IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Resonance Holdings Ltd. v. Infiniti Investments Inc.,* 2025 BCSC 826

Date: 20250502
Docket: S1812328
Registry: Vancouver

Between:

Resonance Holdings Ltd. and 1145227 B.C. Ltd.

Plaintiffs

And

Infiniti Investments Inc., Teja Singh, Kohinoor Ventures Inc., Goldtree Capital Partners Limited Partnership, Goldtree Capital Partners Inc. and Boston Homes Inc.

Defendants

And

Devinder Sidhu

Defendant by Way of Counterclaim

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the Plaintiffs, Resonance Holdings Ltd., 1145227 B.C. Ltd. and the Defendant by Way of Counterclaim, Devinder Sidhu:	G. Dulay
Counsel for the Defendant, Kohinoor Ventures Inc.:	J. Payne A. Chekh
Counsel for the Defendants, Infiniti Investments Inc. and Teja Singh:	A. Beddoes
Place and Dates Hearing:	Vancouver, B.C. February 25-27, 2025
Place and Date of Judgment:	Vancouver, B.C. May 2, 2025

2025 BCSC 826 (CanLII)

Table of Contents

2025 BCSC 826 (CanLII)

2025 BCSC 826 (CanLII)

Overview

[1] Some of the parties to this longstanding litigation are of the view that they entered into a settlement agreement in December 2021. They have been unable to agree on the implementation of the purported settlement agreement, which is in the form of a chart of steps that will occur after two properties, the subject of the underlying litigation, were sold.

[2] I will refer to the document setting out the purported settlement agreement as the "settlement chart". The properties to be sold are called the Sunnyside properties.

[3] The defendant, Kohinoor Ventures Inc. ("Kohinoor"), brought an application to enforce the settlement chart as a settlement agreement and have the court order that certain amounts from the sale proceeds of the subject properties be paid out to each party, in part on the basis that the settlement chart created a trust in which the sale proceeds are held. During the course of speaking to that application, Kohinoor withdrew it and advised that it would be commencing separate litigation in which it would be suing on the purported settlement agreement and seeking the same relief, including arguing that the settlement chart creates a trust.

[4] Teja Singh and Infiniti Investments Inc. (the "Singh parties") brought a cross application pursuant to Rule 9-6 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 also seeking to enforce the settlement agreement they assert is contained in the settlement chart. They seek orders that releases be entered into, consent dismissal orders signed, and a declaration that there is no trust. They assert that if these orders are made, they are at liberty to pay out the rest of the funds their lawyer holds in trust pursuant to a consent order made in May 2022.

[5] Kohinoor opposes the application brought by the Singh parties on the ground that it is not suitable for Rule 9-6 summary judgment resolution, primarily because the issue of whether the settlement chart creates a trust is not bound to fail and so does not meet the Rule 9-6 test. 1145227 B.C. Ltd. and Resonance Holdings Ltd. (the "Sidhu parties") take no position on the relief sought by the Singh parties, except to oppose an order of special costs.

[6] The underlying litigation is about investments projects, including in the Sunnyside properties. 1841 Sunnyside was legally owned by the Singh parties. 1821 Sunnyside was legally owned by 1145227 B.C. Ltd. The defendant by counterclaim, Devinder Sidhu, is the principal of the Sidhu parties. The Sidhu parties and Kohinoor claimed that Goldtree Capital Partners Limited Partnership held a beneficial interest in the Sunnyside properties. The Singh parties claimed that Boston Homes Inc. held a beneficial interest in the Sunnyside properties.

[7] The settlement chart was proposed by the Sidhu parties and Kohinoor to the Singh parties as an offer to conclude the litigation. The Singh parties accepted. It mostly consists of steps to be taken and matters to be taken into account from the first step, sale of the Sunnyside properties, to the division of net sale proceeds among the parties to the settlement chart. No releases have been signed or consent dismissal orders entered.

[8] The defendants Goldtree Capital Partners Limited Partnership, Goldtree Capital Partners Inc. (collectively the “Goldtree parties”) and Boston Homes Inc. are not parties to the settlement chart. They were not served with these applications. Counsel did not know if they were served with the notice of civil claim or filed responses, factors which determine whether they are parties of record, rather than just parties. The parties before me agree that the applications can proceed without them because the Goldtree parties are a limited partnership and its general partner, the shareholders and directors of which are all parties already. They assert that Boston Homes Inc. is an Alberta company controlled by Mr. Singh and Mr. Sidhu.

[9] I am of the view that this is an inadequate explanation to conclude that the Goldtree parties and Boston Homes Inc. are not parties of record and entitled to notice of these applications. They are separate legal entities and the requirement that they have notice of this application, if they are parties to the underlying proceeding, cannot be brushed off by an assertion that their principals and shareholders are present in other roles.

2025 BCSC 826 (CanLII)

[10] Pursuant to Rule 22-1(2), I advised the parties before me that I was prepared to proceed on the basis that if any of the parties are not present and come forward later to assert that this matter had not proceeded, then I would accede to that and this matter would have to be reheard with the party or parties present.

[11] This issue is emblematic of an approach that all of the parties who appeared before me took to these applications. Each is of the view that a settlement of the action was reached, apparently without the participation of the Goldtree parties notwithstanding that Goldtree Capital Limited Partnership was alleged to have a beneficial interest in the Sunnyside properties. There is a question of whether the settlement chart is in fact a settlement agreement, a question which the parties acknowledge but implicitly ask the court to overlook generally because they each believe they seek practical and cost effective results. The necessary threshold question of whether there is a settlement agreement, the suitability of summary determination of the issues sought to be determined given the status of the proceeding, and the lack of pleadings relevant to the issues sought to be resolved, are not central features of the parties' submissions.

