Federal Court  Cour fédérale

Date: 20210907

Docket: T-348-19

Citation: 2021 FC 924

Ottawa, Ontario, September 7, 2021

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Plaintiff

and

KENELANE FARMS LIMITED, KENNETH WILLIAM BILLS and MARION ELAINE BILLS

Defendants

JUDGMENT AND REASONS

[1] The Plaintiff brings this motion for summary judgment in writing pursuant to Rules 214 and 369 of the *Federal Courts Rules*, SOR/98-106. The Plaintiff seeks to recover the amount of $239,845.27, plus interest and costs, against the Defendants. The Plaintiff claims that the Defendants are in default of their repayment obligations for funds received from the Advance Payment Program under the *Agricultural Marketing Programs Act*, SC 1997, c 20 [*AMPA*].

[2] The Defendants oppose the motion for summary judgment and submit that there are several genuine issues for trial. The Defendants argue that: the guarantee signed by them is not enforceable; their repayment agreement with Agriculture and Agri-Food Canada [AAFC] is a separate contract not governed by the *AMPA*; the Plaintiff did not pursue their claim within the applicable limitation period; the calculation of the debt owed, if any, is inaccurate; and, any interest owing on any debt should be reduced due to the Plaintiff's delay in pursuing collection and this action.

[3] For the reasons that follow, the summary judgment is granted in favour of the Plaintiff. There is no genuine issue for trial. The evidence needed to adjudicate the matter fairly is set out clearly in the affidavits that are before the Court, including the amount of the debt owed. The legal issues raised by the Defendants regarding the applicability of the *AMPA* have been recently determined by this Court and confirmed by the Federal Court of Appeal.

I. Background

[4] Although the Defendants take issue with some of the facts, the relevant background is set out in the Plaintiff's submissions and summarized below.

[5] The *AMPA* is the federal statute that establishes and governs the Advance Payments Program to support agricultural producers. Pursuant to the program, organizations involved in marketing the agricultural product (such as the Canadian Wheat Board [CWB]) may make advance payments to producers before their crop or harvest produces revenue. When a producer defaults on their repayment obligations as set out in their agreement with the organization, the

organization may request that the Minister of Agriculture and Agri-Food [the Minister] repay the amount owing to the organization. Once the Minister makes the payment to the organization, the Minister is subrogated to the organization's rights (in this case the CWB) against the producer.

[6] The Minister's role as guarantor was recently described by the Federal Court of Appeal in *Moodie v Canada*, 2021 FCA 121 at para 5 [*Moodie FCA*]:

> [5] Section 23 of the *AMPA* effectively makes the Minister of Agriculture and Agri-Food (the Minister) a guarantor of the producer. If the producer defaults on its repayment obligations, the creditor administrator organization may request payment from the Minister. Provided certain conditions are met, the Minister is obligated by statute to pay any outstanding sums on behalf of the defaulting producer. The program facilitates access to credit for agricultural producers by transferring a substantial portion of the lending risk to the Minister.

[7] In April 2011, the Defendant Kenelane Farms Limited [the Corporate Defendant] applied in writing to the CWB for an advance payment under the *AMPA* for the 2011-2012 pre-harvest period. The Plaintiff refers to this as Advance Payment 1 and the Court adopts the same characterization.

[8] In March 2012, the Corporate Defendant applied in writing to the CWB for an advance payment under the *AMPA* for the 2011-2012 threshed grain period, referred to as Advance Payment 2.

[9] The Corporate Defendant received Advance Payment 1 ($100,000.00) on or about April 29, 2011, and Advance Payment 2 ($64,463.52) on or about March 13, 2012.

[10] Previously, in October 2006, Kenneth William Bills and Marion Elaine Bills [the Individual Defendants] executed a Continuing Declaration and Guarantee [the Individual Defendants' Guarantee] with respect to advance payments received at that time and for present and future advances advanced to the Corporate Defendant under the *AMPA*. By this guarantee, the Individual Defendants agreed to pay to the CWB the full balance then owing with interest and court costs if the Corporate Defendant, Kenelane Farms, defaulted.

