

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sidhu v. Brar*,  
2025 BCSC 1592

Date: 20250818  
Docket: S251355  
Registry: New Westminster

Between:

**Baldev Singh Sidhu, Parminder Singh Sidhu,  
and Sukhjinder Singh Sidhu**

Plaintiffs

And

**Manjinder Singh Brar and Parmjeet Kaur Chahal**

Defendants

And

**Kamalpreet Gelan, Monia Grewal,  
Woodhouse Realty Ltd. and Rohit Jindal**

Third Parties

Before: The Honourable Justice Fowler

## Reasons for Judgment

In Chambers

Counsel for the Plaintiffs: S. Sehdev

Counsel for the Defendants: J. Singh

Counsel for the Third Parties, Kamalpreet  
Gelan and Monia Grewal: R. Robertson

Counsel for the Third Parties, Rohit Jindal  
and Woodhouse Realty Ltd.: D. Duncan

Place and Date of Hearing: New Westminster, B.C.  
June 27, 2025

Place and Date of Judgment: New Westminster, B.C.  
August 18, 2025

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**INTRODUCTION**

[1] These reasons for judgment address three applications seeking remedies for alleged deficiencies with the pleading of a third party claim. There are two applications by the third parties to strike, or set aside, third party notices filed without leave by the Defendants; and an application by the Defendants, intended claiming parties, to amend their third party notice, substitute a party, and for an order confirming that one of the third parties was properly served.

[2] I will commence these reasons by setting out some background to the litigation and these applications. I then provide a chronology of the pleadings before summarizing the notice of civil claim, the defences set out in the response to civil claim, and the allegations in the third party claim. Next, I provide details of the three applications, before addressing the merits of the issues and finally my conclusions.

**BACKGROUND**

[3] In February 2022, the Defendants, Manjinder Singh Brar [Brar] and Parmjeet Kaur Chahal [the “Defendants”], agreed to purchase a residential property from Baldev Singh Sidhu, Parminder Singh Sidhu and Sukhjinder Singh Sidhu [the “Plaintiffs”]. A contract of purchase and sale was signed, a deposit was paid, but the transaction was never completed.

[4] In October 2023, the Plaintiffs filed a notice of civil claim alleging the Defendants had wrongfully breached the contract of purchase and sale by failing to complete the transaction by the completion date. The Plaintiffs are seeking remedies of specific performance, or, in the alternative, damages.

[5] The Defendants filed their response to civil claim in April 2024, pleading that they did not rescind the contract of purchase and sale, that they were “ready, willing and able” to complete the contract given more time, that the Plaintiffs have not rescinded the contract and it remains “a valid and subsisting executory contract with an unspecified completion date.” Paradoxically, the Defendants also plead in their

response that they advised the Plaintiffs that they would not be closing the transaction “on the completion date or **at any time.**”

[6] Outside of the 42-day limitation for filing a third party notice without leave of the court, on August 15, 2024, the Defendants filed a third party claim against three individuals, their realtor, a friend, and someone they believed was a mortgage broker, as well as a real estate firm. In this third party claim, the Defendants, as best as can be ascertained, are claiming in part that they should be indemnified by the third parties for any damages owing to the Plaintiffs because their failure to complete the transaction was caused by the negligence and breach of duty of their realtor, fraudulent misrepresentation, negligent misrepresentation, and breaches of fiduciary duties. These claims stand in stark contrast with the Defendants’ response to the civil claim in which they plead that the contract of purchase and sale of the home was never breached.

[7] The Defendants also claim that the third parties conspired with each other to cause the Defendants’ damage, without identifying in the pleadings what damage.

[8] The third parties now apply to strike the claims against them on the basis that it is plain and obvious the claims cannot succeed, and the claims are frivolous, vexatious and an abuse of process. In the alternative, it is argued that the court should exercise its discretion to set aside the third party notice because of its overall lack of merit and the undue prejudice to the Plaintiffs.

**CHRONOLOGY OF PLEADINGS**

[9] The notice of civil claim was filed on October 24, 2023. An amended notice of civil claim, correcting the names of the Plaintiffs and the Defendants in the style of cause and body of the pleading, was filed on November 6, 2024. It appears that initially the Defendants did not consent to the amendments, necessitating the preparation and filing of an application to the court. Ultimately, on March 28, 2024, a consent order was signed by an associate judge permitting the changes to the names of the parties and obviating the need to serve the amended notice of civil claim.

[10] The response to civil claim was filed on April 30, 2024. The response states that it is a Response to Amended Civil Claim, which indicates that Defendants' counsel was in possession of the amended notice of civil claim and prepared a response accordingly. Only later did the Defendants object to the changes to the names of the parties, necessitating the application to the Court identified in the previous paragraph.

[11] Also on April 30, 2024, the Defendants filed a counterclaim against three individuals, not previously named in the pleadings: Kamalpreet Gelan [Gelan], Rohit Jindal [Jindal] and Monia Grewal [Grewal]. Given that a counterclaim is a claim by a defendant against one or more of the plaintiffs, this counterclaim was obviously a nullity, and yet it was only withdrawn on November 8, 2024.

[12] It was not until August 15, 2024, that the Defendants filed third party notices against the three individuals named in the counterclaim. They also claimed against Woodhouse Realty Ltd. ["Woodhouse"] alleging that Jindal was licensed to work there. Despite Rule 3-5(4)(b) of the *Supreme Court Civil Rules* [the "Rules"] requiring leave of the court to file a third party notice more than 42 days after filing the response to civil claim, the Defendants have never sought leave to file any third party notice.

[13] The third party claims were required to be served within 60 days of being filed. Gelan and Grewal were served within the required timelines and filed their response to the third party claim on September 6, 2024. However, Woodhouse was not served until November 7, 2024; Jindal has never been personally served. However, both Woodhouse and Jindal filed responses to the third party notice on December 19, 2024.

[14] Meanwhile, on October 28, 2024, the Plaintiffs filed an application seeking forfeiture of the deposit paid by the Defendants when they signed the contract of purchase and sale. The application was heard by Justice Elwood on March 3, 2025, who granted summary judgment in the amount of the deposit of \$45,000 held by eXp Realty of Canada, Inc. ["eXp Realty"] in trust.

**THE PLEADINGS**

**Notice of Civil Claim**

[15] The notice of civil claim concisely sets out the materials facts, the relief sought and the legal basis of the claims. It is a straightforward claim for breach of a contract of purchase and sale, seeking remedies of specific performance or damages in lieu of specific performance.

