# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Panesar v. Randhawa,*
2023 BCSC 2263

Date: 20231229
Docket: S170091
Registry: New Westminster

Between:

**Amendip Singh Panesar**

Plaintiff

And

**Jugdeep Randhawa and Parveen Randhawa**

Defendants

Before: The Honourable Justice Gibb-Carsley

## Reasons for Judgment

| | |
|---|---|
| Counsel for the Plaintiff: | S. Rai |
| Counsel for the Defendants: | J. Gill |
| Place and Date of Hearing: | New Westminster, B.C.<br>December 7, 2023 |
| Place and Date of Judgment: | New Westminster, B.C.<br>December 29, 2023 |

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## I. Introduction

[1] In this summary trial application, the plaintiff, Amendip Singh Panesar, seeks judgment against the defendants, Jugdeep Randhawa and Parveen Randhawa, for an amount of money that Mr. Panesar asserts he loaned to Mr. Randhawa that was not repaid. Although Mr. and Ms. Randhawa are both named as defendants, in these reasons for judgment, I refer to Mr. Randhawa as he is the person primarily involved in the matters at issue.

[2] Mr. Panesar alleges that in May 2007, he entered into an oral agreement in which he was to loan Mr. Randhawa $150,000. Mr. Panesar asserts that Mr. Randhawa agreed to repay, no later than January 2015, the full amount of the loan plus interest calculated at a rate of 25%. As I will describe below, Mr. Randhawa has repaid $5,500 to Mr. Panesar.

[3] Mr. Randhawa acknowledges that Mr. Panesar provided him with $150,000. However, he contends that the money was for an investment in a real estate project to develop fourteen townhomes near the Baldy Mountain Resort outside of Oliver, British Columbia. Mr. Randhawa says that the project had inherent risk and, unfortunately, failed. Mr. Randhawa asserts that Mr. Panesar's money was lost in the investment and that he also lost money.

[4] The disagreement between the parties regarding the nature of the arrangement under which Mr. Panesar provided money to Mr. Randhawa is the crux of this application. Mr. Panesar asserts the money was a loan and there are sufficient facts before the court to support a finding that Mr. Randhawa should be ordered to pay the outstanding amount of that loan. Mr. Randhawa, however, contends that the money provided to him by Mr. Panesar was an investment in a real estate development not a loan and he is not legally obligated to repay Mr. Panesar.

[5] More importantly for the purpose of this application, Mr. Randhawa says that the matter is not suitable for summary trial, because a determination requires a weighing of contested facts and an assessment of the credibility and reliability of the

witnesses' account of the nature and circumstances of the arrangement under which Mr. Panesar provided money to him.

[6] In this application, I must first determine if Mr. Panesar's application is suitable for summary trial based on the evidence before me. Rule 9-7(15)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*] provides that the Court should not grant judgment for summary trial if the Court is unable to find the facts necessary to decide the issues of fact or law based on the materials, or if the Court is of the opinion that it would be unjust to decide the issues on the application.

[7] For the reasons that follow, I conclude that this matter is not suitable for determination by summary trial.

[8] As I just described, the core issue in this dispute is whether the money advanced by Mr. Panesar to Mr. Randhawa was a loan or an investment. That fact is contested and I am not satisfied that I have sufficient facts to make a determination of this matter on its merits. The agreement under which Mr. Panesar provided funds to Mr. Randhawa was not reduced to writing. As such, in my view, *viva voce* evidence will be required for a trier of fact to assess the credibility and reliability of the parties regarding their understanding of the purpose, circumstances and nature of the arrangement under which Mr. Panesar provided money to Mr. Randhawa.

[9] In these reasons for judgment I will first provide a brief background of the circumstances leading to this application. I will then set out my analysis regarding why I have determined that this matter is unsuitable for summary trial.

## II. Background Facts

### A. The Parties

[10] Mr. Panesar asserts that he is unsophisticated in business matters and is not wealthy. In his affidavit, he sets out that he is an energy management system analyst and works for BC Hydro. He asserts that the amount of money he provided to Mr. Randhawa is significant for him and was difficult for him to obtain.

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[11] Mr. Randhawa is currently employed as a longshoreman. He is also a building contractor and the owner and operator of a company called JR Concepts Development Ltd. ("JR Concepts"). JR Concepts was incorporated in 2005 for the purpose of purchasing property to construct development projects to resell for profit.