[11] As of October 1, 2012, Advance Payments 1 and 2 were in default. According to the Plaintiff, at the date of default, the outstanding balances of the two Advance Payments, together with interest calculated from the dates the advances were issued pursuant to the applicable terms and conditions, were $55,028.91 for Advance Payment 1 and $66,613.36 for Advance Payment 2.

[12] In addition, according to the Plaintiff, after the date of default, interest accumulates at three percent (3%) above the prime lending rate, calculated daily and compounded monthly, on the outstanding amounts.

[13] On or about April 10, 2013, the Minister honoured the guarantee pursuant to section 23 of the *AMPA* for the advance payments and made a payment to the CWB.

[14] AAFC wrote to the Defendants on April 24, 2013, November 22, 2013, January 6, 2014 and February 10, 2016 advising them of the outstanding balance and requesting a response.

[15] On or about January 6, 2014, the Defendants entered into a Repayment Agreement with AAFC (distinct from the repayment agreement with the CWB). However, the Defendants defaulted on the terms of their Repayment Agreement.

[16] The Plaintiffs launched this action on February 21, 2019.

II. The Plaintiff's Submissions

[17] The Plaintiff submits that there is no genuine issue for trial as all the facts necessary to establish the debt and the Defendants' liability for the debt are before the Court.

[18] The Plaintiff submits that the *AMPA* is federal legislation that governs all aspects of the program including the limitation period of six years for the Minister to commence proceedings to enforce their rights as set out in subsections 23(4) of the *AMPA*. The Plaintiff submits that the Minister's rights differ from the rights of the administrator organization, in this case, the CWB.

[19] The Plaintiff submits that the Individual Defendants' Guarantee is enforceable.

[20] First, the Plaintiff disputes the Defendants' reliance on the Alberta *Guarantees Acknowledgment Act*, RSA 2000, c G-11.

[21] The Plaintiff submits that the *AMPA*, not the provincial legislation, applies to the Individual Defendants' Guarantee. The Plaintiff points to paragraph 10(1)(d) of the *AMPA*, which requires each shareholder of a producer corporation to agree in writing to be jointly and severally liable to

the administrator in order to be eligible for an advance. The *AMPA* does not specify the form of that agreement other than it must be in writing.

[22] Second, the Plaintiff submits that even if the Alberta *Guarantees Acknowledgment Act* applies, the Individual Defendants' Guarantee complies with this Act and is enforceable. The Plaintiff notes that the "Continuing Declaration and Guarantee Form" met all the requirements of the provincial legislation.

[23] The Plaintiff also notes that the affidavit of Mark De Luca attaches the "Continuing Declaration and Guarantee Form", which shows that the Individual Defendants appeared before a lawyer (who is also a notary public) on October 19, 2006 in Lloydminster, Alberta and signed the certificate, which was part of the document, acknowledging that they had read and understood the guarantee. The Plaintiff notes that the lawyer also signed the certificate. The Plaintiff adds that the certificate signed by the Individual Defendants was in the form prescribed by the Regulations to the Alberta *Guarantees Acknowledgment Act*.

[24] The Plaintiff disputes the Defendants' contention that the notary public is not identified and did not issue the certificate under a notarial seal.

[25] The Plaintiff also submits that the Defendants have not provided any evidence to challenge the validity of the guarantee.

[26] Third, with respect to the Defendants' argument that the Individual Defendants' Guarantee is not enforceable beyond the 2006-2007 crop year, the Plaintiff submits that it is intended to apply to all current and future advances. The Plaintiff notes the clear wording under "Part 2 – Guarantee", which states: "[t]his Guarantee will constitute a continuing guarantee for all advances issued to the applicant under all permit books in which the applicant appears now and in the future." The Plaintiff also points to the following provision in the Individual Defendants' Guarantee:

> In consideration of advance payments being made to Kenelane Farms Ltd. (applicant), I/we, the undersigned, jointly and severally guarantee that if the applicant is in default of any advance payments now or hereafter issued under the *Spring Credit Advance Program (SCAP), AMPA* or the *Enhanced Spring Credit Program (ESCAP),* I/we and each of us, will pay to the Canadian Wheat Board (CWB) the outstanding amount of the advance payments(s) on the date of default and interest accruing from the date the advance payment(s) was/were issued at the rate specified on the advance application(s), plus collection costs, until the balance is paid in full.

