

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Aujla v. 0775740 B.C. Ltd.*,
2025 BCSC 162

Date: 20250203
Docket: S136837
Registry: New Westminster

Between:

Gurdip Singh Aujla, Aujla Developments Ltd. and Varinder Kaur Aujla
Plaintiffs

And

**0775740 B.C. Ltd., Buckley Hogan Law Office, Sean Hogan, Satnam Johal,
Kulwinder Kaur Johal, 0707890 B.C. Ltd., Harinder Singh Bal, Amarjit Kaur Bal,
H.B. Enterprises Inc., Harinder Pasricha, Kuldip Sra, KSRA Holdings Ltd., Nu
Tek Properties Ltd. and Nu Tek Investments Ltd.**

Defendants

- and -

Docket: S247756
Registry: New Westminster

Between:

Gurdip Singh Aujla
Plaintiff

And

**0775740 B.C. Ltd. (Inc. No. BC0775740), Satnam Singh Johal, Kulwinder Kaur
Johal and Harinder Bal**
Defendants

Before: The Honourable Justice Kent

Reasons for Judgment

Counsel for the Plaintiffs in both actions:

R.D. Holmes, KC

Counsel for the Defendants, Satnam Singh
Johal, Kulwinder Kaur Johal, 0707890 B.C.
Ltd., Nu Tek Properties Ltd. and Nu Tek
Investments Ltd.:

D. Gautam
S. Dhaliwal

The Defendants, appearing in person: H. Bal

No other appearances

Place and Dates of Trial: New Westminster, B.C.
April 17-21, 24-28,
May 1-5, November 27-30,
December 1, 4-8, 2023,
June 3-7, 11-12, 2024,
September 23-27, 2024

Further written submissions of the Plaintiffs: October 17, 2024

Further written submissions of the
Defendants: December 11, 2024

Plaintiffs' reply to Defendants' further written
submissions: December 18, 2024

Place and Date of Judgment: New Westminster, B.C.
February 3, 2025

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Introduction and Overview

[1] These Reasons for Judgment relate to a failed joint venture development of a property located at 467 Royal Bay Drive, Colwood, BC (the “Royal Bay Property”). The project was doomed to failure at the outset, primarily for lack of necessary capital from some of the joint venturers, exacerbated by a lack of formal structure and ongoing dysfunctional self-dealing.

[2] The joint venture was struck in late November 2006 and gasped its last breath when the Royal Bay Property was finally sold in foreclosure in December 2015, leaving a deficiency of approximately \$1 million. The debacle spawned over a dozen different lawsuits since 2011, including these two actions (one of which is already a consolidated proceeding) which have been ongoing for 10 years or more.

[3] While the composition of the joint venture changed from time to time, the litigation before me is a dispute between the “Aujla parties”, the “Johal parties”, and the “Bal parties” (each of which are defined below) about their respective joint venture interests in the amount of 55% (Johals), 35% (Aujlas), and 10% (Bals).

[4] The background facts are extraordinarily convoluted but a high-level summary of the issues to be determined is:

- the identities of the joint venturers (individuals, corporate entities, or both?) and the nature of their obligations to each other;
- an accounting of proportionate contributions and shortfalls respecting the costs of the joint venture project, including the characterization of myriad separate transactions between the joint venturers and/or with various third parties; and,
- the liabilities between the parties, whether in contract or tort, and/or as “co-obligors” under joint venture-related debt or debt security.

[5] The trial of this perpetual legal stew lasted eight weeks, in four separate sitting periods spread out over one-and-a-half years. Thirteen witnesses were called

to testify, including Mr. Gurdip Aujla, the 88-year-old plaintiff who was on the stand for a gruelling nine days.

[6] In their final submissions, the parties identified specific issues they wish for the Court to decide as part of the judgment in this case. I will attempt to do so, although likely not in the order or the precise wording framed by counsel.

[7] I do not intend to make findings of fact regarding every single event that transpired from November 2006 through the final foreclosure and its aftermath. There is little disagreement about when certain events occurred and, for the most part, what actually happened in that regard. It is the legal characterization of the events and each party's role in them that is mostly in dispute.

[8] I will start the judgment with a list of players and a review of the numerous pleadings, followed by an abbreviated chronology of significant events including details of the third-party financing transactions. This will provide context for the ultimate fact-finding exercise regarding the events in dispute.

The Players

[9] The Aujla parties are the plaintiffs in both actions. They include:

- Mr. Gurdip Singh Aujla (“Mr. Aujla”);
- his spouse, Mrs. Varinder Kaur Aujla (“Mrs. Aujla”); and,
- Aujla Developments Ltd. (“Aujla Developments”), a corporation owned and controlled by Mr. Aujla and his son, Jatinderpal Aujla (“Jatinderpal”).

[10] Mr. Aujla was born, raised, and educated in India. He moved to Canada in 1971 and he worked for the Vancouver Parks Board as a carpenter from 1977 to 2001, when he retired. He and Mrs. Aujla have two adult children, Jatinderpal and a daughter, Kiran Aujla (“Kiran”).

[11] Mr. Aujla and his wife have bought and sold various residential properties over the years. On one such investment property, they demolished the house and replaced it with a duplex.

[12] Through Aujla Developments, Mr. Aujla and Jatinderpal purchased and developed an eight-lot residential subdivision property in Langley, BC in the early 2000s. The subdivision was completed before November 2006, although the lots were sold thereafter.

[13] Another property which Mr. and Mrs. Aujla bought and sold in the early 2000s was on East 19th Ave. in Burnaby, BC. Ms. Harinder Pasricha (“Ms. Pasricha”) was their realtor on that sale which is how they came to make her acquaintance. Ms. Pasricha later became one of the first joint venture participants and also the first to exit the enterprise.

[14] Mrs. Aujla worked in Canada primarily as a seamstress. She knew her husband was participating in a substantial joint venture project in Victoria, BC but had no direct involvement in it. It was apparent during her testimony that she is relatively unsophisticated in business and legal matters and did not fully understand the mortgage and other documents that she may have signed over the years.

[15] Jatinderpal had some involvement in the joint venture meetings and financing transactions in the spring and summer of 2007. He also gave testimony regarding his dealings with a real estate agent, Mr. Sekhon, in early 2012 which resulted in an offer from L51 Venture Corp. (“L51”) to purchase the Royal Bay Property for \$3.6 million which, in turn, led to a contract of purchase and sale being transferred to Uland Development Corp. (“Uland”), a company incorporated by Mr. Sekhon and in which Jatinderpal’s sister, Kiran, was the sole shareholder and director. This is one of the chapters in this drama which will be further reviewed later in these Reasons.

[16] After the Royal Bay Property was sold in foreclosure in December 2015, the unpaid second mortgagee on the lands, Cambro Capital Corp. (“Cambro”), sued Mr. Aujla, Jatinderpal, and Kiran to set aside as fraudulent conveyances certain property

transfers from Mr. Aujla to his children. That action was ultimately settled in May 2017 by way of a \$712,500 payment to Cambro. That payment resulted in the New Westminster Registry action S-247756 seeking contribution and indemnity against Satnam and Kulwinder Johal and Harinder Bal, which is one of the two lawsuits being tried before me.

[17] The Johal parties include:

- Mr. Satnam Singh Johal (“Mr. Johal”);
- his wife, Mrs. Kulwinder Kaur Johal (“Mrs. Johal”); and,
- three corporations owned or controlled by Mr. and Mrs. Johal: 0707890 B.C. Ltd. (“0707 BC”), Nu Tek Properties Ltd. (“Nu Tek Properties”), and Nu Tek Investments Ltd. (“Nu Tek Investments”).

[18] Mr. Johal was born in India and came to Canada in 1968 when he was 10-years-old. He obtained a grade 12 education in Williams Lake, BC and worked both in a sawmill and as a truck driver for a number of years before finally setting up his own door and cabinetry manufacturing business in 1989-90. That business was Nu Tek Doors Ltd., which eventually became successful enough that it was able to purchase its own land and building in Surrey, BC, albeit in the name of 0707 BC. Mr. Johal was the only director and shareholder in Nu Tek Doors Ltd.

[19] Nu Tek Properties, Nu Tek Investments, and 0707 BC were all holding/investment corporations. Mr. Johal's wife is nominally the president and shareholder of each of these companies, although Mr. Johal admitted under cross-examination that he was their directing mind and was “managing [them] for her”.

[20] 0707 BC, Nu Tek Properties, and Nu Tek Investments were later amalgamated as one company on October 27, 2015. As a result, the assets and liabilities of all three entities are now formally vested in 0707 BC, although none of this is reflected in the style of cause or in the final form of the pleadings in the

consolidated New Westminster Registry action S-136837, the other (consolidated) action being tried before me.

[21] Mr. Johal has owned different properties over the years, building new homes, and participating in some relatively small real estate development work in partnership with others.

