

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1187331 B.C. Ltd. v. Gill*,
2026 BCSC 481

Date: 20260320
Docket: S254726
Registry: New Westminster

Between:

1187331 B.C. Ltd.

Plaintiff

And

**Tarsem Singh Gill, Surinder Kaur Gill, Paul Otto De Lange, Manjeet Kaur
Sandhu, Sarabpaul Mattu, Pravin Soni, Mayuri Soni, Naushad Ahmed, John
Doe #1, John Doe #2, Jane Doe #1, and Jane Doe #2**

Defendants

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Plaintiff:

K. Taunk

Counsel for the Defendant M.K. Sandhu:

D. Wierenga

Place and Date of Hearing:

New Westminster, B.C.
October 28, 2025

Place and Date of Judgment:

New Westminster, B.C.
March 20, 2026

Overview

[1] In this action, the plaintiff company claims it was the victim of fraud perpetrated by the defendants Mr. Tarsem Singh Gill and Ms. Surinder Kaur Gill.

[2] The principals of the plaintiff, Mr. and Ms. Ugre, allege they are and always have been the sole shareholders and directors of the plaintiff. The plaintiff owns property on River Road in Richmond, BC (the “Property”). The Ugres allege that unbeknownst to them, between December 2018 and 2020, the Gills created false documents transferring 50% of the shares of the plaintiff to Ms. Gill and registering her as the sole director of the plaintiff. Ms. Gill then placed three mortgages (the “Impugned Mortgages”) on the Property. The Ugres were unaware of and did not consent to the mortgages. The plaintiff never received the mortgage funds. In March 2023, the Ugres discovered this alleged fraud.

[3] The plaintiff sues the Gills, Mr. Paul Otto De Lange who is alleged to have been the Gills’ lawyer and who is no longer a lawyer, Mr. Naushad Ahmed a lawyer, and the mortgagees of the Impugned Mortgages. The only named parties who have filed a response to civil claim are Ms. Sandhu who is the mortgagee of the first of the Impugned Mortgages (the “Sandhu Mortgage”), and Mr. Ahmed. At the beginning of this hearing, the action against Mr. Ahmed was dismissed by consent.

[4] Among the relief sought in this action, the plaintiff seeks an order discharging the Impugned Mortgages from the Property. The plaintiff also seeks damages against the mortgagees of the Impugned Mortgages, alleging that they were negligent in “failing to carry out appropriate due diligence”.

[5] The applicant on this application is the defendant Ms. Sandhu. In a separate foreclosure petition in this court, New Westminster registry, No. 250558 (the “Sandhu Petition”), Ms. Sandhu has obtained an order *nisi* with respect to the Sandhu Mortgage.

[6] Ms. Sandhu applies for the following orders:

- a) pursuant to Rule 9-5(1)(d) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [SCCR], that the allegations in the notice of civil claim (the “NOCC”) which relate to her be struck without leave to amend, on the basis that they are an abuse of process. Ms. Sandhu argues that this action is a collateral attack on the order *nisi*;
- b) in the alternative, pursuant to Rule 9-6 of the SCCR, that the same claims against her be dismissed as they are bound to fail. Ms. Sandhu argues that she does not owe a duty of care to the plaintiff and she is protected by the indoor management rule in s. 146 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA]; and
- c) special costs, or in the alternative, costs.

[7] The plaintiff opposes the application and argues it should be adjourned to permit it to conduct examinations of all the defendants in relation to the Sandhu Mortgage to determine if a relationship exists between the Gills and Ms. Sandhu, and whether Ms. Sandhu had actual or constructive knowledge of the alleged fraud.

[8] For the reasons that follow, I strike without leave to amend the portions of the NOCC that seek to discharge the Sandhu Mortgage from title and to claim damages in negligence against Ms. Sandhu. The action against Ms. Sandhu is a collateral attack on the order *nisi* and an abuse of process. Given this determination, it is not necessary to address the alternate application pursuant to Rule 9-6. I decline to order special costs, but award Ms. Sandhu costs of this application at Scale B.

