IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *WIT Management Corp. v. Aulakh,* 2025 BCSC 2146

Date: 20251030
Docket: S210353
Registry: Vancouver

Between:

WIT Management Corp. and WTC Group Inc.

Plaintiffs

And

Inderjit Aulakh, Tras BC Freight Ltd. and J.J. Cool & Co. Ltd.

Defendants

And

Inderjit Aulakh and Trans BC Freightways (2007) Ltd.

Counterclaimants

And

Brian Atkins by his litigation guardian Jordan Atkins, WIT Management Corp., and WTC Group Inc.

Defendants by way of Counterclaim

Before: Associate Judge Vos

Reasons for Judgment

In Chambers

Counsel for the Plaintiffs and Defendants by way of Counterclaim:	S.C. Driver
Counsel for the Defendants and Counterclaimants:	D.J. Urquhart
Place and Date of Hearing:	Vancouver, B.C. September 19, 2025
Place and Date of Judgment:	Vancouver, B.C. October 30, 2025

Introduction

[1] The plaintiffs and defendants by way of counterclaim proceeded on applications seeking document production from the defendants/counterclaimants. The defendants/counterclaimants oppose the applications.

Background

[2] The plaintiffs, WIT Management Corp. (“WIT”) and WTC Group Inc. (“WTC”) are BC companies owned by Brian Atkins and his family. Brian Atkins, by his litigation guardian, Jordan Atkins, is a defendant by way of counterclaim. These parties are referred to as the Atkins Group in the plaintiffs’ notice of application.

[3] The defendant, Tras BC Freight Ltd. (“Tras BC”), and the counterclaimant, Trans BC Freightways (2007) Ltd. (“TBC”), are BC companies owned by the defendant, Inderjit Aulakh and his family. Mr. Aulakh and the two companies are referred to as the Aulakh Group in the plaintiffs’ notice of application.

[4] Mr. Atkins and Mr. Aulakh were friends. In 2011 they agreed to purchase an industrial property located at 400 Ewen Avenue in New Westminster, BC (the “Property”). Mr. Atkins was to use the Property for a transloading business (i.e. the process of transferring goods from one transportation mode to another, such as from an ocean shipping container to a truck). Mr. Aulakh was to use the Property as part of his trucking business.

[5] The agreement between Mr. Atkins and Mr. Aulakh was informal and unwritten. Mr. Atkins benefitted because he could use the Property to run the transloading business. Mr. Aulakh benefitted by providing trucking services to Mr. Atkins’ transloading business.

[6] Mr. Atkins and Mr. Aulakh set up a company to own and operate the Property. That company is the defendant, J.J. Cool & Co. Ltd. (referenced as “Cool Co” in the plaintiffs’ materials and “JJ Cool” in the defendants’ materials). It is a BC company.

[7] Cool Co. purchased the Property on February 28, 2011, for $5.5 million. Cool Co. is the sole registered owner on title for the Property.

[8] Mr. Aulakh has held all the outstanding shares of Cool Co.; 50% as nominee, agent and trustee for TBC and 50% as nominee, agent and trustee for WIT. The plaintiffs allege there was an agreement that Mr. Aulakh would transfer Cool Co. shares to WIT once the Atkins Group's contributions to Cool Co. matched the Aulakh Group's contributions to Cool Co.

[9] Problems arose in the relationship between Mr. Atkins and Mr. Aulakh. By 2020 the Atkins Group had acquired a new transloading terminal and had their own trucking business. It replaced trucking services that had been provided by the Aulakh Group.

[10] The Aulakh Group alleges that the Atkins Group used the majority of the Property without paying rental or maintenance costs; that they breached an agreement or understanding when they stopped using Mr. Aulakh's trucking service; and that they refused to allow Mr. Aulakh to access large portions of the Property.

[11] The notice of civil claim was filed on January 12, 2021. The plaintiff, WIT, sought a declaration that Mr. Aulakh holds 50% of the shares of Cool Co. as a bare trustee for WIT; an order that would require Mr. Aulakh to transfer those shares to WIT; and an order that would require Mr. Aulakh and Cool Co. to produce an accounting of all proceeds, receipts, disbursements or profits they received in relation to the shares Mr. Aulakh held beneficially for WIT.

[12] The original defendants, Mr. Aulakh and Cool Co., filed their response to civil claim on March 1, 2021. In that pleading they allege that the contributions of the Atkins Group did not sufficiently match the contributions of the Aulakh Group to justify the transfer of Cool Co. shares to WIT.