[22] Mr. Johal was introduced to the Royal Bay Property by a realtor, Kuldip Sra (“Mr. Sra”), who was associated with a real estate firm, Pemberton Holmes Ltd. whom the then-owner of the property, Mamic Developments Ltd. (“Mamic Developments”), had engaged to shop the property around in 2006.

[23] With Mr. Sra's assistance, Nu Tek Properties signed a contract to purchase the Royal Bay Property dated September 8, 2006 for approximately \$4 million. When that contract “fizzled out” (Mr. Johal's words), Mr. Johal, Mr. Sra, and Mr. Harinder Singh Bal later orchestrated another contract of purchase and sale of the Royal Bay Property between Mamic Developments and Mr. Bal (or his nominee) on November 10, 2006 for \$3,866,000 (the “November 10, 2006 CPS”). This contract will be reviewed in greater detail later in these Reasons but it was an important part of the background leading up to the establishment of the joint venture enterprise later that same month.

[24] Nu Tek Properties was the Johal-controlled corporate entity which held the Johal shares in the joint venture corporation, 0775740 BC Ltd. (“0775 Ltd.”), which in turn was the primary debtor with respect to all the financing arranged for the joint venture. 0775 Ltd. was also the registered owner of the Royal Bay Property, holding that property as a bare trustee for the joint venture participants.

[25] When 0775 Ltd. was first incorporated in late November 2006, Nu Tek Properties received a transfer of 50 of the 100 common shares that had been issued i.e. 50% ownership interest. Aujla Developments and Ms. Pasricha each received 25 of the common shares amounting to 25% ownership interest each. At the time, Mr. Johal was appointed as a director and president of 0775 Ltd.; Ms. Pasricha was

appointed as a director and secretary of the corporation; and Mr. Aujla was appointed as a director.

[26] The Bal parties include:

- Mr. Harinder Singh Bal (“Mr. Bal”);
- his wife, Mrs. Amarjit Kaur Bal (“Mrs. Bal”); and,
- a corporation owned by Mr. Bal, H.B. Enterprises Inc. (“H.B. Enterprises”).

[27] Although Mr. Bal had counsel for earlier parts of these proceedings, he was self-represented at the time of trial. Only tidbits of his biographical information emerged from his testimony at trial.

[28] Mr. Bal worked as a realtor in the decade up to 2001. Insofar as his personal business agreements and dealings were concerned, he says “most of them are verbal”.

[29] Before any dealings with the Royal Bay Property, Mr. Bal had undertaken some business with Mr. Johal. The two of them “made money together on a subdivision” in 2004 and this, he says, was why he was “willing to get involved again” with Mr. Johal on the Royal Bay Property in 2006.

[30] Mr. Bal had discussions with both Mr. Johal and Mr. Sra regarding the Royal Bay Property. He believes Mr. Sra showed him an appraisal [an appraisal of the Royal Bay Property at \$4,100,000, dated September 14, 2006 by McConnell & Associates, had in fact been sent by Mr. Mamic to Mr. Johal on September 28, 2006]. Mr. Bal says he was “asked by Mr. Johal to tie up this property”.

[31] Mr. Bal put in an offer for the Royal Bay Property in the amount of \$3,866,000 with “Harinder Bal and/or nominee” as the buyer. This was the November 10, 2006 CPS which contemplated a closing date of February 10, 2007, a \$10,000 deposit within 24 hours after acceptance (November 12), and a further advance payment of \$600,000 on or before November 29, 2006.

[32] Mr. Bal says Mr. Johal was “shopping the property around” and that he and Mr. Johal had “agreed to share any uplift” on the \$3,866,000 purchase price.

[33] Mr. Bal says he had no dealings with Mr. Aujla or Ms. Pasricha with regards to the creation of any joint venture.

[34] Mr. Bal executed an assignment of the November 10, 2006 CPS to Nu Tek Properties on November 25, 2006. It provided for payment of an “assignment fee” of \$640,000 to Mr. Bal.

[35] Later, just before closing the purchase of the Royal Bay Property by 0775 Ltd. in February 2007, Mr. Bal signed a further assignment of the November 10, 2006 CPS directly to 0775 Ltd. With respect to the latter transaction, Mr. Bal says he expected Mr. Johal “would take care of me” (presumably in relation to the \$640,000 assignment fee ostensibly payable by Nu Tek Properties to Mr. Bal pursuant to the first CPS assignment document).

[36] In April 2007, Mr. Bal says he was approached by Mr. Johal to become directly involved in the Royal Bay Property venture. He understood one of the earlier participants, Ms. Pasricha, was no longer going to be involved and that Mr. Sra would be replacing her. Mr. Bal says Mr. Johal offered him a 10% interest in the venture. He agreed to participate, although it was an oral agreement only and no formal joint venture documentation was signed. He understood each joint venturer's obligation was to contribute to the expenses of the enterprise proportionate to their respective shareholdings in 0775 Ltd. and that there would be the same proportionate sharing of the profits derived from the development.

[37] The central securities register for 0775 Ltd. shows that five of the 100 common shares outstanding in the corporation were transferred on June 21, 2007 from Nu Tek Properties to each of H.B. Enterprises, Mr. Bal's holding company, and Touchwood Homes Ltd. (“Touchwood”), a company owned by Mr. Toor, a friend of Mr. Bal's whom he approached for help in funding the 10% buy-in.

[38] Mr. Bal agrees that, three-and-a-half years later in December 2010, the ownership interests in the joint venture once again changed. At that time, Mr. Sra (who had received a transfer of Ms. Pasricha's 25 shares in 0775 Ltd. on June 20, 2007 in the name of in his holding company, KSRA Holdings Ltd.) transferred 15 of the shares to Nu Tek Properties and 10 of the shares to Aujla Developments thereby divesting himself of his entire 25% interest. At the same time, Touchwood transferred its five shares in 0775 Ltd. to Mr. Bal's company, H.B. Enterprises. Hence, from December 2010 through the final foreclosure sale in 2015, the shares of 0775 Ltd. were held as follows:

- Nu Tek Properties (Johal) – 55%;
- Aujla Developments (Aujla) – 35%; and,
- H.B. Enterprises (Bal) – 10%.

[39] There are four other significant parties who were involved in this drama and who were originally named as defendants in the consolidated New Westminster action S136837: Buckley Hogan Law Office, Sean Hogan, Kuldip Sra, and KSRA Holdings Ltd.

[40] Sean Hogan ("Mr. Hogan") is a lawyer and a partner at the Buckley Hogan Law Office ("Buckley Hogan"). Buckley Hogan had been the solicitors for Mr. Johal and his various companies before the Royal Bay Property joint venture came into being. The firm drafted the first formal joint venture agreement signed by some of the parties in late November/early December 2006. It also handled the Royal Bay Property purchase closing in February 2007 and the various re-financing transactions that occurred throughout the years.

[41] As noted above, Mr. Sra was the realtor who brought the Royal Bay Property to Mr. Johal's attention in mid-2006. He, and another realtor with Pemberton Holmes Ltd., Dave Bhandar, were actively involved in arranging the September 8, 2006 CPS for the property (where Nu Tek Properties was the buyer) and also the November 10, 2006 CPS (where Mr. Bal and/or nominee was the buyer). Mr. Sra's holding

company, KSRA Holdings Ltd. became the owner of Ms. Pasricha's 25% interest in the joint venture in June 2007. As noted above, Mr. Sra divested himself of that 25% interest in December 2010.

[42] The litigation against Buckley Hogan and the Sra defendants was discontinued at different times before the start of the trial. The Court has not been made privy to the terms of any settlement that may have resulted in these discontinuances.

[43] Mr. Hogan testified at the trial. However, neither Ms. Pasricha nor Mr. Sra were called as a witness and the Court does not have their first-hand testimony or perspective regarding the joint venture dealings. Mrs. Johal also did not testify even though she was ostensibly the principal of some of the Nu Tek corporations involved in this case.

The Pleadings

[44] As noted above, the failed joint venture development has spawned a multitude of lawsuits, so many that it is virtually impossible to keep track of who was suing whom for what at any particular time.

[45] The trial of this case involves two actions:

- New Westminster Registry number S-136837 (the "Main Action"); and,
- New Westminster Registry number S-247756 (the "Indemnity Action").

The Main Action

[46] As presently constituted, the Main Action is a consolidation of the following three lawsuits:

- New Westminster action S-136837, originally issued August 22, 2011;
- New Westminster action S-135838, also originally issued August 22, 2011;
- and,

- Vancouver action S-127502, originally issued October 25, 2012.