Evidence

Mr. Ugre

[9] Mr. Ugre states he is currently one of the directors of the plaintiff, which is the sole owner of the Property. At the time of the registration of the Impugned Mortgages, he was the sole director and president of the plaintiff. The plaintiff purchased the Property in December 2018 for \$660,000. The plaintiff obtained a mortgage from RBC in the amount of \$491,250 to purchase the Property.

[10] Mr. Ugre states that neither the plaintiff nor any of its directors have ever had knowledge of, interacted with, or agreed directly or indirectly with Ms. Sandhu, or any of the other mortgagees to grant the Impugned Mortgages against the Property. The plaintiff and its directors have never given their consent or authority to Ms. Gill to change its corporate documents, nor has the plaintiff sold any of its shares to Ms. Gill. The plaintiff has never received, nor has it benefited from, the proceeds of the Impugned Mortgages.

[11] Mr. Ugre states that in about March 2023, he discovered the Impugned Mortgages registered on the Property. He states he immediately took steps to remove the Impugned Mortgages but does not state what he did. Mr. Ugre states he is illiterate and cannot read, write, or speak the English language.

Ms. Sandhu

[12] Ms. Sandhu states that in about May 2019, Mr. Jitendra Desai, a notary with whom she had previously worked, contacted her and presented an opportunity to lend money to the plaintiff secured by a mortgage. In May 2019, she agreed to do so and paid \$250,000 to Mr. Desai. That is the entirety of Ms. Sandhu's evidence regarding the circumstances of granting the Sandhu Mortgage. Ms. Sandhu does not state whether she knew the Gills.

[13] Ms. Sandhu's counsel also filed an affidavit from a legal assistant appending the Sandhu Mortgage, which was signed by Ms. Gill on May 17, 2019, as the authorized signatory of the plaintiff and as covenantor. The affidavit also attaches notices of change of directors for the plaintiff that were filed with the BC Registry Services. These show that:

- a) on December 27, 2018, within a few minutes of each other, there were three filings stating that Mr. Ugre ceased to be a director and Ms. Gill was the new director as of that date; and

- b) on May 27, 2019, 10 days after the Sandhu Mortgage was registered, there was a filing stating that Ms. Gill ceased to be a director, and that Mr. Ugre was the new director as of that date.

[14] Thus, at the time of the execution of the Sandhu Mortgage, according to the filings at the BC Registry Services, Ms. Gill was the sole director of the plaintiff.

[15] Ms. Sandhu's counsel also filed an affidavit from Mr. George Richards, counsel for Ms. Sandhu in the Sandhu Petition, who attaches the documents he received from Mr. Desai on January 21, 2025, in response to his request for the file in relation to the Sandhu Mortgage. The file contains the following:

- a) a BC Company Summary showing Ms. Gill as the sole director of the plaintiff;
- b) a document purporting to be the minutes of a meeting of the sole director of the plaintiff, authorizing the borrowing of \$250,000 from Ms. Sandhu and charging the Property;
- c) a document entitled Order to Pay, signed by Ms. Gill on behalf of the plaintiff and herself as covenantor to irrevocably authorize Ms. Sandhu to pay the mortgage proceeds to Mr. Desai; and
- d) a document entitled Mortgagor's Authority to Pay, signed by Ms. Gill which directs Mr. Desai to pay the mortgage proceeds as follows:
 - i. \$86,500 to CTI Construction Testing & Inspection, who I note is briefly shown on title to the Property as holding a mortgage registered on May 6, 2019;
 - ii. \$50,000 to "Vikram Shah", who is not identified and does not appear to have a charge against the Property; and
 - iii. \$111,144 to Avero Developments Ltd. (which the NOCC alleges is owned by the Gills).

Sandhu Petition

[16] On August 23, 2023, Ms. Sandhu commenced the Sandhu Petition. The plaintiff in this action was named as the respondent mortgagor.

