

CANADA / JUDGMENT

Richter v. McKeachie

2009 BCSC 288

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 288 Richter v. McKeachie

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Richter v. McKeachie,

2009 BCSC 288

Date: 20090304

Docket: SO66418

Registry: Vancouver

Between:

Wolfgang Richter and Mary Jane Howroyd

Plaintiffs

And

Thomas Young McKeachie

Defendant

Docket: SO66417

Registry: Vancouver

Between:

Wolfgang Richter

Plaintiff

And

Thomas Young McKeachie

Defendant

Before: The Honourable Mr. Justice Rice

Reasons for Judgment

Counsel for the Plaintiffs:

Francis Lamer

Counsel for the Defendant:

Nicholas W. Lott

Date and Place of Hearing:

December 8 & 9, 2008

Vancouver, B.C.

INTRODUCTION

- [1] This is an extended family dispute involving two companion actions. Mr. Thomas McKeachie, in this Rule 18A application, applies for dismissal of the plaintiff's action No. S066418 in which Mr. Wolfgang Richter sues for specific performance of an agreement he alleges between himself and Mr. McKeachie, husband of Maria Luise McKeachie, Mr. Richter's late sister. The agreement was for Mr. McKeachie to sell the former Richter family home to Mr. Richter and his common law partner, Mary Jane Howroyd.
- [2] Some time around 2003, the two gentlemen entered into negotiations, and by August or September 2005 both thought that they had a binding agreement. However, when Mr Richter presented the final documents to Mr. McKeachie for signature, Mr. McKeachie refused to sign, in part because, he said, the two promissory notes delivered by Mr. Richter did not contain a stated due date. This was despite the fact that both notes were drawn in a form that Mr. McKeachie had suggested, and were for amounts that he had agreed to take as part of the sale price.
- [3] Mr. McKeachie now pleads that due dates were essential terms not negotiated, and that no agreement can sensibly be inferred without them. In other words, he pleads that there was no contract and applies for dismissal of Mr. Richter's action.
- [4] In a companion action No. SO66417 Mr. Richter sues for repayment of a \$50,000 loan that he advanced to Mr. McKeachie to help him and Maria Luise to buy the home in 1993. Mr. McKeachie does not dispute that Mr. Richter's promissory note for that loan is enforceable. He says only that repayment is not due until the home is sold.

- [5] Counsel agree that the sole issue is whether the communications between the parties led to an enforceable agreement of purchase and sale. Specifically, the question is whether the omission of a due date in each promissory note created such a difference of understanding that the contract is thereby rendered unenforceable. If the Court rules that there was, in fact, an agreement between the parties, Mr. Richter's specific performance claim may proceed to judgment. Mr. Richter must now elect between specific performance or damages, if there are indeed damages.

FACTS

- [6] Mrs. Elizabeth Richter lived in the family home which was located on Cedar Glen Road, Victoria, B.C. In July 1993, apparently in a testamentary frame of mind, Mrs. Richter decided to transfer \$70,000 to each of her three children. She gave \$70,000 in cash each to Mr. Richter and a second sister, and sold the home to Maria Luise and her husband Mr. McKeachie with a \$70,000 credit on the purchase price.
- [7] The McKeachies financed the balance by a conventional first mortgage loan, and a further loan of \$50,000 from Mr. Richter out of his \$70,000 gift. A demand promissory note (the "1993 promissory note") was delivered by the McKeachies to evidence that transaction. It provided that the \$50,000 loan would be repaid by the earlier of the sale of the Cedar Glen home or the application for probate of the Will of Elizabeth Richter.
- [8] Mrs. Elizabeth Richter remained in the home and paid rent to the McKeachies equal to the amount of the mortgage, while the McKeachies continued to live in their home on Salt Spring Island.
- [9] Years later Mr. Richter became involved in the development of a ski resort on Garibaldi Mountain, near Squamish, B.C. He guaranteed the company's debts and sought and obtained Mr. McKeachie's guarantee on a line of credit for \$50,000 to the Toronto Dominion Bank ("TD"). For reasons not entirely clear, Mr. McKeachie withdrew the guarantee shortly after he executed the note for it to TD. The effect of this was to limit his liability on the TD guarantee to the balance owing on it as of the time of the cancellation, November 10, 1997, to a maximum of \$50,000.
- [10] In 1997, the parties agreed that any money paid by the McKeachies to TD pursuant to the guarantee would be deducted from what was owed to Mr. Richter on the 1993 Promissory Note.
- [11] Thus far Mr. McKeachie has never been called upon to pay anything under the TD guarantee. Mr. Richter contends that Mr. McKeachie has no liability under his guarantee, because the company for which the guarantee was given transferred the indebtedness to another, and in any event, any claims by TD on Mr. McKeachie became limitation-barred as of November 10, 2003.

