IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Garcha v. Grewal,* 2024 BCSC 746

Date: 20240503
Docket: S235388
Registry: Vancouver

Between:

Gurpal Singh Garcha

Plaintiff

And

Gurkeerat Singh Grewal

Defendant

And

Gurpal Singh Garcha

Defendant by way of counterclaim

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the Plaintiff:	A.M. Evans D.J. Horvat
Counsel for the Defendant:	A. Soliman F. Mukasa, Articled Student A. Johal, Articled Student
Place and Date of Trial/Hearing:	Vancouver, B.C. April 19, 2024
Place and Date of Judgment:	Vancouver, B.C. May 3, 2024

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Overview

[1] The plaintiff, Gurpal Singh Garcha, is the holder of a judgment against the defendant, Gurkeerat Singh Grewal and two other parties. The judgment was issued by the United States District Court, Northern District of Ohio, Eastern Division (the "Ohio District Court"). Mr. Garcha seeks an order of this court recognizing and enforcing the Ohio District Court judgment against Mr. Grewal in British Columbia and brings this summary trial application for that purpose.

[2] Mr. Grewal opposes the summary trial application on the basis that the matter is not suitable for determination by summary trial and because the judgment ought not be recognized and enforced regardless of the mode of trial.

[3] Both aspects of Mr. Grewal's defence to this summary trial are related to two arguments.

[4] The first is that the Ohio District Court 's judgment was to enforce a settlement agreement that Mr. Grewal asserts had been fully satisfied by him and the other defendants in the Ohio District Court proceeding and so ought not have given rise to a judgment against him. The second is that the parties to the settlement agreement agreed that if there was default under the settlement agreement, the underlying litigation would resume. In other words, the settlement agreement could not be enforced other than by requiring the parties to litigate the issues that gave rise to the dispute that the parties purported to resolve by the settlement agreement.

[5] Mr. Grewal asserts that because of these matters, the Ohio District Court had no jurisdiction to enforce the settlement agreement and the judgment of the Ohio District Court was obtained through fraud.

[6] The issues are:

A. whether the matter is suitable for summary trial determination;

B. whether the court should decline to enforce the judgment of the Ohio District Court because:

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a. although Mr. Grewal was served with the enforcement action in the Ohio District Court through his counsel in that court, he was not served personally in accordance with the provision for notice in the promissory note pursuant to which the default was said to arise;

b. the Ohio District Court lacked jurisdiction to enforce the settlement agreement because of its terms and Mr. Garcha concealed the terms of the settlement agreement from the court;

c. Mr. Garcha perpetrated a fraud on the Ohio District Court and engaged in abuse of process because Mr. Garcha did not provide the settlement agreement to the Ohio District Court and because Mr. Grewal and the other Ohio District Court defendants had paid the debt in full that the settlement agreement addressed.

Background to the Ohio District Court Litigation, the Settlement Agreement, and the Judgment Sought to be Recognized and Enforced

[7] Mr. Grewal takes the position that this matter is not suitable for summary trial determination in part because of evidence in contest and the need to have a cross-examination on certain matters. Despite that, very few factual matters are disputed. In this section where I state facts they are not in dispute. Where the facts are in dispute I will state the evidence and identify the dispute.

[8] On June 4, 2021, Mr. Garcha commenced an action in the United States District Court, Northern District of Ohio, Eastern Division. The defendants were Mr. Grewal, Rajeev Sharma, and Worldwide Sports Entertainment Collective, LLC. The subject of the claim was Mr. Garcha's allegation that the defendants in the Ohio District Court claim defaulted on loans that Mr. Garcha made to them and that Mr. Grewal had guaranteed.

[9] Mr. Grewal was represented by an attorney, Steven W. Mastrantonio. Mr. Mastrantonio filed a Waiver of the Service of Summons with the Ohio District Court which provided that Mr. Mastrantonio's clients waved formal service. The

defendants, including Mr. Grewal, filed an answer to complaint in the Ohio District Court proceedings. I understand that the answer to complaint is what would be referred to as a statement of defence or response to civil claim in this jurisdiction. Mr. Mastrantonio was counsel of record for Mr. Grewal. On September 15, 2021 Mr. Grewal and the other defendants consented to the jurisdiction of a United States Magistrate Judge to conduct the proceedings in the Ohio District Court action. That provided for the case to be referred to Magistrate Judge Henderson for all further proceedings.

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[10] On May 26, 2022, the parties to the Ohio District Court proceeding attended a mediation. The results of that mediation were recorded in minutes of proceeding filed in the Ohio District Court and signed by United States Magistrate Judge Greenberg. Those minutes provide as follows:

> PROCEEDINGS: a mediation was held *via* Zoom with the above-named parties. The parties agreed to a resolution. The parties shall file a notice of dismissal with prejudice by the close of business (5:00 p.m.) by July 29, 2022. The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

[11] On May 27, 2022 an order of dismissal without prejudice was filed in the Ohio District Court and endorsed by US Magistrate Judge Henderson which reads as follows:

> The Court has been informed that the matter settled at mediation. (ECF No. 39). Therefore, the docket will be marked “settled and dismissed, without prejudice." The parties shall file a notice of dismissal with prejudice by the close of business (5:00 p.m.) by July 29, 2022. If approved, the joint notice of dismissal with prejudice shall supplement this order. The Court shall retain jurisdiction to enforce the terms of the settlement agreement.

