

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zimtu Capital Corp. v. Capacitor Metals Corp.*,
2026 BCSC 198

Date: 20260210
Docket: S257810
Registry: Vancouver

Between:

Zimtu Capital Corp.

Plaintiff

And

Capacitor Metals Corp.

Defendant

Before: Associate Judge Peck

Reasons for Judgment

Counsel for Plaintiff:

O. Hanson
S. Kim (A/S)

Counsel for Defendant:

O. Stoklosa

Place and Date of Hearing:

Vancouver, B.C.
January 5 and 9, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 10, 2026

Introduction

[1] This is the defendant’s application to set aside a pre-judgment garnishing order the plaintiff obtained without notice via desk order on October 30, 2025 in the context of a dispute related to multiple services agreements.

[2] For the reasons that follow, I find there is no basis on which to set aside the pre-judgment garnishing order. The defendant’s application is dismissed with costs to the plaintiff.

Background

[3] Unless specified, the facts set out in this section appear to be agreed.

[4] Zimtu Capital Corp. (“Zimtu”) is a publicly-traded investment issuer and acts as an incubator for private companies looking to go public.

[5] Capacitor Metals Corp. (“Capacitor”) is a privately-held mining exploration company. At the relevant time, Capacitor had ambitions of becoming a publicly traded company, and Zimtu was going to assist in that process.

[6] In or about February 2024, the parties entered into a Management Services Agreement (the “MSA”). Both parties argue there were some additional terms included in the Management Services over and above what was recorded in writing, however the extent and nature of those additional terms are disputed. The parties do agree there was a form of contractual relationship whereby Zimtu would provide to Capacitor certain administrative and management services, including Zimtu allowing Capacitor to use some of its office space.

[7] The parties disagree about how and when the fee for such services was to be paid, but do agree that Zimtu would charge Capacitor \$15,000 per month plus GST for services under the MSA. The MSA was amended at some point to include additional services whereby Zimtu would provide strategic input into Capacitor’s plan to become listed on a Canadian stock exchange. The fee for the additional services was \$150,000 plus GST, payable in two equal installments, one at the initiation of

the agreement and the second upon completion of Capacitor's first private placement. It is agreed that Capacitor made the first payment.

[8] The MSA was initially for a 10-month term and was extended for a further 12 months on or about December 1, 2024.

[9] In or around March 2024, Zimtu and Capacitor discussed entered into a second agreement under which Zimtu would administer a marketing program for Capacitor for a 12-month term for a fee of \$12,500 per month plus GST (the "Zimtu Advantage Agreement"). The agreement refers to its "ratification" but does not specify the ratification procedure. Zimtu says the start of the contract was delayed to September 1, 2024. Capacitor says that the parties agreed that Capacitor would sign a one-year marketing contract with Zimtu only once Capacitor's shares were listed on a Canadian stock exchange. Until then, Zimtu would provide certain basic marketing services for free. It denies that the Zimtu Advantage Agreement was ever entered into as Zimtu alleges.

[10] In or about April 2024, Zimtu issued loans secured by promissory notes to its employees to acquire shares in Capacitor. Capacitor argues that its having issued shares which were then purchased with the funds secured by those promissory notes is the manner in which the second installment for additional services was paid. In other words, it says that debt was satisfied when Capacitor issued its shares to Zimtu employees, and Zimtu was ultimately repaid in cash when the Zimtu employees repaid those promissory notes. Zimtu denies the connection between the promissory notes and the second \$75,000 installment for additional services. There is evidence that at least some of the promissory notes have been repaid by the employees to whom the loans were made. Capacitor included evidence related to \$48,500 in promissory note repayments by Zimtu employees in the record.

[11] Capacitor closed its first private placement on May 8, 2024.

[12] On or about September 9, 2025, Zimtu, through counsel, demanded payment of \$456,750 pursuant to the MSA and the Zimtu Advantage Agreement, attaching an

accounts receivable statement. Counsel for Capacitor responded and asked for the invoices supporting the accounts receivable statement, which were provided on September 25, 2025. Capacitor claims this is the first invoices they received under either agreement.

[13] Zimtu amended its demand on or about October 2, 2025 to include the MSA amount of \$15,750 including GST for October and a QuickBooks subscription invoice. Capacitor's counsel responded on October 16, 2025, summarizing its position on the alleged debt and suggesting that \$78,750 of the claim related to the promissory notes and not any debt under the agreements.

