

[110] Based on the forgoing, it is helpful to summarize the applicable conditions for claiming reserves under s. 20(1)(l).

[111] Under s. 20(1)(l)(i), there are three requirements: (1) the deduction must be in respect of a debt that has been included in income; (2) the debt must be doubtful; and (3) the amount claimed must be objectively reasonable (see *Delle Donne v. The Queen*, 2015 TCC 150 at para. 62; and *Langdon v. Canada*, [2000] 2 CTC 375 (FCA) at para. 13).

[112] The conditions for claiming a reserve under the previous version of s. 20(1)(l)(ii) were summarized by the Federal Court of Appeal in *Heron Bay Investments Limited v. The Queen*, 2010 FCA 203 [*Heron Bay FCA*] at paragraph 13 as follows: (1) in the year in which the deduction is claimed, the taxpayer's ordinary business must include the lending of money; (2) the loan in respect of which the deduction is claimed must be made in the ordinary course of the taxpayer's money lending business; and (3) the loan must be doubtful at the end of the year in which the deduction is claimed, meaning that there must be a reasonable doubt that it would be collected.

[113] In *Heron Bay FCA*, the Federal Court of Appeal set aside this Court's decision on procedural grounds. Nevertheless, the appellant and the Crown acknowledge that Hogan J.'s analysis under s. 20(1)(l) remains helpful (*Heron Bay Investments v. The Queen*, 2009 TCC 337 [*Heron Bay*]). As well, I note the reserve in *Heron Bay* concerned the 1995 taxation year and Parliament amended s. 20(1)(l) in 1998 applicable to taxation years ending after September 1997 (see S.C. 1998, c. 19, s. 81(4)). In light of the amendments, s. 20(1)(l)(ii) now uses the expression "impaired" rather than doubtful.

[114] I begin my analysis by considering the reserve claimed under s. 20(1)(l)(ii).

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VI. **Analysis**

A. **Whether the appellant's ordinary business included the lending of money — s. 20(1)(l)(ii)**

(1) Legal Test

[115] The conventional understanding is that a taxpayer carries on a money lending business where the taxpayer is ready and willing to lend to all and sundry, provided that the borrowers are, from the taxpayer's perspective, eligible: see *Litchfield v. Dreyfus*, (1906) 1 K.B. 584 [*Litchfield*] at p. 589, cited with approval in *Loman Warehousing Ltd. v. The Queen*, [2001] 1 CTC 50 (FCA) [*Loman Warehousing FCA*] at fn. 2, albeit in the context of s. 20(1)(p). But it would also include a taxpayer who lends money on a regular and continuous basis over time to a limited group of borrowers for arm's length consideration: see *Loman Warehousing FCA* at fn. 2.

[116] The expression "whose ordinary business includes the lending of money" was described by Justice Bowman in *Loman Warehousing Ltd. v. The Queen*, [1999] 4 CTC 2049 (TCC) [*Loman Warehousing TCC*], in the context of s. 20(1)(p), as follows:

> [25] The expression "whose ordinary business includes the lending of money" requires a determination of just what the taxpayer's "ordinary business" is. The ordinary business of the appellant is warehousing, not lending money to other companies in the group. Some effect must be given to the word "ordinary". It implies that the business of lending money be one of the ways in which the company as an ordinary part of its business operations earns its income. It also implies that the lending of money be identifiable as a business. I agree that the participation in the MNA, in which a company in the group, depending upon whether on a given day it is in a credit or debit position, may loan or borrow funds is an incident of its business. The appellant's argument equates the words "whose ordinary business includes the lending of money" to the words "in whose business the lending of money is an incident." I do not think the two expressions cover the same territory.

[117] There must be a certain degree of system and continuity about the lending transactions, and not just the occasional investment of surplus funds: *Heron Bay* at paras. 32 and 46; and see *Newton v. Pyke*, (1908) T.L.R. 127 at p. 128, as cited by the Tax Appeal Board in *Orban v. M.N.R.*, 10 Tax A.B.C. 178, 54 DTC 148 at para. 5. In this sense, the making of loans must be an integral part of the business, and not merely incidental.

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[118] If the loans are made to related parties, this does not necessarily preclude a taxpayer from being a moneylender, but it may justify closer scrutiny: *Heron Bay* at para. 44; and *Rich v. Canada*, 2003 FCA 38 [*Rich*] at para. 16.

(2) Background and the appellant's other lending

[119] As mentioned, the requirement in s. 20(1)(l)(ii) that the taxpayer's ordinary business include the lending of money looks to the year in which the reserve was claimed. Here, significant evidence was introduced regarding the history of the appellant's business, most of which was provided through the testimony of Nathan Bleeman.

[120] By way of background, the appellant was incorporated in 1960 by Abraham Bleeman. Abraham is now elderly and the appellant's day-to-day business is run by his two sons, Nathan and Aaron Bleeman. Abraham owns the preferred shares of the appellant and his five children (including Nathan, Aaron, and Eli Bleeman) each hold 20% of the common shares.

[121] At all relevant times, the appellant's business involved real estate, including acquiring and developing properties, construction and sale of single-family homes and residential and commercial buildings, and leasing property management.

[122] The appellant's business has its origins in the late 1950s and early 1960s when Abraham went into business with Joe Silver and Alex Grossman. Together, they established the "Belmont entities", with each holding a one-third share through holding companies. Abraham's one-third share was held by the appellant.

[123] The Belmont entities also carried on business related to real estate.

[124] In the 1990s, Abraham, Mr. Silver, and Mr. Grossman decided to divide the assets of the Belmont entities through transactions described as the "Belmont Split". Toward that end, in 1996 the appellant incorporated Medallion Properties Inc. as a wholly owned subsidiary to hold the assets that were allocated to the appellant through the Belmont Split. After the appellant took its share of the Belmont assets, it carried on its business operations separately, except in respect of certain properties that were jointly owned.

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[125] In the following years, the appellant built a successful and diverse real estate business which was carried on directly by the appellant and indirectly through its various subsidiaries.

[126] Nathan testified that before and after the Belmont Split, the appellant was also involved in the lending of money as part of its ordinary business operations. This included different types of loans in the real estate context. However, in cross-examination, Nathan confirmed that the history of lending activities could have been through other related corporations such as Belmont and Medallion, or via Abraham personally (N. Bleeman, Transcript, January 21, 2026, p. 21). As such, Nathan's evidence lacked the specificity necessary to make a historical finding that the appellant's ordinary business included the lending of money. Instead, it is useful to consider the specific loans reflected in the appellant's financial statements for the years in issue.

[127] For the 2008 taxation year, the appellant had three outstanding mortgage receivables:

a. 5 Sandale Gardens — $155,722 at 7.5%, interest only and maturing on January 4, 2009;

b. Jane Street – 12 acres — $2,934,133 at 6%, interest only and maturing on January 28, 2008; and

c. Cypress Point — $3,000,000 at 6%, interest only and maturing on March 30, 2010.

[128] According to Nathan's testimony, the receivable for 5 Sandale Gardens was a house loan and the receivables for Jane Street and Cypress Point were vendor take-back mortgages on lands that the appellant had sold.

[129] The appellant also recorded mortgage interest for sundry items in 2008, including for 50–54 Howden, 44 Howden, and Barmac, but these were restated to zero. It seems the appellant held some commercial mortgages on buildings in which it owned a 50% interest and the other owners in the joint ventures had financed their interest through the appellant, although the evidence is unclear.

[130] For the 2009 taxation year, the appellant had the two mortgage receivables for 5 Sandale Gardens and Cypress Point (then at $2,500,000).

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[131] For the 2010 taxation year, in addition to the Cypress Point receivable (then at $2,000,000), the appellant had two other mortgage receivables:

a. Howard Street & Glen Road — $333,333 at 0%, maturing on February 29, 2012; and

b. Weston Road & Major MacKenzie serviced housing lots — $2,828,250 at 5% interest only and maturing on December 7, 2012.

[132] The Howard Street & Glen Road receivable concerned the appellant's joint interest in a property where the joint venturers brought in a development partner and sold them an interest. It was a loan to bring the development partner into the deal. The Weston Road & Major MacKenzie receivable concerned a vendor take-back mortgage on serviced lots that the appellant and its development partner, Grossman Holdings, had sold. The mortgage was to be paid back as the purchaser built and sold houses.

[133] Regarding the loans involving Baka, this concerned a loan to a development partner for a real estate project in Israel.

[134] I next turn to the evidence relating to the BHL US Loans and how the Project Loans and Castellar Loans came into existence.

(3) BHL US and the BHL US Loans

[135] In the early 1990s, Eli Bleeman met Fernbach who was then involved in real estate construction and development in New Jersey through his wholly owned US company, Castellar. Around 1996, Fernbach proposed to enter into a development project with Eli. In turn, Eli looked to his father, Abraham, for support. This culminated in the incorporation of BHL US as a wholly owned subsidiary of the appellant, with Eli leading the day-to-day operations and with the view to expanding into the United States.

[136] Around that time, Eli and Fernbach created the Paramount Properties Group, a management company for what would in time become a group of single-purpose limited liability companies (LLC) formed between BHL US and Castellar as members. Each LLC was to be used to advance separate U.S. real estate construction and development projects. Beginning in 1996, Paramount undertook a number of real estate projects through various Project Entities.

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[137] Eli was the President of BHL US. He gave evidence that the Projects completed before the U.S. financial crisis were generally profitable and those completed after had mixed results. Today, only one Project remains outstanding, the Ocean Breeze Project at Club Premier at Forest Hills (the Ocean Breeze Project).

[138] BHL US and Castellar entered into operating agreements outlining the funding and ownership arrangement in respect of each of the Project Entities (the Operating Agreements). BHL US and Castellar generally each owned a 50% membership interest in each Project Entity, and BHL US contributed its 50% capital contribution into the Project Entity and also contributed a portion of Castellar's required capital contribution on behalf of Castellar.