[16] The Plaintiffs were the sellers of a residential property, and the Defendants were the buyers of the property. The Plaintiffs and Defendants were parties to a written contract of purchase and sale of the property at a price of \$965,000, with a completion date of July 8, 2022, and no other conditions. The Plaintiffs allege that the Defendants breached and repudiated the contract by not completing the purchase of the property thereby causing loss and damage to the Plaintiffs.

**Response to Civil Claim**

[17] In their response to civil claim the Defendants admit that the contract of purchase and sale included several terms:

Payment of a \$45,000 non-refundable deposit that would be forfeited to the Plaintiffs if the Defendants did not complete the purchase; and

An initial completion date of May 26, 2022, which was amended by subsequent agreements to be July 8, 2022.

[18] Despite admitting the completion date of July 8, 2022, the Defendants respond to the Plaintiffs' claim that they failed to complete the purchase of the property by pleading:

... the Plaintiffs or its agents never requested the Defendants to complete the purchase of the property, and the Defendants advised the Plaintiffs that they would not be closing the transaction on the completion date or at any time.

[19] Notwithstanding that the Defendants admitted that they advised the Plaintiffs that they would not be closing on the completion date or at any time, the Defendants

also plead that they were “ready, willing and able to complete the contract given that they received [sic] additional time to complete the contract.”

[20] Furthermore, the Defendants respond by pleading that neither the Defendants nor the Plaintiffs enforced the time is of the essence clause, so the contract remained valid with an unspecified completion date, and as such the Defendants did not rescind the contract.

[21] In respect of the legal basis of their response, they plead in part as follows:

As of the amended completion date of July 8, 2022, the contract remained a valid and subsisting executory contract with an unspecified completion date. In this situation, neither party can insist on compliance by the other with its obligation on closing without first stipulating a new completion date, with reasonable notice given to the other party of the new date, and reinstating time to be of the essence again.

**Third Party Notice**

[22] The Defendants, now the claiming parties, seek indemnification and damages against four parties: Gelan, identified as an insurance agent and friend of the defendant, Brar; Grewal is described as an associate of Gelan; Jindal, is described as a sales associate licensed to sell real estate with the final third party, Woodhouse.

[23] The core of the third party claim set out in the first 34 paragraphs of the third party notice can be summarized as follows: Gelan encouraged Brar to purchase a house and ultimately “represented” to Brar what he would need to facilitate Brar’s purchase of the house; Gelan then induced Brar to make an unconditional cash offer to purchase a property by “guaranteeing” that if Brar failed to arrange a mortgage, Gelan would purchase the property; in reliance on Gelan’s representations the Defendants entered into a contract of purchase and sale and paid a \$45,000 deposit; Gelan arranged for Jindal to prepare the contract of purchase and sale; Gelan introduced Grewal to Brar as a licensed mortgage broker; Gelan required \$22,000 to arrange a mortgage; Gelan was not able to arrange a mortgage by the first completion date of May 26, 2022, but Gelan and Jindal were able to extend the

completion date initially to June 7; having still not arranged financing, it was not until July 8, 2022, that Brar was advised by Gelan, Grewal and Jindal that the sellers (the Plaintiffs) had agreed to extend the completion date to some unknown date; and it was not until the Defendants were served with the notice of civil claim in November 2023 that they learned that the Plaintiffs had not granted an extension to complete the purchase.

[24] The first 34 paragraphs in the statement of facts is then supplemented by 19 additional paragraphs and 21 subparagraphs under four headings: conspiracy; fraudulent misrepresentation by Gelan; Jindal's duty of care; and breach of fiduciary duty by Jindal.

[25] In respect of the 'conspiracy', the Defendants plead that Gelan, Grewal and Jindal, "with an intention to cause damage carried out the conspiracy (the "conspiracy") to commit fraud" by: representing that Grewal was a mortgage broker able to arrange financing to purchase the property; inducing the Defendants to enter into the contract of purchase and sale knowing that the Defendants would not be able to complete the purchase without a mortgage; obtaining \$22,000 from the Defendants on the pretext of securing mortgage financing; and by falsely assuring the Defendants that the Plaintiffs had agreed to extend the completion date.

[26] The allegation of fraudulent misrepresentation by Gelan rests upon "aforementioned fraudulent misrepresentations, active concealments or deliberate non-disclosures." It is further pleaded that Gelan made these fraudulent misrepresentations "knowingly ...without belief in the truth of what was being represented, was reckless, and careless as to whether what he was representing by word or silence was true or false." I note that the Defendants are self evidently commingling intentional, in other words fraudulent, with negligent, misrepresentation.

[27] Under the heading 'Jindal's duty of care', the third party claim pleads that Jindal "owed a duty to the claiming party to exercise reasonable care and skill in steps taken by them and in the advice given and representations made by them to the claiming party in relation to the claiming party's purchase of the property." This is

followed by a list of nine ‘obligations’ Jindal owed the Defendants. Finally, the Defendants plead in the third party notice that the failure of the Defendants to complete the contract of purchase and sale was caused by the “negligence and/or breach of duty” by Jindal, particularized with a non-exhaustive list of eight allegations against Jindal.

[28] Finally, under the heading ‘Breach of fiduciary duty by Jindal’ the Defendants allege that Jindal breached the fiduciary duty a realtor owed the Defendants as his clients. The alleged breaches include: Jindal neglecting to fully disclose details about the sale of the property; failing to notify the Defendants that Jindal was providing real estate services; engaging in deceptive dealing by exploiting the Defendants for his own personal gain; neglecting or failing to ascertain the Defendants’ financial means; wrongfully advising the Defendants that the Plaintiffs had agreed to extend the completion date; and inducing the Defendants to enter into a contract to purchase the property knowing that they would not have the means to complete the contract.

[29] Under the same heading, the Defendants plead that the conduct of Gelan, Jindal and Grewal was “malicious, high-handed and constituted immoral conduct which offends the court’s sense of decency” and that the previously discussed conspiratorial conduct resulted in damage to the Defendants.

[30] The relief sought includes orders that Gelan, Jindal and Grewal indemnify the Defendants for any damages or costs they are ordered to pay the Plaintiffs. In addition, the Defendants seek damages for “financial losses sustained by the Claiming Party as a consequence of Jindal’s breach of the duty of care owed by them to the Claiming Party to the extent those losses exceed the amount of damages, if any, awarded in favour of the Plaintiffs in the action.”