[14] Zimtu filed the notice of civil claim on October 15, 2025 claiming \$472,944.80 was owing. They applied for a pre-judgment garnishing order in the amount of \$472,580 only (the amount allegedly owing under the two agreements plus the \$80 filing fee for the order).

[15] At the time of the hearing, Capacitor remained a privately-held company.

[16] No party advised the court of the amount garnished pursuant to the order.

Defendant's position

[17] Capacitor applies to set aside the garnishing order pursuant to Rule 8-5(8) of the *Supreme Court Civil Rules*, BC Reg 168/2009 (the "SCCR") and s. 5 of the *Court Order Enforcement Act*, RSBC 1996, c 78 (the "COEA") on the basis of the plaintiff's failure to make full and frank disclosure, and on the basis that the order did not take all just discounts into account. Capacitor does not argue the garnishing order was unjust.

[18] In particular, Capacitor says the affidavit #1 of Jody Bellefleur, Zimtu's Chief Financial Officer, made October 28, 2025 and filed in support of the garnishing order, was deficient. Capacitor points to the following specific deficiencies:

- a) It did not admit that the written agreements appended to the affidavit did not include all of the terms of the parties' respective agreements, since

some oral terms were added to or modified the written agreements. The most relevant alleged terms that do not appear in the written agreement are that Capacitor was entitled to pay for services under the MSA in shares or by way of a future private placement, and that the Zimtu Advantage Agreement was not to commence until Capacitor's shares were listed on a Canadian stock exchange.

- b) It did not disclose that Zimtu did not fulfill its contractual obligations and thus Capacitor was entitled to just discounts for services not provided.
- c) It did not include:
 - i. correspondence from Capacitor's counsel from September 12, 2025 or from October 16, 2025 outlining its position on Zimtu's demand,
 - ii. email correspondence from August 2025 from Justin Schroenn, Capacitor's executive director related to the Zimtu Advantage Agreement, or
 - iii. any information about the promissory notes.

[19] Capacitor's argument about Zimtu's inadequate performance under the agreements also forms the foundation for most of its just discounts argument. It says that Zimtu ceased providing services under the MSA altogether in September 2025. It says further that Zimtu provided no services that would properly qualify as services under the Zimtu Advantage Agreement. Capacitor says the limited marketing services Zimtu provided – preparing five articles, one of which was internal, assisting in the set up of a website using a third-party company, and reposting a news release Capacitor had posted on its website – was provided for free.

[20] Finally, Capacitor says that Zimtu has failed to account for the promissory note repayments by Zimtu employees. Since some or all of the promissory notes have apparently been repaid, Capacitor says the repaid money is not owing at all, let alone owing from Capacitor.

[21] Capacitor claims just discounts of at least \$236,250, or 50% of the claimed amount, as follows:

- a) \$157,500 under the Zimtu Advantage Agreement on the basis that the agreement had not commenced and no services had been provided.
- b) \$78,750 in amounts relating to employee promissory notes and thus not payable by Capacitor.
- c) At least a portion of the MSA fee for September and October 2025 when Zimtu ceased providing administrative and managerial services.

[22] While it disputes whether the contracted for services were provided, other than as it relates to the confusion around the promissory notes, Capacitor does not appear to deny that the payments Zimtu says are owing have in fact not been made.

[23] Capacitor relies in this application on two affidavits sworn by Christopher Grove, Capacitor's president and chief executive officer. While he speaks assertively about the parties entering into the MSA and its terms as well as the circumstances surrounding discussion about the Zimtu Advantage Agreement in early 2024, it is not in dispute that he was not with the company at the time, having joined the company only on or about August 29, 2024.

[24] In terms of Zimtu's disclosure obligations, Capacitor points to the comments in the leading case of *Key Insurance Services Partnership v. T. Clarke Insurance Services Ltd.*, 2010 BCSC 1857 ("*Key Insurance*") at paras. 68-69. In those paragraphs, the court warns that allowing an applicant who is aware of facts that are likely to result in a garnishing order being set aside but does not disclose those facts is not legitimately or properly seeking to secure a potential judgment. As such, allowing the order to stand in those circumstances promotes abuse or mischief.

[25] Ultimately, Capacitor says allowing the garnishing order to stand would create a precedent for an absurd result, where a plaintiff could present a contract to the

court, not perform any of the services, and nevertheless obtain a pre-judgment garnishing order to secure its repayment.

Plaintiff's position

[26] Zimtu says that it performed all services required under the MSA and under the Zimtu Advantage Agreement, which it says was in force. It claims it has not been paid under the MSA from and after August 2024, has not received the second \$75,000 installment for additional services, and has received no payments at all under the Zimtu Advantage Agreement.