[12] The settlement agreement was executed by Mr. Garcha on June 20, 2022, by Mr. Grewal on August 10, 2022, by Mr. Sharma on August 7, 2022 and by Mr. Sharma on behalf of Worldwide Sports Entertainment Collective on August 7, 2022.

[13] Mr. Grewal takes the position that the settlement agreement provided for the defendants to make a series of payments totaling $600,000 or to transfer shares that

Mr. Grewal represented he owned in the Leisure Hotel Group. Mr. Garcha takes the position that these were not alternate means of satisfying the debt as agreed upon in the settlement agreement, but rather separate requirements under the settlement agreement.

[14] The pertinent provisions of the settlement agreement are the following clauses:

II.SETTLEMENT TERMS OF AGREEMENT

1. All prefatory recitations are true and correct.
2. That **WSEC**, **SHARMA** and **GREWAL** agree to make monetary payments to GARCHA in the amount of Six Hundred Thousand Dollars ($600,000.00). This amount is to be made in the following payments:
    a. The *Initial Settlement Payment* of Two Hundred and Fifty Thousand Dollars ($250,000.00) is due on or before July 26, 2022. This *Initial Settlement Payment* and all payments thereafter as set forth below, shall be made payable to **<u>Gurpal Singh Garcha</u>** and are to be delivered to the offices of Thomas A. Skidmore Co., L.P.A. at 655 W. Market Street, Akron, Ohio 44303 by end of business or 5:00 p.m. eastern standard time on July 26,2022 and the future dates indicated below;

    b. **WSEC**, **SHARMA** and **GREWAL** will execute a separate Cognovit Note (attached hereto as Attachment A) in the total amount of Three Hundred and Fifty Thousand Dollars ($350,000.00) comprised of the following payments and terms:

        i. The *Second Payment* of One Hundred and Twenty-Five Thousand Dollars ($125,000.00) is due on or before February 1, 2023;

        ii. The *Third Payment* of One Hundred and Twenty-Five Thousand Dollars ($125,000.00) is due on or before June 1, 2023;

        iii. That the Cognovit Note shall carry an interest rate of 12% beginning June 1,2022;

        iv. Should **WSEC**, **SHARMA** and **GREWAL** timely make the scheduled payments set forth in paragraphs 2.a., 2.b.i, and complete the transfer of shares as set forth in more detail in paragraph 3 below, the Cognovit Note will be reduced by One Hundred and Thousand Dollars ($100,000.00) and that the timely payment on June 1, 2023 will be the final payment due to **GARCHA**.

3. That as a material condition and in addition to the terms and conditions contained in paragraph 2, **GREWAL** represents that he is a 5% owner of the Leisure Hotel Group, LLC which owns and operates the Clarion Hotel

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located at 1050 Burnette Avenue, Concord, CA 94520. That **GREWAL** further represents that this interest in the Leisure Hotel Group, LLC is his solely and that said interest is free and clear of any other claims by any third-party. **GREWAL** further represents that he has complete ownership rights in these shares of stock and full authority to transfer these shares subject to the terms and conditions contained in the Code of Regulations of the Leisure Hotel Group, LLC. **GREWAL** further represents that these shares of stock are not encumbered nor pledged to any other person and/or entity including as collateral to another lender. That based upon this representation, **GREWAL** will cause to have transferred his entire interest in the Leisure Hotel Group, LLC on or before July 26, 2022. So long as GREWAL has made substantial progress towards effectuating the transfer of the shares, he may request a reasonable extension of time to complete the transfer and such request shall not be unreasonably denied by GARCHA.

Further, **GREWAL** will provide documented evidence of his due diligence to initiate the transfer process to counsel for **GARCHA** on or before June 15, 2022 to Thomas A. Skidmore, Esq., attorney for **GARCHA.** That for purposes of this settlement only, **GREWAL's** interest in the Leisure Hotel Group, LLC is valued at Seven Hundred Thousand Dollars ($700,000.00). This valuation is for purposes of this settlement only and is based solely on an agreed value as determined by the Parties and is not based upon an actual appraisal.

4. That the Parties agree that should **WSEC**, **SHARMA** and/or **GREWAL** default in the payment of Two Hundred and Fifty Thousand Dollars ($250,000) by July 26, 2022 **OR** fail to perfect the transfer of **GREWAL'S** 5% interest in the Leisure Hotel Group, LLC by July 26, 2022 then **GARCHA** has a right to reinstate the Litigation with the right to assert any and all claims which were or could have been asserted by **GARCHA** against **WSEC**, **SHARMA** and/or **GREWAL**, **GARCHA** including his claims for Fraud.

5. That **WSEC**, **SHARMA** and/or **GREWAL** are responsible for all Court costs associated with the Litigation.

6. **Court Continuing Jurisdiction**. Simultaneously with the execution of this Agreement, the attorneys representing the Parties hereto will execute a stipulation of dismissal in the form annexed hereto as Exhibit B (the "Stipulation of Dismissal"). In order to enable the Court to grant specific enforcement or other equitable relief in connection with this Agreement, (a) the parties consent to the jurisdiction of the Court for purposes of enforcing this Agreement, and (b) each party to this Agreement expressly waives any contention that there is an adequate remedy at law or any like doctrine that might otherwise preclude injunctive relief to enforce this Agreement. That the Stipulation of Dismissal shall be filed on or before July 29, 2022. The Stipulation of Dismissal shall only be filed if **WSEC**, **SHARMA** and **GREWAL** meet all terms and conditions as set forth in paragraphs 2.a. and 3 above.