[17] On December 21, 2023, Associate Judge Vos granted an order *nisi*, declaring that the Sandhu Mortgage is a “mortgage registered against the lands in favour of the Petitioner” and that there has been default under the mortgage, and ordering the amount to redeem. The redemption period was six months expiring June 21, 2024. Judgment was granted against the plaintiff and Ms. Gill for \$303,131.45 plus costs. The entered order states that no one other than the petitioner appeared at the hearing.

[18] On May 29, 2024, Ms. Sandhu filed an application returnable July 3, 2024, seeking an order for conduct of sale of the Property (the “Conduct of Sale Application”). On June 18, 2024, the respondent mortgagor (plaintiff in this action) filed a response to that application, raising as a defence the alleged fraud and stating that: (a) it was not appropriate to deal with the matter by way of the Conduct of Sale Application; and (b) alternatively, the application should be adjourned until after the mortgagor files a “statement of defence and counterclaim in this matter.”

[19] On the same day, the respondent mortgagor (plaintiff in this action) filed its own notice of application in the Sandhu Petition, seeking orders to convert the Sandhu Petition to an action and to put it on the trial list with pleadings and all pre-trial procedures available to the parties (the “Trial List Application”). The respondent mortgagor took the position that the Conduct of Sale Application should be adjourned generally and re-scheduled for hearing “after the final judgment in this matter.”

[20] On June 26, 2024, Mr. Richards wrote to Mr. Khushpal Taunk, counsel for the plaintiff, and stated:

Hello Khushpal. Confirming our conversation of this morning and our agreement to each adjourn our respective applications for conduct of sale and to put the matter on the trial list. My assistant, Alyssa, will send you a

copy of our filed requisition in short order. Looking forward to receipt of your filed Requisition confirming your adjournment. ...

[21] At this hearing, Mr. Taunk submitted that he and Mr. Richards had a discussion leading to the June 26, 2024, email. His understanding was that Mr. Richards agreed that the Sandhu Petition would be put on the trial list. He told Mr. Taunk that he would be filing this action which would concern all the Impugned Mortgages. To Mr. Taunk's mind, the Sandhu Petition and the allegations of fraud and negligence would be heard together. This would be a benefit, as he did not have to file a counterclaim in the Sandhu Petition and address the Impugned Mortgages in a piecemeal fashion but could address all of them in one action. To Mr. Taunk's mind, this would include the validity of the Sandhu Mortgage, even though the order *nisi* had already been granted. None of this was in an affidavit. Mr. Ugre attached the June 26, 2024, email to his affidavit and offered an interpretation of it. I give no weight to that interpretation as he does not read, write, or speak English.

[22] At this hearing, counsel for Ms. Sandhu disagreed with that interpretation of the email. Counsel argued that the email states Mr. Richards and Mr. Taunk would both adjourn their respective applications, one of which was the plaintiff's application to have the petition converted to an action and put on the trial list. The email does not state that the Sandhu Petition would be referred to the trial list. Mr. Richards' affidavit does not address his conversation with Mr. Taunk, and I assume that is because there was no affidavit from Mr. Taunk speaking about the conversation.

[23] In the circumstances, I cannot make any determination of what was said between Mr. Taunk and Mr. Richards, and how that may have affected Mr. Taunk's interpretation of the email. However, as I discuss under the analysis, viewed in isolation, I do not read Mr. Richards' email as stating that he agreed that the Sandhu Petition would be put on the trial list. Further, it would be inconsistent with the existing order *nisi* that the enforceability of the Sandhu Mortgage would be argued again.

[24] Subsequently, the Conduct of Sale Application and the Trial List Application were adjourned generally, by consent. Both applications in the Sandhu Petition remain outstanding.

This Action

[25] The NOCC in this action was filed on August 15, 2024. It alleges the circumstances of the alleged fraud in connection with the Sandhu Mortgage as described above. The NOCC pleads that the two other Impugned Mortgages were arranged by the Gills and registered against the Property in a similar fashion.