[139] The funding arrangement ensured that Fernbach had "skin in the game," and at the same time recognized the value he brought. The appellant referred to the portion of Castellar's required capital contributions that were funded by BHL US as the "Castellar Carried Project Contributions", and for consistency I will also use that term. Under the Operating Agreements, BHL US was to be repaid the Castellar Carried Project Contributions, along with interest, out of the Project Entities' member distributions.

[140] The appellant made loans to BHL US so that BHL US could fund its capital contributions to each of the Project Entities and also to facilitate BHL US's funding of the Castellar Carried Project Contributions. The BHL US Loans were denominated in US dollars, and the parties agree that interest was accrued at 8% per year. It is also agreed that all funds under the BHL US Loans were advanced before November 1, 2007, and no further advances were made during the appellant's 2008, 2009, and 2010 taxation years.

[141] There is no written loan agreement respecting the BHL US Loans. Eli testified that the agreement and understanding was that BHL US would repay the BHL US Loans, plus 8% interest, upon completion and closing of a Project.

[142] In the absence of a written agreement respecting the BHL US Loans, the evidence shows that the repayment of principal, together with accrued interest, was to be funded out of the member distributions from the respective Project Entity. For Projects completed before 2008, the evidence supports a finding that BHL US repaid certain BHL US Loans, but since these Projects were successful, the appellant allowed funds to be redeployed for use in other Projects or amounts were repaid and new BHL US Loans were made for these other Projects.

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[143] Eli also testified that if a particular Project was not successful, BHL US would still be indebted and funds from different successful projects would go to repay the BHL US Loans.

[144] The BHL US Loans were non-recourse loans. And in the absence of a written agreement, I find that there was no specific due date for repayment. This is supported by Nathan's testimony that there were no specific terms for repayment because they did not know how long any specific Project would take and so repayment was left open-ended (N. Bleeman, Transcript, January 21, 2026, p. 12–13).

[145] The appellant recorded the principal and interest owing and any repayments made by BHL US under the BHL US Loans in its general ledger account 1405.

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(4) The US Bank Loans

[146] Each of the Project Entities obtained US bank financing to complete the development, construction, and sale of the Projects. The US Bank Loans were entered into with a number of banks before 2008, including Wachovia Bank, Amboy National Bank (Amboy Bank), Commerce Bank and PNC Bank. Wells Fargo eventually acquired Wachovia Bank and the US Bank Loans with Wachovia Bank were assumed by Wells Fargo. Importantly, the US Bank Loans involved joint and several guarantees.

[147] Extensive documentary evidence was introduced regarding the US Bank Loans, and the existence of these loans is not challenged. So only a summary is needed to illustrate the magnitude of the bank financing, as follows:

a. **Reed Road Construction Loan** — Under an agreement dated April 28, 2006, Wachovia Bank provided a loan in the principal amount of US$11,125,000 to Paramount Homes at Reed Road II LLC. The appellant, BHL US, Fernbach, and Castellar guaranteed the loan. After Wells Fargo assumed the loan agreement, it demanded cross-default covenants and additional guarantees.

b. **Grand Avenue Construction Loan** — Under an agreement dated October 3, 2006, Wachovia Bank provided a loan in the maximum principal amount of US$19,500,000 to Paramount Homes at Grand Avenue LLC. The appellant, BHL US, Fernbach, and Castellar guaranteed payment and the performance of the obligations of Grand Avenue LLC.

c. **PNC Grand Avenue Loan** — Under an agreement dated March 2, 2007, PNC Bank agreed to lend an amount not exceeding US$18,300,000 to Paramount Homes at Grand Avenue LLC. The appellant, BHL US, Fernbach, and Castellar guaranteed the debts to the original maximum principal amount of US$18,300,000 and further guaranteed the completion of construction.

d. **Whispering Heights Loan** — Under a loan agreement dated June 10, 2004, Wachovia Bank loaned a maximum principal amount of US$11,900,000 to Paramount Homes at Whispering Heights LLC. The appellant guaranteed the loan in the same manner as the other Wachovia Bank loans. Wells Fargo had demanded cross-default covenants and additional guarantees.

e. **Forest Hills Loan** — Under an agreement dated March 30, 2005, Wachovia Bank loaned US$9,500,000 to Paramount Homes at Forest Hills LLC. The appellant guaranteed the payment and performance of all liabilities and obligations, including the obligation to construct the project. Wells Fargo subsequently demanded cross-default covenants and additional guarantees from other Project Entities.

f. **Amboy Loan** — On January 26, 2005, Amboy Bank agreed to lend Paramount Homes at Asbury Beach LLC up to US$32,241,130. The appellant, BHL US, Fernbach, and Castellar were guarantors. The Amboy Loan was subsequently amended eight times, with the highest balance permitted extended to US$60,000,000 under an amendment on June 27, 2007.

g. **Marinas Loan** — Under an agreement dated April 24, 2007, Commerce Bank loaned US$8,000,000 to Marinas LLC. The appellant, BHL US, Fernbach, and Castellar guaranteed payment and the completion of the project.

[148] As is apparent, the appellant had provided payment and completion guarantees in connection with the US Bank Loans. As well, the appellant provided indemnities under an agreement dated August 16, 2005, to indemnify certain bond companies if municipalities called on certain performance bonds relating to the Projects undertaken by the Project Entities. These performance bonds totalled approximately $14 million.

(5) <u>The Projects & the U.S. Financial Crisis</u>

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[149] Eli gave evidence respecting the status of the specific Projects undertaken by the various Project Entities pursuant to the terms of the operating agreements. He provided his best recollection as to when a Project was completed, whether the Project was profitable, and whether the associated loans were repaid. His evidence was not disputed, and so it is unnecessary to provide a detailed summary of all the Projects.

[150] In 2006 and 2007, at the onset of the U.S. financial crisis, BHL US and Castellar (through the Project Entities) had several Projects in various stages of development or construction subject to the US Bank Loans.

[151] One of the Projects under construction was the Asbury Beach Project, owned through Paramount Homes at Asbury Beach LLC, which consisted of three concrete residential buildings. As mentioned, the Asbury Beach Project was financed by Amboy Bank and the appellant had provided both payment and completion guarantees.

[152] Numerous other Projects were also in various stages of development and construction. These Projects were financed in part by US Bank Loans, with the appellant providing guarantees.

[153] During this period, a shift occurred in the funding of the Projects. In this regard, I accept the evidence of Nathan and Eli, and that of Peter Grater, whose discovery evidence was read into evidence under rule 100(6) on consent because he passed away before the trial commenced. Mr. Grater was the appellant's Vice President of Finance for many years.

[154] In short, their evidence shows that the shift occurred due to the interplay between the financial crisis and (i) specific issues relating to the Asbury Beach Project, (ii) Paramount's inability to obtain additional bank financing for the Projects and Castellar's insolvency, and (iii) operational and reputational risks for the appellant in Canada if the Guarantees were called.

[155] Regarding the Asbury Beach Project, Paramount had pre-sold about 100 of the 150 units. But there were significant construction delays, cost overruns, and the exterior stucco had to be redone. And so, Paramount was unable to deliver units on time, and the contracts with buyers expired, which meant buyers were able to get their deposits back. About 40 of the contracts that were pre-sold were cancelled. Plus, the presales were originally sold in a more speculative market. With the downward shift in the real estate market during the financial crisis, buyers had an

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opportunity to walk away. Later, Paramount had to re-sell those units at significantly lower prices. In the result, significant cash flow concerns arose, and construction costs increased.

[156] Given the cash demands, Nathan and Abraham met with Amboy Bank to negotiate the terms of the Amboy Loan. But Amboy Bank was unwilling or unable to provide additional financing. Moreover, Amboy Bank—and the other US banks—seemingly considered the loans to be sufficiently secured given the Guarantees, and specifically the appellant's guarantees.

[157] Adding to these difficulties, Fernbach effectively became insolvent and expressed that Castellar could no longer contribute to the funding of the Projects.

[158] At the end of 2007, the appellant's exposure under the Guarantees was approximately $100 million.

[159] In 2008, the appellant sought legal advice about the financial and legal ramifications of potentially ceasing to fund or support the Projects and defaulting on the Guarantees. Dan Dowdall, then a partner with the law firm of Fraser Milner Casgrain LLP, together with another partner, met with the principals of the appellant to discuss the Guarantees. Mr. Dowdall testified that he gave oral advice that the US creditors would be able to enforce in Canada any claims or judgments against the appellant. His evidence was not challenged.

[160] Further complicating matters, the appellant's Canadian operations were financed with mortgages, operating lines of credit, and construction loans. Some of those loans had demand features or cross-default provisions that could have been triggered in the event of default, such as where there was an unsatisfied judgment creditor. Nathan testified that after receiving the legal advice, the appellant was concerned that enforcement actions by the US banks could result in cross-defaults on Canadian bank loans and could lead to the appellant's Canadian lenders calling loans or ceasing to finance Canadian projects. Nathan also testified that the appellant was concerned about bad publicity and its corporate reputation in dealing with Canadian real estate financing.

[161] Moreover, Nathan testified that the other US banks would not provide additional funding, although some extensions were obtained. In his words, "all of these projects that hadn't been completed had to be funded by us" (N. Bleeman, Transcript, January 20, 2026, p. 64). And so, given the impact of the US financial crisis on Paramount's operations and the circumstances discussed above, the

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appellant decided to provide loans to the Project Entities to allow for the completion and sale of the Projects.