[31] Despite initially pleading that Jindal, Gelan and Grewal were all parties to a conspiracy, in the relief sought, the claiming parties seek “damages for financial losses sustained by the claiming party as a consequence of the conspiracy, fraud and misrepresentation by Gelan and Grewal”.

[32] The Defendants apply for an order against Jindal, Gelan and Grewal for “damages for deceit and breach of contract”, punitive and special damages, and in the alternative, general damages. Furthermore, they seek “an order for damages against Gelan, Jindal and Grewal for negligent and fraudulent misrepresentations”.

[33] Finally, the Defendants seek as follows:

The Claiming Party are entitled to the contribution of indemnity of the share of the Third Parties’ respective fault in contributing to any award of damages in favour of the Plaintiffs and the Claiming Party may be entitled to deduct from any award of damages in favour of the Plaintiffs and offset equal to the total monetary value of the Third Parties’ total proportionate share of its contribution towards the Plaintiffs total award for damages.

**APPLICATIONS**

[34] Because these reasons address three separate applications, each of which seeks different relief, I will briefly summarise them.

[35] The third parties, Woodhouse and Jindal, apply to have the third party notice set aside pursuant to Rule 3-5(8), or struck pursuant to Rules 9-5(1)(a), (b) and (d), and all claims against them dismissed. In addition, Woodhouse applies pursuant to Rule 6-2(7) for an order that they cease to be a party because they are not a proper party to the proceedings. Woodhouse and Jindal are also seeking special costs.

[36] In summary, Woodhouse and Jindal submit that the third party notice is confusing and internally inconsistent, pleads allegations that are inconsistent with the Defendants’ response to civil claim, claims for relief for which no material facts are pleaded and pleads conclusions of law for which, again, no material facts are pleaded. In respect of Woodhouse specifically, it is submitted that there are no factual allegations which could support any claim against it.

[37] The other third parties, Gelan and Grewal, also seek dismissal of all claims set out in the third party notice or in the alternative that the third party notice be struck or set aside without leave to amend, on the basis that the third party notice discloses no reasonable cause of action, is frivolous and abusive of the court’s

processes, and otherwise fails to satisfy the preconditions for a third party claim set out in Rule 3-5(1).

[38] Gelan and Grewal submit that the third party notice was filed late and without leave of the court and should be set aside because it does not properly make a claim for contribution or indemnity, does not seek relief that relates to or is connected with the subject matter of the Plaintiffs' claim, and otherwise fails to comply with the prerequisites of a third party claim set out in Rule 3-5(1). In addition, like Woodhouse and Jindal, Gelan and Grewal submit that the myriad of claims, breach of contract, fraud or deceit, conspiracy, and negligent or fraudulent, or both, misrepresentation, are inadequately or improperly pleaded and should be struck pursuant to Rule 9-5(1).

[39] The Plaintiffs consent to an order that Woodhouse cease to be a party but take no position in respect of the other relief sought by Woodhouse and Jindal. Despite the relief sought by Gelan and Grewal being essentially the same as the relief sought by Woodhouse and Jindal, rather than taking no position, the Plaintiffs now consent to all orders sought by Gelan and Grewal.

[40] The Defendants oppose all the relief sought by the third parties on the basis that the original third party notice discloses claims compliant with Rule 3-5(1), and claims which should not be struck under Rule 9-5(1). The Defendants assert that the third party notice articulates an intelligible legal cause of action and makes claims that rest on "concrete allegations concerning conspiracy, breach of fiduciary duty and breaches to the duty of care acts [sic] by Mr. Jindal. The Defendants has [sic] pleaded and deposed specific and plausible connections among the Third Parties – facts that are central to proving Conspiracy, Breach of Fiduciary Duty and Breaches to the duty of care which do not constitute frivolous or vexatious assertions."

[41] The Defendants assert that their claims are "straightforward and well-organized".

[42] In respect of abuse of process, the Defendants submit that abuse is typically found when a party seeks to relitigate an issue that has already been decided or otherwise acts in a manner that is oppressive. The Defendants do not address the concern that the third party notice is inconsistent with their response to civil claim.

[43] In the third application, the Defendants seek orders permitting them to amend the third party notice by substituting eXp Realty for Woodhouse as well as other substantive additions to the third party notice, and an order that eXp be granted 21 days to respond to the amended third party notice. In addition, the Defendants are seeking an order that “the third party notice filed on August 30, 2024, was filed and served pursuant to Rule 3-5 of the *Supreme Court Civil Rules*”. It is not clear what this means given that the Defendants are now seeking leave to file an amended third party notice, which, if granted, would nullify any deficiencies in the original third party notice.

[44] In response to this application the third parties repeat their submissions, outlined above, about the substantive inadequacies of the third party notice, submitting that this court should not permit the filing of the third party notice because the Plaintiffs’ case is a simple breach of a standard residential real estate contract, and none of the third parties are parties to that contract. In addition, dismissing the third party notice, thereby compelling the Defendants to commence separate proceedings against the proposed third parties would greatly reduce prejudice to the Plaintiffs who could continue their straightforward breach of contract claim unhindered by the breadth of claims against the third parties. Furthermore, the third parties right to bring limitation defences would be preserved.

[45] The potential substituted third party, eXp Realty, opposes all the relief sought by the Defendants primarily on the basis that the proposed amended third party notice does not disclose any cause of action against it.

#### **Woodhouse Realty’s Application to be Removed as a Party**

[46] Woodhouse applies pursuant to Rule 6-2(7)(a) to be removed as a party.

[47] I agree that there are no material facts pleaded in the third party notice to support any claim against Woodhouse. Therefore, I order that Woodhouse cease to be a party.

### **Application to Set Aside Third Party Notice**

[48] The Defendants failed to file their third party notice within 42 days of the filing of the response. The failure to apply for leave, when leave is required, should be treated as an irregularity, rather than rendering the third party notice a nullity. [See: *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180 at para. 64].

[49] The third parties have applied to set aside the third party notice on substantive grounds pursuant to Rule 3-5(8). However, in my view, the appropriate way to proceed is to require the Defendants to satisfy the court that leave to file a third party notice should now be granted.

[50] A party who disregards the rules by filing a third party notice outside the 42 day deadline, should not be better positioned than a party who complies with the rules and seeks leave before filing their third party notice. The onus should not be on the third parties to satisfy the court that the notice should now be set aside, but rather the onus should be on the Defendants to satisfy the court that leave should now be granted to file their third party notice.