[26] In the NOCC, the plaintiff alleges that the Gills committed fraud by covertly and deceptively fabricating and/or forging documents to transfer of 50% of the shares in the plaintiff to Ms. Gill and to appoint Ms. Gill as a director of the plaintiff, and by Ms. Gill signing the Impugned Mortgages charging the Property. The plaintiff pleads that it is not liable for repayment of the Impugned Mortgages. The plaintiff alleges that each the mortgagees of the Impugned Mortgages was “negligent in failing to carry out appropriate due diligence before advancing funds pursuant to” their respective mortgages. With respect to the Sandhu Mortgage, these allegations are at Part 1, paras. 37 and 56 of the NOCC. Para. 56 is the only allegation against Ms. Sandhu. No material facts or particulars are pleaded with respect to the alleged failure to conduct due diligence. In Part 2 of the NOCC, the relief sought which concerns the Impugned Mortgages is a declaration discharging the Impugned Mortgages, and as against the mortgagees, damages “flowing from the lack of due diligence [of the mortgagees] in advancing the funds securing the mortgages”.

[27] In summary, as it relates to the Sandhu Mortgage, the NOCC challenges the validity of the Sandhu Mortgage, denies the plaintiff’s liability for the repayment of Sandhu Mortgage, and seeks damages for the alleged negligence of Ms. Sandhu.

[28] On January 27, 2025, Mr. Richards informed Mr. Taunk of Ms. Sandhu’s position that the plaintiff’s claim against her could be decided summarily on affidavit evidence, and that she is protected from liability by the indoor management rule, citing *1264777 B.C. Ltd. v. Gill*, 2023 BCSC 131, aff’d 2023 BCCA 410 in support of

that position. Ms. Gill is one of defendants in that case where she is alleged to have been involved in a similar fraudulent scheme.

[29] On January 28, 2025, Mr. Richards wrote to the plaintiff's counsel, Mr. Taunk, after speaking on the phone, and stated:

... Your thought is to bring a summary judgment application in your action at the same time as we make application in the foreclosure proceedings so all can be heard together. I think this is a good idea but the application we were trying to bring when adjourned, was for conduct of sale. The order nisi was granted in December 2023, and has not been appealed or sought to be set aside.

[30] On March 13, 2025, Ms. Sandhu, through her counsel in this action (not Mr. Richard), informed plaintiff's counsel of her position that the plaintiff's claim is a collateral attack on the order *nisi* and an abuse of process, and that in any event the claim was bound to fail given the indoor management rule.

[31] On April 8, 2025, Ms. Sandhu filed a response to civil claim in this action, denying the allegations against her and pleading that the claim is an abuse of process, and referencing the indoor management rule. This application was filed late June 2025 but did not come on for hearing until four months later.

Abuse of Process

Legal Principles

[32] This Court has inherent jurisdiction to strike or stay a pleading that is an abuse of process: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 35.

[33] In addition, Rule 9-5(1)(d) of the *SCCR* authorizes the court to strike a pleading or stay an action that is an abuse of process. That Rule states:

(1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that

...

(d) it is otherwise an abuse of the process of the court,

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[34] Abuse of process is a flexible doctrine which includes “the inherent power of the court to prevent the misuse of its procedure, in a way that would ... bring the administration of justice into disrepute.” It has been applied where allowing a claim to proceed would violate “such principles as judicial economy, consistency, finality, and the integrity of the administration of justice”: *Toronto (City)* at paras. 37–38.

[35] The rule against collateral attack falls within the doctrine of abuse of process. It was addressed by our Court of Appeal in *Hollander v. Mooney*, 2017 BCCA 238 at paras. 71-74, leave to appeal to SCC ref'd, 37752 (5 April 2018). There, the Court referenced the succinct description of the rule in *Burnaby (City) v. Trans Mountain Pipeline ULC*, 2014 BCCA 465, as follows:

[30] The rule against collateral attack was articulated by the Supreme Court of Canada in *Wilson v. The Queen*, [1983] 2 S.C.R. 594 at 599, and has been affirmed by that Court more recently in *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paras. 71-72, and *Canada (Attorney General) v. TeleZone*, 2010 SCC 62 at paras. 60-62. It stipulates that an order made by a court or tribunal is binding and conclusive until it is set aside on appeal or lawfully quashed, and cannot be attacked in proceedings other than those whose specific object is its reversal, variation, or nullification. If a proceeding calls into question the validity of an order made in another independent proceeding, the former proceeding must be struck as an abuse of process.

