

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tyab v. Mahmood*,  
2023 BCSC 375

Date: 20230314  
Docket: S219647  
Registry: Vancouver

Between:

**Amaran Tyab**

Plaintiff

And

**Farrah Mahmood**

Defendant

Before: The Honourable Justice Forth

## Reasons for Judgment

Counsel for the Plaintiff:

C. Philip

The Defendant, appearing in person and  
represented by her agent:

F. Mahmood  
T. Mahmood

Place and Dates of Hearing:

Vancouver, B.C.  
February 10 and 21, 2023

Place and Date of Judgment:

Vancouver, B.C.  
March 14, 2023

**Introduction**

[1] The plaintiff, Amaran Tyab, applies pursuant to Rule 9-7 of the *Supreme Court Civil Rules* [Rules], for judgment in the amount of \$100,852.75 from the defendant, Farrah Mahmood (“Ms. Mahmood”), representing 50% of the sum owed to the Business Development Bank of Canada (“BDC”) for loans made to Agrisol Manufacturing Inc. (“Agrisol”).

[2] Ms. Mahmood is representing herself. At the outset of the hearing she requested, and I granted, leave for her husband, Tahir Mahmood (“Mr. Mahmood”), to make submissions on her behalf. She explained that she had language difficulties and that Mr. Mahmood was very familiar with the matter, since he had acted as the Chief Executive Officer of Agrisol. In my view, it was in the interests of justice to accommodate her request and the plaintiff’s counsel did not object to proceeding in this fashion.

[3] Ms. Mahmood does not dispute that the BDC loans were made and she admits she signed personal guarantees, but she has many complaints on how she was treated by the other shareholders of Agrisol which, if legitimate, could have impacted the amount owed to BDC.

**Factual Background**

[4] On or about July 15, 2015, Agrisol was incorporated with Mr. Tyab a 30% shareholder and Ms. Mahmood a 50% shareholder. The remaining shares were held by Saif Mahmood. As far as I know, Saif Mahmood is not related to Ms. or Mr. Mahmood. Agrisol’s primary business operations consisted of the manufacture and distribution of fertilizer products for industrial agriculture applications.

[5] Ms. Mahmood claims that she loaned \$350,000 to Agrisol with the other two shareholders lending approximately \$950,000.

[6] Between January and June 2017, BDC agreed to loan Agrisol various amounts for the purposes of general working capital and purchase of equipment. There were three loans made:

1. The sum of \$125,000, advanced pursuant to a letter agreement amended March 5, 2018, with an agreed interest rate of BDC's floating rate in effect from time to time, plus 2.50% per year, calculated and compounded monthly (the "First Loan");
2. The sum of \$75,000, advanced pursuant to a letter agreement amended March 5, 2018, with an agreed interest rate of BDC's floating rate in effect from time to time, plus 3.00% per year, calculated and compounded monthly (the "Second Loan"); and
3. The sum of \$50,000 advanced pursuant to a letter agreement amended March 5, 2018 with an agreed interest rate of BDC's floating rate in effect from time to time, plus 3.00% per year, calculated and compounded monthly. (the "Third Loan").

(collectively, the "Loans")

[7] Agrisol, Mr. Tyab, and Ms. Mahmood agreed to the terms of the letter agreements. It was an express term of each of the Loans that, in the event of a default, BDC was permitted to demand immediate payment.

[8] On February 1, 2017, a general security agreement was agreed to by Agrisol to BDC, granting a general and continuing security interest in all of its present and after-acquired property (the "GSA").

[9] As a condition of the Loans, BDC required personal guarantees to be provided by Mr. Tyab and Ms. Mahmood, which provided:

- a. by guarantee in writing and under seal executed by Mr. Tyab and Ms. Mahmood on February 1, 2017, they jointly and severally guaranteed payment to BDC of the First Loan plus interest as specified (the "First Guarantee");
- b. by guarantee in writing and under seal executed by Mr. Tyab and Ms. Mahmood on February 1, 2017, they jointly and severally guaranteed payment to BDC of the Second Loan plus interest as specified (the "Second Guarantee"); and
- c. by guarantee in writing Mr. Tyab and Ms. Mahmood on June 14, 2017, they jointly and severally guaranteed payment to BDC of the Third Loan plus interest as specified (the "Third Guarantee").

