

CANADA / JUDGMENT

Aros Investments v. MacDonald

2025 BCSC 2164

COURT

Supreme Court of British Columbia

DECIDED

5 September 2025

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2025 BCSC 2164 Aros Investments v. MacDonald

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Aros Investments v. MacDonald,

2025 BCSC 2164

Date: 20250905

Docket: S1910406

Registry: Vancouver

Between:

Aros Investments Limited

Plaintiff

And

Kathrine MacDonald aka Katherine MacDonald aka

Kathrine Lori MacDonald aka Kelly MacDonald and

Robert Matthew Baker

Defendants

Before: The Honourable Justice Crerar

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

D. Moonje

Counsel for the Defendant MacDonald:

R. Shaw

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 5, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 5, 2025

- [1] THE COURT: In this summary trial, the plaintiff, Aros Investments Limited ("Aros"), claims \$441,346 against the defendant Kathrine MacDonald, based on a loan agreement and related debt instruments dated February 28, 2013. The claimed debt represents the principal sum of \$91,616 plus interest at 14 percent per annum, calculated monthly.
- [2] The plaintiff commenced this action on September 13, 2019.
- [3] I highlight these two dates as Ms. MacDonald takes the position that the debt is statute-barred. Specifically, she takes the position that her debt is governed by the former Limitation Act, RSBC 1996, c 266, before the effective date of June 1, 2013, for the new and current Limitation Act, SBC 2012, c 13. Under that former Limitation Act, the six-year limitation period would have expired in February or March 2019, subject to any acknowledgement of the debt which would reset the limitation clock.
- [4] The key facts were not in significant dispute.
- [5] The dispute has its origins on December 7, 2006. On that date, the plaintiff agreed to lend \$78,000 to Robert Baker, Ms. MacDonald's co-defendant and long-time friend. The security for the Baker loan was a charge registered against Mr. Baker's boat, Jazzy. Jazzy is a 16-metre-long pleasure yacht. It is not merely a boat, but it has emotional resonance for Mr. Baker. He built it in 1974 with his father.
- [6] For the loan, Mr. Baker granted to the plaintiff several documents, all dated December 7, 2006, including a mortgage, a direction to pay, a general security agreement, and a promissory note. The plaintiff duly registered its security interest in the boat in the British Columbia Personal Property Registry and the mortgage with the Transport Canada Ship Registry.

- [7] In early 2013, Mr. Baker encountered financial difficulties. He sought to file a consumer proposal under the Bankruptcy and Insolvency Act, RSC 1985, c B-3, s. 66.12. Mr. Baker faced a quandary, however. If he declared the boat as his asset, he would not be able to file a consumer proposal. Instead, he would have to declare bankruptcy and, in turn, lose the boat.
- [8] At this point, Mr. Baker approached his old friend, Ms. MacDonald, for assistance. He then asked the plaintiff if it would cooperate in having the loan and title to the boat transferred to Ms. MacDonald. The plaintiff agreed. The plaintiff's cooperation made sense. It would not be in the plaintiff's best interests if Mr. Baker were not able to file the consumer proposal and instead declared bankruptcy. At that point, he did not believe that the security of the boat had sufficient value to satisfy the Baker debt.
- [9] Accordingly, on February 28, 2013, Ms. MacDonald entered into a loan agreement with the plaintiff. The MacDonald loan arrangement was essentially the same, in broad strokes, as that for the original Baker loan. Ms. MacDonald and the plaintiff also entered into an assumption of mortgage agreement, a general security agreement, and a promissory note, all dated February 28, 2013. The February 28, 2013, MacDonald loan agreement was between Kathrine MacDonald, defined as "the purchaser," and Aros, the plaintiff, as "mortgagee."
- [10] The preamble made reference to the original December 2006 Baker loan and the circumstances of the MacDonald loan agreement:

A. By a Mortgage dated December 7, 2006 made between Robert Baker as mortgagor (the "Mortgagor"), and the Mortgagee. and registered in the Transport Canada Ship Registry on December 8, 2006 (the "Mortgage"), the Mortgagor did grant and mortgage to the Mortgagee that certain vessel more particularly described as follows:

Official Number: 384013

Ship's Name Jazzy

Port of Registry Vancouver, B.C

Dute of Registry 1978--10-27

Vessel Type Pleasure Craft

Vessel Length 16.25 metres

(the "Vessel")

to secure the repayment of a loan of \$78,000.00 together with interest and other charges as set out in the Mortgage.