[13] On March 1, 2021, Mr. Aulakh and TBC filed a counterclaim wherein they claimed that the Atkins Group breached a joint venture agreement.

[14] On September 15, 2021 WIT filed an amended notice of civil claim. It sought an order that would restrain the Aulakh Group from trespassing on the WIT portion of the Property and advanced claims relating to oppression and nuisance.

[15] On January 25, 2023, Justice Fitzpatrick made an order appointing BDO Canada Limited ("BDO") as an investigator of Cool Co. A report from BDO dated May 31, 2023 recommended that a receiver/manager be appointed to manage the Property. On August 2, 2023, Justice Fitzpatrick granted an order that empowered BDO as a Receiver.

[16] The Receiver was involved in a claims process. On January 10, 2025, the Receiver issued its determination and reasons for shareholder claims raised by the parties. On March 24, 2025, the Receiver issued a final adjudication with respect to set-off claims in issue. Some of those adjudications have been appealed.

[17] An order made by Justice Fitzpatrick on June 5, 2025 provided that the undetermined set-off claims and appeals relating to set-off claims were to be heard at the trial of this matter. The June 5, 2025 order indicated that the parties were to file amended pleadings. Pursuant to that order, on June 20, 2025 the plaintiffs filed a second amended notice of civil claim and the counterclaimants filed an amended consolidated counterclaim. On June 27, 2025, the defendants filed an amended response to civil claim and the defendants by way of counterclaim filed a response to amended consolidated counterclaim.

[18] A pleadings application proceeded on August 5, 2025. In oral reasons judgment delivered on August 5, 2025, indexed as *WIT Management Corp. v. Aulakh*, 2025 BCSC 1628, the Chief Justice of this court commented as follows:

> [54] I just want to make one additional point before closing. This matter has been ongoing since 2021. One trial date has already been lost, and I think the other one may be in jeopardy due to expanding time estimates. There have been numerous interlocutory matters. It has been to the Court of Appeal once. So four and a half years into the litigation, the parties are back in court fighting about pleadings. I appreciate that cases evolve as they progress, as do the pleadings in many cases, but court time is a finite resource, and at some point, parties need to either come to a resolution or get on with having a determination on the merits. I think this case is at that point.

[19] The plaintiff's notice of application now before the court was filed on August 7, 2025.

[20] The case was set to proceed to trial on September 15, 2025. On August 12, 2025, the plaintiffs filed a notice of application seeking an adjournment of the trial. The application was opposed by the defendants. The application proceeded on August 26, 2025. The trial was adjourned.

Legal Framework

[21] The discovery and inspection of documents in civil litigation is governed by Rule 7-1 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the "Rules"). The rule concerns a party's obligation to disclose documents that exist. It does not authorize the creation of documents for the litigation.

[22] Rule 7-1 provides for a two tier process for document disclosure.

[23] The first tier of document disclosure applies in all cases. Rule 7-1(1) provides that each party of record must prepare and serve a list of documents that lists all documents that are or have been in the party's possession or control that could be used by any party to prove or disprove a material fact. Any other documents the party intends to refer to at trial must also be listed. Rule 7-1(1) allows for altered document disclosure only if all parties consent or if the court otherwise orders. Those circumstances do not apply on this case.

[24] The Rules do not define what constitutes a "material fact". Case law indicates that a material fact is one that is essential in order to formulate a complete cause of action or a defence: *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500, para. 9; *Barrie v. British Columbia (Forests, Lands and Natural Resource Operations*), 2021 BCCA 322, para. 93.

[25] As each party must list all documents in their possession or control that fit within the definition set out in Rule 7-1(1)(a), a party cannot exempt documents from their list because the opposite party might be able to obtain those documents from other sources (e.g. from public registries), unless the opposite party consents.

[26] Documents must be listed in a way that will allow the opposing party to understand what the documents are and where and when they originated: *Long*

Lake Hydro Limited v. Western Versatile Construction Corp., 2019 BCSC 1760, para. 46.

[27] All parties have an obligation to make sure that their document disclosure is accurate, complete and up-to-date. Rule 7-1(9) provides that if a party learns that their list of documents is inaccurate or incomplete, or if the party comes into possession or control of a document that fits within the test set out in Rule 7-1(1)(a), that party must promptly amend their list of documents and serve the amended list on the other parties of record.

[28] If a party has received a list of documents but believes the list omits documents that should have been listed, that party may, by written demand pursuant to Rule 7-1(10), require the listing party to disclose the additional documents and serve an amended list of documents. A demand under Rule 7-1(10) is restricted to documents that should have been disclosed under Rule 7-1(1).