[12] The submissions reflect the fact that the parties before me, once co-investors working together, do not trust each other. Very shortly after the parties before me agreed on the settlement chart, progress became bogged down with a combination of disagreements on how to implement the steps in the settlement chart, whether the funds had to be held in lawyers' trust account pending the completion of the steps, whether the funds were subject to a trust created by the purported settlement agreement, and cross accusations of impropriety and other behaviour causing delay. All of the parties before me submit that all of this is costing money and diminishing the real value of the funds to be distributed.

[13] It is important to note that the majority of the counsel on these applications are new to the matter and inherited this status when they commenced acting for the parties before me.

[14] The issues are:

2025 BCSC 826 (CanLII)

a) Whether the Court can determine the threshold issue of a valid and enforceable agreement under Rule 9-6, and if so, whether the parties had a meeting of the minds on the essential terms of an agreement to resolve the litigation.

b) Whether the ancillary orders sought by the Singh parties can be made under Rule 9-6.

c) Whether the court can grant a declaration of no trust as sought by the Singh parties.

d) Whether the conduct of Kohinoor and the Sidhu parties warrant special costs in favour of the Singh parties.

2025 BCSC 826 (CanLII)

Enforceability of the Purported Settlement Agreement

[15] The parties before me each assert they made a valid and enforceable settlement agreement when they agreed upon the settlement chart.

[16] The settlement chart does not have features of a typical settlement agreement such as identification of the parties to the settlement agreement, background to the agreement set out in whereas clauses, a statement of the consideration, clear statements of the obligations of the parties, whether time is of the essence, etc. The words in the chart are not sentences – they are strings of words that do not have grammatical structure or punctuation. The form of the settlement chart and the inability to implement it raise the question of whether the parties who agreed on the settlement chart had a meeting of the minds such that the settlement chart is a settlement agreement that is valid and binding and can be enforced by the court.

[17] When the Court raised the issue, Kohinoor and the Singh parties agreed that whether the parties made a binding agreement is a threshold issue that the Court must determine, a position which accords with *Ring Contracting Ltd. v. B & G Logging Ltd.* (1998), 119 B.C.A.C. 166 at para. 1, 1998 CanLII 5852. None of the

parties before me made substantive submissions on why I should conclude that the settlement chart is a valid and binding settlement agreement with regard to whether the parties had a meeting of the minds on the essential terms.

[18] The Singh parties cite Rule 9-6 as the legal basis for a summary judgment order requiring releases and dismissing the action. They do not specify a legal basis for the declaration that they also seek, that the purported settlement agreement does not create a trust. I note that the context in which the Singh parties' application was originally brought was as a cross application to the application of Kohinoor, in which Kohinoor asserted the sale proceeds were impressed with a trust and that the Singh parties had breached the trust.

[19] Since the Singh parties' application for a dismissal order based on the existence of a binding settlement agreement is brought under Rule 9-6, the threshold issue of whether there is a valid settlement agreement is raised under the same procedural framework of Rule 9-6.

Legal Principles

Rule 9-6

[20] Rule 9-6 provides for summary judgment for a plaintiff or a defendant in three circumstances. The first is found in Rule 9-6(5)(a): where the court determines that a claim made by a plaintiff or a defence raised by a defendant does not raise a genuine issue for trial the court must dismiss the claim or pronounce judgment. The second is found in Rule 9-6(5)(b): where the only genuine issue is the amount to which the claiming party is entitled, in which case the court may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount. The third is found in Rule 9-6(5)(c), where the only genuine issue is an issue of law, in which case the court can determine the issue and pronounce judgment or dismiss the case. Under Rule 9-6(5)(d), the court may make "any other order it considers will further the object of the Supreme Court Civil Rules".

[21] Under subrule (5)(a), the principles to be applied are as follows:

2025 BCSC 826 (CanLII)

a) A defendant who seeks summary dismissal under this subrule bears the burden of showing that it is plain and obvious that there is "no genuine issue of material fact requiring trial": *Sandhu v. Sun Life Assurance Company of Canada*, 2016 BCSC 1077 at para. 12. This standard is also described as manifestly clear or beyond a reasonable doubt: *Beach Estate v. Beach*, 2019 BCCA 277 at para. 65.

b) In considering the application, the court must assume that uncontested material facts as pleaded by the plaintiff are true; matters of fact cannot be weighed, and inferences from the facts must be viewed in a light most favourable to the party resisting summary judgment: *Sandhu v. Sun Life Assurance* at para. 12; *Wilkinson v. Chartier*, 2025 BCCA 53 at para. 37; *Beach Estate* at para. 49.

c) If the court is satisfied beyond a reasonable doubt, or that it is manifestly clear that there is no genuine issue for trial, then it must dismiss the claim – Rule 9-6(5) is mandatory: *Sakwi Creek Hydro Limited Partnership* v. *Dickin*, 2023 BCCA 188 at para. 25.

d) The bar for an application under this subrule is high: *Charbonneau Estate v. Charbonneau*, 2021 BCCA 206 at para. 23; *Wilkinson* at para. 37.