- [12] In 2001, Maria Luise McKeachie, who had suffered from cancer, passed away. The mortgage originally used to purchase the property was life-insured and was paid off when Maria Luise died. Mr. McKeachie then became the sole owner of the home. Mrs. Elizabeth Richter passed away in June 2003. Thereafter, Mr. McKeachie and Mr. Richter began discussions on the sale of the home to Mr. Richter. These continued over the next several years, during which time the personal relationship between the Richters and Mr. McKeachie suffered.
- [13] The Richters rented the home for some months, but did not always pay rent. In July 2006 Mr. McKeachie obtained an order under the Residential Tenancy Act ending their tenancy, and entitling Mr. McKeachie to take possession.
- [14] By August 2005, the parties were negotiating in earnest by e-mail concerning the sale of the home to Mr. Richter. On August 12, 2005, Mr. McKeachie emailed the Richters as follows:

Dear Mary Jane and Wolfi,

I promised to get back to you when I knew what a current fair market price for Cedar Glen was. As you said, Wolfi, the prices are continuing to climb. I have been advised to list at \$439,000 to facilitate a fairly quick sale. I could ask more they said, but would likely wait longer to find a buyer. I can't wait.

I am willing to offer it to you for a lesser price of \$331,000 with several conditions.

Those conditions are:

1. That you pay me all past due rents for June, July and August by the end of August.
2. That we call it square on the water damage issues (you keep all the cheques you received from ING.)
3. That you give me a promissory note for \$25,500 at 6% from Sept '05, to cover the payments I made on Oma's VanCity loan.
4. That you give me another promissory note for \$12,000 at 6% from Sept '05, in consideration of the time in which you resided at Cedar Glen and made no payments.
5. That you arrange to have the TD lien transferred to your title after the sale, in which case, to satisfy my 1992 promissory note for \$60,000 [sic] @ 6%, I subtracted \$89,000 to arrive at the \$331,000.

I wish you success in the financial arrangements you need to do this. Please reply as soon as possible as I will begin be signing a contract with a realty company on Monday.

This offer will expire 24 hours after I receive another offer satisfactory to me through a realtor. ie. you will have one day to exercise your right of first refusal. I will keep you posted if we follow that route.

Sincerely,

Tom

[15] Mr. Richter questioned how Mr. McKeachie had arrived at the price, who replied as follows:

When we spoke and you asked me if the \$400,000 was still a fair price I told you that I did not know. I told you that I needed to get advice on the figure. I got the advice. I have chosen to offer you the house at \$420,000 instead of the \$435,000 I was advised to use on the open market and subtracted (\$50,000 plus \$3,000 per year for 13 years) \$89,000 from \$420,000 to arrive at \$331,000.

[16] Mr. McKeachie then amended his August 12th offer in an email dated August 21, 2005:

Dear Mary Jane and Wolfi,

As you consider responding to the conditions contained in my offer, please do it with the knowledge that I will honour the \$400,000 price, provided the three months late rent is paid by the end of August and that the balance of the conditions are met. This amendment to my offer is valid only until September 15th, 2005.

[17] There followed an exchange of emails on August 26, 2005 on the issue of whether the conditions imposed by Mr. McKeachie had been accepted. Mr. Richter wrote to Mr. McKeachie:

Tom:

In reference to my response to the "other conditions", pending we are able to meet the conditions you imposed by August 31st, we should be able to agree and come to the terms of the "other conditions".

However, I don't think they should be included in the Purchase and Sales Agreement and should be a separate agreement. Per discussion with our mortgage broker, she suggests keeping this as clean and simple as possible is best for her to do her job.