[12] Prior to this financial dispute arising, Mr. Panesar and Mr. Randhawa had been close friends for well over ten years.

### B. Mr. Panesar Provides Money to Mr. Randhawa

[13] Between May 30, 2007, and December 14, 2009, Mr. Panesar provided several bank drafts and cash payments to Mr. Randhawa which amounted to $150,000. Mr. Panesar acknowledges that he is only able to prove payments of $142,000 based on the bank drafts as $8,000 of the payment was made to Mr. Randhawa in cash. As such, in his Notice of Civil Claim, Mr. Panesar set out that the outstanding amount of the alleged loan is $142,000, plus interest.

[14] Mr. Panesar affirms that he entered into the agreement "to invest money on [his] behalf for the purchase of properties through the lower mainland, including Surrey and Delta, British Columbia."

[15] Mr. Randhawa deposes that his company, JR Concepts, had various business projects to develop properties in British Columbia, but says that the money that Mr. Panesar provided was invested for the purpose of developing a townhome project at the Baldy Mountain ski resort near Oliver, British Columbia.

[16] Mr. Panesar made many requests to have his money repaid. As will be described below, Mr. Randhawa repaid Mr. Panesar $5,500 of the $150,000.

### C. The Baldy Mountain Project

[17] Mr. Randhawa denies that the money that Mr. Panesar provided him was for projects in the Lower Mainland as alleged by Mr. Panesar. Mr. Randhawa asserts that the money was an investment in a project to build a townhome development at the Baldy Mountain Resort. The plan was to purchase the property and then build14

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townhomes. Mr. Randhawa provided evidence that in or around May 5, 2007, JR Concepts became the registered owners of lands and premises located at the civic address of 302 Buck Road, Oliver, British Columbia, which are legally described as follows:

a) PID: 026-938-197

b) Legal: LOT 24 DISTRICT LOT 100S SIMILKAMEEN DIVISION YALE DISTRICT PLAN KAP82817

(the “Baldy Mountain Property”).

[18] The Baldy Mountain Property is located near Oliver, British Columbia and was intended to be developed into a 14 townhouse multi-unit residential development (the “Project”).

[19] Mr. Randhawa contends that in or around the time JR Concepts took ownership of the Baldy Mountain Property, he and Mr. Panesar entered into an oral investment agreement wherein Mr. Panesar would become an investor in the Project. Mr. Randhawa says that the terms of the oral agreement included, but were not limited to, the following:

a) Mr. Panesar would initially contribute and invest $200,000.00 into the Project;

b) Mr. Panesar would provide further contributions from time to time as needed to progress the construction of the Project;

c) Mr. Panesar and Mr. Randhawa would share the profits and/or losses after the Project was completed and the townhomes were sold; and

d) the profits and losses would be in proportion to the financial contributions provided by each party.

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[20] As set out above, the specific arrangement between Mr. Panesar and Mr. Randhawa regarding the money was never reduced to writing and Mr. Panesar disputes Mr. Randhawa's version of the arrangement.

[21] Mr. Randhawa asserts that Mr. Panesar visited the Baldy Mountain Property on multiple occasions and was active in the construction of the Project. In response, Mr. Panesar says that he only visited Oliver once and it was for the purpose of visiting a friend and not related to the Project. To reiterate, Mr. Panesar strenuously argues that the money he provided to Mr. Randhawa was a loan that was for use in development projects in the Lower Mainland of British Columbia, not for the Project at Baldy Mountain.

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### D. Litigation Commences

[22] On April 16, 2015, Mr. Panesar commenced the within action. The defendants did not file a response and, as such, on February 5, 2018, Mr. Panesar obtained a default judgment (the "Default Judgment") against the defendants for $142,000.00, court ordered interest in the amount of $19,494.77, and costs of $1,293.55.

[23] On May 17, 2018, the parties entered into a consent order setting aside the Default Judgment and the defendants agreed to file and serve a Response to Civil Claim within 21 days of the Order. On June 7, 2018, the defendants filed a Response to Civil Claim.