[22] Under subrule (5)(c), if the only genuine issue is a question of law, the court is empowered to determine the question of law and pronounce judgment accordingly. In *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2021 BCSC 348, Chief Justice Hinkson described three limitations to proceeding under this sub-rule:

a) the court must be satisfied that there is no real dispute about the material facts;

b) the issue of law is well-settled by authoritative jurisprudence; and

2025 BCSC 826 (CanLII)

c) determining the question of law will allow the court to pronounce judgment on at least part of the claim.

Valid and Enforceabe Agreements

[23] For an agreement to be valid and enforceable in law, it must satisfy the usual prerequisites for contract formation, as succinctly described in *Pacific Wagondepot Ltd. v. Hudson West Development Ltd.*, 2017 BCSC 1593 at para. 34 as "when parties reach a meeting of the minds, or *consensus ad idem* about its essential terms". The meeting of the minds on essential terms must be evidenced by an objective expressed intention to be bound and "sufficient clarity or certainty of the essential terms", *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303 at para. 322; *Tham v. Bronco Industries Inc.*, 2017 BCSC 828 at para. 75; and *Berthin v. Berthin*, 2016 BCCA 104 at para. 47.

[24] The test is an objective one; the question is whether the parties have indicated to the outside world, as their communications are seen by an objectively reasonable bystander, not only their intention to contract but also the terms of such contract: *Aubrey v. Teck Highland Valley Copper Partnership*, 2017 BCCA 144 at paras. 35, 48; *Berthin* at para. 46; *Le Soleil* at paras. 324–325; and *Tham* at para. 77. Subjective intentions are not relevant because, as explained in Fridman, *The Law of Contract*, (6th ed, 2011), it is only manifested intentions that can form the basis of mutually agreed to terms.

[25] Ideally, the parties will manifest their agreement to the outside world by creating a written, signed contract. However, this is not required by law; an agreement may be enforceable in the absence of a written contract if the evidence of what the parties said and did establishes that the essential elements of contract formation existed at the time the agreement was formed. Evidence of the parties' conduct leading up to and following the conclusion of the alleged agreement may be considered: *Pacific Wagondepot* at paras. 34–38.

[26] Where a party argues that one or more terms of the agreement are implied through conduct, the court must be satisfied that there was agreement on the

2025 BCSC 826 (CanLII)

essential terms of the contract. This guards against the risk of courts attributing intentions to the parties which they never had: *Surerus v. Rudiger*, 2000 BCSC 1746 at para. 33 citing *Beaudoin-Daigneault v. Richard*, [1984] 1 S.C.R. 2, 1984 CanLII 15. A preliminary agreement that is incomplete on the essential terms does not constitute an enforceable contract but rather an unenforceable "agreement to agree": *Le Soleil* at para. 330; and *Berthin* at para. 48. Put another way, such an agreement is "void for uncertainty".

[27] Courts "will 'lean heavily against finding contracts void for uncertainty'", *Berthin* at para. 46. If there are matters missing, which are "mere formalities or routine language" or "minor details which the parties can impliedly be taken to have agreed upon", then the missing parts are not essential terms and the court can imply the missing terms and enforce the contract: *Bawitko Investments Ltd. v. Kernels Popcorn Ltd.* (1991), 79 D.L.R. (4th) 97, 1991 CanLII 2734 (O.N.C.A.). But if the uncertainty is such that the court cannot reasonably conclude that the prerequisites of contract formation have been met, the agreement will fail: *Berthin* at para. 46.

Jurisdiction of the Court to Make Ancillary Orders to Enforce a Settlement Agreement

[28] The Singh parties and Kohinoor both submit that the court has inherent jurisdiction to make ancillary orders to enforce a settlement agreement.

[29] For example, so long as there is no issue as to whether a binding settlement agreement was reached, pursuant to s. 8 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, a court may stay an action that has been settled: *Roumanis v. Hill*, 2013 BCSC 1047 at para. 55.

[30] Courts have ordered that parties execute releases and have made dismissal orders where there is no doubt that there is a binding settlement agreement. In these cases, the courts have not always specified the source of jurisdiction, which may be s. 8 of the *Law and Equity Act*, or may be the inherent jurisdiction of the court: *Tige Industries Ltd. v. 0763636 B.C. Ltd.*, 2020 BCSC 50, discussed by Justice Tucker in *Sandhu v. Hennessy,* 2020 BCSC 515 at paras. 29–39. In *Hutton v. Hutton*, 2020

2025 BCSC 826 (CanLII)

BCSC 2046, Hinkson C.J.S.C. cited *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114 (1989), 1989 CanLII 2744 (B.C.C.A), in which Chief Justice McEachern explained that a settlement "implies a promise to furnish a release and, if there is an action, a consent dismissal".

[31] In *Sievert, et al v. Napier, et al,* 2006 BCSC 613, Justice Melnick relied on inherent jurisdiction and s. 10 of the *Law and Equity Act* to resolve a dispute in which the parties agreed there was a settlement agreement, but disagreed as to what was required to comply with the settlement terms.

[32] As I have already stated, the pre-cursor to making ancillary orders to enforce an agreement is that there is a valid and enforceable, also referred to in the caselaw as binding, agreement. If that is in issue, the court may undertake that preliminary inquiry as part of an application to enforce an agreement so long as it is not substantive or so long as pleadings are not required on the issue: *Hutton* at paras. 27–30*,* citing *Son v. Kim*, 2009 BCSC 776 at para. 36.