B. The Mortgagor has agreed to sell and the Purchaser has agreed to purchase all the Mortgagor's right, title, and interest in the Vessel which is subject to the Mortgage.

C. The Mortgagee has been requested by the Purchaser to approve the assumption of the Mortgage by the Purchaser and, in consideration of the Mortgagee permitting the assumption of the Mortgage by the Purchaser, the Purchaser has agreed to perform and be bound by all terms, covenants, conditions, and provisions set out in the Mortgage in accordance with this Agreement.

[emphasis added]

[11] The key paragraph, for the purposes of this application, is found in Article 4:

4. Notwithstanding any provision of this Agreement, the covenants contained in the Mortgage and in this Agreement shall continue in full force so long as any moneys remain due or unpaid on the Mortgage, and these presents shall not create any merger or alter or prejudice the rights, remedies, and priorities of the Mortgagee as against the Mortgagor, any surety, subsequent encumbrancer, or other person whatsoever and not a party hereto or the rights of the Mortgagor, all of which rights, remedies, and priorities are hereby reserved.

[emphasis added]

[12] Under the February 28, 2013, promissory note granted by Ms. MacDonald to the plaintiff, she was obliged to provide interest in the amount of \$1,068.86, on the 1st day of every month, commencing March 1, 2013. That is the very next day, of course, after the instrument was signed.

[13] The promissory note also contained an acceleration clause:

If the borrower fails to pay on its due date any payment of principal or interest on this note, the entire amount shall become due and payable.

[14] It is uncontroversial that no interest payment was made on March 1, 2013.

[15] Despite this arrangement, life continued largely as it had before the consumer proposal. The parties both recognised that Ms. MacDonald was doing a favour for her old friend, and expected Mr. Baker to make all debt payments. Although title to the boat was nominally transferred to Ms. MacDonald, the boat remained in the physical possession of Mr. Baker.

[16] On July 12, 2013, the court approved Mr. Baker's consumer proposal. In those court filings, the boat was not listed as an asset. Mr. Baker's debt to the plaintiff was not listed as a liability. The monthly payments to be made by Mr. Baker to creditors other than the plaintiff was in an amount greater than if Mr. Baker had declared bankruptcy.

[17] Mr. Baker made roughly 15 small payments, between \$1,000 and \$3,000, on the Aros loan, from August 2014 to July 2018. The plaintiff recorded these on a single ledger, without distinction between the Baker loan and the MacDonald loan, under the heading of "Loan Interest and Balance in the Jazzy - Aros."

- [18] The only evidence of any MacDonald action with respect to the debt, stated broadly, after the February 2013 agreements was her sole payment made in July 2013: \$2,137.
- [19] It appears that Ms. MacDonald gave no further thought to the debt or the instruments or the arrangement until August 2019, when she received a letter from plaintiff's counsel, demanding payment of \$189,554 with per diem interest of \$72.71 accruing thereafter. Not receiving payment, as stated, the plaintiff commenced this proceeding the next month, on September 13, 2019.
- [20] The parties agree that the central issue is whether the 2013 consumer proposal extinguished the Baker debt, notwithstanding Article 4 of the 2013 agreement, such that only the MacDonald debt remained. Specifically, if only the MacDonald debt remained after the proposal, and the Baker debt was extinguished, then the Baker payments up to July 2018 would serve as an acknowledgement of the MacDonald debt such that this litigation was commenced within the two-year limitation period. If, however, Article 4 prevails, such that both the pre-existing Baker debt and the 2013 MacDonald debt co-existed and were not merged, and that the Baker debt was not extinguished, the Baker payments would be attributable to the existing Baker debt, and thus would not serve as an acknowledgement of the MacDonald debt, and would thus not extend the limitation period.
- [21] Aros argues that the common understanding amongst Baker, MacDonald, and Aros was that the Baker debt would be extinguished through the operation of the February 2013 MacDonald debt instruments and that only the MacDonald debt would continue after the proposal. Aros also hypothesises that the effect of the court's acceptance of the consumer proposal, as well as the contents of the Baker filing in the consumer proposal, indicated that the Baker debt was extinguished.
- [22] I turn first to the Aros argument with respect to the Baker filings in the consumer proposal. Aros notes that Aros was not listed as a creditor of Mr. Baker in the consumer proposal. The other creditors of Mr. Baker had to approve the consumer proposal and the proposed repayment plans. To include any "off-the-books" obligation to pay Aros would be a fraud on the court and creditors of Mr. Baker. If Mr. Baker had any obligation or ability to pay Aros, then that would have had to have been disclosed in the consumer proposal approval process.
- [23] Insofar as this is an argument of estoppel against Mr. Baker or an argument that the Baker filings for the consumer proposal are somehow binding on Ms. MacDonald with respect to the status of the Baker debt, or the effect of the February 2013 MacDonald/Aros agreement and specifically Article 4, it would not work to the detriment of Ms. MacDonald. It may well serve to estop Mr. Baker from any argument he may make with respect to the extension of his debt were he to raise that argument. He has not made that argument. I am not satisfied that anything in the materials he filed for the consumer proposal is of any consequence to this application.