### **Third Party Rule**

[51] The relevant parts of Rule 3-5 provide:

(1) A party against whom relief is sought in an action may, if that party is not a plaintiff in the action, pursue a third party claim against any person if the party alleges that

(a) the party is entitled to contribution or indemnity from the person in relation to any relief that is being sought against the party in the action,

...

(4) A party may file a third party notice

(a) at any time with leave of the court, or

(b) without leave of the court, within 42 days after being served with the notice of civil claim or counterclaim in which the relief referred to in subrule (1) is claimed.

[52] In addition, Rule 3-5(8) provides that:

(8) At any time, on application, the court may set aside a third party notice.

[53] In *Tyson Creek Hydro Corporation v. Kerr Wood Leidal Associates Limited*, 2014 BCCA 17, Justice Low adopted as an accurate and complete statement of the law the chambers judge's summary of the legal principles applicable to a court's exercise of discretion to grant leave to file a third party notice:

#### **PURPOSE OF THIRD PARTY PROCEEDINGS**

[39] In *Lui v. West Granville Manor Ltd* (1985), 1985 CanLII 155 (BC CA), 61 B.C.L.R. 315 at 327, 18 D.L.R. (4th) 391 (C.A.) [*Lui*], which was decided under the 1976 Rules, Lambert J.A. stated that the purpose of third party proceedings was to avoid the problem of having different results on the same issue between the same parties and to avoid a multiplicity of proceedings.

[40] In *MacNaughton*, McLachlin J.A. explained, at 21, the purpose of third party proceedings as follows:

Third party pleadings function as a special type of statement of claim. Indeed, the claim they embody could be brought by separate action. But to avoid a multiplicity of proceedings, the rules permit the claim to be made in the action, which has been commenced against the defendant. The object of permitting third party proceedings to be tried with the main action is to provide a single procedure for the resolution of related questions, issues or remedies, in order to avoid multiple actions and inconsistent findings, to provide a mechanism for the third party to defend the Plaintiff's claim, and to ensure the third party claim is decided before a defendant is called upon to pay the full amount of any judgment. The avoidance of a multiplicity of proceedings is fundamental to our rules of civil procedure. This has been the case since the reforms effected by the Judicature Acts in the nineteenth century. As Cotton L.J. stated in *Searle v. Choat* (1884), 25 Ch. D. 727: "the whole tenor of the *Judicature Acts* is to require all proceedings as far as possible to be taken in one action".

#### **EXERCISE OF DISCRETION**

[41] In *Lui*, Lambert J.A. noted that the court is given a wide discretion under Rule 22(4), to strike out third party proceedings. He indicated at 328 that there were a number of factors that should be considered including:

...What is the fair thing to do? Who suffers prejudice if the discretion is exercised? How much prejudice? Who suffers prejudice if the discretion is not exercised? How much prejudice? Have the parties

acted properly and reasonably in their own interests? If a party has not acted properly and reasonably, should he be relieved from the consequences of his own behaviour? Is there another course available to one or other of the parties? Where does the balance of convenience lie? This list is illustrative, but not exhaustive, of the questions that should be asked with respect to the parties before the court. But part of the purpose of the Rule is to avoid multiplicity of proceedings for the benefit of other litigants, so that congestion in the courts is avoided. So it is proper to ask questions in that area as well.

[42] In *Clayton Systems 2001 Ltd. v. Quizno's Canada Corp.*, 2003 BCSC 1573 at para. 9, 27 B.C.L.R. (4th) 247 [*Clayton Systems*], which was decided under the Amended Rule, Allan J. held that in determining the application the court should consider the following factors in determining whether or not to exercise its discretion to grant leave:

- (a) prejudice to the parties;
- (b) expiration of limitation period;
- (c) the merits of the proposed claim;
- (d) any delay in proceedings; and
- (e) the timeliness of the application.

[43] In *Scott Management* at para. 90, the court framed the question on an application for leave to file a third notice in this fashion:

[90] The fundamental question on the applications should have been whether greater injustice and inconvenience would arise from allowing the contribution claim to continue as a third party proceeding, or from striking it and leaving it to be pursued in a separate future action. The chambers judge erred in failing to address that question. Had he done so, in my view he would have been compelled to exercise his discretion in favour of the former course, as the better of two unpalatable options.

[54] See also *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311, at paragraphs 146–149.

[55] I will address each of the factors discussed above, while remaining mindful of the overarching question, whether there would be greater injustice and inconvenience from allowing the third party claims to continue as opposed to requiring the Defendants to pursue the intended third parties in a separate action.

## Discussion

### *Prejudice to the Parties*

[56] The Plaintiffs' action is a very straightforward claim that the Defendants breached a contract of purchase and sale of a residential property. The Plaintiffs seek specific performance or damages. The Plaintiffs have already secured summary judgment for the deposit.

[57] The notice of civil claim is six pages in length, containing only 11 paragraphs of facts, alongside the conventional relief, specific performance or damages, with reliance on the usual common law and equitable legal principles.

[58] The Defendants' response to the notice of civil claim is equally straightforward; the Defendants did not rescind the contract and were always ready, willing and able to complete the purchase.

[59] The response admits five of the 11 paragraphs of facts set out in the notice of civil claim. The Defendants' version of the facts is only 14 paragraphs. The legal basis of the response relies on the same legal principles as the Plaintiffs.

[60] The Defendants' third party notice significantly expands the scope of the litigation. The statement of facts contains 56 paragraphs over 6 pages. The Plaintiffs are referred to in only one paragraph, simply being identified as the owners and sellers of the property in the contract of purchase and sale. None of the claims against the third parties implicate the Plaintiffs in any way.

[61] The relief sought in the third party notice includes a claim for contribution and indemnity, as well as claims for damages for civil conspiracy, fraudulent misrepresentation, breach of fiduciary duty, negligence and negligent misrepresentation. The Defendants seek more than indemnification for any damages awarded to the Plaintiffs, they are also seeking damages for "deceit and breach of contract", "negligent and fraudulent misrepresentations", as well as punitive and special damages.

[62] The prejudice to the Plaintiffs if the third party notice is permitted to be filed is considerable. What is a straightforward breach of contract claim will metamorphose into a claim that the third parties conspired to cause harm and loss to the Defendants by inducing the Defendants to make an unconditional offer to purchase the Plaintiffs' property, while also fraudulently and/or negligently misrepresenting to the Defendants that they could secure mortgage funding for the Defendants for a payment of \$22,000.