[33] In *Son,* citing *Roberts v. Gippsland Agricultural and Earth Moving Contracting Co. Property Ltd.*, [1956] V.L.R. 555 at 562–565 (Vict. S.C.), Justice MacKenzie concluded that "the Court has the jurisdiction to enforce or set aside an agreement that compromises an action notwithstanding that it involves matters extraneous to the action, or even that there is a substantial issue as to the terms, validity or enforceability of the agreement. The exercise of this jurisdiction will depend on whether justice is best served under the summary procedure in the peculiar circumstances of the settlement agreement in question." The jurisprudence considered by MacKenzie J. referred to the predecessor provisions to what is now s.10 of the *Law and Equity Act*.

[34] I have not been provided with a case in which the inherent jurisdiction of the court has been used to determine the validity of a settlement agreement. Generally speaking, a party to litigation who believes it has been settled will plead the settlement agreement as a defence in which case the validity of the settlement agreement becomes a relevant issue. Alternatively, if a party to a settlement

2025 BCSC 826 (CanLII)

agreement is refusing to act in accordance with the settlement agreement, then the party who seeks compliance with the agreement can sue on the agreement.

[35] In my view, given that the law refers to the court being satisfied that the summary procedure is adequate to do justice in the circumstances, the legal principles pertaining to summary judgment under Rule 9-6 are engaged when determining whether the agreement is valid and enforceable, whether to make ancillary orders, and whether to enforce it. This includes the particulars of the case including "the extent to which extraneous matters are involved, how substantial are the questions to be determined, to what extent questions of credibility are likely to arise, and whether pleadings and discovery may be desirable": *Roberts* at 564, applied in *Son* at para. 45. In *Son*, MacKenzie J. declined to exercise the jurisdiction to enforce the agreement because the originating proceeding was a petition, because one of the parties to the settlement agreement was not a party to the petition, and because the settlement agreement could be enforced by commencing a proceeding and seeking a summary trial resolution.

Whether the Validity and Enforceability of the Purported Settlement Agreement can be Determined under Rule 9-6

[36] The issues to be resolved include issues of fact and mixed issues of fact and law. With regard to the existence of a valid and enforceable agreement, the test is whether there is objective evidence that the parties to the underlying litigation reached an agreement on the essential terms of an agreement to resolve the underlying litigation. Whether essential terms have been reached are a matter of fact, and so if it is decided under Rule 9-6, it is Rule 9-6(5)(a) that is applicable: *Aubrey* at para. 22, citing *Lacey v. Weyerhaeuser Company Limited,* 2013 BCCA 252 at para. 40.

[37] Enforcing the settlement agreement requires contract interpretation which involves issues of mixed fact and law, accordingly that also falls under Rule 9-6(5)(a).

2025 BCSC 826 (CanLII)

[38] The purported settlement agreement is neither part of the claim pleaded by the plaintiffs nor a defence pleaded by the Singh parties. Pleadings would be helpful to determine this issue because they would assist in identifying what the essential terms of a settlement are, and whether there was a meeting of minds on that issue.

[39] There is evidence from the parties as to the making of the purported settlement agreement and what happened after that to bring the parties to this stage, more than three years later, where the Sunnyside properties have been sold but the parties have not been able to agree on how to implement the purported settlement to distribute the proceeds in accordance with the settlement chart.

[40] Some of the evidence is disputed factually, but in most cases, the disputes are over what inferences to draw from the evidence. Under Rule 9-6(5)(a), the court can only draw inferences that are favourable to the parties defending summary judgment, in this case Kohinoor and the Sidhu parties.

The Dispute, the Making of the Settlement Chart and Subsequent Events

[41] The underlying litigation concerned a dispute over beneficial ownership of the Sunnyside properties. Teja Singh was the owner of 1841 Sunnyside and 1145227 B.C. Ltd. was the owner of 1821 Sunnyside. Kohinoor did not hold title to either property but asserted that Kohinoor or Goldtree Capital Partners LP had a beneficial interest.

[42] There was a trial date set for January 10, 2022. In December 2021, the parties before me were negotiating resolution. On December 7, 2021 counsel for Kohinoor wrote to counsel for the Singh parties with the joint offer to settle, made by Kohinoor and the Sidhu parties, in the form of the settlement chart. On December 8, 2021, counsel for the Singh parties responded: "I am instructed to accept your offer".

[43] The settlement chart provides that the Sunnyside properties will be sold on December 29, 2021. It provides that the proceeds will be used to retire two mortgages, reimburse the parties for various costs and expenses including

2025 BCSC 826 (CanLII)

sustaining costs, then the remaining proceeds will be divided 48.48% to the Sidhu parties, 27.27% to Kohinoor, and 24.24% to the Singh parties.

[44] Some of the costs and expenses for which parties were to be reimbursed were not set out or calculated with precision. In particular, line 2E of the settlement chart directs the reimbursement of the "costs that were required to sustain each Sunnyside Property".

[45] According to the Singh parties, Kohinoor and the Sidhu parties quickly developed “settler’s remorse” and at a trial management conference on December 10, 2021, Kohinoor and the Sidhu parties referred to the parties having something less than a finalized settlement. The Singh parties insisted there had been a final settlement. Rather than adjourn the trial generally, the uncertainty resulted in an order that "if the trial scheduled for January 10, 2022 is to commence", then certain materials were to be prepared by the commencement of trial.

[46] On December 21, 2021, counsel for the Singh parties wrote to counsel for Kohinoor and the Sidhu parties attaching drafts of a settlement closing agenda, a release of a consent dismissal order and a letter to the purchaser of the Sunnyside properties regarding the parties' settlement and the closing of the sale.