[47] In New Westminster action S-136837, the Notice of Civil Claim issued on August 22, 2011 named Mr. Aujla as the sole plaintiff and the following defendants: 0775 Ltd. (the joint venture corporation), Buckley Hogan (the lawyers), and York Ventures Ltd. and Varsity Capital Corporation (two of the joint venture lenders). The claim essentially alleges:

- Mr. Aujla made a loan to 0775 Ltd. in the amount of \$875,000 plus 6% interest on March 18, 2010, secured by a mortgage registered against the Royal Bay Property;
- in December 2010, York Ventures Ltd. and Varsity Capital Corporation agreed to lend \$1,810,000 to 0775 Ltd., secured by a mortgage to be registered against the Royal Bay Property in priority to Mr. Aujla's mortgage;
- Buckley Hogan obtained from Mr. Aujla a discharge of his mortgage on its undertaking to pay the \$875,000 loan from the York/Varsity loan proceeds;
- in breach of its undertaking, the law firm failed to pay the money to Mr. Aujla; and,
- hence, judgment in the amount of \$875,000 was sought against 0775 Ltd. (the debtor joint venture corporation), the law firm (for breach of undertaking/trust), along with a declaration that Mr. Aujla's mortgage still operated as a charge over the land in priority to the York/Varsity security.

[48] On August 22, 2011, Mr. Aujla filed another lawsuit in New Westminster registry action S-136838 against 0775 Ltd. (the joint venture corporation) and Buckley Hogan. This time he included his spouse, Mrs. Aujla, as a co-plaintiff.

[49] This second action alleged that:

- the Aujlas mortgaged two of their properties to provide “some financial help” to 0775 Ltd. in December 2010 and advanced the sum of approximately

\$397,000 to the joint venture corporation on the understanding that a mortgage in that amount would be granted over the Royal Bay Property;

- the law firm failed to register the required mortgage on the Royal Bay Property; and therefore,
- judgment was sought against 0775 Ltd. for the \$397,000 along with declaratory relief respecting security priority, and damages for breach of trust were claimed against the law firm.

[50] Vancouver action S-127502 was issued by Mr. Aujla on October 25, 2012. It appears to have been drafted by Mr. Aujla himself as his signature appears on page 15 of the filed Notice of Civil Claim.

[51] This lawsuit named 19 different defendants including the joint venture corporation (0775 Ltd.), the lawyer (Mr. Hogan), and other present or past joint venturers (Mr. Johal, Mr. and Mrs. Bal/H.B. Enterprises, Ms. Pasricha, and Mr. Sra). No relief is actually claimed against Ms. Pasricha or Mr. Sra.

[52] The other defendants named in the lawsuit were various lenders of 0775 Ltd. and/or creditors of Messrs. Johal/Bal (including Messrs. Sandher, Toor, and Bhullar).

[53] The claim again related to two “loans” by Mr. Aujla to 0775 Ltd. (\$875,000 in March 2010 and \$397,000 in December 2010), secured by mortgages and various mortgage transactions with lenders, the proceeds of which are again alleged to have been wrongfully distributed by the lawyers to Mr. Johal or his and Mr. Bal's creditors. The pleading sought judgment against Mr. Johal, Mr. Bal, 0775 Ltd. (the joint venture corporation), and the lawyer (Mr. Hogan) in the amount of \$1.272 million along with judgment in debt against the four alleged Johal/Bal creditors.

[54] In August 2013, the Notice of Civil Claim was amended by Mr. Aujla to, among other things,

- add Mrs. Aujla as a plaintiff; and,

- add Mrs. Johal and 0707 BC (one of the Johal investment companies) as defendants.

[55] In July 2013, Mr. Johal issued a counterclaim against Mr. Aujla in the Vancouver registry action S-127502. Among other things, Mr. Johal alleged in that counterclaim:

- 0775 Ltd. was incorporated “with the purpose and intent of being a holding company for Mr. Johal, Ms. Pasricha and Mr. Aujla to purchase real estate”;
- the three individuals agreed that they would each “contribute towards the purchase price of the properties to be purchased by 0775 Ltd.” and to “pay all expenses” ... “in proportion of their [respective] shareholding in 0775 Ltd.”;
- Mr. Aujla has failed to pay his share of 0775 Ltd.’s expenses and also “breached his duty to act in good faith” (in reference to the attempted sale of the property to L51 Ventures Ltd.); and therefore,
- Mr. Johal seeks damages, “an accounting of all the monies due and owing by Mr. Aujla to the company... to equalize the excess payments made by Mr. Johal”, and indemnity by Mr. Aujla of Mr. Johal for losses arising with respect to the foreclosure proceedings.

[56] It appears Mr. Aujla retained a law firm, Gregory & Gregory, in late 2014. That law firm filed an application in all three actions seeking their consolidation into one action (a draft consolidated Notice of Civil Claim was attached to the Notice of Application). It appears this application was also the mechanism whereby Aujla Developments was added as a plaintiff and all of the claims previously made against mortgage companies in action S127502 were dropped.

[57] In his Notice of Application, Mr. Aujla’s lawyer, Mr. Gregory, rightly described the multiple lawsuits as an abuse of process and a situation which “cries out for consolidation.”

[58] On February 12, 2015, an associate justice of this Court granted an Order consolidating all three actions into one action in the form of the draft Consolidated Notice of Civil Claim attached to the Order. The Order was formally filed on May 12, 2015 and the Consolidated Notice of Civil Claim was filed on May 15, 2015.

[59] This new pleading finally provided some sensible legal structure to the claims being prosecuted by the Aujla parties. Among other things, it

- defined the “Joint Venturers” as “at various times, Mr. Aujla, Aujla Development Ltd., Mr. Johal, Harinder Pasricha, Nu Tek Properties, Nu Tek Investments, H.B. Enterprises Inc., Mr. and Mrs. Bal, Mr. Sra and KSRA” (i.e. both the individuals and their respective corporations);
- properly articulated a negligence claim against Mr. Hogan and his firm for acting for multiple clients making disproportionate initial contributions to the joint venture without insisting on independent legal advice and without properly protecting the interests of the Aujla parties; and,
- particularised the quantum of the Aujla contributions to the joint venture (\$1.95 million) and sought an accounting and judgment against the other joint venturers for appropriate equalization amounts due.

[60] On September 28, 2015, the Johal parties filed a counterclaim against the three Aujla plaintiffs. The counterclaim differed from and expanded the counterclaim earlier filed by Mr. Johal to, among other things,

- add the Johal parties alongside Mr. Johal as plaintiffs by counterclaim;
- attempt to limit the named joint venturers to the corporate entities and not the individuals behind the corporations (although para. 4 of the pleading actually asserts an agreement by Mr. Aujla personally to contribute/pay expenses in proportion to his shareholdings);

- again, seek an accounting and equalization payments from “the plaintiffs”; and,
- seek damages and orders for various payments by “the plaintiffs” to Mr. Johal/the Johal companies, as well as indemnity for Mr. Johal's liability to Cambro.

[61] Over the course of time, the Aujla parties filed discontinuances of the S136837 proceeding against the following defendants on the following dates:

- York Ventures Ltd./Varsity Capital Corp. – November 24, 2014;
- Buckley Hogan Law Office and Sean Hogan – July 11, 2019;
- Ms. Harinder Pasricha – December 7, 2021; and,
- Kuldip Sra/KSRA Holdings Ltd. – March 1, 2023.

[62] As a result of all the above, by the time the trial of these actions started, the S136837 proceeding was limited to claims by the Aujla parties against the defunct joint venture corporation (0775 Ltd.), the Johal parties, and the Bal parties. Mr. Aujla had also retained new counsel (Mr. Holmes) who filed an Amended Consolidated Notice of Civil Claim on March 9, 2023 which,

- even though the action had been discontinued against the law firm defendants, nevertheless retained all the allegations regarding conflicts of interest and breaches of various duties on the part of the (former) law firm defendants;
- added as an alternative allegation that, if Mr. Johal was not personally a joint venturer, then he “acted jointly and in concert with and wrongfully induced [the Johal corporations and other joint venturers] to breach their contractual, fiduciary and other duties and obligations owed to the plaintiffs”;

- added as a claim for damages against Mr. Johal personally for the additionally alleged wrongful conduct; and,
- added as a Legal Basis for the claim “the law of joint liability and wrongfully inducing breach of contract, fiduciary and other duties and obligations”.

[63] On March 10, 2023, with the consent of the plaintiffs and the defendant Bal parties, the Johal parties filed a “Consolidated Counterclaim”. This pleading substantially revises and recasts the counterclaim against the Aujla parties although, regrettably, counsel failed to highlight/underline the amendments as required by the *Supreme Court Civil Rules*. Among other things, the Amended Counterclaim,

- purports to define various “oral agreements” made at the outset of the joint venture and then later in 2009 and 2010;
- articulates various additional breaches by Mr. Aujla of his oral agreement obligations, including wrongfully inducing Aujla Developments to breach the terms of the Joint Venture Agreement; and,
- recasts some of Mr. Aujla's advances as “personal loans to the company... instead of making Aujla Development contribute proportionate share of costs and expenses under the JVA”.