### E. Attempted Resolution

[24] On June 25, 2019, Mr. Randhawa was set to attend an examination for discovery, but requested to adjourn the examination to July 4, 2019. At the end of June 2019 and early July 2019, Mr. Panesar asserts that Mr. Randhawa expressed interest in entering into a payment plan with Mr. Panesar to repay the amounts Mr. Randhawa had received from him and to execute a consent order. Given this development, the examination for discovery did not proceed on July 4, 2019. According to Mr. Panesar, the purported terms of the consent order were that Mr. Randhawa would pay Mr. Panesar the sum of $150,000. Mr. Randhawa was to

commence making payments to Mr. Panesar of $500 per month on the 1st of each month commencing on August 1, 2019. On August 1, 2019, Mr. Randhawa made a payment of $500. However, according to Mr. Panesar, Mr. Randhawa refused to execute the consent order and failed to make further payments despite requests from Mr. Panesar to do so.

[25] On January 11, 2021, the defendants were to attend an examination for discovery, but failed to attend. On this date, Mr. Panesar received a certificate of non-appearance that confirmed that the defendants did not attend.

[26] In or about February 2021 until April 2021, Mr. Panesar says that Mr. Randhawa contacted him and again wished to enter a payment plan. At this time, Mr. Panesar asserts that Mr. Randhawa wished to enter a consent order that stated that he agreed to pay Mr. Panesar $150,000. The payments were to commence in the amount of $1,000.00 per month on the 4th day of each month commencing on February 4, 2021, until July 4, 2021. Mr. Randhawa was to pay the remaining amount owing on or before July 31, 2021. Mr. Randhawa made five payments of $1,000 each on February 4, 2021, March 4, 2021, April 6, 2021, May 5, 2021, and June 4, 2021 for a total of $5,000. However, according to Mr. Panesar, since June 4, 2021, Mr. Randhawa has refused to execute the consent order and failed to make any further payments despite requests from Mr. Panesar to do so.

[27] Given the payments above, Mr. Randhawa has paid $5,500 towards the debt of $150,000. As such, Mr. Panesar contends that Mr. Randhawa continues to owe $144,500, plus pre-judgment and post-judgment interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. To reiterate, this amount of $144,500, plus interest, is the amount that Mr. Panesar seeks in this summary trial application.

## III. Legal Framework

### A. Suitability for Summary Trial

[28] Before a court grants judgment in a summary trial application, it must first decide if that matter is suitable for determination in a summary manner. Rule

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9-7(15)(a) of the *Rules* provides guidance to a court as to the suitability of a matter for summary trial. More precisely, the Rule provides when a matter should not be decided summarily:

> (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…

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[29] As is clear from this rule, upon hearing a summary trial application, the Court may grant judgment unless: "(i) the Court is unable to find the facts necessary to decide the issues; or (ii) the Court is of the opinion it would be unjust to decide the issues on the application": *Sather Ranch Ltd. v. Sather*, 2023 BCSC 926 at para. 139. The Court hearing a summary trial application is to consider, among other things, whether the evidence is sufficient to decide the dispute: *Cepuran v. Carlton*, 2022 BCCA 76 at para. 149.

[30] In order to assess whether the matter is suitable for summary disposition, courts have developed a number of tests and factors to consider. These factors were summarized in *Pareto Capita Partners (2011) Ltd. v. DVRM Investments Ltd.*, 2020 BCSC 1570:

> [76] There is no dispute that the test for suitability requires consideration of a number of factors, as articulated in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30–31:
>
> a) the amount involved;
>
> b) the complexity of the matter;
>
> c) its urgency;
>
> d) any prejudice likely to arise by reasons of delay;
>
> e) the cost of taking the case forward to a conventional trial in relation to the amount involved;
>
> f) the course of the proceedings;
>
> g) the cost of the litigation and the time of the summary trial;

> h) whether credibility is a critical factor in the determination of the dispute;
>
> i) whether the summary trial may create an unnecessary complexity in the resolution of the dispute;
>
> j) whether the application would result in litigating in slices; and
>
> k) any other matters which may be relevant in the particular case.
>
> [77] The overall goal remains to achieve justice between the parties. Summary trials are unsuitable if, because of the nature of the summary trial proceeding itself, the judge is unable to find the facts necessary to decide the issues raised by the application.