(6) The Project Loans and Castellar Loans

[162] As set out earlier, the appellant entered into the Project Loan Agreement effective January 1, 2008. The agreement was between the appellant and the collective Project Entities and was guaranteed by BHL US. Under that agreement, the appellant made the Project Loans to the Project Entities for the completion of the outstanding Projects. Interest accrued at prime plus 1% per year, and the collective Project Entities became debtors under the Project Loans.

[163] In addition, the appellant entered into the Castellar Loan Agreement with Fernbach, effective January 1, 2008, which was guaranteed by Castellar. Under this agreement, the appellant agreed to lend funds to Fernbach and then those funds were to be on-lent to Castellar and to the collective Project Entities for the completion of the outstanding Projects. Interest also accrued at prime plus 1% per year. Another loan agreement was entered into under which Fernbach agreed to lend funds to Castellar and Castellar agreed to lend funds to the Project Entities. These on-lent funds were previously defined as the Castellar Loans.

[164] In addition to the guarantees given by BHL US, Castellar, and Fernbach with respect to the Project Loans and Castellar Loans, the loans had other security, including, among other things, mortgages on all property owned by the Project Entities (subordinated to the mortgages held by the US banks), promissory notes, assignments of leases and rents, and the assignment of membership interests and partnership interests of each of BHL US and Castellar in the Project Entities.

[165] Regarding the objectives of structure, Nathan testified that the appellant "wanted to be sure that the projects would be completed, the bank would get repaid, and whatever money would come after that would go to [the appellant]" (N. Bleeman, Transcript, January 20, 2026, p. 65).

[166] When funds were needed, the relevant Project Entity would make a request, and then the appellant would advance the funds pursuant to the Project Loan Agreement and the Castellar Loan Agreement.

(7) Findings — s. 20(1)(l)(ii)

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[167] The appellant argues that its "everything related to real estate" business included the lending of money and that by 2008, 2009, and 2010, it had developed both a system for and a continuity to money lending as an ordinary part of its business. The appellant emphasizes that the lending of money in respect of real estate properties and projects through loans (to arm's length and non-arm's length parties), and charging fees on the Guarantees, was one way in which the appellant earned income.

[168] Regarding the loans made by the appellant other than the BHL US Loans, the Project Loans, and the Castellar Loans, I am unable to find that these loans establish that the appellant's ordinary business included the lending of money. All but one of the loans made by the appellant were made for the purpose of facilitating the appellant's real estate business. The Jane Street, Cypress Point, and the Weston Road & Major MacKenzie mortgage receivables were vendor-takeback mortgages granted as part of land sales. The Howard Street & Glen Road mortgage receivable was granted to bring a development partner into a real estate development. The Baka loan was made to a development partner for a real estate development in Israel. The interest income from the mortgages on 50–54 Howden, 44 Howden, and Barmac mortgages appear to involve the appellant financing the interests of their other co-venturers in certain properties.

[169] The loan that does not obviously fit within the loans described above is the 5 Sandale Gardens mortgage receivable. Nathan testified that this was a "house loan." While 5 Sandale Gardens may be the sort of loan that a money lender would enter into, it alone cannot provide the degree of system and continuity required to constitute an ordinary business that includes the lending of money. As discussed, with the exception of the 5 Sandale Gardens mortgage, the appellant made the occasional loan in connection with its real estate business. These were often to co-owners or co-venturers. The appellant's financial statements show that these loans were not an ordinary or integral part of its business but were instead incidental or one-off transactions. And the appellant's interest income from the mortgages that were outstanding is minor in the overall context of its real estate business (see JBOD at Tab 190, statement of sundry income).

[170] Turning to the BHL US Loans, these loans—although very significant in amount—were made without any written agreement establishing their terms. Moreover, there were no specific terms for repayment or maturity, and the appellant took no security. Although the parties agree that the BHL US Loans were "non-recourse", it is not clear what they mean by this. In the absence of any security or collateral documents, the loans were seemingly not even secured by the specific

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project asset that they were funding. In effect, there was nothing to look to for repayment other than surplus funds distributed to BHL US if a project was successful.

[171] Important is that the appellant made the BHL US Loans in circumstances where it had guaranteed US Bank Loans. A money lender would generally not guarantee the debts of its borrower in the ordinary course of its business, or at least not routinely as the appellant did here.

[172] The parties agree that the BHL US Loans were loans (see PASF at para. 44). This recognizes that there was an obligation to repay. Nonetheless, in my view, the loans were made to capitalize BHL US in circumstances where the appellant's wholly owned subsidiary otherwise seems to have been undercapitalized. The Crown emphasized that the financial statements of BHL US were not introduced into evidence. And there is no other evidence to suggest that BHL US was capitalized other than through the BHL US Loans. Indeed, the appellant seems to acknowledge that BHL US did not have retained earnings (see appellant's written submissions at para. 133(d)).

[173] In the end, although there was some continuity in the making of the BHL US Loans, I am unable to conclude that those loans turned the appellant into the sort of money lender contemplated by s. 20(1)(l)(ii). The BHL US Loans are more properly viewed as a capital injection. I find support for this conclusion in *Chaffey v. MNR*, [1978] CTC 253 (FCA) [*Chaffey*] at paragraph 10, where shareholders' advances were described as the particular form by which capital was put into a company and not with the principal objective of receiving interest income (see also *Bird v. The Queen*, [2000] 2 CTC 2699 (TCC) at para. 23).

[174] In enacting s. 20(1)(l)(ii) as an exception to the prohibition against deducting reserves, Parliament did not envision that a parent corporation funding a subsidiary through debt would automatically fall within the expression "a taxpayer whose ordinary business includes the lending of money". Otherwise, any parent corporation could fund the new business venture of a subsidiary and claim a reserve in the early years when there is no reasonable assurance of repayment of principal. That would set a very low bar for taxpayers who are classified as a money lender under s. 20(1)(l)(ii). The circumstances would be different if a parent corporation's ordinary business was focused on lending.

[175] Moreover, the fact that the appellant charged BHL US guarantee fees seemingly relates to the transfer pricing issues that emerge in transactions involving

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a non-resident, non-arm's length subsidiary. The fees do not, however, mean that the appellant's ordinary business included the lending of money.

[176] Turning to the Project Loans and Castellar Loans, the evidence is clear that these loans were precipitated by the appellant's exposure under the Guarantees (i.e., the payment guarantees and completion guarantees) to the US banks on the US Bank Loans.

[177] In 2007, at the onset of the US financial crisis, the real estate market began to show signs of a correction. In respect of the Asbury Beach Project, the prices eventually declined around 40% (see G. Miscio, Transcript, January 27, 2026, p. 122).

[178] The appellant acknowledges the difficulties that culminated in the making of the Project Loans and Castellar Loans:

> 58. Further complicating matters, at the time of the US Financial Crisis, Castellar became effectively insolvent and unable to provide any further financing for the Projects. Mr. Fernbach/Castellar became aware that the Asbury Beach Project would have substantial losses, and Castellar would be unable to fund those losses. As a result, Mr. Fernbach informed BHL US and Bleeman Holdings that Castellar could no longer contribute to the funding of the Projects.
>
> 59. With the US banks not forthcoming with additional financing and given Castellar's dire financial circumstances, Bleeman Holdings risked being exposed under the joint and several liabilities under the Guarantees.
>
> 60. At the end of 2007, the exposure under the Guarantees was approximately $100,000,000.
>
> …
>
> 64. …given the Guarantees were joint and several, any default by any of the other guarantors, Mr. Fernbach, Castellar or BHL US, would affect Bleeman's Canadian operations and Canadian credit facilities.
>
> 65. After receiving… legal advice, Bleeman Holdings had the concern that enforcement actions by the US banks could result in cross-default on Canadian bank loans and could lead to Bleeman Holdings' Canadian lenders calling loans and ceasing to finance Canadian construction projects.
>
> [Appellant's written submissions, footnotes and headings omitted]

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[179] In my view, even though there was some regularity and continuity in the making of the Project Loans and Castellar Loans, this lending did not expand the appellant's ordinary business related to real estate to one that included the lending of money. I reach this conclusion because a business that includes the lending of money should have the principal objective or commercial purpose of earning interest income; earning interest is at the core of a moneylender's business: see *Chaffey* at para. 10. The Project Loans and Castellar Loans were not made for that purpose; they were instead made to ensure that the appellant did not have to make good on the Guarantees.

[180] My finding is reinforced by the fact that Fernbach and Castellar were effectively insolvent and the fact that the appellant almost immediately concluded that the payment of interest was doubtful and the payment of principal was impaired. A money lender would not, in the ordinary course of business, loan money with the expectation at the time of making the loan that it would not be paid back.

[181] Further reinforcing my finding is that the appellant claimed reserves for the 2008 taxation year at 100% of the amounts advanced on the Project Loans and Castellar Loans for nearly all of the Projects, yet it continued to advance more money in its 2009 taxation year, and so on (see JBOD at Tab 169 at Tables 4, 5 and 6; and Ex. AR-6 re Asbury Beach Blk #207, PH at Whispering Heights, and PH at Reed Road II for three examples; similar "100% reserves" were claimed for 2009 and 2010 re Asbury Beach Blk #207 and PH at Reed Road II).

[182] In sum, recognizing the limited nature of the appellant's historical lending and considering the BHL US Loans, Project Loans, and Castellar Loans together and in their proper context, I am unable to find that the appellant's ordinary business in the 2008, 2009, and 2010 taxation years included the lending of money.

B. **Whether the BHL US Loans, Project Loans, and Castellar Loans were made in the ordinary course of the business of lending of money**

(1) <u>Legal Test or Approach</u>

[183] Although unnecessary in light of my finding above, I will next consider the condition in s. 20(1)(l)(ii)(B) and will assume that the appellant's ordinary business included the lending of money in the years in issue.

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[184] The text of s. 20(1)(l)(ii)(B) refers to impaired loans that were made or acquired by the taxpayer "in the ordinary course of the taxpayer's business of … the lending of money."