[29] Rule 7-1(11) allows a party who has received a list of documents to pursue additional documents they believe are within a listing party's possession, power or control and relate to matters in question in the action. The test for disclosure of documents under Rule 7-1(11) is wider than the test in Rule 7-1(1). It is whether the documents sought may enable the requesting party to advance their own case or damage their opponent's case, or which may fairly lead the requesting party to a train of inquiry in relation to either of those consequences: *Natural Trade Ltd. v. MYL Trading Ltd.*, 2019 BCSC 1368, para. 23; *Global Pacific Concepts Inc. v. Owners of Strata Plan NW 141*, 2011 BCSC 1752, paras 8, 9.

[30] Document disclosure under Rule 7-1(11) is the second tier of document disclosure. The narrower first tier of document disclosure is mandatory and will be adequate in many cases. The broader second tier of document disclosure is discretionary. Rule 7-1(14) provides that the court may excuse a party from compliance with a Rule 7-1(11) demand either generally or in respect of specific documents. When exercising its discretion, the court is to consider the objective of the Rules, which is to secure the just, speedy and inexpensive determination of the proceeding on its merits. In this context, the court is to consider if the document

disclosure sought would be proportionate to the amount involved in the proceeding, the importance of the issues in dispute and the complexity of the proceeding: *Gardner v. Viridis Energy Inc.*, 2012 BCSC 1816, para. 29.

[31] Rule 7-1(11) puts the burden on the party seeking the broader disclosure to explain why it is justified. It provides:

> (11) If a party who has received a list of documents believes that the list should include documents or classes of documents that
>
> (a) are within the listing party's possession, power or control,
>
> (b) relate to any or all matters in question in the action, and
>
> (c) are additional to the documents or classes of documents required under subrule (1) (a) or (9),
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> the party, by written demand that identifies the additional documents or classes of documents with reasonable specificity and that indicates the reason why such additional documents or classes of documents should be disclosed, may require the listing party to
>
> (d) amend the list of documents,
>
> (e) serve on the demanding party the amended list of documents, and
>
> (f) make the originals of the newly listed documents available for inspection and copying in accordance with subrules (15) and (16).

[32] Some evidence of the existence and potential relevance of the additional documents is required for disclosure under Rule 7-1(11): *More Marine Ltd, v. Shearwater Marine Ltd.*, 2011 BCSC 166, para. 8. The requirement that the demanding party indicate why the additional documents should be disclosed necessarily incorporates an obligation to provide evidence as to why the demanding party contends that the documents are in the possession, power or control of the responding party.

[33] Possession of a document requires more than mere access to it: *Henry v. British Columbia*, 2014 BCSC 1018 [*Henry*], para. 22. Documents in the possession of a party would include all physical and digital documents held by the party. Documents in the control of a party include documents which are not in the party's possession, but the party has a right to obtain from the person or entity who has them: *Henry*, para. 23. An example would be records in the possession of a party's

professional services corporation where the party is the sole shareholder and only officer of the company; the party would be obliged to disclose company documents if they could prove or disprove a material fact in the lawsuit. Power over a document has been held to be broader than mere control: *Henry*, para. 24. For a document to be within the power of a party, that party must have access to the document: *Net1 Products (Canada) Ltd. v. Mansvelt*, 2001 BCSC 906, para. 14.

[34] A party's access to documents is a factor to be considered, but is not determinative as to whether the documents are compellable in litigation involving that party. Records created by and in the possession of someone not a party to the litigation may be accessible by the party (e.g. a doctor's clinical records concerning a plaintiff involved in personal injury litigation), but are not within the party's power or control and do not have to be disclosed or produced by that party: *Seller v. Grizzle*, [1994] B.C.J. No. 1565, 95 BCLR (2d) 297 para. 17. A party seeking production of such records may have a remedy; if the records are relevant to a matter in question in the action they can apply under Rule 7-1(18) for production directly from the person or organization holding the records.

[35] Rule 7-1(12) requires a party who receives a demand pursuant to Rule 7-1(10) or (11), to either produce all requested documents or provide a response that explains why any requested documents will not be disclosed.

[36] If a party who receives a demand pursuant to Rule 7-1(10) or (11) does not comply with the mandatory requirements of Rule 7-1(12), the demanding party may apply pursuant to Rule 7-1(13) for an order that would require the responding party to comply with the demand.

[37] In *Lit v. Hare*, 2012 BCSC 1918 [*Lit*], at para. 67, the court explained that Rule 7-1 is designed to promote dialogue between the parties, informal resolution of document production disagreements where that is possible and, where it is not, targeted litigation that focuses on well-defined issues that remain contentious.