[63] The Defendants' response to the Plaintiffs' claim is also straightforward; the Defendants did not breach the contract of purchase and sale, because neither party insisted that time was of the essence, and the Defendants were willing and able to complete the contract if given the time to do so. The Defendants do not plead in their response any of the allegations made against the third parties.

[64] It is concerning that the Defendants' third party claim is inconsistent with their response to the Plaintiffs' claim. The Defendants' response to the notice of civil claim succinctly pleads that the contract of purchase and sale "remains valid ... with an unspecified completion date", the Defendants "have not rescinded the contract" and the Defendants "were ready, willing and able to complete the contract" if given time to do so. Nonetheless, in the third party notice the Defendants assert that they were induced into signing the contract by the third parties who knew that the Defendants did not have the financial means to complete the purchase of the property, and the failure of the Defendants to complete the contract was caused by the fraudulent conduct or negligence of the third parties.

[65] Furthermore, this is not simply an issue of inconsistent or incompatible pleadings. In the reply to the Plaintiffs' notice to admit dated October 7, 2024, which is 10 weeks after filing the third party notice, the Defendants now deny that they are 'ready, willing and able' to complete the purchase, insisting that the "Plaintiffs have commenced an action resulting in loss of confidence between the parties and the Plaintiffs have repudiated the contract as a result,[sic] the Defendants terminate the contract".

[66] To summarize, the Defendants firstly respond to the notice of civil claim by pleading that they did not rescind the contract and remain ready to complete. Then they allege that their failure to complete was caused by the negligence, and other dishonest conduct, of the third parties. And finally, the Defendants admit that they “terminated” the contract because the Plaintiffs “repudiated” it first.

### ***Expiration of a Limitation Period***

[67] Section 6 of the *Limitation Act*, S.B.C. 2012, c.13 [*Limitation Act*], sets out the basic limitation period:

**6** (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

[68] The general discovery rules in the *Limitation Act* are as follows:

**8** Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:

- (a) that injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the person against whom the claim is or may be made;
- (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[69] Counsel for the third parties submit that the Defendants knew on July 8, 2022, that they could not complete the contract. They further submit that the Defendants would have known, or reasonably ought to have known, that the Plaintiffs suffered a loss, which was caused or contributed to by the acts or omissions of the third parties. Therefore, the third party applicants submit that the limitation period commenced on July 8, 2023, and expired July 8, 2024. The third party notice was filed August 15, 2024, more than two years after the claims were discovered.

[70] When I consider the breadth of the claims brought by the Defendants in their third party notice, it is not clear, based on the evidence filed, when the Defendants

ought reasonably to have known all the information set out in s. 8 of the *Limitation Act*. That is to say, I cannot conclude when the limitation period commenced.

[71] In any event, s. 22(1) of the *Limitation Act* permits third party claims to be brought even though the limitation period has expired.

[72] An additional consideration is s. 22(2) of the *Limitation Act* which specifically limits the right of a person to bring a third party claim for contribution or indemnity after the expiry of the limitation period applicable to that claim.

[73] But there is a specific discovery rule that governs claims for contribution or indemnity. Section 16 of the *Limitation Act* states:

**16** A claim for contribution or indemnity is discovered on the later of the following:

- (a) the day on which the claimant for contribution or indemnity is served with a pleading in respect of a claim on which the claim for contribution or indemnity is based;
- (b) the first day on which the claimant knew or reasonably ought to have known that a claim for contribution or indemnity may be made.

[74] For the purposes of consideration of whether the Defendants' claims for contribution or indemnity are statute barred, I need only consider that the earliest date upon which the claim for contribution or indemnity was discoverable was November 2, 2023, when the Defendants were served with the notice of civil claim, as prescribed by s. 16(a) of the *Limitation Act*. Accordingly, the third party claim for contribution and indemnity is not statute barred.

[75] Based on the foregoing, I am not satisfied that the expiration of a limitation period is an applicable consideration in my overall analysis of whether to grant leave to the Defendants to file their third party notice.

### ***Merits of the Proposed Claim***

[76] Because I am convinced that the prejudice to the Plaintiffs is so overwhelming, I need not say too much about the merits of the proposed third party

claims, other than to note that the third parties have identified considerable problems with the Defendants' pleadings. For example:

1. The Defendants have melded claims for contribution and indemnity with multiple other claims for damages without appearing to identify what damage the Defendants have suffered.
2. The claim for civil conspiracy is improperly pleaded; the type of conspiracy and the elements of the conspiracy are incorrectly pleaded. Furthermore, there are insufficient material facts pleaded to support the claim of conspiracy and no material facts of what damage the Defendants suffered.
3. The claim for breach of fiduciary duty includes no material facts to establish that Jindal gained any benefit from breaching any duty.
4. The Defendants have pleaded that the third parties made both fraudulent and negligent representations without clearly identifying the representations, or which were negligent, and which were fraudulent.
5. Some of the third party claims are inconsistent with the Defendants' response to civil claim. Notwithstanding that the Defendants plead in response that they did not breach the contract of purchase and sale, and were always ready, willing and able to complete if given more time, the Defendants claim against the third parties that the "failure to complete was caused by the negligence and/or breach of duty by Jindal."

[77] These deficiencies in the pleadings make it impossible to meaningfully assess the merits of the third party claims.

[78] It is also difficult to reconcile how the Defendants can plead in their response that they did not breach the contract of purchase and sale and yet claim in their third party notice that they breached the contract because of the negligence of a third party.

***Delay in Proceedings***

[79] The litigation is in its early stages. My understanding is that there have been no discoveries, document discovery is not completed, and no trial date is scheduled.

***Timeliness of the Application***

[80] The Defendants initially brought their claims against the third parties, except Woodhouse, by filing a counterclaim on the same date that they filed their response, April 30, 2024. Albeit that Defendants' counsel must have been aware that this was the incorrect form of pleading because they ultimately did file a third party claim on August 15, 2024, the counterclaim was not withdrawn until November 8, 2024.

[81] That all being said, the Defendants have not inordinately delayed filing the third party claims.