See also: *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 214, 1989 CanLII 229 (C.A.); *Dahl et al. v. Royal Bank of Canada et al.*, 2005 BCSC 1263 at para. 12, aff'd 2006 BCCA 369; and *Argo Mezzanine Financing No. 1 Ltd. v. Plaza 88 Developments Ltd*, 2023 BCSC 2134 at para. 9.

[31] I will now consider these factors in light of the evidence and submissions put forward by the parties on this application. However, in my view, the focus in this application is whether there is sufficient evidence before me to determine the facts now contested between the parties in a manner that achieves a just result. To reiterate, the core fact in dispute between the parties relates to the circumstances of the arrangement under which Mr. Panesar provided money to Mr. Randhawa.

## IV. Analysis

[32] Mr. Panesar argues that he has provided cogent evidence that the money he advanced was a loan and any evidence to the contrary put forward by Mr. Randhawa should not be accepted as credible. Further, he asserts that Mr. Randhawa's agreement to resolve the matter outside of litigation including agreeing to a repayment plan is compelling evidence of Mr. Randhawa's liability and legal obligation to repay a loan to Mr. Panesar. I will deal with each of these arguments now.

### A. Evidence that the Money Advanced was a Loan

[33] Mr. Panesar points to inconsistencies and falsehoods in Mr. Randhawa's affidavits which Mr. Panesar says support that Mr. Panesar was not "investing" in the

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Project. For example, Mr. Panesar argues that an *order nisi* for the Baldy Mountain Property was obtained on July 23, 2008, demonstrating it was under foreclosure proceedings, or at least in financial trouble, at the time he was providing funds. In his affidavit, Mr. Panesar deposes that "it would be illogical of me to invest in a failing or foreclosed project." He contends the timing of the failure of the Project supports that the money he provided to Mr. Randhawa was a loan for building developments in the Lower Mainland, not the Project.

[34] Mr. Randhawa counters this argument by providing affidavit evidence of his personal belief that the purpose of Mr. Panesar giving him money was to invest in the Project. Mr. Randhawa says that although the Project was having financial difficulties in 2008, it was not until 2015 that it was clear that the Project was going to fail.

[35] As I understand Mr. Randhawa's evidence, the foreclosure proceedings against the Baldy Mountain Property were commenced by one of the creditors, Hayter Construction. Hayter Construction obtained an order for conduct of sale October 29, 2008, but the property was not sold until April 2017. While this is some evidence that the Project was in financial difficulty from at least the end of 2008, it does not provide me with conclusive evidence about whether or not Mr. Randhawa kept investing in the Project or used Mr. Panesar's money for the Project. More importantly, these facts do not resolve the primary issue of whether or not Mr. Panesar provided the money as a loan or an investment. In my view the argument raised by Mr. Panesar that he would not have invested in a failing project underscores why there needs to be a greater examination of the facts in issue and an assessment of the credibility of both parties' evidence.

[36] In contrast to Mr. Panesar's argument that he loaned Mr. Randhawa money, Mr. Randhawa asserts that a more logical view of the evidence is that Mr. Panesar's "investment" presented a chance for a significant return on a development project. Mr. Randhawa's counsel characterized the Project as a chance for Mr. Panesar to "hit a homerun." While this issue will be ventilated at trial, in my view, the fact that

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Mr. Panesar expected interest of 25%, calculated monthly, on his money may support a finding that the money was an investment, as a guaranteed return of 25% on a loan could be viewed as exceeding commercial norms for loan interest. That said, I acknowledge that parties are free to enter into loans on terms they accept, so long as the interest does not exceed the 60% rate that is deemed to be a criminal rate by s. 347 of the *Criminal Code*. In any event, I find that on the facts before me I am unable to make a just determination on the merits of this matter given the parties presentation of contested facts that will require an assessment of credibility to determine the nature of the arrangement between Mr. Panesar and Mr. Randhawa.

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[37] I also note that on the evidence before me Mr. Panesar's first payment to Mr. Randhawa was on May 30, 2007, and the Baldy Mountain Property was purchased by JR Concepts on May 7, 2007. I make this observation only to highlight that the money provided by Mr. Panesar appears close in time to the purchase of the Baldy Mountain Property which may tend to support Mr. Randhawa's position that the money and the Project are linked.