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[15] The parties dispute the meaning of the settlement agreement pertaining to default and enforcement. Mr. Grewal asserts that the only remedy for default was to recommence the Ohio District Court litigation over the alleged debt based on clause 4 set out above. Mr. Garcha asserts that that clause only pertains if the default is the failure to make the first $250,000 payment by July 26, 2022 or if Mr. Grewal failed to transfer his shares in Leisure Hotel Group.

[16] It is not disputed that the defendants made the first $250,000 payment and did so in the time frame required by the settlement agreement and that Mr. Grewal transferred his shares in the Leisure Hotel Group.

[17] The remaining balance of the monies to be paid under the settlement agreement were, by the terms of the settlement agreement to be secured by a promissory note in the amount of $350,000. Mr. Grewal, Mr. Sharma, and Worldwide Sports Entertainment Collective made the promissory note and executed it on August 7, 2022 and September 7, 2022. The promissory note was in the amount of $350,000 and on its face stated it was being entered into in connection with the settlement agreement. The pertinent provisions of the promissory note are that the interest on the unpaid balance in the event of a default would be 12% and the $350,000 was to be paid in three instalments: the first in the amount of $125,000 to be paid on February 1, 2023; the second in the amount of $125,000 on June 1, 2023. If those instalments were paid in a timely manner, the makers of the promissory note had no obligation to pay the remaining balance of $100,000.

[18] Clause 5 of the promissory note provides that if any of the payments required under the promissory note were not made by the date they were due, that event would be an "event of default acceleration" resulting in all amounts owing to be immediately due and payable.

[19] Clause 8 of the promissory note provided for any notice or other communication "to be given pursuant to this note or by applicable law shall be in writing and shall be sent" to Mr. Grewal at an address in new Westminster British Columbia including a street address and an email address at a Gmail account.

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[20] Clause 9 of the promissory note reads as follows:

> **Governing Law: Venue.** This note will be governed by and construed in accordance with the internal laws of the State of Ohio, without giving effect to conflict or choice of law's provisions. Makers hereby irrevocably submit to the non-exclusive jurisdiction of the Federal and District Courts sitting in Summit County, Ohio over any action or proceeding arising out of or relating to this Note, or any document related thereto, and Makers hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such Ohio State or Federal Court. Makers hereby waive any objection that it may now or hereafter have to the venue of any such suit or such court or that such suit is brought in an inconvenient court.

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[21] It is not disputed that none of the defendants in the Ohio District Court litigation and parties to the settlement agreement, the same persons who are the makers of the promissory note, made the first $250,000 payment but did not make any further payments and in particular did not make any payments under the promissory note.

[22] It is not disputed that during the summer of 2022, Mr. Grewal took steps and did conclude the transfer of the shares in Leisure Hotel Group. The shares themselves were not transferred to Mr. Garcha because other shareholders in the Leisure Hotel Group exercised their options to buy the share and pay cash to Mr. Garcha in lieu of the shares, all of which was in accordance with the settlement agreement. Mr. Grewal's interest in the Leisure Hotel Group was valued at $700,000 and that amount was paid to Mr. Garcha in lieu of the shares. I will refer to the whole of the transaction as the transfer of the Leisure Hotel Group shares.

[23] The first payment under the promissory note, which was essentially the third payment due under the settlement agreement, was due on February 2, 2023. That payment was not made.

[24] On March 29, 2023 Mr. Garcha filed and served a motion in the Ohio District Court proceedings in which the settlement agreement had been reached seeking to enforce the terms of the settlement agreement and the promissory note by way of judgment against the defendants in that proceeding in the amount of USD $350,000 plus interest at 12% per annum. The enforcement application was accompanied by a

certificate of service indicating that service have been affected by way of email or US mail on Mr. Mastrantonio.

[25] It is clear that Mr. Mastrantonio had continued to represent the defendants in their actions under the settlement agreement as evidenced by correspondence between him and the counsel for Mr. Garcha pertaining to the transfer of the Leisure Hotel Group shares. It is not disputed that the enforcement proceedings were not served on Mr. Grewal through the New Westminster residential address or the email set out in the promissory note for notices under that promissory note.

[26] On March 29, 2023, the Ohio District Court communicated with Mr. Mastrantonio about the enforcement application brought by Mr. Garcha. The Ohio District Court wrote another communication to Mr. Mastrantonio on April 4, 2023 inquiring as to whether the defendants would respond to the enforcement application and advising that any such response was due by April 12, 2023. Also, on April 4, 2023, counsel for Mr. Garcha in the Ohio District Court proceeding wrote to Mr. Mastrantonio and inquired as to whether Mr. Grewal and the other defendants would be responding to the enforcement application.

[27] On April 18, 2023 Mr. Mastrantonio wrote to counsel for Mr. Garcha saying as follows: "I just spoke to Grewal. He wants to enter some forbearance agreement for a limited time. He said the interest rate environment in Canada is so bad that he was unable to do a refinance to make the last payment. Is your client willing to discuss this?"

[28] Mr. Garcha was not prepared to entertain forbearance. Neither Mr. Grewal nor any of the other defendants responded to the enforcement application in the Ohio District Court proceeding.