[47] Counsel for the Singh parties also proposed that MNP LLP be jointly retained to analyze the components of the settlement chart that required certain calculations; that the settlement close on December 28, the day before the planned closing of the sale to the purchaser of the properties; and that counsel for Kohinoor or the Sidhu parties draft an instruction letter to conveyancing counsel regarding the distribution of the undisputed sale proceeds.

[48] On December 28, 2021, the Sidhu parties communicated that as a condition of a consent dismissal order, all sale proceeds be held in trust and not disbursed until an accounting was completed concerning the proceeds that required further calculation.

2025 BCSC 826 (CanLII)

[49] The Singh parties and Kohinoor did not agree to this proposal. The Singh parties took the position that nothing in the purported settlement agreement contemplated that the funds be held in trust. Counsel for Kohinoor and counsel for the Singh parties proposed that they hold back $1 million of the net sale proceeds pending the anticipated accounting.

[50] The Sidhu parties responded that all monies should be held in trust and not disbursed until the accounting had been completed and all parties agreed, in writing, to disbursement of the proceeds.

[51] Counsel for Kohinoor responded stating that there was no reason to hold all of the funds in trust and reiterating the proposal that $500,000 from the sale of each property be held back to address the payouts to be determined from the accounting.

[52] The sale of the Sunnyside properties closed on December 29, 2021. The conveyancer acting for the Singh parties with respect to the 1841 Sunnyside did not agree to hold the proceeds from the sale of that property on any undertaking. Accordingly, the proceeds were deposited in the trust account for counsel for the Singh parties.

[53] The Singh parties estimate the net proceeds from the sale of 1821 Sunnyside will be approximately $3.8 million, and the net sale proceeds from the sale of 1841 Sunnyside will be approximately $3.4 million.

[54] According to the Singh parties, the Sidhu parties immediately paid themselves $500,000 from the sale proceeds of the 1821 Sunnyside despite the Sidhu parties asserting that all sale proceeds were to be held in trust accounts or on undertakings until all the accounting provided for in the settlement chart was done. The Singh parties' application does not turn on that, but the Singh parties argue that Kohinoor's failure to complain about that, then or now, is inconsistent with its position that the sale proceeds are impressed with a trust. The Singh parties make the same argument with respect to Kohinoor not agreeing to the Sidhu parties'

2025 BCSC 826 (CanLII)

proposal that all of the funds be held in trust accounts on undertakings until the accountings were completed.

[55] In January, 2022, counsel for the Singh parties continued to press for agreement on the form of release, the consent dismissal order and an approach for paying out the net sale proceeds.

[56] On January 18, 2022, counsel for Kohinoor took the position that any distribution from counsel for the Singh parties' trust account should be *pro rata* as between Kohinoor and the Sidhu parties.

[57] On January 19, 2022, counsel for the Singh parties explained that he did not agree with the position that the proceeds in his trust account must be distributed *pro rata*, stating that the property sold was owned by his client and his instructions were to pay out the Singh parties in full. As a result, Kohinoor would be paid less than 24.24% from the net proceeds of the sale of the 1841 Sunnyside property. On this application, the Singh parties assert that is not a problem under the purported settlement agreement because Kohinoor is entitled to be paid a sum of money by the Singh parties and the Sidhu parties that is calculated in reference to the net proceeds of the sales of both properties, but not 24.24% from the net proceeds of each property.

[58] After counsel for the Singh parties communicated this position, counsel for Kohinoor raised that he was looking at whether the funds were in trust for the parties pursuant to the purported settlement agreement, but he was hopeful he would not have to press that position and they could find an agreement to the holdback of $1 million.

[59] The Singh parties retained new counsel. Former counsel still had the sale proceeds from 1841 Sunnyside in his trust account. On February 18, 2022, with these debates ongoing, former counsel for the Singh parties, on instructions from the Singh parties, disbursed $1,816,235.91 to the Singh parties. The basis for the instructions were that the funds belonged to the Singh parties. Counsel for Kohinoor

2025 BCSC 826 (CanLII)

asserted that was improper and asked the Singh parties' counsel to bring the matter to the attention of his insurer. Counsel for Kohinoor also disagreed with the calculations that the Singh parties had made to come up with the number disbursed, and demanded the difference, $115,257.22, be paid into the trust account of new counsel for the Singh parties. That was done.

[60] In May 2022, Kohinoor brought an application seeking payments of specified amounts from the trust funds held by counsel for the Singh parties and counsel for the Sidhu parties. The parties agreed to a consent order that the Singh parties' counsel would hold $300,000 in trust and not distribute it without a further court order or written agreement of the parties. For reasons that have not been explained, that order has not been entered but the parties agree what its terms are.

[61] To date, most of the funds have been paid out, although I am not able to conclude that was done based on an agreed upon interpretation of the settlement chart. It is clear that the parties before me have not been able to agree on sustaining costs. I was also told about an issue of taxes owing to CRA. The parties before me did not retain MNP LLP to undertake the accounting, but they did eventually retain Crowe MacKay LLP to do so. An interim report was completed, but it is not final because the parties do not agree whether Crowe MacKay has all of the information to do the accounting, particularly with regard to the sustaining costs.

[62] There is approximately $482,000 total from the sale proceeds of both Sunnyside properties in the two lawyers' trust accounts, on terms that are disputed, except that the funds in the Singh parties' lawyer's trust account are subject to the May 2022 unentered consent order.