***Conclusion re. Application to Set Aside Third Party Notice***

[82] As Justice Goepel observed in *Tyson Creek Hydro Corporation v. Kerr Wood Leidal Associates Limited*, 2013 BCSC 1741 at paragraph 53, it can no longer be said that the overriding purpose of third party proceedings is the avoidance of multiple proceedings, but rather the exercise of the court's discretion whether to permit a third party claim to be filed involves "weighing competing injustices and inconveniences."

[83] The Plaintiffs' claim is an uncomplicated claim for breach of a contract of purchase and sale. The Defendants' response is equally straightforward; they state that they did not breach the contract. The third party claims immeasurably expand the scope of the litigation: at least four tort claims melded with breaches of contract are pleaded against four new parties unrelated to the Plaintiffs' claims.

[84] The burdens placed on the Plaintiffs by the third party notice vastly exceeds any additional burdens placed on the Defendants by forcing them to bring separate claims.

[85] The litigation is in its early stages. If the Defendants are ultimately successful in their defence against the Plaintiffs' claims, it appears unlikely that the Defendants' claims against any other parties, as best as I can understand based on how they are currently pleaded, will bear any merit.

[86] Weighing all the factors discussed above, ever mindful of the fundamental question, whether greater injustice and inconvenience would arise from allowing the contribution claim to continue as a third party proceeding, or from striking it and leaving it to be pursued in a separate future action, I am satisfied that the Defendants have not met their onus of establishing that they ought to be granted leave to file their third party notice.

[87] Accordingly, the third party notice that was filed is set aside.

### **Abuse of Process**

[88] Given my decision to set aside the third party notice pursuant to Rule 3-5(8), it is not strictly necessary for me to address the third parties' arguments that the third party claims should be struck pursuant to Rule 9-5. However, given the importance of the issue of protecting the integrity of the court's process, I have decided that it is necessary to address the applicants' arguments that the third party notice should be struck because the third party notice contains pleadings that are inconsistent with the Defendants' response to civil claim and thereby is an abuse of process.

[89] The law relating to inconsistent pleadings as an abuse of the process of the court was addressed in *Keltic (Brighthouse) Development Ltd., v. Yi Teng Investment Inc.*, 2023 BCCA 375 at para. 15:

[15] The judge first addressed the law relating to inconsistent pleadings as an abuse of the process of the court. At para. 42, the judge recognized the principle applied in *Concord Pacific Acquisitions Inc. v. Oei*, 2019 BCSC 1190 at para. 399 that, in general, "[l]itigants are not permitted to assert inconsistent rights in different proceedings". He then referred to the recent decision of this court in *Illingworth v. Evergreen Medicinal Supply Inc.*, 2019 BCCA 471 at paras. 67–69:

[67] In *Este v. Esteghamat Ardakani*, 2018 BCCA 290, leave to appeal ref'd, [2018] S.C.C.A. No. 477, it was explained that:

[93] Cases concerning inconsistent pleadings fall along a spectrum. At one end are cases in which the courts find that, properly interpreted, no inconsistency exists: *Stewart v. Clark*, 2013 BCCA 359 at para. 48, 49 B.C.L.R. (5th) 1; *First Majestic Silver Corp. v. Davila Santos*, 2012 BCCA 5 at para. 26, 29 B.C.L.R. (5th) 211. In the middle are cases in which an inconsistency is found, but the court declines to characterize it as an abuse of process because it was not advanced “deliberately or with full knowledge of the facts”: *Walsh v. Mobil Oil Canada*, 2013 ABCA 238 at para. 94, 364 D.L.R. (4th) 508. At the other end are cases in which a party knowingly took inconsistent positions: *Pepper’s Produce Ltd. v. Medallion Realty Ltd.*, 2012 BCCA 247 at para. 28, 34 B.C.L.R. (5th) 226. ...

[68] There is no question that taking inconsistent positions may result in a finding of abuse of process. However, such is not automatically the case. As noted by Willcock J.A., writing for the Court in *Glover v. Leakey*, 2018 BCCA 56, “an abuse of process does not arise from inconsistent prior pleadings alone; there must be something more giving rise to an injustice” (at para. 32).

[69] Judges have an inherent and residual discretion to prevent an abuse of the court process; however, use of that doctrine is circumscribed. The doctrine is contextually applied and whether an abuse sufficient to warrant judicial intervention occurs is determined case by case. Generally, a court will not intervene unless the impugned conduct is contrary to the interests of justice, oppressive, or vexatious and/or the court is satisfied that continuing with the proceedings would bring the administration of justice into disrepute: *Glover* at paras. 33–36, relying on *Toronto (City) v. C.U.P.E.*, Local 79, 2003 SCC 63 at para. 35 and the cases cited therein.

[90] And further in *Pepper’s Produce Ltd. v. Medallion Realty Ltd.*, 2012 BCCA 247 at paras. 25–27:

[25] The characterization of inconsistent pleadings amounting to an abuse of process was discussed recently by this Court in *First Majestic Silver Corp. v. Davila Santos*, 2012 BCCA 5. In that case, the Defendants argued (at para. 23):

... the doctrine of abuse of process should be used to prevent the Plaintiffs from bringing a subsequent action based upon allegations that are inconsistent with allegations made in support of a previous action.

[26] In his reasons for judgment for the Court, Mr. Justice Tysoe referred (at para. 24) to *Vanmills Establishment v. Coles* (1992), 8 C.P.C. (3d) 178 at para. 10 (Cohen J. in Chambers) for the discussion of the effect of pursuing inconsistent rights:

[10] This is not a matter of a litigant pursuing inconsistent remedies, where no election is necessary until judgment. There can be no doubt that in the instant action Crux is attempting to pursue

inconsistent rights. Crux elected in his action against Sigurdson to claim that he had disposed of his legal and beneficial interest in the C.I.S. shares to Coles. Having elected to sue Sigurdson on that basis, I find that Crux cannot now sue Coles in the instant action on the basis that he retained a beneficial interest in the C.I.S. shares. In my opinion, his election in his action against Sigurdson is binding upon him. The principle that, in the case of inconsistent rights, a plaintiff's irrevocable and unequivocal election is deemed to be made by the commencement of an initial action is established in *Scarf v. Jardine* (1882), 7 App. Cas. 345, 30 W.R. 893 (H.L.) and *Ashmore v. Bank of British North America* (1913), 4 W.W.R. 1014, 18 B.C.R. 257, 13 D.L.R. 73 (C.A.).