[27] Fourth, in response to the Defendants' submission that the Individual Defendants did not receive any consideration for their guarantee of the advance payments for the 2011-2012 crop year, the Plaintiff argues that the consideration for the Individual Defendants' Guarantee was the very advance payments made to the Corporate Defendant, Kenelane Farms Limited. The Plaintiff notes that the Individual Defendants each had a 50 percent interest in Kenelane Farms Limited.

[28] The Plaintiff submits that subsection 23(4) of the *AMPA* applies to the Minister's action to recover this debt, which provides for a six-year limitation from the date of subrogation. The Plaintiff notes that the applicability of the *AMPA* was determined in *Canada v Moodie*, 2020 FC 46 [*Moodie FC*] and upheld by the Federal Court of Appeal in *Moodie FCA*. The

Plaintiff disputes the Defendants' argument that their Repayment Agreement with the AAFC, entered into in 2014 with respect to the two Advance Payments made to them in 2012, is a separate contract.

[29] The Plaintiff further submits that there is no justification to reduce the amount of interest owing by the Defendants. The Plaintiff argues that the jurisprudence relied on by the Defendants does not apply. The Plaintiff submits that subsection 23(3) of the *AMPA*, which provides that the producer is liable for interest calculated in accordance with the Repayment Agreement, plus costs, governs. The *AMPA* does not contain any provisions to reduce the amount of interest.

[30] The Plaintiff also disputes that they delayed in bringing this action to permit interest to accumulate. The Plaintiff notes that they pursue a high volume of similar claims. The Plaintiff adds that the timing of this action, from the date of subrogation to the filing of their claim, is reasonable and is similar to recent summary judgment applications granted by this Court.

[31] The Plaintiff also disputes the Defendants' argument that a trial is necessary, including to determine the true amount owing, if any. The Plaintiff submits that the Defendants failed to provide evidence on this motion to show that an issue exists about the amount of the debt. The Plaintiff adds that the Defendants did not cross-examine the Plaintiff's affiants and, as a result, the evidence set out in the affidavits of Mark De Luca and Shelley Warner, supported by the exhibits, is undisputed.

[32] In response to the Defendants' submission that the first $100,000 of the amount advanced to them should be interest free, the Plaintiff notes that the terms and conditions include the provision that,

"[u]pon default, the default interest penalty rate is three per cent above the prime lending rate for principal that was previously interest-free." The Plaintiff explains that the amount of $4,499.74 in the CWB account statement, questioned by the Defendants, is the default interest penalty rate that is applied to the principal amount that was previously interest-free.

[33] The Plaintiff points to the affidavit of Mark De Luca, who attests that at the date of default, the outstanding balances of the advance payments, together with interest calculated from the dates the advances were issued pursuant to the applicable and agreed upon terms and conditions, were $55,028.91 for Advance Payment 1 and $66,613.36 for Advance Payment 2. For Advance Payment 1, $4,499.74 in interest accrued prior to the date of default, and $25,293.54 in interest accrued after the date of default up to January 31, 2019. For Advance Payment 2, $2,149.85 in interest accrued prior to the date of default, and $30,727.09 in interest accrued after the date of default up to January 31, 2019.

[34] The Plaintiff also points to the affidavit of Shelley Warner who attests that the principal and interest outstanding at the date of default was $55,028.91 for Advance Payment 1 and $66,613.36 for Advance Payment 2. Interest accrued from the date of default to June 22, 2021, at prime plus three percent, compounded monthly, amounting to $37,871.81 for Advance Payment 1 and $46,155.71 for Advance Payment 2. Ms. Warner attests that as of June 22, 2021, the total judgment sum was $91,925.72, with a per diem rate of $13.73, for Advance Payment 1, and $112,769.07, with a per diem rate of $16.84, for Advance Payment 2.

III. The Defendants' Submissions

[35] The Defendants oppose the motion for summary judgment and raise several arguments. The Defendants dispute: the Plaintiff's account of the facts; the applicable law; the enforceability of the guarantee signed by them; the limitation period; the calculation of the debt owed, if any; and, the authority or discretion to reduce the interest on any debt owing due to the Plaintiff's delay in pursuing collection and this action.