[18] By August 31, 2005 a deal emerged, according to Mr. Richter and Mary Jane Howroyd, Mr. Richter's common law spouse. Their evidence was that they had sent an email that day to Mr. McKeachie which constituted a binding agreement for sale. It provided as follows:

Tom

Further to your revised offer of August 21, 2005 and deadline of today, this is to confirm that we accept your offer to acquire my family home at 1519 Cedar Glen, Victoria, B.C. for \$400,000 with the following two caveats and conditions:

1. per your request for the payment of three months of "rent" today, we are able to Fedex three cheques to you today, two of which you can cash upon receipt, but on which you will not be able to cash until "closing" - which we hope will occur by your deadline of September 15 pending you can get us the Purchase & Sales Agreement in the near future

2. Mary Jane securing mortgage financing once you provide us with an executed Purchase & Sale Agreement required by her mortgage broker in Victoria

Even though you are essentially selling us the house for approximately \$320,000, subtracting the \$50,000 in equity plus interest I still have in the home, for the sake of the mortgage we are securing, the Purchase & Sales Agreement should be made out for the total \$400,000 sales price.

[19] The same day Mr. McKeachie replied:

Wolfi,

In reference to your email today:

Thank you for your partial acceptance of my offer. I will accept the two caveats and conditions you imposed on that part of my offer you accepted.

Pending our ability to clear the other requirements, I will forward a cleaner Purchase and Sales Agreement using a value of \$400,000.

Please send the cheques equivalent to \$1200 CDN to me at 401 Sky Valley Road, Salt Spring Island, BC, Canada, V8K 2C3. The inter- lining agency (likely Loomis) will hold the package for me if they can't get a signature at the house.

[20] On September 4th, Mr. McKeachie wrote the following:

Dear Mary Jane and Wolfi,

Please have a look at the URL below. Reading it I realized that the agreement is written from the Purchaser's point of view, so it should be prepared by yourselves.

The Parcel Identifier is 005-314-011 and the legal description is Lot 10, Section 54, Victoria District, Plan 9479.

To reach agreement I expect that you will include the following details among your own requirements.

You need to pick a day on which you inspected the property.

1. \$400,000 purchase price.
3. Completion as Sept. 28, 2005
5. Adjustments from Sept. 30. (these may be include the cost of removing the lien against the value of the promissory note.)
6. Possession at 12.00 noon Sept. 30.
7. Risk from 12:01 a.m. on Completion Date
8. Included items as stated except the one-half of the contents which were willed to the McKeachie children.

9. Conditions will include payment for the past rent and VanCity loan we have discussed unless you clear the issues beforehand.
 10. The TD lien may appear here if you arrange to have it suspended and placed on the title after you have possession.
 11. Acceptance as 5:00 o'clock PM on the 15th day of September.
- [21] On September 15, 2005, Ms. Howroyd, who was to be the purchaser of the property, emailed Mr. McKeachie attaching a formal contract of purchase and sale with Mr. Richter's signature on it. Also attached were promissory notes signed by Mr. Richter, one for \$12,000 for back rent payable with interest at 6%, and one for \$25,500 in respect of Mr. McKeachie's payments to VanCity Savings, also payable with interest at 6%. The email read:

Dear Tom:

Attached, please find our formal acceptance of your offer to sell Wolfgang's family home in Victoria, British Columbia, on 1519 Cedar Glen Road per the attached Contract of Purchase & Sales we have signed.

Please note the attached Promissory Notes signed by Wolfgang, as you request.

In complying with your demands in this regard, we wish to add one caveat to our acceptance of your Offer to Purchase: Wolfgang has commenced negotiations with the lawyer for the TD-Bank with regards to a possible settlement of the \$50,000 Lien they have against the property. Pending the outcome of this, we may decide to change this purchase offer to read that we are actually buying the house for \$311,000 (\$400,000 minus the \$89,000 you owe for the Promissory Note of July 30, 1993), a concept you have proposed in the past.

We are still uncertain about this and our decision in this regard will depend somewhat on the outcome of our negotiations with the TD Bank. In the meantime, we could appreciate your faxing a signed copy of the attached to us at your earliest convenience so that we can get on with the rest of the transaction.

Sincerely,

Mary Jane

- [22] The attached promissory notes apparently were drafted with the assistance of precedent notes sent to Mr. Richter by Mr. McKeachie. In form, they were in line with what the parties had agreed except for the fact that the due dates on the loans were not stated. Mr. McKeachie noticed this and sent an email on September 17, 2005 to inform Mr. Richter of the omissions.

Dear Mary Jane,

Thank you for your email of the 16th regarding Cedar Glen. I am looking forward to soon being in a position to sign an agreement with you.

I would like to ask you to reconsider a few things. The first is that I cannot include the contents of the house as they are not mine to sell. Oma's will directed them to be shared equally between Wolfi and my children. Perhaps it is time to sort this out now. What do you suggest?