[64] Mr. Bal's then-counsel filed a Response to Consolidated Notice of Civil Claim in October 2015 on behalf of the three Bal parties. This is the pleading that appears in the formal Trial Record. In that pleading, the Bal parties:

- allege liability on the part of Nu Tek Properties to pay Mr. Bal the November 25, 2006 assignment fee of \$684,000 (which he claims as a credit in any joint venture accounting), and refers to litigation initiated by him in February 2022, 2010 against both Nu Tek Properties and 0775 Ltd. to recover that assignment fee pursuant to which he filed a certificate of pending litigation (“CPL”) against the Royal Bay Property;

- concede that in June 2007, Mr. Bal “agreed on behalf of H.B. Enterprises, together with Touchwood Homes, to purchase 10% of the common shares of 0775 Ltd. from Mr. Johal in exchange for \$178,000”, another “contribution on behalf of H.B. Enterprises” for which he seeks credit in any joint venture accounting;
- particularise the “December 2010 Refinancing” with Cambro Capital which required, among other things, the discharge of various encumbrances from title to the Royal Bay Property and also Mr. Bal's personal residence, requirements that resulted in portions of the Cambro proceeds being paid to discharge the “Bhullar Judgment” (\$62,500) and the Toor/Sandher mortgage against the Bal residence (\$182,000). The latter amount but not the former is acknowledged by the Bal parties “as an advance on future proceeds [from the joint venture] or alternatively was a loan” (presumably by 0775 Ltd. to Mr. Bal);
- acknowledge that H.B. Enterprises remained in the joint venture after December 2010, however claim that “Johal and Aujla requested [him] to thereafter manage the Joint Venture’s project and agreed they would procure 0775 Ltd. to pay Mr. Bal monthly wages of \$7,500” in that regard, an alleged oral “Project Management Agreement” for which he claims credit in any joint venture accounting in an amount representing ten months wages to September 2011.

The Indemnity Action

[65] The second action that was tried as part of this case is New Westminster Registry action S-247756, which was originally filed as Vancouver registry action S-187145. This claim also relates indirectly to the December 2010 refinancing with Cambro Capital Corp. and 0751461 BC Ltd. (collectively, “Cambro”). As part of that transaction, 0775 Ltd. and Mr. and Mrs. Johal granted mortgages to Cambro of the Royal Bay Property and the Johal residence in Surrey in the amount of \$1 million

+12% annual interest. Promissory notes and personal guarantees were also granted as further security for the mortgage by Mr. Aujla, Mr. and Mrs. Johal, and Mr. Bal.

[66] In March 2013, Cambro issued foreclosure proceedings against 0775 Ltd., Mr. and Mrs. Johal, Mr. Aujla, and Mr. Bal, among others. Personal judgment was granted against all these parties (except Mrs. Johal) in October 2013 for approximately \$1.34 million.

[67] The Royal Bay Property was eventually sold on December 15, 2015 pursuant to a court-approved sale, but the proceeds from that sale were insufficient to satisfy the Cambro's claim. The resulting deficiency of approximately \$970,000 remained collectible from 0775 Ltd. and the Aujla/Johal/Bal parties pursuant to the security granted at the time of the loan.

[68] At various times in the years 2013-2014, Mr. Aujla transferred to Jatinderpal and Kiran his interest in three properties on Formby Street in Burnaby, E. 39th Ave. in Vancouver, and in Langley, all for nominal consideration. The Langley property was later sold in May 2015 by Jatinderpal for approximately \$304,000.

[69] In July 2015, Cambro sued Mr. Aujla and his two children in Vancouver Registry action S-156300 alleging that the property transfers were fraudulent conveyances and seeking to execute their personal judgment against Mr. Aujla against the transferred interests.

[70] The fraudulent conveyance action eventually settled in May 2017 whereby the Aujlas made a joint and several payment to Cambro in the amount of \$712,500.

[71] In June 2018, Mr. Aujla issued what is now New Westminster Registry action S-247756 against 0775 Ltd., Mr. and Mrs. Johal, and Mr. Bal seeking equitable contribution and indemnity from the latter as co-obligors on the basis that Mr. Aujla had "discharged more than his proportionate share of the mutual obligation to [Cambro]".

[72] In their Response to Civil Claim filed July 29, 2019, Mr. and Mrs. Johal deny both the facts and liability but in any event claim that Mr. Aujla is the one who “owes money in accordance to his proportionate share in the joint venture project carried on under the defendant 0775 Ltd.”.

[73] Rather remarkably, a Response to Civil Claim was also filed on behalf of 0775 Ltd. by a law firm which does not appear to have further participated in the litigation. That pleading denies the alleged facts and also, rather improbably, denies any liability on the part of 0775 Ltd. to Mr. Aujla. It further states:

- “the directors of the defendant 0775 Ltd. failed to contribute their pro rate share towards the losses [of the “business venture”] (sic)” and, in any event,
- “the defendant 0775 Ltd. has no assets”.

[74] Counsel for Mr. Bal filed the latter's Response to Civil Claim in August 2020. While denying liability generally, Mr. Bal also alleges,

- “any money owed to Mr. Aujla by virtue of the \$712,500 payment to Cambro has to be set-off against the liabilities of Mr. Aujla in respect of the joint venture project “as per New Westminster Registry action S-136837”; and,
- “Mr. Bal also specifically sets off the following amounts which he has contributed towards the joint venture operated by 0775 Ltd. (the \$178,000 “contributed” for H.B. Enterprises to acquire its shareholding interest, the \$684,000 assignment fee owed by Nu Tek Investments (sic), and outstanding salary for the period December 2010 to September 2011 for “project management services”).”.

[75] It should be noted that, while the Bal parties claim set-offs and the “taking into account” of their respective “contributions” to the joint venture, they have not issued any counterclaim in either of the two actions.

[76] And, thus, it was that this dog's breakfast of convoluted pleadings came to trial before me on April 17, 2023.

Abbreviated Chronology of Key Events

[77] At the start of the trial, the Court was provided with an Agreed Statement of Facts (“ASOF”) that had been signed by counsel for both the Aujla parties and the Johal parties. When queried by the Court, Mr. Bal stated he had withheld his signature because he did not completely understand some of the paragraphs. I am, however, satisfied that the proposed agreed facts are consistent with the evidence adduced at trial and I adopt them as findings of fact for the purposes of these Reasons for Judgment.

[78] As noted earlier, some of the entries/transactions on each party’s proposed accounting/reconciliation of contributions are disputed and I will address them in greater detail later in these Reasons for Judgment. Stated neutrally, however, the following is an abbreviated chronology of key events related to the joint venture based on evidence and the ASOF and I find as a fact that they occurred as described:

- on November 10, 2006, Mr. Bal offered to purchase the Royal Bay Property from Mamic Developments, an offer that was accepted by the latter on November 12, 2006. The proposed buyer was Mr. Bal “and/or nominee”, a \$10,000 deposit was paid by Mr. Sra, the realtor for the transaction, the closing date was February 10, 2007, and a further advance payment of \$600,000 was to be made on or before November 29, 2006;
- on November 25, 2006, Mr. Bal executed an assignment of the November 10, 2006 CPS to Nu Tek Properties. Among other things, that agreement provided for payment of an “assignment fee” of \$640,000 to Mr. Bal;
- in late November 2006, Ms. Pasricha, Mr. Johal, and Mr. Aujla agreed to jointly undertake the development of the Royal Bay Property as a

multi-townhouse project of a sort similar to the development earlier proposed by Mamic Development;

- 0775 Ltd. was incorporated on November 28, 2006 by Ms. Pasricha as the entity that would purchase the Royal Bay Property for the purposes of the joint venture between the parties;
- on November 30, 2006, the 100 shares issued in the capital of 0775 Ltd. were re-allocated as follows:

Nu Tek Properties – 50 (50%)

Aujla Developments – 25 (25%)

Ms. Pasricha – 25 (25%);

- on November 30, 2006, Mr. Aujla caused Aujla Developments to pay 0775 Ltd. \$350,000, and a further \$200,000 on December 8, 2006, for a total of \$550,000, so that 0775 Ltd. could pay the increased deposit required by the November 10, 2006 CPS for the Royal Bay Property;
- on December 4, 2006, Mr. Aujla, Mr. Johal, and Ms. Pasricha executed a written Joint Venture Agreement, effective November 30, 2006, a document that was drafted for the parties by Buckley Hogan. Pursuant to that Joint Venture Agreement,
 - a. 0775 Ltd. was to obtain and hold legal title to the Royal Bay Property as a bare trustee on behalf of the joint venturers; and,
 - b. each joint venturer was to contribute to the expenses of the joint venture and would distribute to themselves the profits of the joint venture in accordance with their proportionate ownership of the shares in the capital of 0775 Ltd.;