- [24] More importantly, however, Aros was a full participant in and fully understood the arrangement with Ms. MacDonald in entering into the MacDonald loan instruments itself with her. Put further, there was no fraud or surprise inflicted on Aros with respect to Mr. Baker's filing and statements with respect to his debt obligations. Rather, again, the decision to nominally transfer the boat and nominally transfer the debt obligation to Ms. MacDonald was done with the full participation of Aros.
- [25] The second Aros argument is that Article 4 does not expressly preserve the rights of Aros to collect its existing debt against Mr. Baker and, thereby, does not confirm the continued existence of that debt. Rather, Aros argues that Article 4 serves solely as an option or election to allow Aros to pursue Mr. Baker if it chooses to at a later time.
- [26] I conclude that the argument is unsustainable based on the actual language of Article 4. Article 4 does not only speak of the inability of the February 2013 agreement to prejudice the existing rights of Aros, but it also speaks to the status of the existing Baker loan. Specifically, it states that "[n]otwithstanding any provision in this agreement, the covenants contained in the mortgage" --- which is defined as "the Baker 2006 mortgage" in Preamble A --- "shall continue in full force." It further states that the MacDonald loan agreement "shall not create any merger," again, a commentary on the ongoing status of the existing Baker debt obligations, rather than simply the rights, remedies, and priorities of Aros.
- [27] Third, Aros took the court to various passages from the examinations for discovery of Mr. Baker as well as Mr. Chatfield in an attempt to establish a communal understanding that the Baker loan ended in 2013.
- [28] As a preliminary observation, Mr. Chatfield was a representative of the plaintiff itself. Specifically, he served as a broker between Aros on one hand and Mr. Baker on the other. One cannot rely upon one's own representative's discovery evidence in a summary trial; only that of an adverse party: Rule 12-5(46)-(49); *Schwartz v Selkirk Financial*, 2004 BCSC 313 at para 30; *Great Canadian Oil Change Ltd v Dynamic Ventures Corp*, 2002 BCSC 1295 at para 67. Similarly, Mr. Baker's discovery transcript is of limited value vis-à-vis Ms. MacDonald.
- [29] Further, there is no indication that Mr. Baker and Mr. Chatfield could not provide the contents of that transcript evidence in the appropriate affidavit form. Indeed, Mr. Chatfield has sworn an affidavit in support of the plaintiff in these proceedings.
- [30] In any case, that procedural objection aside, there was no clear statement in those transcripts to the effect that it was the intention or common understanding that the February 2013 instruments extinguished the Baker debt to Aros. On the contrary, multiple points in the testimony indicate an intention, albeit perhaps, a fuzzy and not completely thought-out intention, that the Baker debt remained extant. An example is Mr Baker's answer number 103:

Q: All right. But would you agree with me that the understanding was -- is as if, as best as you could, not make -- could you -- could not make payments, the obligations to pay would still be Ms. MacDonald's?

Mr. Baker: Hmm, that's not what my understanding was with Ms. MacDonald.

[31] The plaintiff also took the court to the examination for discovery of Ms. MacDonald. Question and answer 71 also indicates her understanding that the Baker debt continued:

Q Okay. That was the arrangement between you and Mr. Baker?

A My understanding -- that they were Bob's obligations, yes.