[185] The appellant says that it must demonstrate "not only that the loan was made in the course of the taxpayer's business, but also that it was made in the normal or regular ("ordinary") course of the taxpayer's business of lending money" (citing *Heron Bay* at para. 47).

[186] In *Heron Bay*, this Court concluded that for a loan to fail to meet this condition, it would need to be "extraordinary or extracurricular in some distinct fashion and different from activities carried on in the day-to-day operations of the business …" and that the loan would need to "appear as an aberration or an abnormality of some kind": *Heron Bay* at para. 49. In this sense, s. 20(1)(l)(ii)(B) recognizes that although a taxpayer's ordinary business may include moneylending, in certain cases a loan may be made outside the taxpayer's ordinary business of money lending: see *Heron Bay* at para. 68. The appellant seemingly agrees with this approach or legal test.

(2) Findings — s. 20(1)(l)(ii)(B)

[187] In my view, the BHL US Loans do not meet the condition in s. 20(1)(l)(ii)(B); they were extraordinary or extracurricular and, thus, were not made in the ordinary course of the appellant's business of the lending of money. I reach this conclusion generally for the same reasons set out above respecting whether the appellant's ordinary business included the lending of money.

[188] Moreover, the appellant's other lending involved mortgages that were registered, secured, and which contained precise terms for repayment. More specifically, the loans respecting 5 Sandale Gardens, Jane Street, Cypress Point, Howard Street & Glen Road, and Weston Road & Major MacKenzie were registered, secured, and had maturity dates (JBOD at Tabs 179−183). In contrast, the BHL US Loans had no written agreements, no security, were seemingly without recourse, and had no specific maturity. And so, I am unable to agree with the appellant that the BHL US Loans were similar to the other loans that were occasionally made with respect to the appellant's development projects.

[189] Here too I would re-emphasize the lack of security and the significance of the Guarantees—the fact that the appellant guaranteed the US Bank Loans and the

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obligations of its borrower and the respective Project Entities. There was no commercial reason to make the BHL US Loans unsecured and without recourse. The absence of security and the Guarantees make the BHL US Loans extraordinary and outside the appellant's ordinary business of the lending of money.

[190] Turning to the Project Loans and Castellar Loans, the appellant argues that these were made with the view to profit, were properly and extensively secured, and were made with the expectation of repayment. I agree that these loans were secured, but I am unable to find that they were made for the purpose of earning interest income. The Project Loans and Castellar Loans were precipitated by and made because of the appellant's exposure under the Guarantees. The fact that the appellant advanced the funds with a fairly short maturity date of December 31, 2011 (subject to extensions), on one hand, and concluded that the payment of interest was doubtful and the repayment of principal was impaired, on the other hand, illustrates the abnormal situation.

[191] As the Crown said, the appellant cannot have it both ways by arguing that these loans were made in the normal course of a money lending business while also arguing that they arose out of necessity to prevent an existential threat. It is clear that the latter was the true motivation for making the Project Loans and Castellar Loans. Castellar was effectively insolvent and BHL US was unable to get additional bank financing to complete the Projects. It is worth emphasizing here that the loans relating to the Asbury Beach Project represent over 70% of the reserves claimed.

[192] If the appellant had not advanced the Project Loans and Castellar Loans, BHL US and the Project Entities would likely have collapsed into insolvency. This would have resulted in the appellant being forced to make good on the Guarantees or face enforcement action in the United States, and eventually in Canada.

[193] I also adopt my reasons on the ordinary business issue respecting the Project Loans and Castellar Loans.

[194] In the end, I conclude that the Project Loans and the Castellar Loans were also extraordinary and extra-curricular and so were not made in the ordinary course of the appellant's business of the lending of money.

C. **Impaired loans & computation of reserve — s. 20(1)(l)(ii)(D)**

(1) <u>Legal Test or Approach</u>

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[195] The final condition for deducting a reserve under s. 20(1)(l)(ii) is that the loans must be impaired at the end of the relevant taxation year. In light of my findings above, it is unnecessary for me to consider this condition in detail. However, for the sake of thoroughness, I will discuss how I would consider this issue if the appellant had met the other conditions under s. 20(1)(l)(ii).

[196] The appellant recognizes that there are no cases considering the meaning of the term "impaired" following the amendment made in 1998. In the circumstances and because of my previous findings, I acknowledge the need for restraint.

[197] The explanatory notes for s. 20(1)(l) indicate that the amendments reflect the 1995 changes announced by the Canadian Institute of Chartered Accountants (CICA), and adopted by the Superintendent of Financial Institutions, in recognizing and measuring impaired loans for accounting purposes (Canada, Department of Finance, Explanatory Notes Relating to the Income Tax, December 1997, [December 1997 Explanatory Notes] at p. 153–155; and see Canada, Department of Finance, Legislative and Regulatory Proposals and Explanatory Notes Relating to Income Tax — Impaired Loans, November 1997, at p. 19).

[198] Accordingly, the appellant points to s. 3025.03 of the CICA Handbook and related guidance. Section 3025.03 of the 1995 Handbook reads as follows:

> When a loan or portfolio of loans becomes impaired as a result of a deterioration in credit quality to the extent that the lender no longer has a reasonable assurance of timely collection of the full amount of principal and interest, the carrying amount of the loans should be reduced. The reduction in carrying amount should be recognized as a charge in the statement of income in the period in which impairment is identified.
>
> (Canadian Institute of Chartered Accountants, CICA Handbook — Accounting Recommendations, vol. I (March 1994) at p. 1052)

[199] The appellant argues that the test for recognition of an impaired loan is when the lender no longer has "reasonable assurance of timely collection" of the full amount of principal and submits it reflects a no more stringent standard (and likely less stringent) than for doubtful debts under s. 20(1)(l)(i), which requires "reasonable" doubt as to collectability: *Heron Bay* at paras. 79–82, citing *The Coppley Noyes & Randall Ltd. v. The Queen*, [1991] 1 CTC 541 (FCTD) [*Coppley Noyes*] at p. 549–550.

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[200] The Crown points to the term used by the Office of the Superintendent of Financial Institutions regarding impaired loans, which reads as follows:

> Impaired Loans
>
> A loan or portfolio of loans becomes impaired when credit quality has deteriorated to the extent that the lender no longer has reasonable assurance of timely collection of the full amount of principal and interest. Impaired loans consist of loans where impairment has been identified on a loan-by-loan basis…
>
> (Office of the Superintendent of Financial Institutions, "Glossary of Terms" (last modified September 25, 2017) online<www.osfi-bsif.gc.ca/en/data-forms/reporting-returns/filing-financial-returns/glossary-terms#i>)

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[201] It is my understanding that the Office of the Superintendent of Financial Institutions endorsed the CICA's standards and issued additional guidance as to their application for federally regulated financial institutions (see Department of Finance Press Release, November 14, 1997, reproduced in David Sherman, 2025 Department of Finance Technical Notes — Income Tax, 37th ed (Toronto, ON: Thomson Reuters, 2025) at p. 324).

[202] Given the similarity in the appellant's and the Crown's approach, it is unnecessary for me to express a definitive view on whether the test is less stringent than that formerly used when the provision referred to doubtful loans.

[203] Moreover, it seems to me that this Court's approach in *Heron Bay* remains useful in assessing the reasonableness of a reserve claimed under s. 20(1)(l)(ii), which adapted the factors set out by Rothstein J.A., as he then was, in *Rich* in determining whether a debt had become bad: *Heron Bay* at paras. 84–114, citing *Rich* at para. 13.

(2) The appellant's methodology

[204] The appellant says three factors were primarily considered in determining the reserves claimed under s. 20(1)(l)(ii): (i) the general business and economic conditions in the country of the debtors; (ii) the financial position of the debtors; and (iii) the fair market value of the Projects (see appellant's written submissions at para. 133), which I read as a reference to the fair value equity, as discussed in more detail next.

[205] The appellant sought to establish the fair value equity of each of the Projects based on scenarios prepared by Greg Miscio, the CFO of Paramount Homes. The appellant next compared the fair value equity against the aggregate principal and interest outstanding on the BHL US Loans, Project Loans, and Castellar Loans for each project, that is on a project-by-project basis. If the appellant determined that the fair value equity of a project was less than the amount outstanding for the project, then a reserve was claimed based on the deficiency or shortfall in value.

[206] Essential to understanding the appellant's methodology is that the reserves were allocated or ordered on a project-by-project basis in the following sequence: (i) Project Loans interest; (ii) Castellar Loans interest; (iii) BHL US Loans interest; (iv) Castellar Loans principal; (v) Project Loans principal; and then (vi) BHL US Loans principal.[6]

[207] Mary Fernandes, who carried out the appellant's computations based on guidance from Mr. Grater, testified that the Project Loans were considered more uncollectible than the BHL US Loans (M. Fernandes, Transcript, January 26, 2026, p. 88).

[208] The appellant's methodology can be illustrated, in part, by reference to the largest reserves claimed in 2008 relating to Asbury Beach Blk #207, in which a total of US$33,470,605 was owing for principal and interest on the BHL US Loans, Project Loans, and Castellar Loans. The fair value equity was determined to be US$13,577,151. And so, the appellant claimed reserves computed on the difference, being US$19,893,454.

[209] In more detail, the appellant claimed reserves relating to Asbury Beach Blk #207 representing the full amount of interest that was owing in respect of the Project Loans (US$357,008), Castellar Loans (US$89,252), and BHL US Loans (US$1,206,508), plus reserves representing the full amount of the principal owing on the Castellar Loans (US$2,399,261) and Project Loans (US$10,788,000), and a reserve representing a portion of the principal owing on the BHL US Loans (US$5,053,425 of the total principal owing of US$18,735,913). The total reserve of

[6] In its written submissions, the appellant said the reserve for interest owing was allocated firstly to the Project Loans, secondly to the BHL US Loans, and thirdly to the Castellar Loans. But Ms. Fernandes testified that the sequence was firstly to the Project Loans, secondly to the Castellar Loans, and thirdly to BHL US Loans (M. Fernandes, Transcript, January 26, 2026, p. 54).