- on January 29, 2007, Ray Baker Appraisals issued a formal appraisal of the Royal Bay Property to Mr. Sra estimating the market value as of January 25, 2007 in the amount of \$4,332,000;
- on February 12, 2007, the sale of the Royal Bay Property by Mamic Developments to 0775 Ltd. completed for a total purchase price of \$3,866,000. Part of the purchase price was funded by a \$2.85 million loan from Accredited Mortgage Ltd. ("Accredit") to 0775 Ltd. which was secured by a mortgage registered against the title of the Royal Bay Property. Each of Mr. Aujla, Ms. Pasricha, and Mr. Johal signed the mortgage as co-covenantors and each also signed written confirmation of the receipt of independent legal advice in respect of same;
- on June 14, 2007, Mr. Aujla, Mr. Johal, and Mr. Sra signed various documents related to a loan agreement/re-financing of the proposed joint venture development by Canadian Western Bank ("CWB"), including a two-phase credit facility of over \$15 million for 0775 Ltd., liability guarantees by the 0775 Ltd. shareholders and their principals, and certificates of legal advice in relation to the re-financing transaction. The Accredited Mortgage security was discharged from title to the Royal Bay Property and a first mortgage was registered on title in favour of CWB;
- on June 20, 2007, Ms. Pasricha transferred her 25 shares of 0775 Ltd. to KSRA Holdings Ltd., a corporation owned and directed by Mr. Sra, and Ms. Pasricha also resigned as an officer and director of 0775 Ltd.;
- on June 21, 2007, Nu Tek Properties transferred five shares of 0775 Ltd. to each of H.B. Enterprises and Touchwood Homes. As of that date, the shareholdings in 0775 Ltd. were as follows:

Nu Tek Properties – 40 (40%)

Aujla Developments – 25 (25%)

KSRA Holdings Ltd. – 25 (25%)

H.B. Enterprises – 5 (5%)

Touchwood Homes – 5 (5%)

- during the period June 15-25, 2007, Buckley Hogan drafted a new version of a Joint Venture Agreement to reflect the change in shareholders and their proportionate percentages respecting contributions towards expenses and division of profits. There is no evidence at trial to indicate this document was ever executed by the parties or to explain why this did not occur;
- on January 10, 2008, Ray Baker Appraisals provided Mr. Johal with an appraisal report estimating the January 9, 2008 market value of the Royal Bay Property “approved for thirty eight (38) townhouse units, serviced and ready to develop” at \$6,025,000;
- on March 16, 2009, the solicitors for CWB issued a formal demand for immediate payment of \$3,024,421 being the balance owing under the CWB mortgage. The letter also included a formal notice under s. 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 respecting CWB’s intention to enforce security against each of 0775 Ltd., Nu Tek Properties, KSRA Holdings Ltd., Mr. and Mrs. Johal, Mr. Sra, Mr. Aujla and his son, Jatinderpal Aujla;
- on March 31, 2009, CWB issued foreclosure proceedings in the Vancouver Registry of the Supreme Court of British Columbia against 0775 Ltd. and the various guarantors referred to above, as well as Oryx Excavating Ltd. who had filed an earlier builder's lien against the Royal Bay Property for unpaid excavating work on the project in the amount of \$186,000;
- on April 1, 2009, Cunningham & Rivard Appraisals Ltd. issued to CWB an appraisal report estimating the market value of the Royal Bay Property as of March 28, 2009 in the amount of \$2,260,000 (well below the amount of the

- CWB debt and also well below the 2009 BC Assessment authority valuation of \$3,344,000). Negative factors taken into account by the appraisal included “weakening economic conditions, coupled with adequate market supply”;
- on April 21, 2009, Ray Baker Appraisals issued a report estimating the market value of the Royal Bay Property as of April 20, 2009 in the amount of \$6,042,000, based on a “critical assumption” of 38 “very good quality” townhouse units, fully serviced, and all with excellent city/mountain views. The report acknowledged the weakened local economic conditions, including “real estate foreclosures and credit problems with major financial institutions creating a volatile situation in the real estate and stock markets”;
 - on June 16, 2009, CWB obtained judgment in the amount of \$3,044,224 against all of Mr. and Mrs. Johal, Mr. Sra, Mr. Aujla, and Jatinderpal Aujla;
 - in the period June through mid-September 2009, the parties were able to secure some re-financing through a broker, Mandate Management Corporation, actually funded by York Ventures Ltd, Sirin Investments Ltd., Horizon Charters Ltd., Soumi Holdings Ltd. and Varsity Capital Corporation (collectively, “York/Varsity”), secured by a second mortgage on the Royal Bay Property (ranking behind CWB) as well as mortgages over properties owned by Mr. Johal, Mr. Aujla, and Mr. Sra. The initial net proceeds of this re-financing were to be disbursed to, among others, pay various fees to the broker/lenders, to pay creditors registered against title to the Royal Bay Property (including CWB and Oryx Excavating Ltd.), to pay outstanding amounts due to the city of Colwood, as well as lawyers’ fees;
 - the York/Varsity second mortgage was eventually registered against the Royal Bay Property on September 14, 2009 and CWB received some \$800,000 as payment on their mortgage in exchange for forbearance of the foreclosure proceedings and enforcement of the June 16, 2009 judgment;

- as part of the security for the York/Varsity re-financing, Mr. and Mrs. Aujla granted mortgages over the following personal properties:
 - a. 885-39 Avenue, Vancouver (“39 Avenue Property”);
 - b. 7661 Formby Street, Burnaby (“Formby Property”); and,
 - c. 6970 Walker Ave., Burnaby (“Walker Avenue Property”).
- around the same time, Mr. Johal also granted the York/Varsity lenders mortgages over the following property:
 - a. 8262-142B Street, Surrey (personal residence); and,
 - b. 12876-85 Avenue, Surrey (Nu Tek Doors’ commercial premises owned by 0707 BC, which was also a covenantor on the York/Varsity mortgage).
- on October 15, 2009, Mr. and Mrs. Aujla were required to complete a contract for the purchase and sale of the Walker Property that had earlier been made for a sale price of \$888,000. They evidently had forgotten about or did not realize the implications of the collateral mortgage registered against title in favour of York/Varsity and they were shocked by the requirement of a \$867,882 payment from the sale proceeds to York/Varsity in order to provide clear title to the purchasers. Mr. Aujla demanded and was later granted a mortgage by 0775 Ltd. of the Royal Bay Property in the amount of \$875,000 (and interest at 6% per annum) as a form of security for the payment Mr. and Mrs. Aujla has been required to make to York/Varsity;
- on December 17, 2009, Ray Baker Appraisals provided Mr. Johal with a written report estimating the market value of the Royal Bay Property as of August 24, 2009 (i.e. some four months earlier) in the following amounts and on the following bases:

- a. \$5,131,000, “current market value as is, as zoned and services 50% complete and approved for 38 townhouses”;
 - b. \$5,700,000, “approved for 38 townhouse units, fully serviced and ready to develop with an assumed very good/excellent quality development, all units with excellent city/mountain views”; and,
 - c. \$25,000,398, “prospective value (gross sellout value) of the proposed 38 townhouse units, as at construction completion to an assumed very good to excellent quality standard, net GST”.
- on February 22, 2010, Mr. Bal issued Vancouver Registry action S101291 against Nu Tek Properties and 0775 Ltd. seeking judgment for the assignment fee of \$684,000 payable under the assignment agreement dated November 25, 2006. He also filed a CPL against the title to the Royal Bay Property, presumably on the basis of his allegation that “*by means unknown to [Mr. Bal], the Property was transferred from Mamie Developments Ltd. to [0775 Ltd.]*”, even though he was the individual who had signed the assignment of his own interest to 0775 Ltd. at the time of closing in February 2007.
 - further payments to CWB not having been made, the CWB foreclosure proceeding was revived and CWB accepted an offer to purchase the Royal Bay Property from a third party for \$2,350,000, subject to court approval (the hearing of which was to occur on June 9, 2010);
 - in early June 2010 (Mr. Hogan believes it was June 4, 2010), a second Joint Venture Agreement was prepared by Buckley Hogan at the request of Mr. Johal. This agreement, erroneously dated June 15, 2007 (the same date of the new Joint Venture Agreement that was prepared but not actually signed when Messrs. Sra and Bal joined the joint venture), names as joint venturers Nu Tek Investments, Aujla Developments, H.B. Enterprises, Mr. Aujla and Mr./Mrs. Bal (but not Mr. or Mrs. Johal) and, among other things, provides for:

- a. Nu Tek Investments would offer to purchase the Royal Bay Property (no price stipulated) with a deposit of \$200,000;
 - b. if the offer was successful, a new joint venture agreement would be prepared and executed;
 - c. all parties released each other of all claims respecting the previous joint venture undertaking; and,
 - d. the Aujla and the Bal parties would hold harmless and indemnify the Johal parties.
- on June 9, 2010, Mr. Bal, Mr. Aujla, and Mr. Johal all attended the court hearing and at that time signed the second Joint Venture Agreement prepared by Mr. Hogan. They agreed to submit to the Court that day an offer to buy the Royal Bay Property in the name of Nu Tek Investments for a purchase price of \$3,800,000, a deposit of \$200,000, and a closing date of July 22, 2010;
 - the Nu Tek Investments offer was approved at the foreclosure sale application hearing on June 9, 2010. The \$200,000 deposit was paid, however the transaction did not close. Instead, the parties later informed CWB that they would be redeeming the CWB mortgage through a re-financing;
 - eventually in November and early December 2010, the parties agreed that Mr. Sra/KSRA Holdings Ltd. and Touchwood Homes would leave the joint venture which would then be continued by Mr. Johal (55% in Nu Tek Properties), Mr. Aujla (35% in Aujla Developments) and Mr. Bal (10% in H.B. Enterprises) with further financing from York/Varsity of \$1,810,000 (again arranged through Mandate Mortgage), and second mortgage financing in the amount of \$1 million from Cambro Capital Corp./0751461 B.C. Ltd.(collectively “Cambro Capital”) brokered through Alpha Mortgage Corporation;

- on December 6, 2010, the York/Varsity mortgage was registered against the Royal Bay Property. The covenantors on the mortgage included 0775 Ltd., Mr. Aujla/Aujla Developments, Mr. Johal/Nu Tek Properties, and Mr. Bal/H.B. Enterprises;
- on December 14, 2010, the Cambro Capital mortgage was registered against the Royal Bay Property and also 8262-142B Street (the Johal's residence) with each of Mr. Johal, Mr. Aujla, and Mr. Bal signing as guarantors of the mortgages. At the same time, a promissory note in the amount of \$1 million was signed in favour of Cambro Capital by each of Mr. and Mrs. Johal, Mr. Bal, and Mr. Aujla;
- on December 17, 2010, the re-financing was complete and the net proceeds were applied in satisfaction of the CWB debt. Other claims were also paid at that time but these are the subject of dispute and will be addressed later in these Reasons for Judgment;
- on March 10, 2011, Mr. Bal transferred his interest in the Bal residence to his wife, Mrs. Bal;
- on July 7, 2011, York/Varsity filed a petition for foreclosure of the Royal Bay Property and for judgment in the amount of \$1,950,595 against 0775 Ltd. as mortgagor and the Aujla, Johal, and Bal parties as covenantors. An order *nisi* was made by the Court on September 6, 2011, and on April 4, 2012, the Court ordered sale of the Royal Bay Property and granted York/Varsity exclusive conduct of that sale;
- in February 2012, certain corporate resolutions within 0775 Ltd. were passed which, among other things, authorized Mr. Aujla to execute the sale of the Royal Bay Property “to pay all outstanding loans”;
- on February 4, 2012, a contract of purchase and sale for the Royal Bay Property was presented to Mr. Aujla by a realtor, Mr. Sekhon of Omax Realty.

- The proposed buyer was L51 Venture Corp., the purchase price was \$3,600,000, the closing date was April 30, 2012, and a deposit of \$100,000 was to be paid within “72 hours of subject removal by the purchaser”. This offer was signed by Mr. Manjinder Johal on behalf of L51 Venture Corp. (no relation to the Johal parties). The “subject to” condition was a “feasibility study” to be obtained before March 6, 2012. The CPS was accepted by 0775 Ltd. on March 1, 2012 and was signed by both Mr. Johal and Mr. Aujla;
- from March 2012 through October 2013, there ensued a series of transactions which included an assignment of the CPS from L51 to Uland Development and multiple payments by Uland to support the York/Varsity mortgage categorized as “increased deposits” on the CPS in exchange for multiple extensions of the completion date for the purchase of the property. The nature of these transactions and the involvement in them of the Aujla parties is in dispute and will be addressed in greater detail later in these Reasons for Judgment;
 - on May 27, 2013, Cambro Capital filed in the New Westminster Registry a foreclosure action against 0775 Ltd., and Mr. and Mrs. Johal as mortgagors, and as guarantors against Mr. and Mrs. Johal, Mr. Aujla, and Mr. Bal, also naming various other claimants against the Royal Bay Property;
 - on October 21, 2013, the Court granted Cambro Capital an *order nisi* for foreclosure along with judgment in the amount of \$1,338,859.00 against all the guarantors and signatories to a related promissory note (except Mrs. Johal against whom the application was adjourned generally);
 - on September 21, 2015, an agreement was signed between Cambro Capital and Mr. Johal settling all claims of Cambro if an offer to purchase the Royal Bay Property in the amount of \$3,150,000 is presented, approved by the Court and completes, in which event the Johal parties would be released, however Cambro Capital would be reserving all rights to further pursue 0775 Ltd., Mr. Aujla, and Mr. Bal;

- on October 13, 2015, a CPS for the Royal Bay Property was procured by Mr. Johal and executed between Cambro Capital and 1051906 BC Ltd. for \$3,151,000. The offer was approved by the Court in the York/Varsity foreclosure proceeding on October 15, 2015 and a provisional Order Absolute was made foreclosing the interests in the Royal Bay Property of 0775 Ltd., the Aujla parties, the Johal parties, and the Bal parties in the event of completion of the sale in December 2015;
- ownership of the shares of the purchaser, 1051906 BC Ltd., changed in the meantime, however the new owner, Mr. Amarjit Bains completed the transaction and successfully pursued development of the property over the next several years. The York/Varsity financing was paid off by the proceeds of the foreclosure sale, however a deficiency remained with respect to the Cambro Capital interests in the amount of approximately \$1 million.

[79] As noted earlier in these Reasons, at various times in 2013-2014, Mr. Aujla transferred to his son and daughter his interest in three properties on Formby Street, Burnaby, E. 39th Avenue, Vancouver and in Langley, all for nominal consideration. The Langley property was later sold in May 2015 by Mr. Aujla's son for approximately \$304,000.

[80] In July 2015, Cambro Capital sued Mr. Aujla and his two children in Vancouver Registry action S-156300 alleging to set aside the property transfers as fraudulent conveyances and seeking to execute their personal judgment against Mr. Aujla against the properties in question.

[81] The fraudulent conveyance action settled in May 2017 resulting in the Aujlas making a joint and several payment to Cambro Capital in the amount of \$712,500. In June 2018, Mr. Aujla issued what is now the New Westminster Registry action S-247756 against 0775 Ltd., Mr. and Mrs. Johal, and Mr. Bal seeking equitable contribution and indemnity from the latter as co-obligors on the basis that Mr. Aujla had "discharged more than his proportionate share of the mutual obligation to [Cambro Capital]". This is the second action that proceeded to trial before the Court.

Process for Resolving Credibility Disputes and Findings of Facts

[82] In *Phoenix Homes Limited v. Takhar*, 2023 BCSC 184 (currently under appeal), I was called upon to resolve another dispute between real estate joint venturers who, even though many millions of dollars were ultimately involved, failed to put in writing either the terms of their joint venture agreement or even any shareholders agreement regarding the management of the corporation established to undertake the joint venture project(s). Almost every fact in the case was in dispute. The parties accused each other of perjury, forgery, deceit, and other dishonesty. Several witnesses testified in their primary language of Punjabi. As here, the credibility of the various witnesses was seriously challenged and the fact-finding in the context of convoluted claims and counterclaims was very challenging.

[83] The present case involves only a single project/joint venture undertaking. However, the composition of the joint venture changed several times in several years. Many of the dealings between the parties were oral. Some of the facts, such as those set out in the above chronology of key events, can be determined based on transactional documents. Others, however, are in dispute and require the Court to resolve conflicting oral testimony. In that regard, I have approached matters in much the same manner adopted in *Phoenix Homes*, summarized in that case as follows:

[61] I recently provided a "plain English" description of this process without legal citations for the benefit of a self-represented litigant in *Eaglestone v. Intact Insurance*, 2022 BCSC 2007 at para. 17. It is perhaps worth repeating here:

[14] The primary role of a trial judge is to make findings of fact, i.e. to determine what happened in any given case, and to apply the law to those facts in order to generate the appropriate legal result. Findings of fact are based on admissible evidence presented to the court. As in this case, that evidence can include testimony under oath from witnesses respecting their actions and observations, as well as documents or other material marked as exhibits. The role of the trial judge is to appropriately weigh all of this evidence and to determine which alleged facts have been proved in accordance with the applicable standard of proof - in civil cases, on a balance of probabilities.