[36] First, the Defendants argue that the *Guarantees Acknowledgment Act* applies. The Defendants submit that the Individual Defendants' Guarantee did not comply with the requirements of the provincial legislation and is not enforceable. Among other arguments, they assert that the identity of the lawyer they attended before to sign the certificate, which is part of the guarantee, is not known.

[37] The Defendants also argue that the Individual Defendants' Guarantee signed in 2006 is not enforceable because it applies only to advances made for the 2006-2007 crop year, noting that the two advances at issue were executed for the 2011-2012 crop year. The Defendants further argue that no consideration was advanced to support the guarantee for the advance payments for the 2011-2012 crop year.

[38] Second, the Defendants argue that their Repayment Agreement with AAFC, entered into in January 2014, is a new contract governed by the law of Alberta, including the two-year

limitation period set out in the Alberta *Limitations Act*, RSA 2000, c L-12. The Defendants submit that the Plaintiff's action falls well outside the two-year period.

[39] Third, the Defendants argue that even if the *AMPA* applies, the six-year limitation period runs from the day on which the Minister is subrogated to the administrator's (in this case the CWB's) rights, which is the date of default and not the date the Minister honours the guarantee.

[40] Fourth, the Defendants argue that if the Court finds that the Plaintiffs have an enforceable claim, the amount of interest demanded should be reduced due to the Plaintiff's failure to pursue their claim in a timely manner. The Defendants acknowledge that the Minister sent demand letters in the 2013-2016 period but note that the Plaintiff did not pursue collection and waited until February 2019 to bring this action, without any explanation for their delay.

[41] The Defendants point to jurisprudence that addressed similar issues in circumstances where the Alberta *Judgment Interest Act* applied, to argue that the Plaintiff's delay allowed pre-judgment interest to accumulate to the Plaintiff's benefit and to the prejudice of the Defendants, which should justify a reduction in the interest owed. The Defendants note that at the date of default, the principal balance was approximately $115,000 and the Plaintiff now claims $204,694 plus ongoing interest.

[42] Finally, the Defendants submit that if the *AMPA* governs, which they dispute, a trial is necessary, at least to determine the value of the debt. The Defendants submit that the Plaintiff's account of the debt is inaccurate, noting that the amounts in the Statement of Claim, the affidavit

of Shelley Warner, Exhibit “D” to the affidavit of Mark De Luca, and the calculation in the Repayment Agreement all differ.

IV. Summary Judgment: Principles from the Jurisprudence

[43] In *Lauzon v Canada (Revenue Agency)*, 2021 FC 431, Justice Walker set out the governing law on motions for summary judgment at paras 19–21:

> [19] The purpose of summary judgment is to allow the Court to summarily dispense with cases which should not proceed to trial because there is no genuine issue to be tried. In *Hryniak v Mauldin*, 2014 SCC 7 (*Hryniak*), the Supreme Court of Canada considered the values underlying the summary judgment process. Although *Hryniak* involved the interpretation of the Ontario *Rules of Civil Procedure*, RRO 1990, Reg 194 (which are worded differently from the *Federal Courts Rules* relating to summary judgment), the principles set out by the Supreme Court are of general application and remind us that the same goals of conserving judicial resources and improving access to justice, while safeguarding the proper disposition of an action, underlie Rules 213 to 215 (*Hryniak* at para 35; see also *Manitoba v Canada*, 2015 FCA 57 at para 11).
>
> [20] The application of Rules 213 to 215 was comprehensively reviewed by Justice Mactavish, then of this Court, in *Milano Pizza Ltd. v 6034799 Canada Inc.*, 2018 FC 1112 at paragraphs 24-41 (*Milano Pizza*). Rule 215(1) provides that the Court shall grant summary judgment where the judge is satisfied that “there is no genuine issue for trial with respect to a claim or defence”. The Supreme Court described the circumstances in which a judge can make such a determination (*Hryniak* at para 49):
>
> > [49] There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