Positions of Parties

[36] Ms. Sandhu submits that the relief sought against her in the NOCC is an abuse of process, as it is in direct conflict with the order *nisi* in the Sandhu Petition. Ms. Sandhu refers to *Ba-Oose Inc. v HSBC Bank Canada*, 2011 BCCA 511 at paras. 21-23 [*Ba-Oose*] as holding that an order *nisi* is a final judgment of the court which can only be granted where the court is satisfied that a mortgage is both valid and legally enforceable: at para. 21. To the extent the plaintiff takes issue with the validity of the order *nisi* or its terms, those issues must be raised within the foreclosure petition: *Ba-Oose* at para. 22.

[37] The plaintiff made two arguments. First, plaintiff's counsel referred to Mr. Richards' email of June 26, 2024, and submitted he and Mr. Richards agreed the Sandhu Petition would be put on the trial list, he would commence this action, and that the two proceedings would be heard together. In plaintiff's counsel's mind, this included the validity of the Impugned Mortgages.

[38] As discussed above, I do not agree with that interpretation of Mr. Richards' email. Consistent with that, on January 28, 2025, Mr. Richards pointed out to plaintiff's counsel that an order *nisi* had already been obtained and that the plaintiff had not appealed that decision or sought to set it aside. However, beyond that, I cannot make any determination of the two counsel's conversation.

[39] Second, the plaintiff submits that it has not yet conducted an examination for discovery of Ms. Sandhu and the other defendants as to whether Ms. Sandhu had a relationship with the Gills and had actual or constructive knowledge of the alleged fraud. Mr. Taunk stated that he planned to bring an application to add Mr. Desai as a defendant to this action and examine him as well. In response, Ms. Sandhu argues that this application was served in June 2025, and the first request for an examination for discovery was when the response to application was filed eight days prior to this hearing.

Analysis

[40] In *Ba-Oose*, the mortgagee bank obtained an order *nisi*. Subsequently, the mortgagors commenced an action against the bank alleging that the bank engaged in unconscionable and deceptive practices in connection with the mortgage contrary to *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, and that the bank was negligent in connection with the mortgage. The relief the mortgagors sought was a stay of the foreclosure petition. The mortgagee applied to strike the claim as an abuse of process.

[41] The chambers judge held that the mortgagors' allegations that the mortgage loan was unenforceable, were inconsistent with the order *nisi* and thus were a collateral attack on its validity and an abuse of process. Those allegations should

have been raised in defence of the foreclosure petition. Had they been raised then, they would have gone to the root of the bank's claim and put in issue the bank's right to an order *nisi* and to judgment under the mortgage. The action brought by the plaintiffs was an attempt to relitigate issues already decided or deemed to have been decided.

[42] On appeal, the Court of Appeal agreed with the chambers judge. Justice Groberman stated:

[21] In my view, the chambers judge was correct in finding that this action (or, at least, most of it) is an abuse of process. As the respondent contends, an order *nisi* in a foreclosure proceeding is a final judgment of the court (see *Bank of Montreal v. Singh* (1979), 109 D.L.R. (3d) 117 (B.C.C.A.)). An order *nisi* of foreclosure cannot be granted unless the court is satisfied that the mortgage is both valid and legally enforceable. The court must also determine the amounts secured by the mortgage and whether there has been a default.

[22] Once an order *nisi* is pronounced, it is not open to a mortgagor to challenge the validity of the mortgage by way of a separate action. Because the validity and enforceability of the mortgage are prerequisites to the granting of an order *nisi*, the facts necessary to determine that the mortgage is enforceable become *res judicata*.