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US$19,893,454 was next converted to Canadian dollars as $23,961,665 (see PASF at para. 47).

[210] It bears repeating that the appellant claimed reserves under ss. 20(1)(l)(i) and (ii) relating to Asbury Beach Blk #207 computed at 100% of the interest and principal advanced during the taxation year as Project Loans and Castellar Loans.

[211] A further illustration will help demonstrate the appellant's methodology. At the end of the 2008 taxation year,[7] the fair value equity of the Ocean Breeze Project was determined to be US$21,535,324, and a total of US$13,773,093 in interest and principal was outstanding on it in respect of the BHL US Loans, Project Loans, and Castellar Loans. In that situation, no reserve was claimed because it was felt that the project could be completed and a positive cashflow would arise that could be used to repay the loans with interest (M. Fernandes, Transcript, January 27, 2026, p. 48–50 and 59–60).

[212] I digress to acknowledge that under cross-examination Ms. Fernandes identified some errors in her analysis. For example, with respect to the project for Premier Homes at Whispering Heights, Ms. Fernandes over-allocated the reserve claimed for the Project Loan principal by approximately US$865,782 (US$1,325,782 vs. US$460,000), with the result that she would have allocated an additional reserve of US$865,782 to the BHL US Loans principal. Her corrections were jotted in pen during a break. They are difficult to follow because she inadvertently made errors in correcting her errors and crossed amounts out by mistake (see Ex. AR-6 with hand-written corrections related to JBOD at Tab 169; M. Fernandes, Transcript, January 27, 2026, p. 75–85).

[213] Ms. Fernandes discovered the errors in her spreadsheet formula while preparing for her attendance, and I find it somewhat surprising that this was not made known earlier. The errors impact the allocations among the various loans but not the overall reserves claimed (M. Fernandes, Transcript, January 27, 2026, p. 62–63).

[7] To be precise, Mr. Miscio determined the fair value equity as at September 30 based on the information then available.

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(3) The methodology of the Appeals Division

[214] The appellant does not agree with the methodology of the Appeals Division in computing the reserves that were allowed under the reassessments made on May 11, 2018.

[215] In simple terms, Ms. Lee Chan computed the reserves by backing out the principal owing on the BHL US Loans on a project-by-project basis. She computed the revised total amount owing on a project-by-project basis by aggregating the accrued interest on the BHL US Loans, Project Loans, and Castellar loans and the principal owing on the Project Loans and Castellar loans. She next compared the revised total owing against the fair value equity amount for the project as prepared by Mr. Miscio and adopted by the appellant. If the revised total amount owing exceeded the fair value equity amount, she allowed a reserve based on the difference.

[216] Ms. Lee Chan's methodology can also be illustrated by reference to Asbury Beach Blk #207. However, given the limitations relating to the 2008 taxation year, I will review her analysis for the 2009 taxation year. I must first summarize how the appellant calculated the reserve claimed. The appellant proceeded on the basis that fair value equity of the project was US$11,389,151. A total of US$37,203,123 was owing for principal and interest on the BHL US Loans, Project Loans, and Castellar Loans, and so the appellant computed the deficiency as US$25,813,972.

[217] The appellant allocated the deficiency according to its ordering sequence and claimed reserves relating to Asbury Beach Blk #207 representing the full amount of interest that was owing in respect of the Project Loans (US$1,008,799), Castellar Loans (US$252,199), and BHL US Loans (US$1,149,378), plus reserves representing the full amount of the principal owing on the Castellar Loans (US$2,903,596) and Project Loans (US$16,353,238), and a reserve representing a portion of the principal owing on the BHL US Loans (US$4,146,762 of the total principal owing of US$15,535,913). The total reserve of US$25,813,972 was next converted to Canadian dollars as $27,928,136 (see PASF at para. 48).

[218] For Asbury Beach Blk #207, Ms. Lee Chan aggregated the interest owing in respect of the Project Loans, Castellar Loans, and BHL US Loans (which totalled US$2,410,376), and she aggregated the principal owing on the Castellar Loans and Project Loans (which totalled US$19,256,834) for a grand total of US$21,667,210. She compared the grand total of US$21,667,210 against the fair value equity amount used by the appellant of US$11,389,151 and allowed a reserve of US$10,278,059 (or $11,119,832 converted to Canadian dollars). Ms. Lee Chan also allocated the

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reserve, with US$2,410,376 for interest under s. 20(1)(l)(i) and US$7,867,683 to principal under s. 20(1)(l)(ii).

[219] The appellant argues that Ms. Lee Chan's methodology is flawed as she should have instead simply backed out the reserve claimed under s. 20(1)(l)(ii) for the principal on the BHL US Loans by subtracting US$4,146,762 from the reserves claimed. This would have had the effect of allowing a reserve of US$21,667,210 ($25,813,972 − US$4,146,762). The appellant submits that the principal on the BHL US Loans should remain included when netting the outstanding principal and interest on the loans against the fair value equity of each project.

[220] Excluding the BHL US Loans principal had a significant impact when the outstanding principal and interest were compared against the appellant's fair value equity determination on a project-by-project basis. For example, there were five projects where Ms. Lee Chan concluded that there was no deficiency in the 2009 taxation year (see JBOD at Tab 166; and PASF at para. 48). And it impacts both the reserves claimed for outstanding interest under s. 20(1)(l)(i) and for principal under s. 20(1)(l)(ii).

(4) Findings — methodology and whether loans were impaired

[221] I have already concluded that the appellant is not entitled to claim reserves under s. 20(1)(l)(ii) for the principal owing on the BHL US Loans, Project Loans, and Castellar Loans. It is important to acknowledge that the appellant cannot be worse off by appealing to this Court; there is no upward adjustment.

[222] If, however, I had concluded that the appellant otherwise met the conditions for claiming reserves under s. 20(1)(l)(ii) for the principal owing on the Project Loans and Castellar Loans but not the BHL US Loans, I would have excluded the principal owing on the BHL US Loans in computing the reasonable amount of the reserves under s. 20(1)(l)(ii)(D)(I). This is because the objective is to measure the level of impairment in respect of the principal owing of a loan eligible for the reserve.

[223] If the principal owing on the BHL US Loans is not eligible for a reserve under s. 20(1)(l)(ii), then it would only be relevant if it ranked equally with or ahead of the Project Loans and Castellar Loans when considering their collectibility or impairment. Here, the Project Loans and Castellar Loans were subject to security agreements, and the BHL US Loans were unsecured and seemingly without recourse

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(see JBOD at Tabs 60 and 62; and the evidence of Mr. Grater under rule 100(6) at Ex. A-2, Tab 15, U/T 24).

[224] These distinctions are borne out in Mr. Grater's evidence:

> Q. … There was a financial situation in the US, and Bleeman had to change the way its advancing moneys to BHL US. Can you describe a little bit more about that? And then go back to table 4.
>
> A. Yes. I think the significant part of that change was that Castellar and Jeffrey Fernbach became insolvent and were unable to meet their obligations. So Bleeman Holdings was not prepared to continue with the – continue supporting the projects if it wasn't secured and wasn't first in line behind the banks for any funds that it advanced. So as funds were required, they were advanced to the individual projects, individual LLCs. They were kept track of on that basis, and interest was charged on that basis, and – yeah.
>
> …
>
> Q. … So they are secured. So there's a difference the old loans and the US project loans?
>
> A. Yes.
>
> Q. Okay.
>
> A. And – and the other thing that I think I mentioned previously was not only are they secured, but any funds that come out of any of those projects has to be paid to Bleeman Holdings first, before either BHL US or Jeffrey Fernbach or Castellar can receive any funds.
>
> [Peter Grater, A-2, Tab 8, Transcript, p. 159–160 and 162]

[225] In my view, the unsecured BHL US Loan principal would thus not be taken into account when determining the amount of a reasonable reserve for the Project Loans and Castellar Loans as the BHL US Loan principal would rank behind the Project Loans and Castellar Loans amounts for the purposes of recovery and enforcement.

[226] Another difficulty that I have when considering the reasonableness of the reserves claimed, in light of s. 20(1)(l)(ii)(D)(I), concerns the situation where a specific project had a fair value equity that exceeded the interest and principal outstanding on the BHL US Loans, Project Loans, and Castellar Loans. One example, mentioned previously, is the Ocean Breeze Project where, at the end of the

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2008 taxation year, Mr. Miscio and the appellant determined that the fair value equity was US$21,535,324 and the total principal and interest outstanding (including US$10,060,936 of principal on the BHL US Loans) was US$13,773,093.

[227] In effect, there was over US$7.7 million of equity projected in this project at the end of the 2008 taxation year that could have supported the repayment of interest and principal on the other loans. If the effect of the Project Loan Agreement and Castellar Loan Agreement was to tie all the projects together, it seems unreasonable—and blinkered—to ignore the projected surplus equity available in one of the projects when considering whether a loan is impaired. This was not isolated to only the Ocean Breeze Project (see JBOD at Tabs 191, 193, and 195).

[228] In the circumstances, it is unnecessary for me to examine in detail the additional factors considered in *Heron Bay* and in *Rich* in determining whether an amount claimed as a reserve is reasonable. It bears mentioning, however, that under the Project Loans Agreement, unpaid and accrued interest (other than Partial Deferred Interest), plus principal, was payable on the "Maturity Date" or, if applicable, the "Extended maturity date". The term "Maturity Date" was defined as December 31, 2011. The Castellar Loan Agreement had similar terms.