(collectively, "the Guarantees")

[10] It was an express term of the First Guarantee that Mr. Tyab and Ms. Mahmood would indemnify BDC for any fees and disbursements, on a solicitor and client basis, incurred in relation to any action brought upon First Guarantee.

[11] It was an express term of the Second and Third Guarantees that Mr. Tyab and Ms. Mahmood would pay for the fees and disbursements incurred by BDC in enforcing them.

[12] In February 2018, Ms. Mahmood claims that she was forced out of Agrisol by Mr. Tyab and Saif Mahmood. She claims that she took photographs of the inside of the Agrisol warehouse, showing the amount of inventory present. She claims that the value of the inventory at that time was \$750,000.

[13] On March 12, 2018, Agrisol Solutions Inc. (“Agrisol Solutions”) was incorporated by Monika Tyab, who is Mr. Tyab’s wife.

[14] It appears that for some period of time Agrisol and Agrisol Solutions were operating out of the same address, being 3254B, 262 Street, Aldergrove, BC.

[15] On July 9, 2018, Ms. Mahmood commenced a petition out of the New Westminster Registry (court file No. S-S-203945) against Agrisol, Saif Mahmood, and Mr. Tyab, claiming that she had been oppressed under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] (the “Petition Proceeding”). It appears that the parties to the Petition Proceedings set down notices of application in July and August 2018.

[16] In February 2019, Agrisol defaulted under the Loans by failing to make payments to BDC when due in accordance with the terms of the Loans. As of May 7, 2019, the default amount was \$210,719.91 (“Agrisol Default Amount”).

[17] On May 7, 2019, as a result of Agrisol’s continuing default under the Loans, BDC invoked the acceleration clauses under the Loans, making them immediately due and payable, and demanded payment. Agrisol was unable to make payment of the Agrisol Default Amount. On the same day, BDC demanded payment from

Mr. Tyab and Ms. Mahmood, pursuant to the Guarantees. Neither party were able to make payment of the Agrisol Default Amount.

[18] On June 5, 2019, BDC commenced a civil action in this Court seeking the following relief:

- a. Judgment against Agrisol for default under the terms of the Loans in the Agrisol Default Amount, plus interest at a rate per annum in accordance with the BDC's floating rate, and the agreed-on extra interest in accordance with the Loans; and
- b. Judgment against Mr. Tyab and Ms. Mahmood, jointly and severally, for amounts due and payable under the Loans pursuant to their Guarantees for the Loans, plus fees and costs incurred by BDC in enforcing the Guarantees.

(the "BDC Action").

[19] On June 18, 2019, BDC seized certain goods and equipment of Agrisol as a result of Agrisol's default under the Loans and pursuant to the GSA. The two pieces of equipment seized are described by the bailiff as:

- 2016 Adams B ton Stainless Steel Rotary Mixer Drum, Model 304 GM3AH002 Serial Number 75256; and
- 2016 Adams B ton Stainless Steel Weigh Hopper, Model 304.

[20] On July 4, 2019, Ms. Mahmood filed a response to civil claim in the BDC Action. In her response, she raised a concern that she had been thrown out of Agrisol and that the other two shareholders were attempting to drain this company of all assets. She requested that BDC intervene and at least secure all the equipment and inventory so that the Loans can be paid back.

[21] On September 9, 2019, BDC obtained default judgment against Agrisol in the BDC Action for the principal of the Agrisol Default Amount, plus interest of \$4,347.45, in accordance with the applicable rates under the Loans up to September 9, 2019, as well as costs in the amount of \$1,033.40 (the "BDC-Agrisol Judgment").

[22] On November 5, 2019, BDC obtained default judgment against Mr. Tyab in the BDC Action for the principal of the Agrisol Default Amount, plus interest of

\$8,784.68, in accordance with the applicable rates under the Loans up to November 5, 2019, as well as legal costs in the amount of \$1,237.86 (the “BDC-Tyab Judgment”).

[23] On or about November 13, 2019, BDC registered the BDC-Tyab Judgment against title to the property of Mr. Tyab’s personal residence.