[27] Zimtu acknowledges the obligations of disclosure on a pre-judgment garnishing order application but argues that the scope of the disclosure obligations are narrower than those required on other *ex parte* applications. It says that the authorities make clear that full and frank disclosure in this context is not an unlimited concept but rather relates only to the five factors set out in s. 3 of the *COEA*, which identifies the evidence required to obtain a pre-judgment garnishing order. It points to the court's comments in *Clarke Communication Contracting Inc. v. Black Diamond Limited Partnership*, 2024 BCSC 465 ("*Clarke Communication*") at paras. 75-77 which discuss the disclosure obligations of an applicant in more detail.

[28] Zimtu says the only part of s. 3(2) of the *COEA* that could potentially be in issue here is what amount is justly due and owing after making all just discounts (s. 3(2)(e)). It says it made full and frank disclosure regarding that required element.

[29] Zimtu cautions the court about relying too heavily on the Grove affidavits, and Mr. Grove's affidavit #1 in particular. Mr. Grove makes a number of statements about what he understood the terms of the relevant agreements to be but Mr. Groves was not part of Capacitor at the relevant time. As such, he has no personal knowledge of the discussions about agreement terms, and in some cases, he does not attribute the source of his information, rendering his hearsay evidence even less reliable. As a result, Zimtu says there is no admissible evidence in the record about any terms not included in the written agreements that Capacitor asserts. Though Mr. Grove attributed some of his affidavit #1 comments in his

affidavit #2, Zimtu questions whether that is effective to cure the evidentiary defect. It also says that even if effective, Mr. Grove's affidavit #2 does not cure all the defects with his affidavit #1.

[30] In any event, Zimtu says even if the agreement terms are ultimately found to allow Capacitor to pay for services in shares, that constitutes a defence to the claim for payment and not a just discount. It relies heavily on the discussion *Clarke Communication* at paras. 77-82, where the court discussed the limits on an applicant's obligation to disclose defences to an action or otherwise proactively raise the defendant's position. In that case, the court held that the applicant had not withheld material facts that would have impacted the registrar's decision to issue a pre-judgment garnishing order. Ultimately, in response to similar arguments as those being raised by Capacitor about payment terms and the unsatisfactory nature of the work performed, the court found sufficient disclosure had been made: "this information shows no more than that there is another side to [the] claim, something the registrar must assume in...every case" (*Clarke Communication* at para. 82 citing *Jeffries v. American Cumo Mining Corp.*, 2013 BCSC 1150 at para. 20).

[31] Zimtu further argues that in order for a position to qualify as a just discount, it must be a liquidated amount advanced by way of set off or counterclaim (*Key Insurance* at para. 17(e)). A liquidated amount is "a specific sum that is 'already ascertained or capable of being ascertained as a mere matter of arithmetic'" (para. 65 of *Clarke Communication*). Zimtu argues that none of the issues that Capacitor raises are liquidated amounts and thus cannot qualify as just discounts.

[32] Zimtu makes the further point that Capacitor's response to civil claim, though admittedly filed after the pre-judgment garnishing order was obtained, makes no claim for set off and Capacitor has not filed a counterclaim. It says this underlines the point that Capacitor is raising defences not "just discounts".

[33] In terms of the non-provision of services, Zimtu says that Capacitor used its office space through November 9, 2025 meaning at least some services must have been provided under the MSA. It also repeats its point about Mr. Grove's evidence

being hearsay and in some cases double-hearsay (e.g. at paras. 30-31 of Grove affidavit #1), since Capacitor’s argument that there were additional terms in the various agreements that are not reflected in writing are what ground its just discounts argument. Zimtu says that even if there is a dispute about the nature and value of its services, under either agreement, that may be a defence to the ultimate claim but is not a reason to set aside the garnishing order.

[34] With respect to the argument about the repaid promissory notes being a just discount, Zimtu says this is pure speculation. It points out that even Capacitor’s own evidence on this point is weak, given that it rests on Mr. Grove’s assertion that “he believes” the \$78,500 claimed relates to those promissory notes (at para. 24 of his affidavit #1). Ms. Bellefleur in her affidavit #2 made November 17, 2025 at paras. 6-9 denies that the promissory notes form any part of Zimtu’s claim and say this was a separate commercial transaction between Zimtu and its employees. Zimtu used the \$75,000 that Capacitor paid as the first installment for additional services to fund those loans, but the fact that this is how Zimtu chose to use those funds has no bearing on the second part of the additional services debt owing by Capacitor, says Zimtu.