[32] Although it is unorthodox to quote Ms. MacDonald's transcript evidence in her favour, for the same reason just indicated, the plaintiff itself brought this evidence to my attention. And, of course, that understanding is consistent with Ms. MacDonald's understanding stated in her affidavit:

4. In or around 2013, Mr. Baker contacted me seeking my help. He mentioned that he was dealing with health and financial issues at the time. He asked me if I could do him a favour and agree to transfer the Boat to my name for him to help Mr. Baker and his largest creditors avoid Mr. Baker declaring bankruptcy.
5. Mr. Baker advised that he was seeking to avoid bankruptcy and that he had made an arrangement with his creditors, Wendy Baily and Aros Investments Limited ("Aros"), to transfer the Boat into the name of a third party so that the Boat and its associated debt would not be included in a consumer proposal which Mr. Baker was arranging to file (the "Consumer Proposal").
6. With the agreement of Aros and Mr. Baker, I agreed to transfer ownership of the Boat to me and sign on to the Boat mortgage debt in order to allow Mr Baker to proceed with the Consumer Proposal, but for Mr. Baker to still retain ownership and possession of the Boat.

7 At the time I believed, and understood all parties believed, that I was taking on a debt obligation and the Boat in name only as a favour to Mr. Baker, and that the debt and obligation to repay would continue to be the responsibility of Mr. Baker alone.

8. On or around February 28, 2013, I signed the Boat transfer documents, including a promissory note (the "Note") Attached and marked as Exhibit "A" are true copies of the transfer documents and the Note that I signed.
9. At all material times, Mr. Baker retained possession of the Boat I did not have or take possession of the Boat at any time.
10. As per the terms of the Note, interest was due and payable on the 1st of the month commencing March 1, 2013. No payments were made towards the interest from March 1 until July 16 2013.

11. Aside from the one payment I made on or about July 16, 2013, I did not make any payments of principal or interest to Aros in respect of the purported debt under the Note. Any other payments Aros received were made by Mr. Baker.

12 At no time did I tell Mr Baker to make payments to Aros on my behalf. I understood that Mr. Baker would be making payments to Aros directly, as it was still his debt to repay

13. Aros first contacted me regarding the Note when it delivered a demand letter dated August 8, 2019 (the 'Demand Letter'). Aside from the Demand Letter, Aros made no attempts to contact me with respect to the Note the Boat, or to advise me that Aros would be seeking to enforce the purported debt per the Note against me.

[emphasis added]

[33] This evidence is also consistent with some of the evidence of Aros in-house communications, which indicate Aros's internal understanding as late as July 2019 that it still could claim the amount from Mr. Baker.

[34] In an email exchange of July 27, 2019, Mr. Baker, apparently in response to Mr. Chatfield's indication that Mr. Behrend of Aros wanted to be repaid, provided a somewhat waffling reply musing that gold stocks might put him in a better position to respond to a demand. Mr. Chatfield forwards the Baker comment to Mr. Behrend, saying:

Same story with a twist of "someone else" paying the balance.

[35] The context of this email, as well as Mr. Behrend's express response, indicates his understanding that Baker remains responsible for the debt, and that he is entitled to demand payment from Mr. Baker through communications via Mr. Chatfield:

... then let someone else pay now! I will have David send the demand letter. I need his address, and if you can't find the spreadsheet at the moment, please let me know the total amount you told him last week.

[36] Similarly, there is nothing in the court's acceptance of the consumer proposal or the governing statutory apparatus that would expressly or by implication negate the Baker debt obligations. Nor do those court filings or creditor acceptances or the governing statutory apparatus provide a blanket erasure of all Baker debts. Rather, the Bankruptcy and Insolvency Act, s. 66.28 indicates that any Baker debt obligations to the plaintiff would presumptively survive the consumer proposal absent specific exemption.

Time for determining claims

66.28 (1) The time with respect to which the claims of creditors shall be determined is the time of the filing of the consumer proposal.

On whom approval binding

- (2) Subject to subsection (2.1), a consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court is binding on creditors in respect of
- (a) all unsecured claims; and
 - (b) secured claims for which proofs of claim have been filed in the manner provided for in sections 124 to 134.

When consumer debtor is released from debt

(2.1) A consumer proposal accepted, or deemed accepted, by the creditors and approved, or deemed approved, by the court does not release the consumer debtor from any particular debt or liability referred to in subsection 178(1) unless the consumer proposal explicitly provides for the compromise of that debt or liability and the creditor in relation to that debt or liability voted for the acceptance of the consumer proposal.

Certain persons not released

- (3) The acceptance of a consumer proposal by a creditor does not release any person who would not be released under this Act by the discharge of the consumer debtor.