[24] On or about November 22, 2019, BDC seized all the goods and equipment of Agrisol and left them on the premises with a signed bailee’s undertaking. At this point in time, Ms. Mahmood says that most of the goods and equipment had been removed from the Agrisol premises. She asserts the value of the equipment was around \$750,000 and, in addition, there were several thousands of dollars in a bank account.

[25] According to bailiff, the equipment seized on November 22, 2019 consisted of:

1. White container (Chemicals) Saif Mahmood says it’s empty.
2. ~~9 blue barrels~~ – were removed
3. ~~Huge rust coloured drum (no serial #)~~
4. Silver mix tank (Marked Tank1)
5. Silver mix tank (Serial #18890)
6. Silver conveyor hopper (Splo24325763)
7. 1 bulk cooler (#59513 green spout on top)milk agitator
8. 1 platform/stand alone ( no #)
9. 1 platform with a machine on top and shoot below. (No. #)
10. 1 rust coloured slide on stilts
11. 1 silver drum (75256) says Adams fertilizer on it. Has motor and electrical hook up.
12. ~~Two clear chemical drums, bags of product, and another large bag of BLk chips.~~

[26] On or about November 25, 2019, BDC issued a Notice of Disposition and Intention to Sell to Agrisol, Mr. Tyab, and Ms. Mahmood in relation to the seized Agrisol goods and equipment. No payments were made by Agrisol pursuant to the Loans; no payments were made by Mr. Tyab or Ms. Mahmood pursuant to the Guarantees.

[27] In or about January 2020, the goods and equipment of Agrisol seized by BDC were sold by way of auction for the total sum of \$42,000. After payment of the auctioneer's fees and disbursements plus the bailiff fees, BDC recovered the sum of \$29,396.74 (the "Equipment Net Proceeds").

[28] Mr. Tyab says that in or about February 2020, Agrisol permanently ceased its business operations.

[29] On March 4, 2020, BDC applied for a summary trial of the BDC Action in relation to the relief sought against Ms. Mahmood pursuant to her joint and several obligations under the Guarantees for the Agrisol Default Amount.

[30] On October 23, 2020, Justice Basran ordered judgment in favour of BDC against Ms. Mahmood in the BDC Action for the principle of the Agrisol Default Amount, less credit for the Equipment Net Proceeds, plus interest of \$25,668.79, as well as BDC's legal costs on a solicitor-client basis (the "BDC-Mahmood Judgment"). There were no reasons of judgment issued.

[31] On July 23, 2021, Mr. Tyab made a payment of \$201,705.50 to BDC in satisfaction of the full amount of the BDC-Tyab Judgment, plus applicable interest from November 5, 2019 through July 23, 2021, in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79, less credit for the Agrisol equipment seized and sold by BDC.

[32] Mr. Tyab has demanded payment of 50% from Ms. Mahmood, being \$100,852.75, pursuant to her joint obligations as a co-surety of the Loans under the Guarantees.

[33] On August 6, 2021, the lawyers for BDC wrote to Ms. Mahmood advising that BDC had received payment of \$201,705.50 and after deducting that amount from the BDC-Mahmood Judgment, the amount outstanding was \$26,944.04. In addition, the amount of solicitor client costs is \$24,860.24. BDC demanded payment of \$51,804.28.

[34] On October 27, 2021, the notice of civil claim was filed in this proceeding seeking judgment against Ms. Mahmood in the amount of \$100,605.75. I note this amount is slightly less than the amount BDC stated Mr. Tyab paid in the August 6, 2021 letter to Ms. Mahmood, and also less than the amount claimed in the notice of application.

[35] On December 2, 2021, Ms. Mahmood filed a response to civil claim in which includes allegations of misappropriation of funds by Mr. Tyab and Saif Mahmood and that assets belonging to Agrisol were removed from the premises in order to allow Mr. Tyab and Saif Mahmood to start up Agrisol Solutions.

[36] On March 14, 2022, Ms. Mahmood was served a list of documents of Mr. Tyab via registered mail.

[37] On December 19, 2022, Mr. Tyab filed the notice of application seeking a summary trial.