Rule 9-6 Resolution

[63] The questions are whether the court can, within the permissible parameters of Rule 9-6(5)(a), determine that:

2025 BCSC 826 (CanLII)

a) there is objective evidence that the parties to the underlying litigation reached an agreement on the essential terms of an agreement to resolve the underlying litigation; and

b) any unclear or missing matters can be implied based on evidence that is not in conflict. Contract interpretation is a matter of mixed fact and law*:* *Sattva Capital Corp. v. Creston Moly Corp*., 2014 SCC 53.

[64] Despite the disputes the parties had very shortly after agreeing to the settlement chart, I consider there to be objective evidence that the parties before me intended to resolve the underlying litigation. There is no dispute that counsel for Kohinoor sent the settlement chart to counsel for the Singh parties, with a copy to counsel for the Sidhu parties, as a counteroffer from Kohinoor and the Sidhu parties. Counsel for the Singh parties replied that it was accepted.

[65] The difficult question is whether I can determine whether the settlement chart represents a meeting of minds on the essential terms.

[66] I did not receive any submissions on what the essential terms of an agreement to resolve the underlying litigation would entail. I was provided with very little information about the underlying litigation. I was not provided with the pleadings which might assist in understanding the issues in the underlying litigation and how the settlement chart resolves them.

[67] The settlement chart does not identify the parties to it, which is clearly an essential term of a settlement agreement: *Hutton* at para. 50. This brings the analysis back to the status of the Goldtree parties and Boston Homes Inc. No counsel before me were able to say whether they had been served with the notice of civil claim or had filed responses and therefore are parties of record. While I expect that counsel for Kohinoor would argue that it does not matter for the purposes of determining that the settlement agreement was made, because the parties to the settlement agreement included all the shareholders and limited partners of the Goldtree parties and Boston Homes Inc., that does not make them parties to the

2025 BCSC 826 (CanLII)

settlement agreement. It is also a circular proposition because the other parties to the settlement agreement are not identified so it is not possible to confirm that the Goldtree parties and Boston Homes Inc. were represented in the settlement chart through all of their limited partners or shareholders. Indeed, the settlement chart refers to "the parties" as those who are prepared to sell the Sunnyside properties and it also refers to the potential purchasers of the Sunnyside properties as "parties". I could presume the latter term is used in the settlement chart as a synonym for "potential purchasers" but the question remains as to whether there was a meeting of the minds as to who are the parties to the settlement chart and the agreement the parties intended make.

[68] The settlement chart does not state what the consideration is. It is plain from the Singh parties' position that they are of the view that the basic deal was that the litigation would be resolved and dismissal orders entered providing that the Sunnyside properties would be sold, the net sale proceeds would be determined, and those net sale proceeds would be distributed 48.48% to the Sidhu parties, 27.2% to the Singh parties; and 24.24% to Kohinoor.

[69] However, there are several matters in dispute between the parties before me as to how the settlement chart was to be implemented including:

a) whether the gross sale proceeds, or some of them, are to be held in trust pending the resolution of the calculations necessary to determine the net sale proceeds;

b) whether the purported settlement agreement created a trust over the gross sale proceeds; and

c) how the "sustaining costs" to be deducted from the gross proceedings and referenced in lines 2Ei and 2Eii of the settlement chart are to be calculated.

2025 BCSC 826 (CanLII)

[70] I did not receive submissions on whether these are essential terms. The disagreement on these issues is such that the parties before me have not been able to complete the settlement.

Whether the Proceeds from the Sale are to be Held in Trust and/or Whether there is Trust Created by the Settlement Chart

[71] The Sidhu parties have asserted, since shortly after the sale of the Sunnyside properties, that the proceeds are to be held in trust until all of the accounting has been undertaken to get to the point where the proceeds can be distributed. They assert that is an implied term of the settlement. The Singh parties have asserted that there is no such term, and one should not be implied. They point to the fact that the vast majority of the sale proceeds have been paid out as evidence that no such term should be implied.

[72] Kohinoor has, at various points, asserted that the funds do not need to be held in trust, but at a later point began asserting that the settlement agreement creates a trust over the sale proceeds and paying out funds without the agreement of all of the parties to the settlement is a breach of trust.

[73] The Singh parties address both of these positions as not being consistent with the purported settlement agreement because the settlement agreement substituted a right to a certain sum of money for any ownership interest in the properties themselves or any legal interest in the sale proceeds. They assert that while Kohinoor became entitled to be paid a sum of money equal to 24.24% of the net sale proceeds, the only legal interest in the properties and the sale proceeds remained with the legal owners, Mr. Singh for one of the properties and 1145227 B.C. Ltd. for the other property. That is, the sale proceeds are simply a reference point to determine what Kohinoor is contractually owed, and are not *per se* the subject of any contractual rights.

[74] Based on that view of the settlement chart, the Singh parties assert they are entitled to pay out their entire 27.27% share of the net proceeds of both Sunnyside properties from the proceeds of sale that their lawyer holds from the sale of 1841

2025 BCSC 826 (CanLII)

Sunnyside. That will leave less than 24.24% of the net proceeds from 1841 Sunnyside for Kohinoor, but the Singh parties say that is not a problem because the net proceeds of 1821 Sunnyside held by the Sidhu parties is enough to pay Kohinoor the sum of money to which it is entitled and because Kohinoor's interest is only to be paid a sum of money. For the same reason, the Singh parties say that, at law, there can be no trust. The Singh parties also assert that the three certainties necessary to create a trust cannot be established.