[15] The assessment of a witness's oral testimony necessarily entails an assessment of credibility. The role of the court is not usually reduced to simply choosing between two or more

versions of events, and it is not an all-or-nothing process. In determining facts, i.e. making findings as to what actually occurred in any given case, the court is free to reject some aspects of a witness's evidence while accepting others and, indeed, to assign different weight to different parts of the witness's evidence.

[13] A human being's perception and memory of events is fallible. Memories are fragmentary, suggestible, and malleable. They often contain amnesic gaps, information out of order, guesses, and incorrect details. They are subject to decay, interference, distortion, and constructive error. Witnesses in a trial usually do their best to provide accurate evidence about a sequence of events or the content of conversations, but there is a great deal of room for error and reconstruction, and conflicting testimony is commonplace.

[16] Accepting all or part of the testimony of any witness involves an assessment of credibility (truthfulness/honesty) and reliability (accuracy) of both the witness and the evidence. That in turn involves consideration of many different factors including:

- consistency of the witness's account of events;
- consistency with other admissible evidence from witnesses, documents, or other physical objects;
- whether the evidence is reliably corroborated or contradicted by other evidence;
- the witness's ability to reliably recall and communicate details;
- the demeanour of the witness and whether the questions are answered in a frank and forthright fashion without evasion, speculation, or exaggeration; and
- the inherent plausibility of the evidence and its consistency with the probabilities affecting the case as a whole.

[17] Sometimes, however, witnesses deliberately lie and intend to deceive. When that occurs, it may be impossible to accurately separate truth from falsehood and the court may simply find the witness's testimony wholly unreliable. The more frequently the witness lies, the more likely that will be the case. If as a consequence a truth is not accepted as a fact by the court, the witness has only himself or herself to blame.

[62] The above summary reflects in part the methodology articulated at paras. 186-187 of the often-cited case of *Bradshaw v. Stenner*, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal ref'd [2012] S.C.C.A. No. 392, 2013 CanLII 11302. The defendants strongly urge me to apply this methodology here:

- First, the court should consider the testimony of a witness on a "standalone" basis, followed by an analysis of whether the witness's story is inherently believable;
- Then, if the witness's testimony has survived relatively intact, the testimony should be evaluated based upon the consistency with other witnesses and with documentary evidence. The testimony of non-party, disinterested witnesses may provide a reliable yardstick for comparison; and
- Finally, the court should determine which version of events is the most consistent with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[63] I would note, however, that a determination of what is "reasonable" or "inherently believable" is, like concepts of "common sense" and "implausibility", often a subjective assessment reflecting personal experience and one that may be unintentionally informed by implicit bias and even inappropriate stereotyping or myths. This is particularly true in cases involving testimony of witnesses from different cultures and backgrounds not necessarily understood by the trier of fact. As noted in *Kim v. Choi*, 2019 BCSC 437:

[17] Caution should be exercised in assessing the testimony of witnesses from other cultures or where English is a second language and the evidence is received through an interpreter. The reason for caution was explained in *Fu v. Zhu*, 2018 BCSC 9 at paras. 39-42:

[39] Some caution had to be exercised in assessing credibility because the witnesses were from another country and culture and did not speak English. Often cultural and linguistic differences can affect the demeanour of witnesses in ways not necessarily understood by the trier of fact. For this reason, I was hesitant to conclude that a witness was evasive, in case what appeared to be evasiveness could be due to language or cultural differences.

[40] I have approached the evidence aware that nuances might be lost in translation, both in terms of the translation of the question to the witness and in the answer. Word choice and word order in a sentence might be an interpreter's preference and I have been careful not to form judgment based on the wording of a single answer. Rather, I have considered the whole tenor of the evidence in coming to conclusions as to the facts. In my view it would

be a mistake to take a single passage from a witness's evidence as a conclusive admission against interest, given the nuances that might be lost in translation.

[41] As well, I have kept in mind that motives and conduct that might seem improbable to a person raised in a Canadian culture might not be improbable in another cultural context. The very structure of the transactions at issue in this case was unusual in the Canadian context, as it involved large sums of money changing hands over several years, without any written agreements in place or any common accounting practices. I have been mindful that different cultural contexts can affect the court's perspective as to inherent probabilities or improbabilities.

[42] On the other hand, certain characteristics probably cross all cultures, and that includes the instinct and ability to be self-serving in one's memory so as to advance one's own interests, especially when it comes to matters of money.

[18] The *Fu* caution is instructive, but it does not provide a license for a witness to lie. Simply because a witness comes from a different culture and speaks a different language does not result in a free ride in the witness box. A truthful witness is not diminished and an untruthful witness is not elevated. A truthful witness is to be believed and a liar is to be rejected.

[64] The last paragraph cited above is an observation similar to that of Southin J., as she then was, in *Le (Guardian ad litem of) v Milburn*, [1987] B.C.J. No. 2690, 1987 CarswellBC 1589 (S.C.) at para. 2:

When a litigant practises to deceive, whether by deliberate falsehood or gross exaggeration, the court has much difficulty in disentangling the truth from the web of deceit and exaggeration. If, in the course of the disentangling of the web, the court casts aside as untrue something that was indeed true, the litigant has only himself or herself to blame.

...

[67] As noted above, a finding of fact by the court is not usually a matter of simply choosing between two or more conflicting versions of events. The court may reject some aspects of a witness's evidence while accepting others and it may assign different weight to different parts of the witness's evidence. Where, however, the state of the evidence is so unsatisfactory that a finding of fact cannot be fairly made one way or the other, the matter may be determined based on the burden of proof.

[68] This is precisely what occurred in the recent case of *Pavlovich v. Danilovic*, 2019 BCSC 153, aff'd 2020 BCCA 239, where the Court was

unable to find one party more credible than the other and was therefore unable to determine on a balance of probabilities the deceased's intention regarding the impugned transfer of property to his son. The Court simply ruled that the son had not met the burden of proof regarding displacement of the legal presumption of resulting trust and judgment was issued accordingly. In affirming the decision, the Court of Appeal referred to *Rhesa Shipping Co. S.A. v. Edmunds*, [1985] 2 All E.R. 712 (H.L.) where, at 718, Lord Brandon stated:

[T]he judge is not bound always to make a finding one way or the other with regard to the facts averred by the parties. He has open to him the third alternative of saying that the party on whom the burden of proof lies in relation to any averment made by him has failed to discharge that burden. No judge likes to decide cases on burden of proof if he can legitimately avoid having to do so. There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course for him to take.

[69] In this case, I have at various places found the evidence of one principal witness to be unworthy of belief and have accepted the evidence to the contrary tendered by the other party. In other instances, I have disbelieved the evidence of both principals and yet have been able to determine certain facts with reference to other reliable evidence. In yet other instances, I have found the evidence on the point of contention to be wholly unsatisfactory and have simply determined that the point has not been proved to my satisfaction on the balance of probabilities. Throughout I have attempted to take into account how cultural and linguistic differences might affect assessments of plausibility and implausibility and, where possible, I have avoided giving significant weight to what might be characterized as similar fact evidence which might otherwise impugn a witness's character or credibility.

[84] Suffice it to say here that all the principal parties in this case have credibility shortcomings. At different times and in different ways, they have each breached their promises and contractual obligations and/or engaged in various deceitful or self-serving conduct. I am generally reluctant to accept their testimony on contentious matters unless corroborated by other reliable evidence or documents.

General Terms of the Joint Venture Agreement(s)

[85] In this case, there are at least three iterations of a joint venture agreement:

1. the agreement created between Ms. Pasricha, the Johal parties, and the Aujla parties resulting from meetings and discussions between the principals in late November 2006, ostensibly evidenced by the Joint Venture Agreement

- drafted by the Buckley Hogan law firm and signed by Ms. Pasricha, Mr. Johal, and Mr. Aujla on December 4, 2006, the terms of which were largely ignored in practice;
2. the joint venture as re-constituted upon the departure of Ms. Pasricha and the inclusion of Messrs. Bal and Sra (and their respective holding companies) in the period following mid-June 2007, for which Buckley Hogan started to redraft a formal written agreement which was neither completed nor signed by the parties; and,
 3. the joint venture as reconstituted between the Bal, Johal, and Aujla parties upon the departure of Mr. Sra/KSRA Holdings Ltd./Touchwood in December 2010.

[86] The analysis is further complicated by,

- the November 25, 2006 Assignment Agreement between Mr. Bal and Nu Tek Properties which contemplated the payment of a \$640,000 assignment fee; and,
- the second written Joint Venture Agreement signed June 9, 2010, erroneously dated June 15, 2007, and the related Nu Tek Investments offer to purchase the Royal Bay Property in the court ordered foreclosure process.