Discussion and Analysis

[35] There is no dispute between the parties as to the relevant principles and caselaw on this application. The dispute is over their application to the facts of this case.

[36] *Avalos Y Abogados v. Defiance Silver Corp.*, 2021 BCSC 2244, provides some useful background on the procedure by which a pre-judgment garnishing order is obtained and set aside at paras. 12-16:

[12] Garnishing orders are issued pursuant to s. 3 of the *Court Order Enforcement Act*, RSBC 1996, c. 78 [COEA]. The relevant parts of s. 3 provide that:

- (2) A judge or a registrar may, on an application made without notice to any person by
 - (a) a plaintiff in an action ...

...

on affidavit by himself or herself or his or her solicitor or some other person aware of the facts, stating,

...

- (d) if a judgment has not been recovered,
 - (i) that an action is pending,
 - (ii) the time of its commencement,
 - (iii) the nature of the cause of action,
 - (iv) the actual amount of the debt, claim or demand, and
 - (v) that it is justly due and owing, after making all just discounts,

...

order that all debts due from the garnishee to the defendant, judgment debtor or person liable to satisfy the judgment or order, as the case may be, is attached to the extent necessary to answer the judgment recovered or to be recovered, or the order made, as the case may be.

[13] Section 5 of the *COEA* authorizes an application to set aside a garnishing order:

5(1) If a garnishing order is made against a defendant or judgment debtor, he or she may apply to the registrar or to the court in which the order is made for a release of the garnishment, and if a judgment has been entered against him or her, for payment of the judgment by instalments.

(2) If, under subsection (1), the registrar or judge considers it just in all the circumstances, he or she may make an order releasing all or part of the garnishment...

[14] A garnishing order that was issued without notice to the defendant may also be set aside on an application under Rule 8-5(8) of the *Supreme Court Civil Rules*.

[15] Garnishing orders are a unique and extraordinary remedy. When a garnishing order is issued before judgement, the defendant is deprived of the funds until trial, with no undertaking from the plaintiff as to damages. As a result, the courts have developed a requirement that there must be meticulous or strict compliance with the statutory prerequisites: *Politeknik Metal San ve Tic A.S. v. AAE Holdings Ltd.*, 2015 BCCA 318, at paras. 20-23 [*Politeknik*], citing *Knowles v. Peter* (1954), 12 W.W.R. (N.S.) 560 (B.C.C.A.).

[16] On an application under s. 5 of the *COEA*, the court may consider the merits of the action in assessing what is just in the circumstances. By contrast, it is not appropriate on an application under Rule 8-5(8) to consider the merits, except to determine whether the pleadings disclose a cause of action against the defendant and whether the plaintiff has given effect to “all just discounts”: *Politeknik*, at para. 27, citing *Ridgeway-Pacific Construction Limited v. United Contractors Ltd.*, [1976] 1 W.W.R. 285 (B.C.C.A.), at 287.

[37] With respect to disclosure, *Clarke Communication* provides additional detail at paras. 75-77. The relevant takeaways from that case on disclosure are:

- a) While “full and frank disclosure” is required, the materials tendered in support of a pre-judgment garnishing order may be narrower in scope than the materials required on an *ex parte* injunction.
- b) The duty of disclosure is very high but relates specifically to information that is relevant and material to the statutorily prescribed elements under s. 3 of the *COEA* to be included in the affidavit in support. What qualifies as “material” is something that may have affected the outcome (see *Cummings v. Chen*, 2023 BCSC 266 at para. 32). If the facts submitted are misleading, the garnishing order should not stand.
- c) The *COEA* does not oblige the applicant to raise all of the defences the defendant may raise in the proceeding.

[38] Zimtu has met its disclosure obligations in this case. Nothing that Capacitor argued on this application as non-disclosure rises to the level of material, in my view.

[39] The written agreements and Ms. Bellefleur’s first-hand evidence about relevant terms was sufficient evidence on which to base the garnishing order issued. In particular, Zimtu was not required to attach the August 2025 correspondence from Mr. Schroenn, or the September 2025 or October 2025 correspondence from Capacitor’s counsel.