[229] The Crown emphasized that the appellant would not have had any expectation of repayment of principal (and interest) under the Project Loans and Castellar Loans in the years under appeal. The terms of these loans suggest that the appellant rushed to claim the reserves in respect of the principal.

[230] Before concluding my analysis under s. 20(1)(l)(ii), I note again that the appellant did not reduce the amount claimed under 20(1)(l)(ii)(D) having regard to the formula in subclause (II), which requires a 10% reduction.

[231] Moreover, during argument, the appellant acknowledged s. 12(4.1), a provision that was not referred to in the pleadings or previously raised by the parties. Subsection 12(4.1) provides that ss. 12(1)(c), 12(3), and 12(4) do not apply to a taxpayer in respect of a debt obligation for the part of a taxation year throughout which the obligation is impaired where an amount in respect of the obligation is deductible because of s. 20(1)(l)(ii) in computing the taxpayer's income for the year. Under s. 12(4.1), interest would not be included in income under s. 12(1)(c) for that portion of the year in which the debt obligation is impaired. This provision was enacted when Parliament amended s. 20(1)(l) in 1998 (S.C. 1998, c. 19, s. 71(4)).

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[232] The appellant did not consider s. 12(4.1) when claiming the reserves under s. 20(1)(l)(ii). Instead, the appellant included in income, under s. 12(1)(c), the accrued and unpaid interest relating to the BHL US Loans, the Project Loans, and the Castellar Loans and claimed a corresponding reserve under s. 20(1)(l)(i).

[233] Although the parties made additional submissions on the implications of s. 12(4.1) and the specified reserve adjustment in s. 20(30) (see variable N in the formula in s. 20(1)(l)(D)(II)), it is unnecessary for me to further consider s. 12(4.1) in light of my findings under s. 20(1)(l)(ii).

[234] I turn next to the reserve claimed by the appellant under s. 20(1)(l)(i).

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D. **Reserve under s. 20(1)(l)(i)**

[235] As stated, s. 20(1)(l)(i) allows for a reasonable amount as a reserve in respect of doubtful debts that have been included in computing a taxpayer's income for the year or a preceding taxation year, other than a debt to which s. 20(1)(l)(ii) applies.

[236] The parties agree the interest that accrued on the BHL US Loans, the Project Loans, and the Castellar Loans was included in the appellant's income for the year or a preceding taxation year. The issue relates to the computation of the reserve, and in particular whether the interest owed was doubtful and the amounts claimed were reasonable. The appellant emphasizes that the Minister never assumed that the elements for deducting a reserve under s. 20(1)(l)(i) were not met.

[237] The table below summarizes the aggregate amounts claimed by the appellant as a reserve under s. 20(1)(l)(i) in respect of the interest accrued on the BHL US Loans, the Project Loans, and the Castellar Loans and the amounts allowed by the Appeals Division, stated first in US dollars and then restated in Canadian dollars:

Year	2008	2009	2010
Reserve claimed – s. 20(1)(l)(i)	[US$2,401,447]	[US$3,447,533]	[US$5,257,231]
	$2,892,543	$3,729,886	$5,363,427
Reserve allowed – s. 20(1)(l)(i)	[US$2,401,447]	[US$2,437,815]	[US$3,522,543]
	$2,892,543	$2,637,472	$3,593,698
Reserve denied	Nil	$1,092,414	$1,769,729

[238] It is apparent that for 2008 taxation year—after allocating the reserves that were in effect allowed under s. 20(1)(l)—the Appeals Division allowed the full reserve claimed under s. 20(1)(l)(i). The appellant now argues that it should be allowed an additional US$43,901 or $52,879 because of the corrections Ms. Fernandes made during her testimony. This correction arises from her reallocation of interest from the Project Loans principal to the BHL US Loans interest respecting the Project known as Rolling Meadow (Upper Freehold).

[239] The Crown argues that the appellant, as a large corporation, is constrained from increasing the amounts sought on appeal. I agree. I do not think it is appropriate for the appellant to seek to increase the reserve claimed under s. 20(1)(l)(i) in light of the rules in ss. 169(2.1) and 165(1.11) (i.e., there is no basis to conclude that the appellant indicated in its notice of objection, as further clarified by the letter of November 28, 2017, that it was seeking an increased amount under s. 20(1)(l)(i) for the 2008 taxation year).

[240] Other corrections were made by Ms. Fernandes for the 2009 taxation year, but I have great difficulty following her reallocations as marked in pen in Ex. AR-6. In light of her corrections, the appellant states that it was denied additional reserves under s. 20(1)(l)(i) of $867,956 rather than the $1,092,414 set out in the above table.

[241] The remaining amounts denied by the Appeals Division otherwise relate to the methodology issue discussed previously. To recap, the Appeals Division excluded the BHL US Loans principal in considering whether the fair value equity on a project-by-project basis, as prepared by Mr. Miscio, exceeded the accrued but unpaid interest on the specific BHL US Loan, Project Loan, and Castellar Loan and the principal owing on the Project Loan and Castellar Loan. If there was insufficient fair value equity in the project to satisfy the total of those amounts, the Appeals Division allowed a reserve under s.20(1)(l)(i).

(1) Legal Test or Approach

[242] For a debt to be included in a reserve for doubtful debts under s. 20(1)(l)(i), there must be a reasonable doubt about its collectability: see *Coppley Noyes* at p. 549–550; and *Heron Bay* at paras. 79–82. The appellant also agrees that the factors examined by the Federal Court of Appeal in *Rich* may also be considered: see *Rich* at para. 13.

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(2) Findings — s. 20(1)(l)(i)

[243] Notwithstanding that the Appeals Division allowed reserves under s. 20(1)(l)(i), the Crown argues that the appellant has not demonstrated that the interest was doubtful and that the appellant claimed a reasonable amount as a reserve. The Crown emphasizes that the appellant's methodology resulted in claims that often resulted as soon as funds were lent.

[244] As mentioned, interest accrued but was not payable on the Project Loans and the Castellar Loans until after the taxation years in issue. Interest on the BHL US Loans appears to only have been paid on the completion of a Project and was accrued in the interim. And so, the Crown emphasizes that the appellant would not have had any expectation of being paid interest in the 2008, 2009, and 2010 taxation years.

[245] The history and age of the debt is a factor to be considered in determining whether a debt is doubtful: *Heron Bay* at paras. 84 and 90; *Rich* at para. 13 albeit in the context of s. 20(1)(p). The appellant did not really address this aspect of the claim.

[246] Instead, the appellant emphasized the three factors previously described: (i) the general business and economic conditions in the country of the debtors; (ii) the financial position of the debtors; and (iii) the fair value equity in the projects.

[247] The outcome here, in my view, turns on whether the BHL US Loans principal should be considered in the analysis of the fair value equity of a Project relative to the cumulative principal and interest outstanding.

[248] I would also exclude the BHL US Loans principal in the analysis under s. 20(1)(l)(i)—just as Ms. Lee Chan did—for the reasons discussed previously. Moreover, there was additional fair value equity in the Ocean Breeze Project because it was not "underwater." The appellant could have looked to that to support the collectability of the interest (see M. Fernandes, Transcript, January 26, 2026, p. 89–90).

[249] In the circumstances, I would not allow any additional amounts under s. 20(1)(l)(i) in the 2008, 2009, and 2010 taxation years.

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VII. **Conclusion**

[250] In light of my findings, the appellant's appeals for the 2008, 2009, and 2010 taxation years must be dismissed.

[251] I will defer the matter of costs. If there is no agreement on costs, the parties shall have until January 11, 2027 to provide submissions on costs. I express no view here on who should pay costs or whether costs are to be awarded at all. Submissions are to be limited to five pages at 1.5 spacing. The parties shall file reply submissions, if any, limited to three pages at 1.5 spacing on or before February 12, 2027.

Signed this 20th day of November 2026.

"Perry Derksen"

Derksen J.

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Appendix A

1

2019-2709(IT)G

TAX COURT OF CANADA

BETWEEN:

BLEEMAN HOLDINGS LIMITED

Appellant

and

HIS MAJESTY THE KING

Respondent

PARTIAL AGREED STATEMENT OF FACTS

For the purposes of this appeal, the parties admit the truth of the facts set out in this Partial Agreed Statement of Facts and agree that they are not precluded at trial, if there is a trial, from calling evidence to supplement these facts as long as this evidence does not contradict these facts.

A. INTRODUCTION

1. The appeal concerns the Appellant's entitlement to claim deductions for allowances or reserves for doubtful or impaired debts ("Allowances for Doubtful Amounts" or "AFDA") under paragraph 20(1)(l) of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.) (the "*Act*") for the 2008, 2009, and 2010 taxation years (the "Years Under Appeal").

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B. BLEEMAN HOLDINGS LIMITED AND BHL (US) INC.

2. The Appellant, Bleeman Holdings Limited ("Bleeman Holdings" or "the Appellant"), is a corporation incorporated under the *Ontario Business Corporations Act*.[1]

3. Bleeman Holdings is a large corporation for the purposes of sections 165 and 169 of the *Act*.

4. At all relevant times, Bleeman Holdings' principal office was located in Ontario and its principal shareholders and officers included members of the Bleeman family.

5. Abraham Bleeman owns 100% of the preferred shares of Bleeman Holdings.

6. Abraham Bleeman's children Nathan Bleeman, Aaron Bleeman, Eli Bleeman, Deena Smursz, and Shifra Hofstedter each own 20% of the common shares of Bleeman Holdings through their respective holding corporations.

7. At all relevant times, Bleeman Holdings' business included a wide range of activities relating to real estate including, but not limited to, acquiring and developing properties, construction and sale of single-family homes and residential and commercial buildings, leasing, and property management.