[38] Again in my view, this evidence underscores the need for a trier of fact to assess the credibility of each of the parties to determine the facts. I also note that in the examination for discovery transcript of Mr. Randhawa provided to me at this application by Mr. Panesar, Mr. Randhawa explains that his view was that the money provided to him by Mr. Panesar was for an investment in the townhouse project:

> 89 Q Okay. So why do you think this lawsuit is being commenced against you today.
>
> A. It's money that he's – he's – money that he's trying to recover.
>
> 90 Q Okay. Which is due to what?
>
> A. Due to his investment.
>
> 91 Q What was that investment for?
>
> A. Investment into a project that we had in the Okanagan.
>
> 92 Q What type of investment are you referring to then?
>
> A. Like I said, an investment into a project that we had in the Okanagan.
>
> 93 Q What was the project?

A. It was a townhouse site.

[Emphasis added.]

[39] This exchange highlights that the parties have put in issue the nature and purpose of the money Mr. Panesar provided to Mr. Randhawa. In my view, this supports a conclusion that this matter is unsuitable for summary trial.

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### B. Settlement Discussions and Repayment Offers

[40] Mr. Panesar also argues that Mr. Randhawa's agreement to enter into repayment plans for the money proves that he has a legal obligation to repay Mr. Panesar. As I understand Mr. Panesar's argument it is that Mr. Randhawa would not offer to repay some or all of the money if it were truly an investment at risk of being lost as opposed to a loan.

[41] It is important to recognize that Mr. Panesar has not framed the application before me as an application to enforce the purported consent agreement to which he says Mr. Randhawa verbally agreed to repay the funds. Instead, Mr. Panesar raises the issue of the settlement and settlement discussions as a fact that supports his claim that Mr. Randhawa has acknowledged that he has a legal obligation to repay Mr. Panesar.

[42] As evidence for his argument that Mr. Randhawa has acknowledged the debt by offering to repay, Mr. Panesar points to the transcript of the examination for discovery of Mr. Randhawa in which Mr. Randhawa, after being shown text messages in which he offered to start repaying Mr. Panesar, made the following comments:

Q 234 Okay. What were you referring to at this point when you said this sentence?

A. To make him whole of his investment.

Q 235 Okay. What do you mean by that, to make him whole?

A. This is taken out of context. So we had a discussion regarding the money that he invested and, you know, he's a friend of mine. Like, you know, we tried to work together to do it, but unfortunately we lost a lot of money on the project. And I said to him, I go, look, we can

> work on this slowly, I don't mind, I don't like you losing money for an investment through me, but unfortunately it's happened, so we'll try to do our best…

[43] Mr. Panesar says that this evidence combined with Mr. Randhawa's payments of $5,500 towards the debt, is evidence supporting a determination that Mr. Randhawa is indebted to Mr. Panesar and the money advanced was a loan. In other words, based on this evidence, Mr. Panesar says that the Court has the necessary facts to conclude that the money Mr. Panesar provided to Mr. Randhawa was a loan to be repaid in full.

[44] Before considering the merits of this argument, I note that I accept Mr. Randhawa's concern that it is improper for Mr. Panesar to rely upon settlement discussions as evidence of Mr. Randhawa's liability for the unpaid money. While I will not canvass this issue in great detail, in my view, it is inappropriate to use settlement negotiations or overtures of settlement as evidence of liability. There may be a myriad of reasons why a party, even if they do not believe they have legal responsibility, wish to discuss or arrange a potential resolution outside of litigation.

[45] Further, it is settled law that discussions for the purpose of attempting to settle any action or issues in an action, whether or not successful, are subject to privilege and not disclosable nor admissible in subsequent proceedings. As held by the Supreme Court in *Sable Offshore Energy Inc. v. Ameron International Corp.*, 2013 SCC 37:

> [12] Settlement privilege promotes settlements. As the weight of the jurisprudence confirms, it is a class privilege. As with other class privileges, while there is a *prima facie* presumption of inadmissibility, exceptions will be found "when the justice of the case requires it" (*Rush & Tompkins Ltd. v. Greater London Council*, [1988] 3 All E.R. 737 (H.L.), at p. 740).
>
> [13] Settlement negotiations have long been protected by the common law rule that "without prejudice" communications made in the course of such negotiations are inadmissible (see David Vaver, "'Without Prejudice' Communications — Their Admissibility and Effect" (1974), 9 *U.B.C. L. Rev.* 85, at p. 88). The settlement privilege created by the "without prejudice" rule was based on the understanding that parties will be more likely to settle if they have confidence from the outset that their negotiations will not be disclosed. As Oliver L.J. of the English Court of Appeal explained in *Cutts v. Head*, [1984] 1 All E.R. 597, at p. 605:

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> … parties should be encouraged so far as possible to settle their disputes without resort to litigation and should not be discouraged by the knowledge that anything that is said in the course of such negotiations . . . may be used to their prejudice in the course of the proceedings. They should, as it was expressed by Clauson J in *Scott Paper Co v. Drayton Paper Works Ltd* (1927) 44 RPC 151 at 157, be encouraged freely and frankly to put their cards on the table.
>
> What is said during negotiations, in other words, will be more open, and therefore more fruitful, if the parties know that it cannot be subsequently disclosed.
>
> [14] *Rush & Tompkins* confirmed that settlement privilege extends beyond documents and communications expressly designated to be "without prejudice"…

[46] In this summary trial application, I will not consider in detail whether or not the settlement discussions and partial payment arrangements made between Mr. Panesar and Mr. Randhawa attract settlement privilege. However, for the purpose of determining if this matter can be decided summarily, I reject the argument that the settlement discussions and payments made by Mr. Randhawa to Mr. Panesar provide conclusive evidence that the money Mr. Panesar advanced was a loan. In my view, even taking into consideration the parties' settlement discussions the nature of the arrangement through which Mr. Panesar provided money to Mr. Randhawa remains a contested fact that needs to be decided through the assessment of the parties' credibility by the trier of fact at a trial.

[47] In respect of Mr. Randhawa's repayment of $5,500 to Mr. Panesar, I observe that Mr. Randhawa and Mr. Panesar had a friendship that spanned at least a decade prior to the issues giving rise to this litigation. It may be that, short of any belief or admission that he is legally obliged to repay Mr. Panesar, there could be emotional or other factors at play motivating Mr. Randhawa to resolve the matter. Indeed, in the transcript of the examination for discovery of Mr. Randhawa reproduced above, he stated that, "I don't like you losing money for an investment through me, but unfortunately it's happened, so we'll try to do our best…". Based on the evidence presented at this summary trial application, the principle fact regarding the nature, purpose and circumstances under which Mr. Panesar provided the money to

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Mr. Randhawa remains hotly contested and its determination will depend on an assessment of the credibility and reliability of the parties.

## V. Determination

[48] As set out above, I have concluded that this matter is not suitable for summary trial, primarily on the basis that I am unable to find the facts necessary to determine the matters in issue. Put simply, in my view, the main facts in issue require ventilation at trial. Using the language of Rule 9-7(15), I am unable, on the whole of the evidence adduced on the application, to find the facts necessary to justly decide the issues. As such, I find that this matter is not suitable for summary trial and I dismiss Mr. Panesar's application.

[49] In coming to my conclusion, I have considered whether less expensive methods such as cross-examination on affidavits could provide a trier of fact with sufficient facts to determine the issue. However, in my view, a trial presents the most efficient and best manner through which to determine the facts especially because I expect that the determination will likely turn on the credibility and reliability of the witnesses.

[50] Given my conclusion that this matter needs to be referred to the trial list on the basis that I am unable to find the facts necessary to decide the issues, I need not consider the additional factors to determine if the matter is suitable for summary trial. However, I will comment on Mr. Panesar's argument that Mr. Randhawa has been unnecessarily delaying the resolution of this matter.

[51] In my view, there is some merit to Mr. Panesar's argument that Mr. Randhawa has not been moving this matter forward diligently. As support for this claim, Mr. Panesar points to the fact he obtained default judgment against the defendants in 2018 only to have it set aside months later. I also note that funds at issue were advanced by Mr. Panesar to Mr. Randhawa between 2007 and 2009, well over a decade ago. This dispute needs resolution. As such, I direct the parties to set this matter for trial at the earliest date available to the parties and to Supreme Court Scheduling.

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## VI. Costs

[52] The defendants have been successful in resisting Mr. Panesar's application for summary trial. The defendants are entitled to its costs of this application, in any event of the cause, at Scale B.

## VII. Conclusion

[53] I wish to thank counsel for both parties for their well-argued submissions.

"Gibb-Carsley J."

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