[27] Mr. Justice Tysoe noted (at para. 25):

In *Mystar Holdings Ltd. v. 247037 Alberta Ltd.*, 2009 ABQB 480, 10 Alta. L.R. (5th) 260, Mr. Justice Brooker considered the existence of inconsistent allegations within the context of the court's inherent jurisdiction to prevent abuses of the court's process. He expressed the principle in the following terms:

[49] In general, I am persuaded that a party is not free to deliberately argue diametrically inconsistent facts in various actions, thus knowingly advancing irreconcilable positions which are not articulated as alternative claims.

## Discussion

[91] The Defendants' response to the notice of civil claim succinctly pleads that the contract of purchase and sale "remains valid ... with an unspecified completion date", the Defendants "have not rescinded the contract" and the Defendants "were ready, willing and able to complete the contract" if given time to do so.

[92] Despite pleading that the contract was valid and remains valid, in the third party notice the Defendants assert that they were induced into signing the contract by the third parties who knew that the Defendants did not have the financial means to complete the purchase of the property, and the failure of the Defendants to complete the contract was caused by the fraudulent conduct or negligence of the third parties.

[93] In addition, in their reply to the Plaintiffs' notice to admit the Defendants deny that they are 'ready, willing and able' to complete the purchase, insisting that the "Plaintiffs have commenced an action resulting in loss of confidence between the

parties and the Plaintiffs have repudiated the contract as a result, [sic] the Defendants terminate the contract”.

[94] To summarize, the Defendants firstly respond to the notice of civil claim by pleading that they did not rescind the contract and remain ready to complete the purchase. Then they allege that their failure to complete was caused by the negligence, and other dishonest conduct, of the third parties. Finally, the Defendants admit that they had “terminated” the contract because the Plaintiffs “repudiated” it first.

[95] The Defendants are not advancing alternative claims; they are advancing irreconcilable positions. The Defendants cannot have been ready, willing and able to complete the contract and then admit that they had terminated the contract. They cannot claim to be ready, willing and able to complete the contract, and yet allege that they failed to complete because of the conduct of the third parties, including that the third parties knew or should have known that the Defendants could not have completed the contract.

[96] The position advanced by the Defendants in their third party notice is diametrically opposed to their response to civil claim, and inconsistent with their response to the notice to admit: The Defendants plead that the contract remains valid, allege that they breached the contract because of the conduct of the third parties, and finally admit that the contract was breached by the Plaintiffs. It is impossible to reconcile these positions.

[97] It is unjust to the Plaintiffs and the third parties to permit the Defendants to advance irreconcilable positions. It undermines the integrity of the court’s process to permit the Defendants to respond to the Plaintiffs that the contract remains valid and the Defendants are willing and able to complete purchase, while at the same time accusing the third parties of causing the Defendants damage because the third parties knew the Defendants could never complete the purchase, and then, furthermore, the Defendants are now admitting that they had ‘terminated’ the contract because the plaintiff had ‘repudiated’ it.

[98] I am satisfied, in the unusual circumstances of this case, that the third party notice is an abuse of process and should be struck to preserve the integrity of the court's process.

### **SPECIAL COSTS**

[99] Two applicants, Jindal and Woodhouse, seek an order for costs of their applications payable as special costs. The Plaintiffs, the third parties, Gelan and Grewal and the intended substituted third party eXp Realty have not sought special costs.

[100] Given the punitive nature of special costs, a party against whom an award of special costs is being sought is entitled to some level of procedural fairness. At a minimum this should include notice that special costs are being sought so that the party against whom costs are being claimed has an opportunity to respond. [See *Gichuru v. Pallai*, 2018 BCCA 78 at para. 86].

[101] The principles governing an award of special costs were summarized by our Court of Appeal in *AM Gold Inc. v. Kaizen Discovery Inc.*, 2022 BCCA 284, at paragraphs 53–56:

[53] Special costs are usually awarded when one party has engaged in reprehensible conduct: *Young v. Young*, 1993 CanLII 34 (SCC), [1993] 4 S.C.R. 3, at 134. While a special cost award provides a greater degree of indemnity against its actual legal expenses, in the ordinary course "[s]pecial costs are not compensatory; they are punitive": *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177, at para. 56. They are typically awarded to address conduct in the course of the litigation that is deserving of censure and rebuke: *Grewal v. Sandhu*, 2012 BCCA 26, at para. 106, leave to appeal ref'd [2012] S.C.C.A. No. 120.

[54] While special costs are usually awarded for the whole proceeding, it is open to a judge to make a partial award if it would be disproportionate to award special costs for the entire proceeding: *Gichuru v. Smith*, 2014 BCCA 414, at para. 91, leave to appeal ref'd [2014] S.C.C.A. No. 547.

[55] The seminal test for special costs was set out in *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242 (C.A.), where Lambert J.A., after an extensive review of the authorities, concluded:

[17] ... it is my opinion that the single standard for the awarding of special costs is that the conduct in question properly be categorized

as "reprehensible". As Chief Justice Esson said in *Leung v. Leung*, the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.

[56] An award of special costs is discretionary and it does not follow as a matter of right from a conclusion that a party's conduct is deserving of rebuke: *Walker v. John Doe*, 2014 BCSC 294, at para. 57.

[102] In *Mayer v. Osborne Contracting Ltd.*, 2011 BCSC 914 at paragraph 11, Justice Walker reviewed multiple authorities before summarizing the circumstances in which special costs may be ordered:

- [11] Special costs may be ordered in the following circumstances:
- a) where a party pursues a meritless claim and is reckless with regard to the truth;
  - b) where a party makes improper allegations of fraud, conspiracy, fraudulent misrepresentation, or breach of fiduciary duty;
  - c) where a party has displayed "reckless indifference" by not recognizing early on that its claim was manifestly deficient;
  - d) where a party made the resolution of an issue far more difficult than it should have been;
  - e) where a party who is in a financially superior position to the other brings proceedings, not with the reasonable expectation of a favourable outcome, but in the absence of merit in order to impose a financial burden on the opposing party;
  - f) where a party presents a case so weak that it is bound to fail, and continues to pursue its meritless claim after it is drawn to its attention that the claim is without merit;
  - g) where a party brings a proceeding for an improper motive;
  - h) where a party maintains unfounded allegations of fraud or dishonesty; and
  - i) where a party pursues claims frivolously or without foundation
- ...