[38] Document production often is a crucial component of a litigated case. Documents can be essential in the truth seeking process. On some matters that arise in a case, documents can be regarded as the only truly reliable source of

information. Documents can have a significant bearing on the assessment of a party's credibility, as the most reliable evidence as to what actually happened often will be found in contemporaneous documents. Nevertheless, as a court process, document production must be conducted in a manner that accords with the objectives of the Rules and is capable of effective judicial supervision.

[39] It is obvious that Rule 7-1 is designed to counteract speculative demands for documents. It is not uncommon for counsel for a party seeking documents to send correspondence to opposing counsel that suggests documents the demanding party believes should be produced. Often those requests for documents are based, at least in part, on speculation about the types of documents that might have been created. This can be regarded as part of the informal dialogue between parties contemplated in *Lit*. However, if the parties do not agree on the documents that should be disclosed, and the demanding party chooses to proceed on an application, they must adhere to the requirements in Rule 7-1. The rule provides safeguards to ensure that orders for document disclosure are warranted and appropriate. Documents sought on an application must be clearly identified. This is a key component of the process because a responding party needs to know exactly what they are being asked to do. There must be evidence to establish the existence and potential relevance of the documents and that they are in the possession, power or control of the responding party. These are very important factors, as it would be wrong for the court to order a party to produce documents that do not exist or are not in the possession, power or control of that party.

[40] An application for document production, especially one seeking second tier document production under Rule 7-1(11), requires a properly prepared notice of application. It is essential that a notice of application inform the party against whom orders are sought about the exact nature of the orders and provides them with a reasonable opportunity to respond to the application. Our court of appeal referred to this fundamental principle In *Kett v. Google LLC*, 2023 BCCA 350:

> [75] I begin my analysis of the Second Issue by observing that the *audi alteram partem* rule requires that a person be informed of the case against them and be given a reasonable opportunity to answer that case before the

> decision maker renders its decision. The rule contemplates notice of the order being sought and opportunity to be heard: *Halsbury's Laws of Canada – Administrative Law* (*2018 Reissue*) at Ch. IV.3.(4)(a); *Halsbury's Laws of Canada – Civil Procedure* (*2021 Reissue*), Ch. VII.2.(1).

[41] A notice of application must set out the arguments and the legal basis for the order sought, so the opposing party and the court will have proper notice of the arguments: *Dupre v. Patterson*, 2013 BCSC 1561, paras. 47, 48. In the context of a document disclosure application, this means that the notice of application must identify the documents the demanding party seeks with reasonable specificity; indicate why the demanding party contends that the documents exist and are in the possession, power or control of the responding party; and present the demanding party's argument regarding why the documents should be disclosed. A notice of application that clearly sets out each of those elements provides proper notice to the responding party and allows them to prepare an application response that frames the issues for the court.

Analysis

[42] The application at Part 1, para. 1 of the plaintiff's August 7, 2025 notice of application seeks production of documents in four groupings. The plaintiffs have shown that each of these sets of documents were requested pursuant to the provisions of Rule 7-1(11).

[43] The first group of documents sought in Part 1, para. 1 of the notice of application is:

> Aulakh Credit Information
>
> (a) The mortgage/investment broker documents from Dilbagh Mann referred to in para. 1013 of the December 13,2024 examination for discovery of Inderjit Aulakh, or the lending institution to which he applied for financing for his homes;
>
> (b) all application materials submitted by Inderjit Aulakh to financial institutions, banks, or lenders that relied on this credit profile since the incorporation of Cool Co., including but not limited to:
>
> > (i) any loans and mortgages obtained using Inderjit Aulakh's credit profile that include shares of Cool Co.;

> (ii) all application materials submitted by Inderjit Aulakh to financial institutions, banks, or lenders that relied on this credit profile;
>
> (iii) any supporting documentation used in loan applications reflecting Inderjit Aulakh's ownership or financial stake in Cool Co.;

[44] The plaintiff's submissions in relation to this demand for additional documents are set out in Part 2, the Factual Basis section of the notice of application:

> 38. The basis for the request at (b) is an email from the Aulakh Group's bookkeeper. That email indicated that Inderjit Aulakh obtained a loan based on his personal credit profile, which claimed 100% ownership of Cool Co. In doing so, he leveraged both his credit and his asserted ownership interest in Cool Co. to secure financing.
>
> 39. This issue is directly raised in the pleadings, where it is alleged Mr. Aulakh acted in breach of his obligations as a bare trustee by "representing to lenders that he is the 100% owner of Cool Co." and managing or dealing with the WIT Shares without the direction of WIT.
>
> 40. On June 20,2025, the Aulakh Group responded that:
>
> > (a) all documents in Mr. Aulakh's possession or control concerning broker Dilbagh Mann had been produced;
> >
> > (b) they were not aware of any additional documents relating to an encumbrance over Cool Co.'s shares or any pledge of those shares as security, beyond what had already been listed; and
> >
> > (c) Mr. Aulakh's credit profile or personal financing arrangements were unrelated to allegations in the pleadings.
>
> 41. On July 14,2025, the Atkins Group followed up, noting that during discovery Mr. Aulakh was questioned about the bookkeeper's email, which referenced a loan granted on the basis of his credit profile, including ownership in Cool Co. Mr. Aulakh stated he was unaware of the specifics and had provided all records requested by the bank.
>
> 42. Records provided to Mr. Mann or any financial institutions in connection with that financing are relevant and producible. If such records are not already in Mr. Aulakh's possession, they are within his power or control and should be obtained and disclosed.

[45] The defendants provided the following submissions in Part 4, the Factual Basis section of their application response:

> 16. There is no relevance to many of the requested documents related to Mr. Aulakh's personal home.
>
> 17. Mr. Aulakh no longer has a copy of his mortgage application for the purchase of his house. Our office has been in correspondence with

> representatives of Coast Capital to obtain a copy. On 21 August 2025, Avtar Singh Guru of Coast Capital advised us that "Inderjit Aulakh purchased this property (6211 No. 6 Road, Richmond) back in 2014 and I did a mortgage application which funded on 27 Nov 2014. There was no involvement of his Co. JJ COOL in ref application."
>
> 18. The shareholders agreement referred to by the applicants was signed at some point after September 2018. It was 'back-dated' to February 2011. As at the time, Mr. Aulakh is alleged to have acquired his house, there was no written shareholders agreement in place.

[46] The defendants refer to the following passage from *Tophay Leo Farms Ltd. v. Wu*, 2023 BCSC 992 concerning a response from counsel as to whether a requested document is available:

> [49] I pause to state that when counsel advise the Court that a document request has been passed on to a client and that client has advised that the requested document can not be located, the Court takes such advice at face value. If at a later date the requested documents are obtained, and the requested party seeks to rely on them, the Court may refuse to allow them to do so without a satisfactory explanation as to why they were not produced earlier, in accordance with the rules.

[47] The defendants have indicated the documents are not in the possession of Mr. Aulakh. There is no evidence that establishes they are in the power or control of Mr. Aulakh. Indeed the indication is that if these records do exist they are in the possession or control of Mr. Mann or a financial institution who are not parties to this litigation, and there is no evidence to establish that the defendants would have access to any such records. The plaintiffs' applications at Part 1, paras. 1(a) and (b) are improper because counsel for the defendants have indicated that Mr. Aulakh does not have the requested documents. The applications are misguided because the notice of application does not refer to evidence that would show that the documents exist and are in the possession, power or control of the defendants. The applications at Part 1, paras. 1(a) and (b) are dismissed.

[48] The second group of documents sought in Part 1, para. 1 of the notice of application is:

> Rate Information and Exclusivity Terms
>
> (c) Documents that relate to the rates charged by TBC to non-Atkins Group carriers from 2001 to 2020;

> (d) Documents that provide the proportion and percentage of work that was done for WTC and non-WTC carriers/companies from 2001 to 2020;
>
> (e) Invoices and container numbers for non-WTC carriers/companies from 2001 to 2020;
>
> (f) Invoice backups, including container numbers, for all invoices sent from TBC to WTC from 2010 to 2012, inclusive;

[49] The plaintiff's submissions in relation to this demand for additional documents are set out in Part 2, the Factual Basis section of the notice of application:

> 44. On June 20,2025, the Aulakh Group advised that these documents would not be produced, asserting they are not relevant to allegations in the pleadings and were sought for the purpose of obtaining competitive information.
>
> …
>
> 46. On July 14,2025, the Atkins Group responded by identifying specific paragraphs of the Amended Consolidated Claim that reference the Exclusivity Terms alleged to form part of a joint venture agreement. They also cited portions of Mr. Aulakh's discovery transcript in which he acknowledged that discounted rates were negotiated with WTC as part of the alleged joint venture.
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> 47. The Atkins Group further stated that if a joint venture with exclusivity terms is established, the court must determine the scope of exclusivity and any breaches, and the requests at (c)-(e) would demonstrate what the exclusivity terms were, how they differ from the parties' arrangement before 2011, and whether the parties followed them.