The promissory notes lack a due date or circumstance such as the ones on the July 30, 1993 note (Please also check the spelling in both). I will get advice on this concern and contact you directly with the results.

The lien removal is one part of my TD bank liability. The termination of the guarantee contract is the other essential element. When both are achieved I will be able to remove them as conditions. Please copy me with all the past and current communication between the TD Bank representatives and yourselves related to the lien and/or guarantee. With this kind of information I can assess the appropriateness of having Wolfi act as an agent between the Bank and myself. Thank-you again for your efforts to date on this.

After I send you my promissory note amendment requests I will expect to receive your reconsiderations if any. I appreciate your efforts to meet the Sept. 15 date and still wish to continue to work toward an agreement.

Sincerely,

Tom

[23] Considerable email correspondence followed over the next months evidencing the parties' deteriorating relationship, including one on September 26 in which Ms. Howroyd expressed Mr. Richter's willingness to put due dates on the promissory notes, but also stated that the promissory notes were "valid only if there is a sale and worthless if the sale does not go through".

[24] On September 28, Mr. McKeachie sent a signed contract for Purchase and Sale with an addendum containing two conditions precedent for the sale - production of written evidence that Mr. McKeachie was fully absolved of all responsibilities as guarantor under the TD bank loan, and payment of the amount owing on the promissory notes, discounted from \$37,500 to \$30,000. He acknowledged that this was a "departure from our original plan":

Given your opinion that Wolfi's promissory notes are worthless in the absence of a completed sale I have been advised to include a paragraph in an addendum which includes payment of these debts at the time of closing. As an additional consideration of the hardships you are under and of the fact that this is a departure from our original plan, I am offering a settlement of the notes at a discount.

[25] On October 13, 2005, Ms. Howroyd pointed out that Mr. McKeachie was attempting to renegotiate the deal:

Dear Tom,

Thank you for your e-mail of yesterday, your proposal to renegotiate our agreement for the purchase of 1519 Cedar Glen, your explanation about your involvement in the teacher's strike and why you have been delayed in your response to complete the purchase and sale agreement.

Let me be clear about something. You made an offer for me to buy this house with certain conditions attached and we agreed to that offer and to the conditions. As you well know, therefore, this forms the basis of a legal agreement and I am now anxious for you to complete your end of the bargain.

[26] That same day Mr. McKeachie replied:

Dear Mary Jane,

You are correct in saying that the P&SA is a basis of an agreement. When it and the attached referenda are signed it will be exactly that. You are also correct with the observation that I have been negotiating toward an agreement different than that what we started with. I did not expect to have to do this when we started

What has shaken me is that within this process I have learned that Wolfi and your commitment to his past debt is very different that I had believed. Your revelation that the obligation is exclusively to achieve the purchase of 1519 and would have absolutely no substance if your objective is not reached really surprised me.

I began wondering what kind of value the promissory notes might have after you gained title. You are only providing the notes (with no due date or condition) to facilitate the sale. When it is done - what then? My lawyer says those notes are only paper - useless if the author chooses or is not able to honour them. I was sure Wolfi would honour them until your comments about invalidity and non-acceptance of responsibility.

...

Unless you have an offer to achieve the security I have now come to need by the expiry date (Oct. 14) you set in the unsigned P&SA we are done.

[27] On October 14, 2005, TD Bank notified Mr. Richter that it accepted the terms of the settlement he had offered contingent on the sale of the house.

[28] The parties continued to argue over the terms of the agreement, and Mr. McKeachie eventually sent a revised addendum dated November 19, 2005 which was never signed by Mr. Richter.

[29] Discussions ended in January 2006.

ANALYSIS

[30] An offer is a complete statement of the terms on which one party is prepared to deal, made with the intention that it be open for acceptance by the person to whom it is addressed: John Swan, *Canadian Contract Law*, 1st ed., LexisNexis 2006 at 184. The offeror's intention is not assessed with reference to the subjective intention of the offeror but to the reasonable understanding of the offeree. "The court's task is to decide what each party to an alleged contract would reasonably conclude from the utterances, writings or conduct of the other": *Henry Kendall & Sons v. William Lillico & Sons Ltd.* [1969] 2 A.C. 31 at 113, 2 All E.R. 444 at 481 (H.L.), per Lord Pearce. A contract will be held to have been made when the offeree accepts an offer that can reasonably and objectively be said to constitute an offer. Mutual assent, in the sense that both parties subjectively intended to enter into a contract, is not required for the formation of a contract; it is only necessary that there be an objective manifestation of mutual assent: see e.g. *Walton v. Landstock Investments Ltd.* (1976), 13 O.R. (2d) 693 at 696, 72 D.L.R. (3d) 195 (C.A.), leave to appeal refused [1976] 2 S.C.R. ix. Thus although it is often said that there must be a "meeting of minds" or consensus ad idem, "what is important is not what either party actually thought but what each reasonably understood the other to mean": Swan, *Canadian Contract Law*, at 195.