> [21] The test on a motion for summary judgment is not whether a party cannot possibly succeed at trial; rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial (*Milano Pizza* at para 33; *Kaska Dena Council v Canada*, 2018 FC 218 at paras 21, 23 (*Kaska*)). The onus is on the party seeking summary judgment to establish the absence of a genuine issue for trial and that onus carries with it an evidentiary burden (*Collins v Canada*, 2015 FCA 281 at para 71). However, Rule 214 of the Rules requires the responding party to set out specific facts in their response to the motion and to adduce evidence showing that there is a genuine issue for trial (*Canmar Foods Ltd. v TA Foods Ltd*., 2021 FCA 7 at para 27). In other words, both parties must put their best evidentiary foot forward and the Court is entitled to assume that no new evidence would be presented at trial (*Samson First Nation v Canada*, 2015 FC 836 at para 94; aff'd 2016 FCA 223 at paras 21, 24; *Kaska* at para 23).

[44] These principles and Rules 214–215 have been applied in determining whether the Plaintiff's motion should be granted.

V. The Relevant Provisions of the *AMPA*

Payments to be made by Minister	**Paiement ministériel**
23 (1) If a producer is in default under a repayment agreement and the Minister receives a request for payment from the administrator or lender to whom the guarantee is made, the Minister must, subject to any regulations made under paragraphs 40(1)(g) and (g.1), pay to the lender or the administrator, as specified in the advance guarantee agreement, an amount equal to the Minister's percentage of (a) the amounts mentioned in paragraphs 22(a) and (c); and	23 (1) Le ministre doit, après réception d'une demande en ce sens de l'agent d'exécution ou du prêteur à qui, le cas échéant, la garantie a été donnée, lui remettre, conformément à l'accord de garantie d'avance et sous réserve des règlements pris en vertu des alinéas 40(1)g) et g.1), le pourcentage réglementaire de la dette correspondant à la responsabilité du ministre pour les sommes mentionnées aux alinéas 22a) et c) et les intérêts sur le montant non remboursé de l'avance

(b) the interest at the rate specified in the advance guarantee agreement on the outstanding amount of the advance, calculated from the date of the advance.

garantie calculés au taux prévu dans l'accord de garantie d'avance, courus à partir de la date du versement de l'avance.

Subrogation

(2) The Minister is, to the extent of any payment under subsection (1), subrogated to the administrator's rights against the producer in default and against persons who are personally liable under paragraphs 10(1)(c) and (d).

Subrogation

(2) Le ministre est subrogé dans les droits de l'agent d'exécution contre le producteur défaillant et les personnes qui se sont engagées personnellement au titre des alinéas 10(1)c) et d), à concurrence du paiement qu'il fait au titre du paragraphe (1).

Recovery of interest and costs

(3) The producer is liable to the Minister for interest on the subrogated amount, calculated in accordance with the repayment agreement, and the costs incurred by the Minister to recover that amount, including legal costs.

Frais engagés par le ministre

(3) Le producteur est redevable au ministre des frais engagés par celui-ci pour procéder au recouvrement en vertu du paragraphe (2), y compris les frais juridiques et les intérêts sur le montant des frais calculés conformément à l'accord de remboursement.

Limitation period

(4) No action or proceedings may be initiated by the Minister to recover any amounts, interest and costs that are owing more than six years after the day on which the Minister is subrogated to the administrator's rights.

Prescription

(4) Toute poursuite visant le recouvrement par le ministre d'une créance relative au montant non remboursé de l'avance, aux intérêts ou aux frais se prescrit par six ans à compter de la date à laquelle il est subrogé dans les droits de l'agent d'exécution.

VI. Summary Judgment Is Granted

[45] I am satisfied based on the evidence provided by the Plaintiff, the provisions of the *AMPA* and the jurisprudence that there is no genuine issue for trial. The evidence permits me to make the necessary findings of fact and to apply the law to the facts. The Federal Court of Appeal has recently and clearly resolved many of the issues raised by the Defendants. In addition, the Defendants have not adduced any evidence in support of their submissions that there is any genuine issue for trial as required by Rule 214. Summary judgment provides a proportionate and more expeditious process to resolve the Plaintiff's claim.