8. Bleeman Holdings also loaned amounts to other entities.

[1] R.S.O. 1990, c. B.16

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9. From 2001 to 2025, Mr. Peter Grater was the Vice President, Finance of Bleeman Holdings. He was the Bleeman Holdings deponent in the examinations for discovery held orally and in writing in 2022. Mr. Grater passed away on June 21, 2025.

10. At all relevant times, Bleeman Holdings owned a U.S. subsidiary, BHL (U.S.) Inc. ("BHL US").

11. BHL US is a corporation incorporated in 1996 in the state of New Jersey and is a wholly-owned subsidiary of Bleeman Holdings.

12. BHL US' business activities include the acquisition, development and sale of real estate properties in the United States, including the State of New Jersey.

13. At all relevant times, the president of BHL US was Eli Bleeman, Abraham Bleeman's son.

C. THE BHL US OPERATIONS

14. Prior to the Years Under Appeal, BHL US and Castellar Properties Inc. ("Castellar"), a corporation owned by Jeffrey Fernbach ("Fernbach"), entered into the projects for the development, construction and sale of real estate in New Jersey (the "Projects") through single purpose US limited liability corporations (the "Project Entities"), under the name "Paramount Homes".

15. BHL US entered into operating agreements with Castellar in respect of certain Project Entities, which governed ownership interests and funding arrangements.

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16. In connection with the Projects, amounts were advanced by Bleeman Holdings to BHL US, ("BHL Loans"). These amounts were recorded in the books and records of Bleeman Holdings and denominated in US dollars.

17. The Project Entities also obtained third-party bank financing in respect of the Projects.

18. In 2006/2007, at the onset of the global financial crisis, BHL US and Castellar, through the Project Entities, had several Projects in various stages of development or construction and subject to US bank loans.

19. One of the Projects under construction was the Asbury Beach Project, owned through Paramount Homes at Asbury Beach, LLC, which consisted of three concrete residential buildings under partial construction. The Asbury Beach Project was financed by the Amboy National Bank (the "Amboy Loans") and Bleeman Holdings (along with the others) provided both payment and completion guarantees in support of the Amboy Loans.

20. Other Projects (other than the Asbury Beach Project) in various stages of development and construction in 2006/2007 included Projects being carried on by Paramount Homes at Reed Road II, LLC, Paramount Homes at Forest Hills, LLC, Paramount Homes at Wall, LLC, Paramount Homes at Grand Avenue, LLC, Paramount Homes at Marinas, LLC and Paramount Homes at Whispering Heights, LLC. All of these Projects were financed by US bank loans, with Bleeman Holdings, and others, providing guarantees for such US bank loans.

21. In addition, BHL US and Castellar owned, during that same period, development land through Paramount Properties Group, LLC, and Paramount Land IV, LLC.

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D. FINANCIAL CRISIS AND PROJECT LOANS

22. Effective January 1, 2008, Bleeman Holdings provided loans to the Project Entities collectively so as to provide for the completion and sale of the Projects.

23. Under a loan agreement between Bleeman Holdings and the collective Project Entities effective January 1, 2008 and guaranteed by BHL US (the "Project Loan Agreement"), Bleeman Holdings agreed to lend funds to the Project Entities for the completion of the outstanding Projects (collectively, with the Castellar Loans referenced below, referred to as the "Project Loans") at the interest rate of the prime lending rate plus 1% per year. The Project Loans were denominated in US dollars.

24. Under a loan agreement between Bleeman Holdings and Fernbach effective January 1, 2008 and guaranteed by Castellar (the "Castellar Loan Agreement"), Bleeman Holdings agreed to lend funds to Fernbach to be on-lent to the Project Entities for the completion of the outstanding Projects at the interest rate of the prime lending rate plus 1% per year. These loans were denominated in US dollars.

25. By additional loan agreement effective January 1, 2008, Fernbach agreed to lend funds to Castellar at the same prime plus 1% interest rate per year and Castellar agreed to lend funds to the Project Entities at that same prime plus 1% interest rate per year (collectively with the loans referenced in paragraph 23 above, the "Castellar Project Loans").

26. By way of background, as at October 31, 2007, Bleeman Holdings had USD$42,525,123 in outstanding BHL US Loans principal and USD$2,539,824 in earned net accrued and unpaid interest.

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27. Bleeman Holdings did not make any further BHL US Loans during the 2008, 2009 or 2010 fiscal and tax years of Bleeman Holdings but earned accrued and unpaid interest of USD$3,034,579, USD$2,898,284 and USD$3,442,689 for these years, respectively.

28. As at October 31, 2008, Bleeman Holdings had USD$44,046,848 in outstanding BHL US Loans principal and USD$3,034,579 in earned accrued and unpaid interest.

29. As at October 31, 2008, Bleeman Holdings had USD$14,731,016 in outstanding Project Loans principal and USD$482,567 in earned accrued and unpaid interest.

30. As at October 31, 2008, Bleeman Holdings had USD$3,291,479 in outstanding Castellar Project Loans principal and USD$121,109 in earned accrued and unpaid interest.

31. As at October 31, 2009, Bleeman Holdings had USD$41,304,570 in outstanding BHL US Loans principal and USD$2,898,2844 in earned accrued and unpaid interest.

32. As at October 31, 2009, Bleeman Holdings had USD$24,742,048 in outstanding Project Loans principal and USD$1,422,250 in earned accrued and unpaid interest.

33. As at October 31, 2009, Bleeman Holdings had USD$4,914,809 in outstanding Castellar Project Loans principal and USD$357,387 in earned accrued and unpaid interest.

34. As at October 31, 2010, Bleeman Holdings had USD$41,835,570 in outstanding BHL US Loans principal and USD$3,442,689 in earned accrued and unpaid interest.

35. As at October 31, 2010, Bleeman Holdings had USD$33,641,357 in outstanding Project Loans principal and USD$2,588,201 in earned accrued and unpaid interest.

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36. As at October 31, 2010, Bleeman Holdings had USD$8,205,247 in outstanding Castellar Project Loans principal and USD$647,091 in earned accrued and unpaid interest.

E. BLEEMAN HOLDINGS REPORTING OF BHL US LOANS AND PROJECT LOANS (INCLUDING CASTELLAR PROJECT LOANS)

37. At all relevant times Bleeman Holdings recorded all principal and interest owing and any repayments by BHL US under the BHL US Loans in general ledger account 1405 ("G/L 1405"), an asset account in the books and records of Bleeman Holdings.

38. At all relevant times, Bleeman Holdings recorded all principal and interest owing and any repayments by Fernbach under the Castellar Project Loans in general ledger account 1406 ("G/L 1406"), an asset account in the books and records of Bleeman Holdings.

39. At all relevant times, Bleeman Holdings recorded all principal and interest owing and any repayments by the Project Entities under the Project Loans in general ledger accounts 1452 to 1467 ("Project Loan G/Ls"), asset accounts in the books and records of Bleeman Holdings.

40. G/L 1405 is referenced as the "owner capital account" in certain internal spreadsheets of Bleeman Holdings.

41. The principal and accrued and unpaid interest associated with the G/L 1405, G/L 1406 and G/L 1452 to 1467 were recorded as "Loans to related parties", along with other related party loans, in the audited financial statements of Bleeman Holdings for the 2008, 2009 and 2010 fiscal years.

42. At all relevant times, all interest amounts recorded in G/L 1405 were reported as income by Bleeman Holdings in its financial statements and in its corporate tax returns.

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43. At all relevant times, all accrued and unpaid or paid interest amounts recorded in G/L 1406 and G/L 1452 to 1467 was reported as income by Bleeman Holdings in its financial statements and in its corporate tax returns.

44. The BHL US Loans were loans.

F. SUMMARY OF AMOUNTS

45. At all relevant times, each year Bleeman Holdings made a determination as to the portion of each Project's portion of the Project Loans, Castellar Project Loans and BHL US Loans that was impaired and claimed reserves for doubtful or impaired debts under paragraph 20(1)(l) of the *Act* (the Allowances for Doubtful Amounts or AFDA). This determination was made by establishing the fair value of each of the Projects as compared to the Project Loans, Castellar Project Loans and BHL US Loans outstanding for each of the Projects (the "AFDA Computation").

46. For the 2007 taxation year, Bleeman Holdings claimed net Allowances for Doubtful Amounts of $10,618,614 related to the BHL US Loans. The amount of $10,619,614 is the Canadian dollar equivalent of USD$11,241,255[2], which is broken down by Project and between principal and interest as follows:

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[2] Exchange Rate of 0.9447, Bank of Canada, Oct 31/07 Year End Closing.

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Project	BHL US Principal Amount Claimed as AFDA in USD	BHL US Interest Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in CAD
Whispering Grove	147,486	173,616	321,102	303,345
Maple Crest	1,524,299	182,467	1,706,766	1,612,382
Asbury Beach	4,056,870	749,691	4,806,561	4,540,759
Asbury Beach II	567,500	97,832	665,332	628,539
Royal Grove	1,477,251	167,558	1,644,809	1,553,851
Whispering Meadows	(22,455)	227,070	204,615	193,300
Baka			1,892,069	1,787,438
Total	**USD7,750,951/ CAD7,322,323**	**USD1,598,235/ CAD1,509,853**	**USD11,241,255**	**CAD10,619,614**

47. For the 2008 taxation year, Bleeman Holdings claimed net Allowances for Doubtful Amounts of $20,219,400 (comprising of the 2008 Allowances for Doubtful Amounts under 20(1)(l) of $30,839,024 less the inclusion into income under paragraph 12(1)(d) of the 2007 Allowances for Doubtful Amounts closing balance of $10,618,614). The $30,839,014 is the approximate Canadian dollar equivalent of USD$25,602,089[3], which is broken down by Project and between principal and interest as follows:

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[3] Exchange Rate of 1.2045, Bank of Canada, Oct 31/08 Year End Closing.