[29] On April 18, 2023 Magistrate Judge Henderson heard the enforcement application and granted joint and several judgment in favour of Mr. Garcha and against each of Mr. Grewal, Mr. Sharma and Worldwide Sports Entertainment

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Collective in the amount of USD $350,000 plus interest at a rate of 12% from February 2, 2023.

[30] Neither Mr. Grewal, Mr. Sharma nor Worldwide Sports Entertainment Collective appealed the April 18, 2023 judgment. The time for appeal expired 30 days from April 18, 2023.

[31] Neither Mr. Grewal, Mr. Sharma nor Worldwide Sports Entertainment Collective has paid Mr. Garcha any amount under the April 18, 2023 judgment of the Ohio District Court.

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Suitability for Summary Trial Determination

Legal Principles

[32] Supreme Court Civil Rule 9-7(15)(a) states that a matter will not be suitable for summary trial if the court is unable to find the facts necessary to decide the issues of fact or law, or if would be unjust to decide the issues summarily.

[33] The Court of Appeal reviewed the law pertaining to the suitability of matters for summary trial determination in *Main Acquisitions Consultants Inc. v Yuen*, 2022 BCCA 249; and *Newhouse v Garland*, 2022 BCCA 276. The starting point is that regardless of the parties' views on this matter, the court must make a threshold determination: *Main Acquisitions* at para. 89.

[34] The factors set out in rule 9-7(15)(a) (i) and (ii), whether the necessary facts can be found and whether it would be unjust to decide the issues raised, are separate but related questions: *Liu v. Luo,* 2018 BCSC 1237 at para. 29. In some circumstances it may be unjust to decide a case summarily even if, on the whole of the evidence, it is possible to find the necessary facts. See also: *Placer Development Limited v. Skyline Explorations Ltd.* (1985), 67 B.C.L.R. 366 at 385–386 (C.A.); *Foreman v. Foster*, 2001 BCCA 26 at para. 19; and *Creyke v. Creyke*, 2016 BCCA 499 at para. 45.

[35] The onus is on the party who asserts that the matter is not suitable for a determination by a summary trial to demonstrate unsuitability: *Ekins v. Davey*, 2007 BCSC 1630 at para. 24. Though a party may contest the suitability for summary trial, that party is nonetheless obliged to bring forward all of its case or risk having judgment go against it: *Spring Hill Farms Limited Partnership v. Nose*, 2014 BCCA 66 at para. 20; and *Gichuru v. Pallai*, 2013 BCCA 60 at para. 32.

[36] In *Chevron Corp. v. Yaiguaje*, 2015 SCC 42 at para. 53, the Supreme Court of Canada explained that comity is a guiding principle of enforcement of foreign judgments. Comity generally militates in favour of enforcing foreign judgments as opposed to sidetracking or ignoring legitimate judicial acts. At paras. 44–45, the Court further explained that the enforcing court's role is not one of substance, but of facilitation to collect a debt. The enforcing court should not address the underlying claim in an evaluative manner on an application to recognize and enforce a foreign judgment. The underlying facts are irrelevant except as they relate to a defence to enforcement.

[37] Judges of this court have determined claims for recognition and enforcement of foreign judgments at summary trial in cases such as *Lang v. Lapp*, 2009 BCSC 638; *Cabaniss v. Cabaniss*, 2006 BCSC 1076; *Litecubes, L.L.C. v. Northern Light Products, Inc.*, 2009 BCSC 181; and *Wei v. Mei*, 2018 BCSC 157 [*Wei BCSC*], aff'd 2019 BCCA 114 [*Wei BCCA*].

[38] In *Wei BCSC*, Justice Macintosh of this court observed, at para. 55, that an action to enforce a foreign judgment is enforcing the obligation created by the foreign judgment and it is not appropriate in most cases to look beyond the judgment to the merits of the case. Accordingly, there is little scope for conflicting evidence on most cases involving an enforcement of foreign judgments. However, that is not always the case and in some cases the courts have refused to exercise the discretion to decide an enforcement action through summary trial: see for example *Lonking (China) Machinery Sales Co. Ltd. v. Zhao*, 2019 BCSC 1110.

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[39] With regard to whether the court can find the necessary facts, the suitability question involves a consideration of the factual findings called for in the course of deciding whether to recognize and enforce foreign judgments. As addressed in more detail below, the foreign court must have jurisdiction over the action in accordance with the real and substantial connection test and the foreign judgments must be final and conclusive: *Beals v. Saldanha*, 2003 SCC 72 at para. 17. If the foreign court properly exercised jurisdiction and the judgment is final, the domestic court examines the defences available to a domestic defendant to contest the recognition of the foreign judgment. The defences are fraud, breach of natural justice, and public policy: *Beals* at paras. 39–41.

[40] Where the evidence conflicts on some points, if other admissible evidence makes it possible to find the necessary facts to determine the issues, the court may proceed to by summary trial: *Cory v. Cory*, 2016 BCCA 409 at para. 10, citing *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at 216. However, where there is a "head on" conflict in the evidence regarding an important issue, and the court either cannot resolve the issue or cannot resolve the issue without assessing the deponents' credibility, it will not be suitable for summary determination. A court cannot sidestep conflicts by relying on only a portion of the record, assuming certain facts, or by taking the plaintiff’s case at it’s highest: *Concord Pacific Acquisitions Inc. v. Oei*, 2017 BCSC 236 at para. 50.