[75] Dealing with the first point, I am not persuaded beyond a reasonable doubt of the Singh parties' position that any sort of a trust is inconsistent with settlement. The settlement chart does not state the rights asserted in the litigation by Kohinoor (which I understand included claims of beneficial interests in the properties) have been replaced with the right to a sum of money in one of the parties. The settlement chart states that the "parties are prepared to sell the properties". The proposition that Kohinoor abandoned its claim for a beneficial interest in the properties in exchange for money is arguable. But the proposition that the parties agreed that Kohinoor had a beneficial interest in the properties, and is one of the "parties" that agreed to sell them to monetize each of their interests and to accept a certain percentage of the proceeds to resolve the issue of the parties' respective interests is also arguable. Another arguable proposition is that the parties did not agree, either way, as to whether Kohinoor had a beneficial interest in the properties, but agreed to not resolve that issue but not longer litigate it by paying Kohinoor a sum of money. Under that scenario, Kohinoor's agreement to release its claim over the properties was satisfied because the sale proceeds would secure its payment.

[76] As I have already noted, the settlement chart does not contain any whereas clauses that describe what claims have been resolved how. The settlement chart does not use full sentences. The point form words in the settlement chart do not suggest, one way or the other, that its point form terms shall be implemented in a manner consistent to legal title being the only interest, or beneficial interest in the Sunnyside properties being determined one way or the other. It says nothing about whether its terms are meant to provide security for the parties to be paid what they

2025 BCSC 826 (CanLII)

are owed or otherwise how the funds are to be held. Given the form of the settlement chart, the lack of words does not mean that something was or was not agreed upon. If the parties' position that they have a valid and enforceable settlement agreement is ultimately accepted, then I anticipate that the parties and/or the court interpreting the agreement will be tasked with drawing substantial and substantive inferences from the sparse language used and the evidence.

[77] On this application, the only inferences I can draw are those favourable to Kohinoor and the Sidhu parties. Possible inferences include that the settlement chart was intended to not only liquidate the properties to pay sums of money, but also for the sale proceeds to be the funds from which those funds would be paid, and to be a form of security for those sums, if not the only source of the funds. These possible inferences are such that I cannot decide that an essential term of the settlement chart is the one that the Singh parties advance.

[78] Accordingly, I am not in a position to conclude that the only interest that Kohinoor has in the settlement agreement is a claim for a certain amount of money to be paid by the Singh parties and by the Sidhu parties. That conclusion is central to the Singh parties' argument that there can be no trust. Accordingly, I cannot determine whether the settlement agreement contained terms of a trust or terms that the sale proceeds would provide security for the amounts to be paid.

[79] The Singh parties also argue that the evidence rules out that the agreement created a trust because none of the prerequisites for a trust are present and they can all be ruled out on the evidence. Those are certainty of object, certainty of subject matter and certainty of intention.

[80] Kohinoor argued that those certainties can be determined in its favour, but also argued that a traditional trust is not the only type of trust that could be created. It argued that resulting trust or equitable trust is also arguable.

[81] If the creation of a trust or the legal conclusion that the sale proceeds are the subject of an equitable trust is an essential term of the purported settlement, an

2025 BCSC 826 (CanLII)

issue on which I did not receive submissions, I cannot determine if the parties had a meeting of the minds on this essential term on this Rule 9-6 application because the evidence is inadequate to determine these issues on this application beyond a reasonable doubt.

Sustaining Costs

[82] The settlement chart contains a number of terms of the sale of the properties, and provides for types of payments to be made out of the sale proceeds. Some of those terms include what are referred to as sustaining costs – the costs incurred by the Singh parties for maintaining one of the properties and the costs incurred by the Sidhu parties to maintain the other.

[83] Unlike in some of the cases where a valid agreement has been found despite the failure to address all matters in the agreement, the settlement chart does not set out a method of how to address this such as how to determine whether certain claimed expenses meet the expenses that the settlement chart says ought to be taken into account, or how to value those expenses if their cost is disputed.

[84] Kohinoor asserts that despite this gap, it was understood all along that the parties would have to retain experts to assist with this. I pause to note that the evidence was that it took some months and wrangling to get to the point where an expert was retained, and so the evidence that it was understood all along that would happen requires drawing an inference that is not obvious, at least on the evidence before me. In any event, that expert was not able to do the calculation because of the disputes the parties have about what sustaining costs were paid by whom.

[85] The fact that this dispute has stood in the way of doing the calculation is some evidence that the parties did not have a meeting of the minds on all of the essential terms. But it is not conclusive of that. It is possible that there is evidence of a meeting of the minds on the essential terms including on sustaining costs and one party has simply refused to implement that meeting of the minds on the issue of sustaining costs. That sort of situation was the case in *Sievert.* It is also possible that

2025 BCSC 826 (CanLII)

the calculation of sustaining costs is not an essential term for reasons that are not in evidence before me.

[86] What is clear is that I cannot resolve whether the method of calculating sustaining costs was an essential term, what the agreement on it was if there was one, and whether the agreement on that topic was sufficient to create a valid and enforceable agreement on this Rule 9-6 application.

[87] I conclude I cannot determine what the essential terms of the settlement were and whether the parties before me had a meeting of the minds on them on this Rule 9-6 summary judgment application.

Ancillary Orders to Enforce the Settlement Agreement Sought by the Singh Parties Under Rule 9-6

[88] I cannot determine the threshold issue of whether the parties made a valid and enforceable settlement agreement under Rule 9-6(5)(a). Having concluded that, I cannot make the orders sought under Rule 9-6 to enforce the agreement.