[50] The defendants provided the following submissions in Part 4, the Factual Basis section of their application response:

> 20. There is no relevance to rates charged by Mr. Aulakh or his companies for trucking services provided to companies other than WTC.
>
> 21. This litigation is not about whether Mr. Aulakh was permitted to service other clients with his trucks. There is no allegation that he was not permitted to do so. Nor is there any allegation that he breached any agreement with Mr. Atkins by the rates that were charged to Mr. Atkins.
>
> 22. At present, Mr. Atkins and Mr. Aulakh are competitors in the same industry. The request that Mr. Aulakh disclose his clients and the rates charged can be used for mischief.
>
> 23. Furthermore, the request is very onerous. They request seeks 19 years of data, likely including many thousands of invoices and containers that is of marginal or no relevance to the pleadings.
>
> 24. At best, these documents appear to be for the purpose of making a rhetorical point that Mr. Atkins was obligated to treat Mr. Aulakh as an exclusive trucker and did not receive a reciprocal promise of exclusivity.

> However, this is the arrangement that is alleged in the pleadings: Mr. Aulakh was to make his trucks available to Mr. Atkins, but the Aulakh trucks would not sit idle if Mr. Atkins did not need them. The production of underlying invoices and rates for third parties does not enhance the understanding of the agreement that existed between Mr. Aulakh and Mr. Atkins: they would not prove or disprove any material fact that is at issue.
>
> 25. There is no allegation in the pleadings that Mr. Aulakh failed to comply with rates or pricing negotiated with Mr. Atkins. There is no assertion of breach of any agreement by Mr. Aulakh in respect of rates that were charged. Mr. Atkins would be aware of the rates that were charged by Mr. Aulakh to his companies and whether they were complied with.

[51] The defendants have shown that the documents demanded at Part 1, paras. 1(c) to (f) would not be relevant to matters in question in this action and likely would not assist the plaintiffs in advancing their own case, damaging the defendants' case, or assist in fairly leading the plaintiffs on a train of inquiry in relation to either of those consequences. Furthermore, the defendants have indicated a good reason why the documents should not be produced to the plaintiffs: they would expose pricing information on services the defendants provide in the same industry in which the plaintiffs operate. This could result in an unfair competitive disadvantage for the defendants. The applications at Part 1, paras. 1(c) to (f) are dismissed.

[52] The third group of documents sought in Part 1, para. 1 of the notice of application is:

> Transloading/Storage Information
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> (g) Financial records of Trans BC Freightways (2007) Ltd. ("TBC"), TrasBC Freight Ltd. and any other Aulakh Group entity detailing any revenue earned from the use of storage facilities on the Ewen Property since 2018;
>
> (h) Records relating to transloading activities on the Ewen Property by any entity beginning in 2018;
>
> (i) A list of customers and associated financial records related to the use of storage facilities on the Ewen Property since 2018;
>
> (j) Records indicating the current status of the storage facilities including a list of all parties who have goods stored at the Ewen property currently;
>
> (k) All emails, rate discussions or negotiations, onboarding, recruitment, advertisement or other commercial efforts related to securing warehouse customers from 2018 to the present;

[53] The plaintiff's submissions in relation to this demand for additional documents are set out in Part 2, the Factual Basis section of the notice of application:

> 49. These documents are related to the use of Cool Co's space and the revenues from such use, and were necessary given Mr. Aulakh's responses on discovery that:
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> (a) He could not recall what was being transloaded other than steel;
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> (b) He could not recall how storage fees were collected or from whom;
>
> (c) He admitted that steel was being transloaded and stored at Bay 4, with revenue going to Cool Co;
>
> (d) A company called Samuel and Son was using storage at the Ewen Property, benefiting TBC; and
>
> (e) He could not confirm the presence of other companies in the warehouse despite photographic evidence.
>
> 50. These documents relate to WIT Set Off Claims #3 (Unauthorized Use of Warehouse and Yard) and #4 (Debt Forgiveness). The Receiver was unable to determine Set Off Claim #3 and a portion of #4, and declined to use its investigatory powers to obtain the information needed to make a determination.
>
> …
>
> 53. On June 20,2025, the Aulakh Group responded by providing a spreadsheet containing warehousing information. The letter identifies that "... payments for storage, handling, trucking and/or transloading are not generally itemized in the records of the [the Aulakh Group]." A spreadsheet specific to agricultural transloading was also provided. The letter goes on to state that "... these invoices are not generally itemized and contain fees for trucking and/or transloading as one payment."
>
> 54. The "invoices" referenced that form the spreadsheet for agricultural transloading are, not yet provided or, if they have been provided, it is unclear which records are being specified. We note that a commercial rent roll (OVC_1593) and property-specific operating statements for 2020, which provide a summary of income and rents (OVC_1595) are included in the records. But, we are not able to identify the back-up sources identified by the Aulakh Group in the spreadsheet. The same holds true for the "records" for payments and storage.
>
> 55. Disgorgement of Cool Co.'s profits is a remedy to be determined at trial. The Aulakh Group has already acknowledged, through the claims process, that compensation is owed to Cool Co. for its use of the property. While the Aulakh Group asserts that back payment of rent is the appropriate remedy, the Atkins Group requires disclosure of revenues generated by entities using the property, records of material stored or operations conducted on the property, and a current customer list. These records are directly relevant to assessing the benefit the Aulakh Group has derived and the scope of shareholder oppression from its unauthorized use of Cool Co. space.