[31] On August 12, 2005, revised August 21, Mr. McKeachie made an offer to sell the Richter family home. Mr. Richter responded to this offer with his own counter-offer, which was identical to Mr. McKeachie's offer but with two additional terms:

Further to your revised offer of August 21, 2005 and deadline of today, this is to confirm that we accept your offer to acquire my family home at 1519 Cedar Glen, Victoria, B.C. for \$400,000 with the following two caveats and conditions

[32] Mr. McKeachie then accepted this counter-offer:

Thank you for your partial acceptance of my offer. I will accept the two caveats and conditions you imposed on that part of my offer you accepted.

[33] Mr. McKeachie's acceptance was unequivocal. At this point a binding and enforceable contract came into existence. The issue therefore is whether the parties' negotiations after this date constituted tacit consent to rescind this contract and continue negotiations. For the court this is a question of the inferences to be drawn from what the parties said or did.

[34] Ms. Howroyd's email of September 15 purported to add one "caveat" to the agreement. Her "caveat" was not a true caveat, however, but simply an amendment to the purchase price as it would appear in the Purchase and Sale Agreement. There was no change in the actual amount that Mr. Richter and Ms. Howroyd would pay to Mr. McKeachie.

- [35] Mr. McKeachie's email of September 17 appeared to continue negotiations. He asked Ms. Howroyd to "reconsider a few things". He noted that the contents of the house could not be included in the sale because they were not his to sell. He pointed out the absence of a due date on the promissory notes and stressed the importance of removing his liability on the TD bank loan. On September 28 it became clear that Mr. McKeachie was attempting to renegotiate the deal.
- [36] The emails of Mr. Richter and Ms. Howroyd make it clear that they had a reasonable belief that a binding contract existed between the parties. They acted in reliance on it: Mr. Richter had made a settlement offer to TD Bank on September 28 contingent on the purchase of the house being completed, while Ms. Howroyd was engaged in obtaining financing. The fact that Mr. McKeachie lost confidence in the integrity of the deal is not sufficient to indicate that the parties consented to rescind the agreement and continue the negotiations.
- [37] Further, Mr. McKeachie cannot suggest that the agreement was not binding until a formal document was drafted and executed, as he appears to do:

You are correct in saying that the P&SA is a basis of an agreement. When it and the attached referenda are signed it will be exactly that.

- [38] There is a distinction in contract law between negotiations that are "subject to contract" - i.e. not binding until further documentation has been drafted and agreed upon - and agreements that are binding without further documentation. The question for the court is to determine what the parties themselves agreed to, expressly or impliedly. In *Calvan Consolidated Oil & Gas Co. v. Manning*, [1959] S.C.R. 253 at 261, 17 D.L.R. (2d) 1, Judson J., speaking for a unanimous Court, set out the relevant principles:

Only two questions remain to be considered and these arise from the provision in the amending agreement for arbitration on the terms of the formal agreement. The questions are, first, whether this indicates an intention not to be bound until the formal agreement is executed, and, second, what terms may be incorporated in the formal agreement by the arbitrator. My opinion is that the parties were bound immediately on the execution of the informal agreement, that the acceptance was unconditional and that all that was necessary to be done by the parties or possibly by the arbitrator was to embody the precise terms, and no more, of the informal agreement in a formal agreement. This is not a case of acceptance qualified by such expressed conditions as "subject to the preparation and approval of a formal contract", "subject to contract" or "subject to the preparation of a formal contract, its execution by the parties and approval by their solicitors". Here we have an unqualified acceptance with a formal contract to follow. Whether the parties intend to hold themselves bound until the execution of a formal agreement is a question of construction and I have no doubt in this case. The principle is well stated by Parker J. in *Hatzfeldt-Wildenburg v. Alexander* [[1912] 1 Ch. 284 at 288-9, 81 L.J. Ch. 184], in these terms:

It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplate the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of

the bargain, or whether it is a mere expression of the desire of the parties as to the manner in which the transaction already agreed to will in fact go through. In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored.