[40] In my view Mr. Schroenn’s email is not the uncontroverted evidence Capacitor suggests that there was no money owing under the Zimtu Advantage Agreement because the agreement had not commenced. Mr. Grove speaks to some marketing services provided that would fit the definition of services under the Zimtu Advantage Agreement (though he says Zimtu agreed to provide those for free). Also, the Schroenn email refers both to the expiry of the Zimtu Advantage Agreement and to “pre-paying the bill for future Zimtu Advantage services”. One interpretation of this email is that there was a prior agreement and that services under that agreement

had been provided in the past, which is consistent with Zimtu's evidence. At the end of the day, Capacitor's position may prevail but the fact that this email was not included in Ms. Bellefleur's affidavit in support is not material non-disclosure. In the context of the rest of the evidence provided on this application, it is equivocal at best.

[41] The letters from counsel in September and October 2025 are more of the nature of information that, in some other circumstances, could be material. They are similar to the letter that the court in *Key Insurance* chastised the applicant in that case for failing to include in its garnishing order materials. However, I view the information in those letters as, at most, setting out Capacitor's defences, which Zimtu was not required to exhaustively raise. The September 12, 2025 letter simply identified Capacitor's counsel and asked for the invoices referred to in Zimtu's demand letter. All parties agree that those invoices were provided at least by September 25, 2025. The garnishing order was applied for more than 30 days later.

[42] In the October 2025 letter, counsel for Capacitor confirms, among other things:

- a) The fee under the MSA of \$15,000 plus GST per month.
- b) A payment under the MSA that has already been accounted for in Zimtu's claim.
- c) A proposal that Capacitor reduce the monthly amounts owing under the MSA from and after September 2025 by half to reflect that Zimtu had "ceased providing administrative and managerial services to Capacitor in September 2025." In that way, it is consistent with Zimtu's position that services were being provided under the MSA even after September 2025, though their nature and value was not settled.

[43] While the letter does raise the promissory note issue, the invoicing issue, and suggests that there was no Zimtu Advantage Agreement in place at all, these are defences and not information that would likely have changed the registrar's decision

of whether or not to grant the garnishing order. I note with respect to the allegation that the Zimtu Advantage Agreement was not entered into at all, the evidence in support of that position is Mr. Grove's unattributed hearsay evidence and thus, even if admissible, is not of sufficient weight to justify setting aside the garnishing order in reliance on it.

[44] I acknowledge that, unlike in *Clarke Communication*, Zimtu does appear to have had knowledge of Capacitor's allegations regarding the extent and nature of alleged deficiencies with Zimtu's performance and/or complete failure to provide the services prior to applying for the garnishing order, by virtue of counsel's letters in September and October 2025. However, the registrar could not have assessed the strength of the defences raised in those letters on the application for a garnishing order, nor are they liquidated claims.

[45] I turn next to whether the issues Capacitor raises as "just discounts" qualify as such in this context. Again, they are:

- a) All fees claimed under the Zimtu Advantage Agreement on the basis that the agreement had not commenced and no services had been provided.
- b) The amounts Capacitor says related to the employee promissory notes and thus are not payable by Capacitor.
- c) At least a portion of the MSA fee for September and October 2025 where Zimtu had allegedly ceased providing administrative and managerial services.

[46] I agree with Zimtu that these argument are not liquidated claims or set offs such that they needed to be accounted for in Zimtu's garnishing order materials. The parties have diametrically opposed positions as to whether or not there was a Zimtu Advantage Agreement and whether services were provided under it. There is also a dispute about the level and value of MSA services provided in September and October 2025. Again, these are in the nature of defences rather than set off or

counterclaims,. Capacitor will have the opportunity to argue them but Zimtu was not obliged to account for them in their garnishing order application.

[47] The promissory note issue is the only one that is truly liquidated as required, but a lot more evidence will be required for it to qualify as a defence to the full amount claimed. At the moment, it is a theory that does not appear to be grounded in more than a hearsay supposition that Zimtu denies. Capacitor did not include evidence that promissory notes in the full amount of \$78,500 were issued or that any more than \$48,500 was repaid, meaning the alleged debt figure for the additional services and the promissory note repayments do not match. It may be that Capacitor will prove this amount should be deducted from any amount owing as the case progresses, but it has not established that it consists of a just discount for the purposes of setting aside the pre-judgment garnishing order.

[48] This is not a case like the hypothetical proposed in *Key Insurance* at paras. 27-28 related to widgets that were simply not provided which was used to support the court's decision to set aside the garnishing order in that case. There is a dispute between the parties as to whether Zimtu performed certain services adequately or at all, but determining whose position is correct will require an analysis and a weighing of evidence far beyond counting widgets and providing a discount on an ascertainable price per unit not provided.

[49] The defendant's application is dismissed. The plaintiff is awarded its costs of the application.

"Associate Judge Peck"