[54] The defendants provided the following submissions in Part 4, the Factual Basis section of their application response:

> 26. The Application Respondents are prepared to deliver documents that may be of assistance in proving profits it has earned at the expense of JJ Cool if the Applicants do the same in kind. The Applicants have long taken the position that documents related to revenue they have earned on business diverted from the Property and on business of its new trucking arm are irrelevant.
>
> 27. The Atkins parties have refused to disclose documents related to revenue at their Port Coquitlam and Delta terminals on the basis that they include "confidential business and financial information" which are irrelevant to the joint venture. They have similarly refused to disclose their financial statements. Thus, the plaintiffs seek disclosure of revenue that Mr. Aulakh earned, but simultaneously and steadfastly refuse disclosure of their own revenue.

[55] During the hearing, counsel for the defendants indicated that the defendants had provided a spreadsheet to the plaintiffs to answer the request at Part 1, para. 1(g). The spreadsheet was prepared by the defendants. Counsel for the defendants opposed the plaintiffs' request for production of the invoices the spreadsheets are based on because of proportionality.

[56] Document production is subject to the proportionality objectives set out in Rule 1-3(2): as far as is practicable, a proceeding is to be conducted in ways that are proportionate to the amount involved in the proceeding, the importance of the issues in dispute and the complexity of the proceeding. An application for document production can be refused if the order sought would offend the proportionality principles. Submissions on the proportionality principles must be based on evidence. An application response must set out the factual basis on which an application is opposed: Rule 8-1(10). Therefore, if a party opposes an application based on the proportionality principles, the factual basis section of that party's application response should clearly state the evidentiary foundation for the opposition and, if necessary, provide reference(s) to the paragraph(s) in the affidavit(s) that provide the evidence.

[57] The proportionality defence was not substantiated on this application. The defendants' application response does not refer to evidence that could form the basis for a ruling that production of the underlying invoices should be denied because doing so would be disproportionate to the amount involved in the case, the importance of the issues in dispute, or the complexity of the case. One would think

that such evidence would be available to the defendants through whoever prepared the spreadsheets. If the objection is that too many invoices would have to be produced, the approximate number of the invoices should have been set out in the application response and an indication of the amount of work that would be required to produce them. The defendants' opposition on the basis of proportionality cannot be sustained. The invoices on which the spreadsheets are based may be relevant as a check on whether the spreadsheet information is correct.

[58] The application at Part 1, para. 1(g) seeks an order that would compel the defendants to produce the documents without regard to safeguards imbedded in Rule 7-1. It also requires production, rather than disclosure, of the documents, which would eliminate any potential claim that a document is privileged from production, without evidence that would support that result. The application is granted in part. The defendants are to disclose the documents described in para. 1(g) that are in the defendants' possession, power or control.

[59] The demand at Part 1, para. 1(h) is similar to the application at para. 1(g). The documents sought would likely be copies of invoices. The findings with respect to the application at Part 1, para. 1(g) also apply to the application at para. 1(h). The application at Part 1, para. 1(h) seeks an order that would compel the defendants to produce the documents without regard to safeguards imbedded in Rule 7-1. The application is granted in part; the defendants are to disclose the documents described in para. 1(h) that are in the defendants' possession, power or control.

[60] The application at Part 1, para. 1(i) seeks an order that would require the defendants to prepare and provide "a list of customers…". The application is pursuant to Rule 7-1. That Rule does not authorize an order that would require a party to prepare a document for the litigation. When counsel for the plaintiffs was reminded of this fundamental flaw with respect to this application during the hearing, he argued that the application for preparation and production of a list could be considered as an examination for discovery request pursuant to Rule 7-2. The notice of application does not rely on Rule 7-2 or refer to the alleged examination for discovery request. Therefore adequate notice of this submission has not been provided. The application must be dismissed.