[38] On February 2, 2023, Ms. Mahmood filed her response to the application opposing the relief sought and seeking an order that this proceeding be dismissed. She raises the issue that equipment and company products were removed by Mr. Tyab and Saif Mahmood prior to the BDC's seizure and that Agrisol is still operating.

### **Legal Principles**

[39] The first issue to address is whether the matter is suitable for disposition by way of a summary trial.

[40] Rule 9-7 of the *Rules* permits a party to apply to the court for judgment by way of summary trial. Rule 9-7(15) provides:

**Judgment**

(15) On the hearing of a summary trial application, the court may

(a) grant judgment in favour of any party, either on an issue or generally unless

(i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or

(ii) the court is of the opinion that it would be unjust to decide the issues on the application.

[...]

[41] The decision as to the suitability of a summary trial is discretionary. *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 215, 1989 CanLII 229 (C.A.) [*Inspiration Management*], sets out a number of factors in considering the suitability of proceeding summarily, including the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings, and any other matters which arise for consideration on this important question. Caselaw has since added factors including the cost of the litigation, the length of time of the summary trial, whether credibility is a critical factor in determination of the dispute, and whether the application would result in “litigating in slices”: *Dahl v. Royal Bank of Canada*, 2005 BCSC 1263 at para. 12.

[42] In determining suitability, courts should have regard to the objectives of proportionality and efficiency in deciding whether a summary trial is appropriate: *Morin v. 0865580 B.C. Ltd.*, 2015 BCCA 502 at paras. 48–49.

[43] The fact that there may be a dispute on credibility does not mean that the matter cannot be dealt with by way of a summary trial: *Arbutus Investment Management Ltd. v. Russell*, 2022 BCSC 72 at para. 44.

[44] A party cannot frustrate an application for judgment by summary trial by failing to adduce evidence, and then arguing that the facts cannot be found: *Gichuru v. Pallai*, 2012 BCSC 693 at paras. 22–25, *aff'd* 2013 BCCA 60.

**Position of the Parties**

**The plaintiff**

[45] The plaintiff submits that this action is suitable for determination by way of summary trial. He points out that the amount sought is approximately \$100,000 and the costs of proceeding to discovery and a conventional trial could reasonably exceed \$50,000. The issues relating to the co-surety obligations and the BDC-Tyab Judgment are ones amenable to the summary trial process.

[46] He argues there are no material issues of credibility requiring determination and the evidence required to make the necessary findings to decide the issues is almost exclusively documentary. Further, there is no issue that a summary determination of these issues would present any risk of this action being litigated in slices.

**The defendant**

[47] It is clear from Ms. Mahmood’s affidavit #1 filed with the court on February 1, 2023 and the submissions made by Mr. Mahmood that Ms. Mahmood disagrees with the suitability of this matter by summary trial, although she seeks an order dismissing the action. There are a series of allegations made by Ms. Mahmood which she says drained Agrisol of money and assets, such that Agrisol was not able to pay the Loans. They consist of:

- a. The removal of equipment and inventory from the Agrisol warehouse so that there was very little for the bailiff to seize;
- b. Payments made out of Agrisol’s bank account for personal expenses for Mr. Tyab and Saif Mahmood, supported by copies of bank statements; and
- c. Misappropriation of funds from Agrisol’s bank account to Mr. Tyab and Saif Mahmood, supported by cheques and bank withdrawals.

[48] Ms. Mahmood further asserts the statement made by Mr. Tyab at para. 20 in his affidavit #1 filed with the court on December 19, 2022 that “[i]n or about February 2020, Agrisol permanently ceased its business operations” is false. In support, she has provided the following documents:

- a. A Telus invoice dated April 26, 2022, confirming the activation of a phone number for Agrisol;
- b. Janitorial services provided to Agrisol in February, March, April, and August of 2021;
- c. Various invoices shipping equipment and supplies to Agrisol with dates in March to June 2020, December 2020, and throughout 2021; and
- d. Shipping containers shipped to Agrisol in January, February, March, and June of 2021.

[49] Ms. Mahmood also asserts that Agrisol applied for and obtained the Canada Emergency Business Account loan in the amount of \$40,000 (“the CEBA loan”), which was received on July 24, 2020. On January 17, 2023, a collection company contacted Ms. Mahmood seeking to collect the CEBA loan of \$40,000 from her.