[41] It is open to courts to draw adverse inferences from gaps in the evidence but it is not mandatory: *Kingan v. Kingan*, [1995] B.C.J. No. 164 (S.C.) at para. 40, aff’d [1995] B.C.W.L.D. 1596 (C.A.).

[42] There is a difference between circumstances where the court cannot find the facts or where it would be unjust to proceed summarily, and a case where there are gaps in the evidence because a party who bears the onus has not put forward evidence to discharge that party’s burden of proof. In the latter circumstances, the answer is not to refuse to determine the case summarily because the evidence is insufficient and instead order a conventional trial, the answer is to determine the

matter taking into account hat the party who has an onus on an issue has not discharged it: *Gichuru* at paras. 32–33; *Brown v. Douglas*, 2011 BCCA 521 at paras. 29–30. A party who seeks determination by summary trial must put its case forward on the basis that it will be determined summarily including the risk that the claim may be summarily determined against it.

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[43] As summarized in *Gichuru* at paras. 30–31, citing *Inspiration Management*, whether it would be unjust to proceed summarily depends on the following factors:

a) the amount involved;

b) the complexity of the matter;

c) its urgency;

d) any prejudice likely to arise by reason 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.

Finding the Facts Necessary to Decide the Issues of Fact or Law

[44] Mr. Grewal's position is that the evidence is "inadequate" to make a summary trial determination.

[45] Inadequate evidence *per se* is not a ground to avoid summary trial. A party responding to a summary trial application cannot fail to lead the evidence in support of the outcome it seeks and then argue that the case is not suitable for summary

determination because all of the evidence is not before the court. A party who is facing summary trial must put their best foot forward and respond to the evidence sought to be led on summary trial: *Liu* at paras. 33–34.

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[46] It can be that the evidence is “inadequate” to permit summary trial because there has been inadequate pre-trial discovery. In that case, the party seeking to avoid summary trial should address that with specifics of what evidence would be the subject of discovery.

[47] Mr. Grewal argues that it is necessary to call and examine witnesses and make discoveries of evidence in the U.S. relating to the transactions regarding the Leisure Hotel Group shares. This is related to Mr. Grewal's submission that the debt that the settlement agreement addressed was fully settled by Mr. Grewal transferring the Leisure Hotel Group shares to Mr. Garcha.

[48] It is not disputed that Mr. Grewal transferred the Leisure Hotel Group shares. However, his assertion that the share transfer fully satisfied the settlement agreement cannot be successfully advanced because of the unambiguous terms of the settlement agreement. Clauses 2 and 3 of the settlement agreement clearly provide that Mr. Grewal and the other defendants are required to make payments totalling $600,000 and transfer the Leisure Hotel Group shares.

[49] Mr. Grewal relies on clause 4 of the settlement agreement, which provides for the parties to take certain steps in the event that Mr. Grewal and the other defendants in the Ohio District Court proceedings did not make the first payment owing under the settlement agreement or transfer the shares. Mr. Grewal asserts that the use of the disjunctive “or” in clause 4 means that the settlement agreement should be interpreted to provide that Mr. Grewal and the other defendants could satisfy the amounts owing either by making the payments provided for in clause 2 or by transferring the Leisure Hotel Group shares.

[50] That position is nonsensical. It is contrary to the clear language of the agreement in clauses 2 and 3. Clause 4 does not make the payment of cash and

share transfer alternate means of satisfying the debt to which the settlement agreement relates, it provides for remedies in the event that Mr. Grewal and the other defendants defaulted either in making the cash payments or in transferring the shares. There is no support for an interpretation of the agreement that Mr. Grewal promotes either in the agreement itself or in the admissible extrinsic evidence.

[51] Indeed, Mr. Grewal's making of the promissory note makes no sense if he were able to meet his obligations under the settlement agreement simply by transferring the shares. Nor does it make sense that having made the first $250,000 payment under the settlement agreement and transferring the shares, Mr. Grewal would ask for "forbearance" through Mr. Mastrantonio after he failed to make the payments required by the promissory note. If Mr. Grewal's obligations under the settlement agreement had fully being met through the transfer of the Leisure Hotel Group shares, there would be no need to make payments under the promissory note and no need to ask for forbearance.

[52] In any event, whether the settlement agreement had been fulfilled or not is not a matter for this court's determination. That was a matter for the Ohio District Court to determine and Mr. Grewal had the opportunity to do so in that court, subject to his argument of breach of natural justice due to not being personally served with the enforcement application. I will address that below.

[53] I do not consider the argument that the settlement agreement had been fully satisfied and the necessity to have further discovery and/or cross-examination on that issue to be a reason to not proceed by summary trial.

[54] Mr. Grewal also argues that Mr. Garcha failed to provide the Ohio District Court with the settlement agreement on the application to enforce the settlement agreement and that is fraud on the court that goes to its jurisdiction. Mr. Grewal asserts that it is Mr. Garcha's burden to demonstrate that the Ohio District Court had jurisdiction. Because in this case, that question requires examination of what evidence was before the Ohio District Court, the record before me is inadequate to permit summary trial determination.