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Project	BHL US Principal Amount Claimed as AFDA in USD	BHL US Interest Amount Claimed as AFDA in USD	Castellar Loan Principal Amount Claimed as AFDA in USD	Castellar Interest Amount Claimed as AFDA in USD	Project Loan Principal Amount Claimed as AFDA in USD	Project Loan Interest Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in CAD	Total Amount Allowed by CRA Appeals in USD and CAD[4]
Asbury Beach Blk #207	5,053,425	1,206,508	2,399,261	89,252	10,788,000	357,008	19,893,454	23,961,665	USD1,157,541/ CAD1,394,258
Oak Knoll	-	-	6,000	285	-	1,138	7,423	8,941	USD7,423/ CAD8,941
Whispering Heights (Whispering Grove)	-	182,218	85,000	3,304	1,325,782	13,221	1,609,525	1,938,673	
Whispering Hills - Sec. 11	-	-	36,200	1,277	36,200	1,278	74,955	90,283	USD74,957/ CAD90,286
Rolling Meadow (Upper Freehold)	-	-	20,000	1,128	43,901	4,514	69,543	83,765	
Marinas	-	-	42,500	887	50,000	888	94,275	113,554	USD94,275/ CAD113,554
Asbury Blk 208 & 209	558,428	103,908	-	166	31,500	1,494	695,496	837,725	
Reed Road II (Maple Crest)	1,273,243	216,078	13,500	857	256,500	7,715	1,767,893	2,129,427	USD400,743/ CAD482,695
Savannah Ridge	-	-	-	167	4,744	168	5,079	6,118	USD5,079/ CAD6,118
Grand Avenue (Whispering Meadow)	-	207,988	-	-	-	-	207,988	250,522	
Baka							1,176,458	1,417,044	USD1,176,458/ CAD1,417,044
Total	**USD 6,885,096/ CAD 8,293,098**	**USD 1,916,700/ CAD 2,308,665**	**USD 2,602,461/ CAD 3,134,664**	**USD 97,323/ CAD 117,226**	**USD 12,536,627/ CAD 15,100,367**	**USD 387,424/ CAD 466,652**	**USD 25,602,089**	**CAD 30,837,716**	**USD2,916,476/ CAD3,514,192[5]**

48. For the 2009 taxation year, Bleeman Holdings claimed net Allowances for Doubtful Amounts of $5,643,790 (comprising of the 2009 Allowances for Doubtful Amounts under 20(1)(l) of $36,482,804 less the inclusion into income under paragraph 12(1)(d) of the 2008 Allowances for Doubtful Amounts closing balance of $30,839,014). The $36,482,804 is the

[4] This column outlines the AFDA allowed by CRA Appeals in USD and CAD. See JLOD 162, page 2416, using same exchange rate of 1.2045.

[5] JLOD 164, page 2507; JLOD 162, pages 2415 – 2417.

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Canadian dollar equivalent of USD$33,721,050[6], which is broken down by Project and between principal and interest as follows:

Project	BHL US Principal Amount Claimed as AFDA in USD	BHL US Interest Amount Claimed as AFDA in USD	Castellar Loan Principal Amount Claimed as AFDA in USD	Castellar Interest Amount Claimed as AFDA in USD	Project Loan Principal Amount Claimed as AFDA in USD	Project Loan Interest Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in CAD	Total Amount Allowed by CRA Appeals in USD and CAD[7]
Asbury Beach Blk #207	4,146,762	1,149,378	2,903,596	252,199	16,353,238	1,008,799	25,813,972	27,928,136	USD10,278,059/ CAD11,119,832
Paramount Homes (Oak Knoll)	-	-	6,000	561	-	2,244	8,805	9,526	USD8,805/ CAD9,526
Whispering Heights (Whispering Grove)	-	173,806	219,000	11,968	(207,467)	47,874	245,181	265,261	
Whispering Hills - Sec. 11	-	-	36,200	2,927	36,200	2,927	78,254	84,663	USD78,254/ CAD84,663
Rolling Meadow (Upper Freehold)	-	110,497	117,600	4,738	647,898	18,955	899,688	973,372	
Grand Ave (Royal Grove)	-	257,632	235,000	13,096	1,168,003	52,386	1,726,117	1,867,486	
Marinas	-	-	110,000	4,385	117,500	4,386	236,271	255,622	USD236,271/ CAD255,622
Asbury Blk 208 & 209	304,000	82,653	-	327	31,500	2,945	421,425	455,940	
Reed Road II (Maple Crest)	1,582,352	206,047	35,000	2,680	450,000	24,115	2,300,194	2,488,580	
Savannah Ridge	-	-	-	383	4,744	384	5,511	5,962	USD5,511/ CAD5,962
Reed Road II (Cream Ridge)	129,000	8,646	20,895	297	20,894	298	180,030	194,774	USD51,030/ CAD55,209
Baka							1,805,602	1,953,481	USD1,805,602/ CAD1,953,481
Total	**USD 6,162,114/ CAD 6,666,791**	**USD 1,988,659/ CAD 2,151,530**	**USD 3,683,291/ CAD 3,984,953**	**USD 293,561/ CAD 317,604**	**USD 18,622,510/ CAD 20,147,693**	**USD 1,165,313/ CAD 1,260,752**	**USD 33,721,050**	**CAD 36,482,804**	**USD12,463,53/ CAD13,484,295[8]**

[6] Exchange Rate of 1.0819, Bank of Canada, Oct 31/09 Year End Closing.

[7] This column outlines the AFDA allowed by CRA Appeals in USD and CAD. See JLOD 162, page 2416, using same exchange rate of 1.0819. See also JLOD 164, page 2507.

[8] JLOD 164, page 2507; JLOD 163, pages 2457 – 2459.

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49. For the 2010 taxation year, Bleeman Holdings claimed net Allowances for Doubtful Amounts of $6,661,190 (comprising of the 2009 Allowances for Doubtful Amounts under 20(1)(l) of $43,143,993 less the inclusion into income under paragraph 12(1)(d) of the 2009 Allowances for Doubtful Amounts closing balance of $36,482,804). The $43,143,993 is the Canadian dollar equivalent of USD$42,289,742[9], which is broken down by Project and between principal and interest as follows:

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[9] Exchange Rate of 1.0202, Bank of Canada, Oct 31/10 Year End Closing.

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Project	BHL US Principal Amount Claimed as AFDA in USD	BHL US Interest Amount Claimed as AFDA in USD	Castellar Loan Principal Amount Claimed as AFDA in USD	Castellar Interest Amount Claimed as AFDA in USD	Project Loan Principal Amount Claimed as AFDA in USD	Project Loan Interest Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in USD	Total Amount Claimed as AFDA in CAD	Total Amount Allowed by CRA Appeals in USD and CAD[10]
Asbury Beach Blk #207	3,303,362	1,323,238	4,717,305	430,687	19,077,304	1,722,746	30,574,642	31,192,249	USD15,038,729/ CAD15,342,511
Paramount Homes (Oak Knoll)	-	-	6,000	806	-	3,223	10,029	10,232	USD10,029/ CAD10,232
Whispering Heights (Whispering Grove)	-	209,564	324,513	23,799	73,584	95,195	726,655	741,333	
Whispering Hills - Sec. 11	-	-	36,200	4,411	36,200	4,411	81,222	82,863	USD81,222/ CAD82,263
Rolling Meadow (Upper Freehold)	-	133,287	278,883	13,429	260,280	53,715	739,594	754,534	
Grand Ave (Royal Grove)	-	310,626	771,792	33,436	1,527,446	133,745	2,777,045	2,833,141	
Marinas			177,500	9,584	177,500	9,584	374,168	381,726	USD374,168/ CAD381,726
Asbury Blk 208 & 209	981,976	110,337	3,500		31,500		1,127,313	1,150,085	
Reed Road II (Maple Crest)	911,040	248,446	110,197	5,562	991,769	50,056	2,317,070	2,363,875	
Savannah Ridge	-		4,774	578	4,714	578	10,644	10,859	USD10,644/ CAD10,859
Grand Avenue (Whispering Meadow)	-	275,154	138,788	3,834	180,202	34,503	632,481	645,257	
Reed Road II (Cream Ridge)	128,837	10,421	20,895	1,138	20,894	1,138	183,323	187,026	USD54,323/ CAD55,420
Baka							2,735,556	2,790,814	USD2,735,556/ CAD2,790,814
Total	**USD 5,325,215/ CAD 5,432,784**	**USD 2,621,073/ CAD 2,674,019**	**USD 6,590,347/ CAD 6,723,472**	**USD 527,264/ CAD 537,915**	**USD 22,381,393/ CAD 22,833,497**	**USD 2,108,894/ CAD 2,151,494**	**USD 42,289,742**	**CAD 43,143,993**	**USD15,569,115/ CAD18,674,425[11]**

[10] This column outlines the AFDA allowed by CRA Appeals in USD and CAD. See JLOD 164, page 2416, using same exchange rate of 1.0202.

[11] JLOD 164, pages 2507 – 2509.

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Dated at the City of Toronto, Ontario, this 19th day of January, 2026.

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CITATION:	2026 TCC 203
COURT FILE NO.:	2019-2709(IT)G
STYLE OF CAUSE:	BLEEMAN HOLDINGS LIMITED v. HIS MAJESTY THE KING
PLACE OF HEARING:	Toronto, Ontario Calgary, Alberta
DATE OF HEARING:	January 19, 20, 21, 22, 26, 27, 28, 29, 2026 March 2 and 3, 2026
REASONS FOR JUDGMENT BY:	The Honourable Justice Perry Derksen
DATE OF JUDGMENT:	November 20, 2026

APPEARANCES:

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