[emphasis added]

- [37] Subsection (2) expressly specifies two categories of creditors on whom the consumer protection approval is binding such as to bar or limit pursuit of the pre-proposal debts: unsecured claims, and secured claims for which proofs of claim have been filed. The plaintiff, of course, falls under neither category, being a secured creditor that did not file a proof of claim in the consumer proposal.
- [38] Of course, the plaintiff did not merely fail or forget to file a proposal. The plaintiff elected, with eyes wide open, not to file a proposal, preferring to participate in the plan to transfer interest in the boat to Ms. MacDonald, and thus keep the asset and the debt out of the consumer proposal. The plaintiff itself entered into the loan agreement and related documents with Ms. MacDonald in February 2013. The MacDonald loan agreement, likely drafted by the plaintiff's own solicitors, sought to let the plaintiff have its cake and eat it too, confirming that the Baker debt and Aros's rights to collect on that debt, continued, notwithstanding the new MacDonald loan arrangement made in conjunction with the consumer proposal.
- [39] Aros makes one final argument with respect to s. 66.28 of the Bankruptcy and Insolvency Act. It points to subsection 2.1, quoted above. Section 2.1, in turn, refers to s. 178(1). Aros highlight sub-paragraph (f):

178 (1) An order of discharge does not release the bankrupt from

...

- (f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless the creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim;

[emphasis added]

[40] In this context, one must substitute "consumer proposal" for "bankruptcy" in 178(1)(f), as that is the section that is referring the reader to s. 178.

[41] With respect to (f), of course, the creditor Aros had full notice and knowledge of the consumer proposal being filed by Mr. Baker.

[42] The further answer to Aros's argument based on s. 2.1 is s. 2.1 itself. That section, again, confirms that nothing releases the consumer debtor from any particular debt or liability referred to in s. 178 unless the consumer proposal explicitly provides for the compromise of that debt. As the consumer proposal was silent on the Aros debt, s. 2.1, by reference to s. 178, offers no respite to Aros.

[43] Accordingly, Article 4 of the MacDonald loan agreement prevails. Both the Baker debt and the MacDonald debt obligations to the plaintiff continued to run in tandem. The Baker payments made until July 2018 were made with respect to the Baker debt alone and not to the back-up MacDonald debt. Accordingly, the Baker payments cannot be considered as acknowledgement of the MacDonald debt in a manner extending the limitation period. The Baker payments were only made in reference to the Baker debt.

[44] Accordingly, the MacDonald loan agreement and promissory note, both dated February 28, 2013, were subject to the old Limitation Act, having been created before the June 1, 2013: the effective date for the new Limitation Act.

[45] One could embark upon a scholarly discussion, as was done in *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33, with respect to the classification of a debt as a demand loan or a contingency loan, as a means of avoiding the common law's commencement of the limitation clock running upon the execution of a debt instrument: a counterintuitive quirk of the old Limitation Act.

[46] In this case, however, that discussion would be superfluous.

[47] Right away --- the very day after the MacDonald promissory note was signed--- Ms. MacDonald failed to make payment of the interest, as required. Accordingly, as of March 1, 2013, the acceleration clause took effect. The entire debt principal and interest became due and owing as of March 1, 2013. The limitation clock started ticking. Applying the six-year limitation period under the old Limitation Act, the limitation period expired in March 2019, months before the filing of this action.

- [48] Accordingly, I confirm the position of the defendant Ms. MacDonald that the claim is statute barred.
- [49] I dismiss the plaintiff's application for judgment in the total debt amount.
- [50] Anything arising from that, counsel?
- [51] CNSL R. SHAW: Justice, just costs. Given the claim has been dismissed and -- application and claim has been dismissed, Ms. MacDonald will be seeking costs for the proceedings tabled by the plaintiff.
- [52] THE COURT: Yes. Mr. Moonje?
- [53] CNSL D. MOONJE: Yes. I mean, that's the standard order that flows. I don't recall any formal offer to settle, so I think it would just be the action dismissed with costs to Ms. MacDonald.
- [54] THE COURT: Once again, I appreciate your reasonableness and responsibility as an officer of the court. And I agree at costs payable to Ms. MacDonald.
- [55] And I thank both counsel for their able submissions and materials and for their very constructive approach to this dispute. Thank you both.

"Crerar J."

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Prepared on 29 October 2026 · Esheria