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[55] I do not agree. As I will explain, Mr. Grewal's argument about failure to provide the court with the settlement agreement is defence of fraud, specifically extrinsic fraud, going to the jurisdiction of the foreign court. Jurisdiction simpliciter must be established by Mr. Garcha for this court to recognize and enforce the judgment. With regard to the defence of extrinsic fraud going to jurisdiction, the burden is on Mr. Grewal to establish that there was fraud going to the jurisdiction of the issuing court that misled the court to conclude that it had jurisdiction. If that defence can be proved through the record before the Ohio District, his failure to bring that evidence is his failure to be ready to address matters at this summary trial and does not render it inappropriate for summary trial.

[56] There is a dispute in the evidence over whether Mr. Grewal had actual knowledge of the enforcement application in the Ohio District Court. Mr. Garcha relies on the evidence that his lawyer served Mr. Mastrontonio with the enforcement application, and after several communications from the Ohio District Court and Mr. Garcha’s lawyer about the application, Mr. Mastrontonio emailed counsel for Mr. Garcha stating that he had spoken to Mr. Grewal, who was seeking forbearance.

[57] Mr. Grewal asserts in his affidavit at paragraph 45 as follows:

> I was never served with the application to enforce the settlement agreement, as alleged in the plaintiff's affidavit of March 25, 2024. I have never received notification of the enforcement application, be it from the plaintiff, his lawyers, the courts in the U.S., or Mr. Steven Matrantonio [*sic*] I first learned of the enforcement application when the plaintiff took steps to have the US judgment recognized and enforced in Canada.

[58] In light of the evidence that Mr. Mastrantonio replied to communications about the enforcement application by referring to a discussion he had with Mr. Grewal, Mr. Grewal's statement amounts to no more than a bald statement. In order for it to raise a conflict in evidence that would preclude a summary trial, I would expect it to be corroborated by evidence from Mr. Mastrantonio explaining his email to counsel for Mr. Garcha in which he stated, in conjunction with the enforcement application in Ohio, that he had spoken with Mr. Grewal and that Mr. Grewal was seeking

forbearance. Mr. Grewal's bald assertion, does not give rise to a conflict in evidence that precludes a summary trial.

[59] Mr. Grewal also has brought a counterclaim in the British Columbia enforcement proceedings. However, at the hearing of this summary trial, he abandoned the counterclaim as a basis for the court to determine that summary trial was not appropriate.

Whether it is Just to Proceed by Summary Trial

[60] Mr. Grewal asserts because the judgment sought to be enforced is for USD $350,000 plus interest and especially since Mr. Grewal has transferred shares in the Leisure Hotel Group in the value of USD $700,000, there is plenty at stake to justify the costs of a traditional trial.

[61] I agree that the amount at stake does not mandate in favour of a summary trial however the fact that large sums are at stake does not mandate against a summary trial if the matter is otherwise appropriate for summary trial.

[62] The defences of lack of jurisdiction, breach of natural justice and fraud are not based on disputed facts. They are based on arguments which call for the court to apply the law to undisputed facts. I agree with the submissions made by counsel for Mr. Garcha that the arguments made by Mr. Grewal to a large extent seek to have the court consider matters and make findings that were in the purview of the Ohio District Court and are not within the purview of this court.

[63] Seen this way, this enforcement action is not complex.

[64] With regard to whether any prejudice will likely arise by reason of delay and proceeding to a traditional trial, given the interest rate in the promissory note of 12%, counsel for Mr. Garcha has not argued any specific prejudice. However, if the matter is otherwise suitable for summary trial resolution, the delay will simply be delay for the sake of delay to get to a traditional trial. There is no reason to incur that delay in this case.

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[65] The summary trial will not result in litigating in slices given Mr. Grewal's abandonment of the argument that his counterclaim should not stand in the way of the summary trial. The counterclaim sounds in defamation, and there is no contention that it is inextricably woven up with the matter sought to be resolved on the summary trial.

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[66] I am of the view that it would be just to proceed by summary trial.

Whether to Enforce the Judgment of the Ohio District Court

[67] The burden is on the plaintiff to establish that the foreign court had jurisdiction over the action and the foreign judgment is final and conclusive: *Beals* at para. 17. If so, the domestic court examines the defences available to a domestic defendant to contest the recognition of the foreign judgment. The defences are fraud, breach of natural justice, and public policy: *Beals* at paras. 39–41.The burden is on the defendant to establish any of these defences.

Jurisdiction

[68] In *Beals* the Supreme Court of Canada held that the jurisdiction in the foreign court necessary for a Canadian court to enforce the foreign court's judgment is that the foreign court had a real and substantial connection with the litigants or with the subject matter of the dispute. In *Beals*, the Court held that this test will generally be applied in the same manner to foreign judgments whether they be judgments after trial or default judgments.

[69] In *Litecubes* at para. 46, Justice Griffin, then of this court, held that attornment, or submission to the foreign court, will establish jurisdiction in the foreign court whether or not there were other factors establishing a real and substantial connection between the foreign court and the subject matter of the litigation of the parties. Justice Griffin described attornment as a "separate ground for jurisdiction and for recognition of a foreign court's judgment": *Litecubes* at para. 59.

[70] Mr. Grewal does not dispute that he filed an answer to the complaint, agreed to the jurisdiction of Magistrate Judge Henderson over the complaint, participated in

two case management conferences, made discovery, was deposed and participated in the mediation in the Ohio District Court proceeding. I agree with the submissions of Mr. Garcha that Mr. Grewal "consistently and voluntarily submitted to the jurisdiction" of the Ohio District Court by participating fully in its process. I conclude that this amounts to attornment of the Ohio District Court.