[61] The part of the application that seeks “associated financial records” must also be dismissed. It is a vague description of possible documents. It does not identify documents with reasonable specificity, as required by Rule 7-1(11). The notice of application also does not provide or refer to credible evidence that those documents exist and are in the possession, power or control of the defendants.

[62] The application at Part 1, para. 1(i) is dismissed.

[63] The plaintiffs’ notice of application does not establish why the documents demanded at Part 1, para. 1 (j) and (k) would be relevant to matters in question in this action. Furthermore the defendants have indicated a good reason why the documents should not be produced to the plaintiffs: they would expose pricing information on services the defendants provide to customers not involved in this litigation. The applications at Part 1, paras. 1(j) and (k) are dismissed.

[64] The fourth group of documents sought in Part 1, para. 1 of the notice of application is:

> Tumac Invoices
>
> (l) All invoices with respect to any Tumac cargo that passed through the Ewen Property which relate to payments made to either an Aulakh Group entity or Cool Co.

[65] The plaintiffs’ submissions in relation to this demand for additional documents are set out in Part 2, the Factual Basis section of the notice of application:

> 56. On March 11,2025, counsel for the Applicants demanded documents which further particularized the demand for financial records under the header *“Aulakh Credit Information — Breach of Trust”* above. Additionally, they demanded all invoices with respect to the Tumac rentals for payments made to an Aulakh Group entity or Cool Co.
>
> 57. On June 20,2025, the Aulakh Group responded that they are continuing to look for the Tumac invoices. The documents remain outstanding and no further particulars have been provided.

[66] The defendants provided the following submissions in Part 4, the Factual Basis section of their application response:

> 28. In Set off Claim 4, Mr. Atkins argued that Mr. Aulakh failed to collect $24,900 in rent from a company called Tumac Lumber Co. The receiver found that revenue for Tumac was not property accounted in JJ Cool’s books

> as they generally lacked clarity and had limited available supporting documentation.
>
> 29. As at this time, the application respondents have been unable to locate any further records related to the Tumac invoices or payments.

[67] The defendants have provided an appropriate response to the document demand at Part 1, para. 1(l). The court is obliged to accept that counsel for the defendants, as officers of the court, have made the appropriate inquiries regarding these documents and that they cannot be located. The application at Part 1, para. 1(l) is dismissed. If these documents come into the possession or control of the defendants in the future, counsel for the defendants will have to disclose them to the plaintiffs pursuant to Rule 7-1(9).

Orders

[68] The applications at Part 1, paras. 1(a), (b), (c), (d), (e), (f), (i), (j), (k) and (l) of the notice of application filed on behalf of the plaintiffs and defendants by way of counterclaim on August 7, 2025 are dismissed. The applications at Part 1, paras. 1(g) and (h) are granted in part; within 30 days of the date of these reasons the defendants/counterclaimants are to disclose to the plaintiffs and defendants by way of counterclaim the documents described in paras. 1(g) and (h) that are in the possession, power or control of the defendants or the counterclaimants.

Costs

[69] Submissions were not provided during the hearing regarding costs for the application.

[70] Rule 14-1(12) sets out the usual order for costs for an application; costs in the cause. Although the plaintiffs succeeded on two of the applications, the majority of their applications were refused. Some of the applications (e.g. the applications at Part 1, paras. 1(a), (b), (i) and (l)) clearly were without merit. The defendants successfully opposed a number of the applications. Under Rule 14-1(12)(b) the defendants would be entitled to costs. As the hearing lasted more than two hours,

those costs would be assessed under Appendix B of the Rules at full day rates for preparation for and attendance at the hearing of an opposed application.

[71] If any party wishes to make submissions on whether an order other than costs to the defendants pursuant to Rule 14-1(12)(b) should be made for this application, they can do so by way of written submissions. The party seeking a different costs order must file their brief of argument with the registry within 14 days of the date of these reasons. The brief is to be no more than five double spaced pages and is to include no more than five case authorities. They must immediately serve a registry stamped copy of the brief on all other parties. Any party opposing the proposed alternate order for costs must respond within 14 days of when the applicant's brief was filed. The responding parties' brief is to be no more than five double spaced pages and is to include no more than five case authorities.

[72] If no party files a brief of argument seeking an alternate order for costs for this application within 14 days of the date of these reasons, the defendants will be entitled to costs of the application, pursuant to Rule 14-1(12)(b).

"Associate Judge Vos"