[103] Costs are not usually recoverable until the conclusion of the litigation. However, given that the third party notice has been set aside, it is possible that this is the end of the litigation for the intended third parties, I must consider whether any costs award should be payable forthwith:

[20] Costs awarded on interlocutory applications are usually not recoverable until the conclusion of the litigation: *G.W.L. Properties Ltd. v. W.R. Grace & Co. of Canada* (1993), 14 C.P.C. (3d) 91 (B.C.S.C.). In *G.W.L.*, Mr. Justice Lowry noted at para. 8 that courts may order special costs payable forthwith to control their own process or to discourage unnecessary interlocutory proceedings:

There are, however, times when it is desirable to award costs payable forthwith. Costs are a means of controlling the court's process. An order that they be paid forthwith may serve to discourage unnecessary interlocutory proceedings: *Banke Electronics Ltd. v. Olvan Tool & Die Inc.* (1981), 1981 CanLII 1920 (ON SC), 21 C.P.C. 231 (Ont. H.C.), at 232, considered in *Parkin v. MacMillan* (1991), 49 C.P.C. (2d) 83 (B.C. Master), at 88. It may serve to enforce compliance with the court's rules and its orders. I consider the costs payable to the Plaintiffs should be paid forthwith in this instance.

[21] Costs awards from interlocutory proceedings are not usually payable forthwith for two reasons: (a) to avoid adverse financial repercussions to the unsuccessful litigant that would prevent it from proceeding with the litigation; and (b) to avoid limiting the range of options available to the trial judge to deal with costs at the conclusion of the litigation: *Lalji v. Sunderji*, [1997] B.C.J. No 239 (S.C.).

[22] Yet, where the “application or the opposition to it is frivolous or without merit, or where there is a substantial likelihood that the matter will never be set down for final hearing because the main objective is likely to be gained in interlocutory proceedings, [an] order that costs be payable forthwith may be appropriate”: *Lalji* at para. 28; *Parkin v. MacMillan* (1991), 49 C.P.C. (2d) 83 (B.C.S.C.).

[23] In *G.W.L.*, Lowry J. ordered W.R. Grace to pay special costs forthwith in respect of part, but not all, of its conduct (its failure to produce documents prior to an order being obtained did not warrant special costs). However, W.R. Grace's refusal to “make any effort to comply with an order of th[e] court for a period of more than three months” was “not excusable”. An award of special costs was made because W. R. Grace's “decision not to even attempt to comply” could not “be justified”: paras. 4 and 5.

*Mayer* at para. 20.

## Discussion

### *Woodhouse*

[104] In its application Woodhouse has sought special costs. I have no hesitation in concluding that Woodhouse is entitled to an award of special costs. In December 2024 counsel for Woodhouse notified counsel for the Defendants that Woodhouse was not a proper party and that the claims against them should be dismissed or discontinued. It does not appear that counsel for the Defendants responded

substantively to this communication, necessitating, firstly, that Woodhouse file a response to the third party claim, and secondly this application to set aside or strike the third party claim.

[105] If the Defendants had complied with the Rules and sought leave to initiate third party proceedings, it would have been apparent much sooner, and certainly before the need to file a response, that Woodhouse was not a proper party.

[106] In addition, the third party pleading against Woodhouse is manifestly deficient. It simply does not plead any material facts against Woodhouse. This was brought to the attention of counsel for the Defendants, but they have persisted, nonetheless, with their claim against Woodhouse.

[107] In addition, the Defendants have entwined Woodhouse with allegations of fraud, conspiracy, fraudulent misrepresentation and breach of fiduciary duty made against three other individuals. Despite the paucity of material facts specifically pleaded against Woodhouse, inevitably Woodhouse appears associated with the allegations of dishonest conduct by the other third parties.

[108] In all the circumstances, the conduct of the Defendants in respect of the third party claim made against Woodhouse is reprehensible and deserving of rebuke. The court must dissociate itself from such a manifestly weak case that had no possibility of success. Counsel for the Defendants were advised that Woodhouse was the wrong party, but they did nothing, forcing Woodhouse to file a response to the third party claim and ultimately to bring this application. In addition, the third party claim associates Woodhouse with the serious allegations of dishonest conduct of the other individual third parties.

[109] Woodhouse is entitled to special costs, payable by the Defendants forthwith because Woodhouse is no longer a party to the action brought by the Plaintiffs.

***Jindal***

[110] Jindal has also specifically requested special costs. I have found that the third party claim should be struck as an abuse of process because it makes allegations that are irreconcilable with the Defendants' response to the civil claim and with the Defendants' admission in their response to the notice to admit. The allegations against the third parties are diametrically opposed to the Defendants' admission that they terminated the contract because of the conduct of the plaintiff. Having made this admission, the Defendants cannot maintain that the contract was terminated because of the dishonest and negligent conduct of the third parties. By making this admission, the Defendants have implicitly acknowledged that their claims against the third parties are without merit, frivolous and without foundation. More seriously, they have continued to make allegations of fraud, conspiracy, fraudulent misrepresentation and breaches of fiduciary duty.

[111] I am satisfied that the court must deter parties from pursuing manifestly irreconcilable positions during litigation. It does nothing to promote the just, speedy and inexpensive determination of disputes on their merits if a party's response, third party notice and admissions are so plainly incompatible.

[112] The applicant, Jindal, is entitled to special costs, payable forthwith by the Defendants because Jindal is no longer a party to the action brought by the Plaintiffs.

***Other Parties***

[113] Although Grewal and Gelan, the Plaintiffs, and eXp Realty have not sought special costs, I have determined that it is appropriate to give them an opportunity to make that application.

[114] As is apparent from the discussion above, the decision to award special costs is discretionary and contextual. Counsel for the successful parties did not have that context when determining whether to seek in their application an award of special costs.

[115] Counsel have leave to appear to address the issue of special costs based on my findings.

**CONCLUSION**

[116] The application by Woodhouse to cease to be a party pursuant to Rule 6-2(7) is allowed.

[117] The third party notice is set aside pursuant to Rule 3-5(8).

[118] The third party notice is struck pursuant to Rule 9-6(1)(d) as an abuse of process.

[119] Given these conclusions the application by the Defendants to file an amended third party notice and to amend the style of cause to substitute a party, eXp Realty, and other consequent orders, is dismissed.

[120] The application by Woodhouse and Jindal for special costs is allowed, payable forthwith, to be assessed.

[121] The other third parties, Gelan and Grewal, the intended substituted third party eXp Realty, and the Plaintiffs, have leave to appear to address the issue of special costs.

“The Honourable Justice Fowler”