[23] In the case before us, most of the plaintiffs' claims go directly to the question of whether the mortgage was valid and enforceable according to its terms. If the plaintiffs wished to argue that the mortgage was unconscionable or entered into in an unlawful manner, their opportunity to do so was in defence of the application for an order *nisi* of foreclosure. They could not consent to the granting of the order *nisi* and then commence a separate action to challenge the validity of the mortgage. The order *nisi*, either expressly or by implication, affirmed the legality and enforceability of the mortgage.

[43] Those principles are applicable here. To the extent the claims in the NOCC seek to challenge the enforceability of the Sandhu Mortgage, the plaintiff is seeking to relitigate what has already been decided in the order *nisi*. Those claims are a collateral attack on the order *nisi* and an abuse of process. Being able to conduct an examination for discovery of Ms. Sandhu will have no bearing on that determination because the order *nisi* has already been made. Those claims must be struck without leave to amend.

[44] I have considered whether there are any claims in the NOCC that do not go to the root of the order *nisi* and Ms. Sandhu's right to claim under the mortgage. The only allegations in the NOCC that concern Ms. Sandhu and the relief claimed against her are:

Part 1 (Statement of Facts)

37. The Ugres and the 118 Company [the plaintiff] are not liable for repayment of the Mortgage #1 [the Sandhu Mortgage].

56. Ms. Sandhu was negligent in failing to carry out appropriate due diligence before advancing funds pursuant to mortgage #1.

...

Part 2 (Relief Sought)

1. A declaration:

- a. discharging the Mortgages from the Property; and,
- b. discharging any Certificates of Pending litigation filed by the Defendants as against the Property.

...

4. Damages flowing from the lack of due diligence by Ms. Sandhuin advancing the funds securing the Mortgages.

[45] Paragraph 37 of Part 1 and para. 1 of Part 2, go directly to the enforceability of the Sandhu Mortgage, and must be struck as an abuse of process.

[46] Paragraph 56 of Part 1 and para. 4 of Part 2 seek damages for negligence in failing to carry out appropriate due diligence before advancing funds. As already noted, the NOCC lacks any supporting material facts or particulars of this allegation. There is an issue whether Ms. Sandhu could owe a duty of care to the plaintiff: *Canada Trustco Mortgage Co. v. Pierce*, 2005 CanLII 15706 (ON CA) at para. 27; *McDonald v. Toronto-Dominion Bank*, 2022 ONCA 788; *Toronto Dominion Bank v Whitford*, 2020 ABQB 802. However, I do not need to decide that issue.

[47] Although negligence is not an issue that would usually be determined in a declaration of validity of mortgage, I conclude that the negligence claim in this case is implicitly an attack on the validity of the Sandhu Mortgage. Based on the submissions of plaintiff's counsel at this hearing, the negligence allegation is that Ms. Sandhu may have had a relationship with the Gills and actual or constructive

knowledge of the alleged fraud. Counsel submitted that he wanted to examine Ms. Sandhu for that purpose.

[48] In my view, those submissions are aimed at s. 146 of the *BCA* and the indoor management rule, which goes to the root of the enforceability of the Sandhu Mortgage. Section 146 states:

146(1) Subject to subsection (2), a company, a guarantor of an obligation of a company or a person claiming through a company may not assert against a person dealing with the company, or dealing with any person who has acquired rights from the company, that

(a) the company's memorandum or notice of articles, as the case may be, or articles have not been complied with,

(b) the individuals who are shown as directors in the corporate register are not the directors of the company,

(c) a person held out by the company as a director, officer or agent

(i) is not, in fact, a director, officer or agent of the company, as the case may be, or

(ii) has no authority to exercise the powers and perform the duties that are customary in the business of the company or usual for such director, officer or agent,

(d) a record issued by any director, officer or agent of the company with actual or usual authority to issue the record is not valid or genuine, or

(e) a record kept by or for the company under section 42 is not accurate or complete.

(2) Subsection (1) of this section does not apply in respect of a person who has knowledge, or, by virtue of the person's relationship to the company, ought to have knowledge, of a situation described in paragraphs (a) to (e) of that subsection.