[46] In brief, the Plaintiff has established that the Defendants owe the amount requested to the Crown. The Plaintiff has established that the Defendants applied for and received the advance payments from the CWB. Upon paying out the amount guaranteed to the CWB, the Minister became subrogated to the CWB's rights. The Plaintiff commenced this action within six years of the date that the Minister honoured the guarantee available under section 23 of the *AMPA* for the Advance Payments. The interest claimed reflects the advance payment agreements signed by the Defendants.

[47] The Individual Defendants' Guarantee is enforceable. I agree with the Plaintiff that the clear wording of the Individual Defendants' Guarantee executed in 2006 demonstrates that it is intended to apply to all current and future advances made pursuant to the *AMPA*, and is not limited to the 2006-2007 crop year. As noted in the guarantee, the consideration for it was the advance

payments made to Kenelane Farms Limited, in which the Individual Defendants each had a 50 percent interest.

[48] The *AMPA* applies to the Guarantee. Paragraph 10(1)(d) of the *AMPA* requires each shareholder of a producer corporation to agree in writing to be jointly and severally liable to the administrator in order to be eligible for an advance.

[49] Alternatively, even if the Alberta *Guarantees Acknowledgment Act* applied, its requirements were met. Kenneth William Bills and Marion Elaine Bills appeared before a lawyer or notary public, acknowledged that they executed the Individual Defendants' Guarantee, and signed the statement in the certificate part of the document, which was in the same form as that set out in the Regulations to that Act. The Individual Defendants would certainly know or be able to ascertain the identity of the lawyer or notary public that they engaged.

[50] The jurisprudence has established that the Repayment Agreement entered into between the Defendants and AAFC is not a new contract. The *AMPA* applies and the Plaintiff's claim is based on the *AMPA. S*ubsection 23(4) provides that the limitation period is six years, which runs from the date the Minister is subrogated to the rights of the organization, which is the date upon which the Minister honours their guarantee and pays the organization (in this case, the CWB). The limitation period does not run from the date that the producer (the Defendants) defaulted.

[51] In *Moodie FC* and in three other similar cases (*Canada v Klesse*, 2020 FC 45; *Canada v Harman*, 2020 FC 47; *Canada v McKinna*, 2020 FC 48), the Court found that the Minister's right

of action was distinct from that of the administrator and was governed by the *AMPA*, noting in *Moodie FC* at paras 26–27:

> [26] The Plaintiff's right of action in this case derives from the operation of the *AMPA*; this is a claim based on statute, not contract. The relevant terms of the statute, and in particular the Minister's subrogation rights, are reflected in the agreements signed by the Defendant, but that does not have the effect of transforming their essential nature. I do not accept the Defendant's contention that these are to be interpreted as equitable or contractual claims. I will discuss the "clean hands" argument below.
>
> [27] I find that the agreements and the *AMPA* are consistent and clear: the Minister's right to bring an action for recovery of the amounts due arises only when a number of conditions have been met. First, the producer must be in default (section 22, *AMPA*). Second, the administrator must have made a demand to the Minister for payment of the amount specified by the legislation and Regulations (subsection 23(1), *AMPA*). Third, the Minister must have made a payment to the administrator pursuant to that demand (subsections 23(1) and (1.1), *AMPA*). Only if these conditions have been fulfilled does the Minister become subrogated to the rights of the administrator (subsection 23(2), *AMPA*). Once this occurs, the producer is liable to the Minister for the subrogated amount (subsection 23(3), *AMPA*). <u>This is when the statutory limitation or prescription period begins to run, subject to the other provisions regarding time limitations set out in subsections 23(6) to (9) of the *AMPA*</u> [Emphasis added].

[52] In the present case, as in *Moodie*, all the same conditions have been met for the Minister to recover the amounts due.