[71] Mr. Garcha's application to enforce the settlement agreement after Mr. Grewal and the other Ohio District Court defendants failed to make the payments required under the promissory note was made in the same proceeding to which Mr. Grewal had previously attorned. The application to enforce the settlement was made in the Ohio District Court proceeding in accordance with the settlement agreement and the stipulation, made in the Ohio District Court proceeding, that the Ohio District Court was to retain jurisdiction to enforce the settlement agreement. Accordingly, Mr. Grewal expressly agreed to the continuing jurisdiction of the Ohio District Court to enforce the settlement agreement.

[72] Mr. Grewal submits that the Ohio District Court did not have jurisdiction because the settlement agreement provided that on default, the matter was to be litigated afresh. He asserts that Mr. Garcha provided the Ohio District Court with the promissory note but did not provide the court with the settlement agreement on the application to enforce the settlement agreement and so the Ohio District Court was not apprised of that term of the settlement agreement.

[73] Mr. Grewal submits that clause 4 of the settlement agreement, set out above, provides that a default under the settlement agreement simply put the parties back to the places they were before the settlement agreement was reached, only entitling Mr. Garcha to proceed with the litigation as though no settlement agreement had been reached.

[74] The unambiguous language of the settlement agreement defeats this argument. Clause 4 of the settlement agreement provides for consequences of default if the first payment of $250,000 under the settlement agreement was not made or the Leisure Hotel Group shares were not transferred by Mr. Grewal to

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Mr. Garcha. Those are not the events of default on which Mr. Garcha relies. It is common ground that Mr. Grewal and the other defendants made the first $250,000 payment and that Mr. Grewal transferred his shares. Mr. Garcha's action to enforce the settlement agreement is based on failure to make the payments of the remaining $350,000 provided for in the settlement agreement. Default of those payments is plainly not covered by clause 4 of the settlement agreement.

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[75] Accordingly, Mr. Grewal's argument that the settlement agreement deprived the Ohio District Court of the jurisdiction to make the enforcement order it made must fail.

Whether the Ohio District Court Enforcement Judgment is Final and Conclusive

[76] The decision of the Ontario District Court is final and conclusive. There is no dispute that the time to appeal has passed and no appeal has been taken.

Defences to Recognition and Enforcement

Natural Justice

[77] A typical defence of natural justice to an application to enforce a foreign judgment is that the defendant was not served with the proceeding in the foreign court.

[78] In *Wei BCCA* at para. 26 the Court of Appeal addressed that in order to avoid a finding that the foreign judgment was obtained in proceedings contrary to Canadian notions of fundamental justice, it must be apparent that a minimum standard of fairness was met, citing *Beals* at paras. 60, 62 and 64. With regard to service, a minimum standard of fairness does not require personal service of a proceeding and will be met if the defendant is made aware of the case he or she has to meet and was given the opportunity to meet it: *Wei BCCA* at para. 27. See also *Walters et al v. Tolman et al*, 2005 BCSC 838 at paras. 27–28. In *LLS America LLC (Trustee of) v. Grande*, 2013 BCSC 1745, Justice Grauer, then of this court held that where there is evidence that a defendant "received adequate notice that granted him

an opportunity to defend", there would be adequate notice that meets the threshold of "due service clause", short of personal service.

[79] Mr. Grewal argues that given the residential address and email address set out in the promissory notice as the address in which he was to be given notice of matters related to the promissory note, it was not open to Mr. Garcha to serve Mr. Grewal's lawyer of record in the Ohio District Court proceedings rather than serving him at the residential address or by email.

[80] I do not accept this argument for several reasons.

[81] First, absent a rule of court or statutory provision that required a specific step to be served personally, it is consistent with local notions of natural justice to serve a party's lawyer of record with process in a proceeding already underway and in relation to which the party has agreed the court retains jurisdiction. Mr. Mastrantonio was Mr. Grewal's attorney of record in the Ohio District Court and continued to be representing him right up to the point of the enforcement application. Delivering the enforcement application to Mr. Mastrantonio is consistent with British Columbia notions of natural justice as an effective method to make Mr. Grewal aware of the proceeding and his opportunity to defend it.

[82] Second, Mr. Grewal's assertion is that the enforcement application should have been served on him by putting it in the mail to him at the residential address for notice under the promissory note. This is not personal service and it is a method of service that Justice Grauer held would likely be ineffective in *LLS America*.

[83] Mr. Grewal relies on *Cortés v. Yorkton Securities Inc.*, 2007 BCSC 282 at para. 71 where there was evidence that the defendant did not have actual knowledge of the proceeding and the plaintiff was aware of a Canadian address for the defendant. Justice Myers held that the plaintiff had to do more to locate the defendant and provide actual knowledge of the proceedings in order to avoid a breach of natural justice: *Cortés* at paras. 76–79, 135.

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[84] For the reasons I have given above, I do not accept Mr. Grewal's evidence that he did not have actual knowledge of the enforcement application in the Ohio District Court. I conclude that Mr. Grewal was given adequate notice of the enforcement application through Mr. Mastrantonio and there is no breach of natural justice.

Fraud

[85] In *Beals*, the Supreme Court of Canada described two types of fraud that a defendant can show to vitiate a foreign judgment. I have already referred to one kind, extrinsic fraud, which is fraud going to the jurisdiction of the issuing court or fraud that misleads the court into believing that it had jurisdiction over the cause of action. Above, I rejected Grewal's argument on extrinsic fraud.