[49] Section 146(1)(b) of the *BCA* prevents the plaintiff from asserting against Ms. Sandhu that Ms. Gill was not a director of the plaintiff and therefore the Sandhu Mortgage is not valid, unless the exception in s. 146(2) of the *BCA* applies. These are arguments that should have been raised at the time of the order *nisi*.

[50] I therefore order that paras. 37 and 56 in Part 1 of the NOCC, and paras. 1 and 4 of Part 2 of the NOCC – but only to the extent that they refer to the Sandhu Mortgage – be struck without leave to amend. Ms. Sandhu also sought that para. 9

of the NOCC be struck, but I see no need to do that. That paragraph simply identifies her, and it is necessary to understand the remainder of the pleading.

[51] To be clear, I am not making a determination under Rule 9-6 whether a duty of care was owed or, if the order *nisi* were set aside, whether Ms. Sandhu would be successful in a defence under s. 146 of the *BCA*. Given my conclusions of abuse of process, it is not necessary to make those determinations.

[52] Plaintiff's counsel indicated that he planned to bring an application to set aside the order *nisi* and, if necessary, will file a counterclaim in the Sandhu Petition. His client is illiterate and his client's position is that while an employee of the plaintiff was given a copy of the petition, it did not come to Mr. Ugre's attention until he received the Conduct of Sale Application, at which point Mr. Taunk was retained.

Costs

[53] Rule 9-5(1) provides that, in striking or amending a pleading under that rule, the Court may order the costs of the application to be paid as special costs.

[54] The test for awarding special costs is whether an unsuccessful party has engaged in reprehensible conduct, which encompasses both scandalous and outrageous behaviour as well as milder forms of misconduct deserving of reproof or rebuke: *Garcia v. Crestbrook Forest Industries*, 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242 at paras 11-14.

[55] In *Hollander* at para. 79, Justice MacKenzie writing for the Court, held that a "collateral attack is always an abuse of process" and that "[c]onduct that is an abuse of process is, by its nature, reprehensible and deserving of rebuke." Special costs are generally intended to be punitive.

[56] Special costs have been awarded against a party who has been found to have abused the court's process by seeking to relitigate issues that have already been decided: *Daum v. Gorrell*, 2018 BCSC 225 at paras. 32-33, and 41; *Li v. The Owners, Strata Plan EPS1069*, 2021 BCSC 2158; and *Wang v. Davies*, 2025 BCSC 596 at paras. 76-77. However, that does not mean that every time a pleading is

struck as an abuse of process, an award of special costs automatically follows. The court must still consider all the circumstances and exercise its discretion judicially: *Mand v. Cheema*, 2023 BCSC 545 at para. 7; *Klassen v. Epp*, 2025 BCSC 2148 at paras. 18-23.

[57] Keeping in mind the principles in *Hollander*, I have also considered the following. First, there may have been some misunderstanding by plaintiff's counsel regarding what was agreed to by Mr. Richards when the Conduct of Sale Application and Trial List Application were adjourned. Second, plaintiff's counsel advises that he plans to bring an application to set aside the order *nisi*. Third, when I attempted to determine from plaintiff's counsel why an application to set aside the order *nisi* had not been brought earlier, he referred to his agreement with Mr. Richards. Nothing led me to believe that this action was brought for an improper purpose, or to intentionally "sidestep" the order *nisi*, as Ms. Sandhu argues. This is not a situation where the plaintiff has repeatedly or vindictively brought proceedings such as *Gonzalez v. Gonzalez*, 2016 BCCA 376. If the plaintiff's allegations against the Gills are found to be true, the Ugres have been the victim of a fraud, and it is understandable that they commenced this one action to have the Impugned Mortgages discharged, although as I have held, the time to have raised the challenge to the Sandhu Mortgage was at the hearing of the application for the order *nisi*.

[58] In summary, I am not persuaded that in the circumstances of this case, the plaintiff's conduct rose to the level of being reprehensible conduct deserving of rebuke.

[59] Ms. Sandhu will have the costs of this application at Scale B.

"Norell J."