[50] Ms. Mahmood claims that Agrisol Solutions is now conducting the same business as Agrisol and using some of the former Agrisol equipment.

**Analysis**

[51] The issues related to the amount of the Loans, the Guarantees, and the amount of the judgments obtained by BDC are clear and not overly complex. However, the amount at issue and the complexity of the matter increases when the various issues raised in Ms. Mahmood’s response are considered.

[52] It is not clear whether there were steps taken by Mr. Tyab or Saif Mahmood to have the equipment and supplies removed from the Agrisol premises, so as to reduce any recovery by BDC. A review of the equipment and supplies seized by the bailiff does not appear to be consistent with an operating company. If Agrisol had additional equipment and inventory, then the amount of money that the BDC may have recouped on the seizure and sale of the equipment and inventory could have

been substantially greater. This would have in turn reduced the indebtedness of both parties.

[53] In addition, Ms. Mahmood has raised issues and produced documents which raise at least some suspicion on whether Agrisol's finances were being properly used by Mr. Tyab and Saif Mahmood. If monies were wrongfully taken from Agrisol's bank account, this would have reduced the company's ability to service the Loans.

[54] It is puzzling that Mr. Tyab would state that Agrisol was no longer in business after February 2020 when the documents that Ms. Mahmood has put forward clearly shows it continued to operate. This included the application and receipt of the \$40,000 CEBA loan for which Ms. Mahmood is now being pursued on. If Agrisol had permanently ceased operating in February 2020, as Mr. Tyab has asserted, it is not clear on what basis the company applied for a CEBA loan. It is in my view, that there are significant issues of credibility that need to be addressed. Unlike in *Inspiration Management*, I am not persuaded that cross-examination on affidavits would allowed me to resolve the conflicts. When considering all of the various issues raised, this is not a relatively straightforward litigation.

[55] The decision on whether to grant judgment at a summary trial is highly contextual: *Gill v. Cheema*, 2018 BCSC 1453 at para. 55. I find, on the record before me, it would be unjust to grant judgment to Mr. Tyab considering the very significant issues that Ms. Mahmood has raised.

[56] When reviewing the various *Inspiration Management* factors, I am not in a position to make a just and fair determination by way of a summary trial. To do so would be highly prejudicial to the self-represented litigant who is struggling to navigate the complex and costly litigation system.

[57] I further note that the plaintiff is seeking the equitable right to contribution to support his right to claim against a co-surety, which was partially codified at ss. 34 and 54 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. The plaintiff seeks equitable relief and he must come to court with clean hands: *De Angelis v. Sierny*,

2022 BCCA 401 at para. 37. At this stage, I am unable to determine if the plaintiff does have “clean hands”. If any of the allegations made by Ms. Mahmood are true, I anticipate they would have an immediate and necessary relation to Mr. Tyab’s claim. This raises the spectre of “misdeed and misconduct” that should not be condoned by the Court.

[58] I note that Ms. Mahmood seeks to have the action dismissed against her with costs. It would also not be appropriate to grant that order.

[59] I do note that, at this stage, Ms. Mahmood has only filed a response to civil claim. It is clear that as a self-represented litigant, she is at a loss on what steps she should take. She describes herself as a “simple housewife with little or no knowledge of the law” and with very poor English. In order to meaningfully participate in the proceeding, Ms. Mahmood should seek legal advice on how to proceed, including whether she should seek leave to file a counterclaim and potentially bring Saif Mahmood into the action. It may also make some sense to have the Petition Proceeding heard at the same time so that all issues between these parties can be resolved.

[60] Ms. Mahmood advises that she has no resources to hire a lawyer. She claims that she has lost all of her earnings, has no job, and currently is unable to support her family. There are resources that can assist her. I recommend that she go onto the Supreme Court’s website and enter the page relating to “Self-Represented Litigants”. Under the heading “If you need help with your legal problem” there is a link to a list of organizations that can provide legal information, legal advice, and referrals to a variety of services.

[61] I dismiss the plaintiff’s application for a summary trial. In light of the various issues raised, I will leave the issue of costs to be decided by the trial judge.

“Forth J.”