[89] Had I been able to determine whether there was a valid and enforceable agreement, I would not have made the ancillary orders to enforce it for the reasons I have given above pertaining to not being able to determine under Rule 9-6 whether the parties agreed that the funds were to be held in trust, whether the settlement chart only created a contractual right to sum of money and no contractual, trust or equitable rights to the proceeds of the sale of the Sunnyside properties, whether calculation of sustaining costs is an essential term, and what if anything the parties before me agreed to about calculating sustaining costs.

Declaration of No Trust

[90] The Singh parties have sought a declaration that the sale proceeds from 1841 Sunnyside are not impressed with a trust. Their notice of application does not list Rule 9-6 as the legal basis for the declaration sought. At the hearing, counsel for the Singh parties did not refer to the principles under Rule 9-6 in support of any of the relief sought, and in reply submissions, counsel for the Singh parties pointed out that

2025 BCSC 826 (CanLII)

the declaration is not sought pursuant to Rule 9-6. I understood his argument to be that the declaration sought does not engage the Rule 9-6 summary judgment test.

[91] As discussed above, the jurisdiction to make ancillary orders to enforce a settlement depends on the court first finding there is a valid and enforceable settlement agreement and that it is appropriate to give summary judgment on the ancillary order sought. In essence, the law is that in making ancillary orders, the court is engaged in a summary judgment process. I consider that the law pertaining to Rule 9-6 applies to the court considering that it is just to proceed summarily when making ancillary orders.

[92] I am not able to give summary judgment on whether the settlement agreement is valid and enforceable including because I cannot determine whether the essential terms were agreed to, including whether the issue of whether the proceeds of the sale of the Sunnyside properties were to be held in trust or are subject to an express or equitable trust were essential terms.

[93] It follows that I consider it inappropriate to make a declaration of no trust under the summary judgment procedure.

[94] In addition, the May 2022 consent order provides that funds held by the Singh parties' counsel would not be distributed without further order of the court on the agreement of the parties in writing.

[95] The Singh parties have not expressly sought a further order of the court pursuant to the May 2022 consent order. They assert that if I accede to their request for a declaration no trust, that declaration would be a further order of the court that would permit the Singh parties' counsel to disburse the funds.

[96] I have not made a declaration of no trust. Even if I had, I have serious doubts that would be a further order of the court within the meaning of the consent order. Orders like the May 2022 consent order usually are made so that the parties can agree that all matters have been resolved allowing the payout in a certain matter, or the court resolves all of the issue and orders payout in a certain manner. The Singh

2025 BCSC 826 (CanLII)

parties are of the view that they can pay their 27.27% entitlement out of the funds they hold, and not pay Kohinoor its 24.24% interest out of the funds they hold. I am not prepared to make an order consistent with that approach pursuant to Rule 9-6 for the reasons I have given, regardless of the trust issue. It follows that I would not make a "further order of the court" within the meaning of the May 2022 consent order.

Costs

[97] The Singh parties and the Sidhu parties seek costs thrown away on Kohinoor's application which it withdrew during the course of making submissions.

[98] The Singh parties seek an order that those costs be assessed as special costs. The primary basis for this position is that Kohinoor's assertion that the funds were trust funds, that there had been a breach of trust, and making allegations of impropriety, warrant special costs. The Singh parties emphasize that Kohinoor disagreed with the position of the Sidhu parties that the funds should be held in trust until all of the accounting had been completed, and then reversed course, according to the Singh parties, and asserted the funds were impressed with a trust. I pause to note that a position that the settlement chart required the funds to be held in trust or on undertakings is not necessarily the same thing as the position that they were impressed with a trust.

[99] The Singh parties also assert that the fact that Kohinoor has not made allegations of breach of trust against the Sidhu parties for unilaterally paying some of the proceeds of the sale of 1821 Sunnyside out to themselves, while making those allegations against the Singh parties, warrants special costs.

[100] I am of the view that the Kohinoor should pay the Singh parties and the Sidhu parties their costs of Kohinoor's withdrawn application. They were forced to respond to it and then it was withdrawn mid-hearing. However, given that I found I could not resolve the issues pertaining to whether the funds should have been held in a trust account or were impressed with an express or equitable trust, I cannot find the facts

2025 BCSC 826 (CanLII)

necessary to determine the bases for the Singh parties' assertion for special costs. I decline to order special costs.

[101] I conclude that the costs payable by Kohinoor should not be in the cause, but payable forthwith, since Kohinoor has advised that it will commence a separate action to enforce the purported settlement agreement where it will be raising the same allegations. Accordingly, there may not be a "cause" in this action on Kohinoor's application to enforce the purported settlement agreement. I order that Kohinoor pay the costs of the Singh parties and the Sidhu parties on its application payable forthwith.

[102] With regard to the Singh parties' application, they were not successful so a costs award in their favour would be very unusual. I have not been provided a reason to depart from the usual rule that costs follow the event. However, the costs should be in the cause because the concern that there will be no cause in this action does not apply to all of the relief that the Singh parties sought, especially the orders for a release and a consent dismissal order. Accordingly, I order that the Singh parties pay Kohinoor and the Sidhu parties the costs of their failed application as costs in the cause.

Disposition

[103] Kohinoor shall pay the Singh parties and the Sidhu parties their costs on Kohinoor's withdrawn application assessed as ordinary costs and payable forthwith.

[104] The application of the Singh parties is dismissed.

[105] Kohinoor and the Sidhu parties shall have their costs of the application of the Singh parties assessed as ordinary costs in the cause.

"Matthews J."

2025 BCSC 826 (CanLII)