[39] With respect, the agreement between Mr. Richter and Mr. McKeachie was not an agreement that was "subject to contract". There is nothing in the evidence that suggests Mr. McKeachie communicated to Mr. Richter that the agreement they had reached was contingent on the drafting of the final agreement. There was an unqualified acceptance made by both parties of the terms of the agreement. Both understood that a document was to follow but that this constituted only a formal expression of the terms to which they had already agreed.

[40] The final issue to be considered, then, is whether the lack of a due date on the promissory notes makes the agreement between the parties so uncertain as to render it unenforceable. If the terms of the agreement are so vague and indefinite that the intent of the parties cannot be ascertained with reasonable certainty, then the so-called agreement is not enforceable at law: *Arnold Nemetz Engineering Ltd. v. Tobien*, [1971] 4 W.W.R. 373 (B.C.C.A.) at 383. However, the courts will be hesitant to find uncertainty and will search out the facts that support the making of a bargain: *Gaspari v. Creighton Holdings Ltd.* (1984), 52 B.C.L.R. 30 (S.C.) at 45. In *Marquest Industries Ltd. v. Willows Poultry Farms Ltd.* (1968), 66 W.W.R. 477 at 482, 1 D.L.R. (3d) 513 (B.C.C.A.), Bull J.A. stated:

... [E]very effort should be made by a court to find a meaning, looking at substance and not mere form ... difficulties in interpretation do not make a clause bad as not being capable of interpretation, so long as a definite meaning can properly be extracted ... if the real intentions of the parties can be collected from the language within the four corners of the instrument, the court must give effect to such intentions by supplying anything necessarily to be inferred and rejecting whatever is repugnant to such real intentions so ascertained.

[41] The effect of a promissory note without a due date is that it is converted into a demand note. The Bills of Exchange Act, R.S. 1985, c. B-4, s. 176(1), provides that:

176(1) A promissory note is an unconditional promise in writing made by one person to another person, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person or to bearer.

[42] Subsection 22(1) provides:

22(1) A bill is payable on demand

- (a) that is expressed to be payable on demand or on presentation; or
- (b) in which no time for payment is expressed.

[43] Subsection 186(1) provides:

186(1) Subject to this Part, and except as provided by this section, the provisions of this Act relating to bills apply, with such modifications as the circumstances require, to notes.

[44] The Bills of Exchange Act assists in removing any uncertainty present in the agreement. The promissory notes delivered by Mr. Richter to Mr. McKeachie were demand notes. They were drafted with the assistance of a precedent note supplied by Mr. McKeachie. Both men, in the absence of evidence otherwise, must in my view be taken to know that the notes became thereby payable on demand. That Mr. Richter could have expected a stated term without any written confirmation of a due date is not credible. He must be taken to have accepted that he was indebted on a demand basis. He must have known that no agreement as to a term had been stipulated, and that he could not impose one of his choosing. He might well have been content to trust Mr. McKeachie to consent later to some specific term. That hope, however, as he surely knew, would not have had any binding effect. In my view he must be deemed to have agreed to payment on demand. That, at any rate is the position he takes now, and on a balance of probabilities, it is the correct one in my view. That Mr. McKeachie could have expected anything more is preposterous. Both neglected to consider the issue, most likely, but the reasonable interpretation for Mr. McKeachie, in the circumstances, was to treat the loan as repayable on demand.

[45] Another approach would be for the court to find an implied term of the loan based on what was reasonable at the time. No evidence or insufficient evidence was adduced by either side for me to draw any conclusion other than as the documents now provide.

[46] It cannot sensibly be said that the absence of a due date rendered the agreement between the parties so uncertain as to be void or unenforceable. I find that the contract for the purchase and sale of the home is valid and enforceable. Mr. McKeachie's application is dismissed with costs to Mr. Richter and Ms. Howroyd. Mr. Richter may now move for judgment for specific performance or damages on application.

[47] In the second action, No. S066417, Mr. Richter seeks judgment in the amount of \$96,193.72 on the 1993 promissory note as of December 9, 2008. Mr. McKeachie does not dispute that Mr. Richter is entitled to this amount. I find, therefore, that this is the amount owing by Mr. McKeachie on the promissory note.

[48] Mr. Richter is entitled to judgment in the amount of \$96,193.72 together with his costs.

"The Honourable Mr. Justice Rice"

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