[86] The other is intrinsic fraud, which is fraud that goes to the merits of the case and to the existence of a cause of action: *Beals* at para. 47.

[87] Generally speaking, to establish intrinsic fraud a defendant must allege and prove new material facts or newly discovered material and evidence that were not before the foreign court because they are facts that the "defendant could not have discovered and brought to the attention of the foreign court through the exercise of reasonable diligence": *Beals* at para. 50 citing *Jacobs v. Beaver* (1908), 17 O.L.R. 496. Intrinsic fraud is not available where a defendant fails to defend the action.

[88] Mr. Grewal alleges intrinsic fraud on the Ohio District Court by Mr. Garcha not putting the settlement agreement into evidence before that court, by not advising the court that Mr. Grewal and the other defendants had fully satisfied the settlement agreement by transferring the shares in Leisure Hotel Group, and by not advising the court of remedies for default that Mr. Grewal says are limited by clause 4 of the settlement agreement.

[89] I agree with the submissions of Mr. Garcha said that these allegations of fraud are not the type of an intrinsic fraud supported by new and material facts or evidence that Mr. Grewal was incapable of leading in the Ohio District Court. All of

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these arguments could have been made before the Ohio District Court by Mr. Grewal in defence of Mr. Garcha's application to enforce the settlement agreement but Mr. Grewal did not attend.

[90] I have addressed Mr. Grewal's natural justice argument that he was not made aware of the enforcement application and I have not accepted it. A consequence of this conclusion is that Mr. Grewal had every opportunity to attend at the Ohio District Court hearing and make the arguments he now makes to this court as intrinsic fraud. They should have been made to the Ohio District Court in Mr. Grewal's defence to the application to enforce the settlement agreement.

[91] In any event, I would not give the effect to those arguments if they could properly be made in this court. For the reasons I have already given it is clear that clause 4 of the settlement agreement did not preclude Mr. Garcha from seeking to obtain a judgment for the unpaid amounts of the settlement agreement through an enforcement application. In addition, the promissory note provided for any unpaid amounts to be accelerated and for the entire amounts owing under the promissory note to be come due on default of any payment.

Novation

[92] Although it is not clear from the written submissions or the oral submissions, Mr. Grewal also refers to "novation" and I presume that is as a defence. As I understand it, Mr. Grewal asserts that because of clause 4 of the settlement agreement, and the transfer of the Leisure Hotel Group shares by Mr. Grewal to Mr. Garcha the parties entered into a "novation agreement" and by which Mr. Garcha was no longer entitled to enforce the promissory note or otherwise claim that Mr. Grewal was still indebted to him.

[93] Mr. Grewal relies on *National Trust Co. v. Mead*, [1990] 2 S.C.R. 410 at 426–427 for the proposition that contractual obligations may be extinguished where there is a novation, i.e. a trilateral agreement "by which an existing contract is extinguished, and a new contract is brought into being in its place".

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[94] It is not clear what Mr. Grewal relies on to assert that novation is a defence to enforcement of the Ohio District Court agreement. It is not one of the established categories of defence. It is not a matter of public policy or fraud or natural justice. It amounts to an argument that Mr. Grewal could have made in the Ohio District Court but did not. I would not entertain it for that reason alone.

[95] If I were to entertain it, I would not accept that by transferring the shares in the Leisure Hotel Group, or by clause 4 of the settlement agreement, the parties agreed to extinguish the settlement agreement. It is clear from the settlement agreement that Mr. Grewal and the Ohio District Court defendants were required to pay USD $600,000, and transfer the shares. The transfer of the shares was not a subsequent novation or change to the terms of the settlement agreement. The transfer of the shares was made pursuant to the settlement agreement and as required by the settlement agreement.

[96] I do not accept the novation argument as a defence to enforcement of the Ohio District Court judgment.

Conclusion on Enforcement of The Foreign Judgment

[97] I conclude that the judgment of the Ohio District Court to be recognized and enforced in by this court.

<u>Interest</u>

[98] Mr. Garcha seeks judgment from this court in the amount of the Canadian dollar equivalent of $370,597.26 United States dollars plus 12% interest from the date of the Ohio District Court judgment.

[99] In the Court of Appeal's decision in *Wei BCCA*, the Court adopted the reasoning of the Court of Queen's Bench of Alberta in *Dingwall v. Foster*, 2013 ABQB 424, aff’d 2014 ABCA 89 that the debt created by the foreign judgment and recognized by the domestic judgment will include post judgment interest ordered by the foreign court up to the date of the judgment of the domestic court. After that date,

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the judgment is then a domestic judgment and attracts post judgment interest according to domestic: see para. 24 of *Dingwall*; and para. 31 of *Wei BCCA*.

[100] I adopt this approach. The judgment of the Ohio District Court set post judgment interest at the 12% interest rate provided for in the promissory. That applies up to today. Going forward the judgment of this court will attract interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

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Disposition

[101] I recognize and enforce the Ohio District Court's April 18, 2023 judgment. I grant judgment in favour of Mr. Garcha in the amount of the Canadian dollar equivalent of $370,597.26 United States dollars plus interest at 12% from July 31, 2023 until today's date and interest pursuant to the *Court Order Interest Act* from today's date forward.

"Matthews J."