[53] In *Moodie FCA*, the appellants argued that the Minister's claim fell outside the six-year limitation period because it was started more than six years after the producer (the appellants) first defaulted on their repayment agreement. The Court of Appeal clearly determined that subrogation occurs when the Minister pays the administrator, noting at paras 12–15:

> [12] Indeed, a second reason why the appellants' interpretation must be rejected is that it implies that the Minister, if she becomes subrogated to the administrator at the moment of the producer's default, could start an action to recover the debt from the producer before the administrator requests payment by the Minister and before the Minister pays any funds. This would presumably mean either that the administrator is precluded from seeking to recover the debt itself, as its creditor's rights assign to the Minister the moment of the producer's default; or that the producer would be liable upon default to both the administrator and the Minister at the same time. This interpretation is, frankly, without merit, and the appellants made no cogent argument as to why this strained interpretation must be preferred over the more obvious and logical one, namely, that subrogation occurs when the Minister pays the administrator in place of the producer.
>
> [13] This accords with the conclusion of the Federal Court judge, who pointed out that the *AMPA* sets out specific pre-conditions that are to be met before the Minister must pay the administrator in place of the producer: *Moodie* at para. 27. The Federal Court judge therefore concluded that the Minister does not become subrogated at the moment of the producer's default: *Moodie* at paras. 27–28.
>
> [14] In my view, the Minister's obligation to pay the administrator in place of the producer does not arise at the moment of the producer's default, and indeed may not arise at all if the administrator does not follow the statutorily mandated steps. It is thus difficult to see how the Minister could become subrogated to the administrator at the moment of the producer's default, before the Minister has paid in place of the producer, and before it is even clear that she will have to.
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> [15] Therefore, in my view, the Minister's claims were not statute-barred, as the limitation periods did not begin to run at the moment of the appellants' defaults.

[54] The jurisprudence relied on by the Defendants to argue that the amount of pre-judgment interest should be reduced is based on provisions of Alberta's *Judgment Interest Act* and does not assist them. Although the Plaintiff's explanation for their delay in pursuing their action as due to volume and workload is not compelling, the Defendants were well aware of their obligations

pursuant to their Repayment Agreement and could have been proactive in repaying to avoid the accumulation of interest. In addition, as the Plaintiff notes, the time period from subrogation to the filing of the claim is consistent with other recent summary judgment applications.

[55] The amount of the claim is clearly set out in the affidavits of the Plaintiff's affiants. The Defendants did not adduce any other evidence, nor did they cross-examine the Plaintiff's affiants.

[56] The Plaintiff has established, via the affidavits of Mark De Luca and Shelley Warner, that:

a) the Defendants applied in writing to the CWB for Advance Payments on April 27, 2011 and March 8, 2012;

b) the Defendants received Advance Payment 1 in the amount of $100,000.00 on or about April 29, 2011 and Advance Payment 2, in the amount of $64,463.52 on or about March 13, 2012;

c) the Minister honoured the guarantee and paid the CWB on or about April 10, 2013;

d) the Plaintiff commenced this action on February 21, 2019; and

e) the Defendants are indebted to the Crown in the total amount of $239,845.27 as of June 22, 2021.

[57] In conclusion, the Court grants summary judgment in favour of the Plaintiff. In accordance with Rule 400(4) of the *Federal Courts Rules*, the Plaintiff is entitled to its costs and

disbursements in the amount of $2,108.93, the calculation of which is set out in the affidavit of Shelley Warner.

JUDGMENT in file T-348-19

THIS COURT'S JUDGMENT is that:

1. The Motion for Summary Judgment is granted.
2. The Defendants, Kenelane Farms Limited, Kenneth William Bills and Marion Elaine Bills, shall pay to the Plaintiff:

- the sum of $ 239,845.27;
- the Plaintiff's costs and disbursements fixed at $2,108.93; and,
- interest on the sum of $239,845.27, which shall accrue at the *per diem* interest rate of $16.84 from June 22, 2021 to the date of this Court's Judgment and thereafter at 5% per annum.

"Catherine M. Kane"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-348-19
STYLE OF CAUSE:	HER MAJESTY THE QUEEN IN RIGHT OF CANADA v KENELANE FARMS LIMITED, KENNETH WILLIAM BILLS AND MARION ELAINE BILLS

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	KANE J.
DATED:	SEPTEMBER 7, 2021

WRITTEN REPRESENTATIONS BY:

Cailen Brust	FOR THE APPLICANT
Ryan Trainer	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Saskatoon, Saskatchewan	FOR THE APPLICANT
McLennan Ross LLP Edmonton, Alberta	FOR THE RESPONDENT