[87] As explained below, my conclusion is that

- the November 26, 2006 Assignment Agreement between Mr. Bal and Nu Tek Properties formed no part of any iteration of the joint venture and is not enforceable as against any of the joint venture participants (except perhaps for Nu Tek Properties, an issue I need not decide);
- the June 9, 2010 Joint Venture Agreement was contingent upon the purchase of the Royal Bay Property by Nu Tek Investments, an event which did not

occur and thus rendered that agreement of no force and effect (something on which the parties seemingly agree); and,

- the three iterations of the Joint Venture Agreement referred to above (December 2006, June 2007, and December 2010) were oral in nature (or, in the case of the Johal and Aujla contingents, partly written and partly oral), and included/imposed obligations upon not only the parties' respective holding companies but also the individual principals of those entities.

The Late November 2006 Agreement

[88] Mr. Johal had a history with the Royal Bay Property long before he met Mr. Aujla. He was introduced to it by Mr. Sra who persuaded Mr. Johal to submit an offer to the owner (Mamic Developments) on September 8, 2006. Curiously, that agreement was not signed by Mr. Johal but was prepared and executed on behalf of Nu Tek Properties by the realtor, Mr. Sra. The version of that agreement which was put into evidence stipulated a purchase price of \$4,066,000. The conditions of the contract required Mr. Mamic to provide various documents and planning/engineering reports regarding the proposed development on the site.

[89] Included in the documents provided by Mr. Mamic was a September 14, 2006 appraisal by McConnell & Associates estimating current market value at \$4,100,000 and a "gross sell-out value" of the proposed 38-unit townhouse development of \$18,838,000. The McConnell appraisal noted that Mamic Developments had acquired the Royal Bay Property in January 2006 for \$2,050,000.

[90] The McConnell appraisal included a copy of the development permit that had been issued by the city of Colwood on July 4, 2006 (which was stated to expire if the development was not "substantially commenced" within 24 months).

[91] When cross-examined, Mr. Johal acknowledged that he did not proceed with the September 2006 CPS because he did not have the necessary money and he would have needed investors. He said he "couldn't find any one to come in with me" and therefore the deal "fizzled out".

[92] Mr. Johal testified that he, Mr. Bal, and Mr. Sra later had discussions about purchasing the Royal Bay Property at a lower price. He and Mr. Bal thought there would be a good possibility of flipping the property and “sharing the uplift” in the ultimate purchase price. They orchestrated Mr. Bal’s November 10, 2006 CPS but they were unable to find a buyer (to flip the property) before meeting Ms. Pasricha and Mr. Aujla in the third week of November 2006.

[93] Mr. Johal acknowledges he had a meeting with Ms. Pasricha and Mr. Aujla at the Nu Tek Doors business premises to discuss the proposed development transaction, and that thereafter they all travelled to Victoria where they met up with Mr. Sra to visit the Royal Bay Property, and also visited the City of Colwood offices to confirm the development permit details.

[94] Mr. Johal says he met Ms. Pasricha first (her husband was a neighbour in his Surrey office complex) and told her of the project. When she expressed interest, he showed her the November 10, 2006 CPS and the plans for the development. She later called and asked to introduce Mr. Aujla as a potential investor. The two of them came to Mr. Johal's office in Surrey and had a general discussion about the project including the number of units, environmental issues, the plans, some budget information, and the November 10, 2006 CPS.

[95] Mr. Johal testified that Mr. Aujla was interested in the project but first wanted to see the land before proceeding further. It was for this reason that the group went to visit the Royal Bay Property, along with Mr. Sra at the site, and then attended at the City of Colwood offices to review the development permit information.

[96] Following the visit to Vancouver Island, Mr. Johal, Mr. Aujla, and Ms. Pasricha returned to the office in Surrey for a “deep conversation” about moving forward and it was at this time that the parties agreed in principle to the 50% Johal, 25% Aujla, and 25% Pasricha participation in the investment. Mr. Johal also testified that he informed the parties that he did not have the money at that time for the required deposit, however he promised that “I’ll make it up” at the completion date, a proposition with which Mr. Aujla agreed.

[97] On cross-examination, Mr. Johal was confronted with the November 25 Assignment Agreement with Mr. Bal. He says this document was prepared to create the “uplift” for flipping purposes, and the \$684,000 was to be divided between Mr. Bal and himself if any such flip occurred. He said he showed this Assignment Agreement to Mr. Aujla and Ms. Pasricha, although he did not disclose to them his side-deal with Mr. Bal. However, neither Mr. Aujla nor Ms. Pasricha were prepared to participate at anything other than the original purchase price set out in the November 10, 2006 CPS. He described the attempted price increase (and related dishonest nondisclosure) as a “you try and it is a negotiation!” situation.

[98] On cross-examination, Mr. Johal acknowledged that the only “security” Mr. Aujla had for the \$600,000 non-refundable deposit paid to Mamic Developments was “Mr. Johal's word” that he would come up with his contribution at the time the land sale completed (anticipated to be February 10, 2007).

[99] Even though he was assisted by a Punjabi interpreter, Mr. Aujla's testimony on these issues was somewhat confused. He was adamant that he had only been shown the first page of the November 10, 2006 CPS (vendor, purchaser, property, and \$3,866,000 purchase price). However, he also stated “it is possible, I do not remember” when challenged that he had been shown the complete CPS before his initial deposit payment of \$350,000 on November 30, 2006. He says he never inquired about deposit amounts during the parties’ first discussion and he “just assumed everyone was putting in their share”. He said he “understood” the November 10, 2006 CPS had to be somehow assigned to the new purchasers and that he read and understood the draft Joint Venture Agreement prepared by Mr. Hogan before ultimately signing it at a later meeting at Mr. Hogan's office.

[100] What is clear on the evidence, and I find as a fact, is that on November 30, 2006,

- Mr. Aujla, Mr. Johal, and Ms. Pasricha met with Sean Hogan of Buckley Hogan to discuss formal documentation and organization of the joint venture, and at that time Mr. Hogan took instructions and provided to the parties a

- blank precedent joint venture agreement for their perusal. (The precedent was later modified by Mr. Hogan and presented to the parties for their review and execution on December 4, 2006);
- that same day, following the meeting with Mr. Hogan but before any joint venture agreement was finalized and executed, the parties attended at the Khalsa Credit Union to open a bank account in the name of 0775 Ltd. Mr. Aujla deposited \$350,000 into the bank account, and a cheque in the same amount was issued to Mamic Developments as a non-refundable deposit under the November 10, 2006 CPS;
 - the parties were agreeable that the written joint venture agreement could/would be drawn up in the name of their respective holding companies (in Ms. Pasricha's case, yet to be advised). They agreed that the fundamental principle underlying the joint venture was that expenses and profits would be borne/distributed in proportion to their respective percentage shareholdings in the capital of 0775 Ltd., the entity that was to hold legal title to and develop the Royal Bay Property as a bare trustee on behalf of the joint venturers;
 - the parties were all aware that the buyer under the November 10, 2006 CPS was Mr. Bal "and/or his nominee", and that an Assignment Agreement had been made between Mr. Bal and Mr. Johal's company, Nu Tek Properties. They all agreed and intended that steps would be taken by Mr. Johal to ensure 0775 Ltd. would become the registered owner of the Royal Bay Property at the time of the CPS completion for the original purchase price of \$3,866,000.

[101] I am satisfied and find as a fact that, contrary to his testimony, Mr. Aujla had been shown and was aware of the entire November 10, 2006 CPS agreement, the Assignment Agreement between Mr. Bal and Nu Tek Properties, and at least some of the preliminary plans and expert engineering reports regarding the proposed 38-unit townhouse development on the Royal Bay Property before he agreed with Ms. Pasricha and Mr. Johal to participate in the joint development of that project.

[102] However, I am also satisfied on the evidence and I find as a fact that:

- none of Mr. Aujla, Mr. Johal, and Ms. Pasricha performed any due diligence into each other's finances and their respective ability to make their required capital contributions to the venture, whether through holding companies or otherwise. Instead, they simply trusted that each individual would ensure such contributions were made as promised;
- throughout the discussion and negotiation preliminaries, Mr. Johal was anxious to secure Mr. Aujla as a substantial investor, and Mr. Johal made repeated assurances to Mr. Aujla regarding the viability and potential profit of the development project;
- in particular, Mr. Johal informed Mr. Aujla that he (Mr. Johal) was not in a position to contribute towards the deposits required by the November 10, 2006 CPS, however he personally promised and assured Mr. Aujla that he would equalize his capital contribution by or at the time of the completion date for the sale and purchase of the Royal Bay Property;
- Mr. Johal knew full well and, indeed, intended that Mr. Aujla would rely on Mr. Johal's personal assurances in this regard as the basis for Mr. Aujla's participation in the joint venture and his disproportionate early contribution towards the deposits under the November 10, 2006 CPS;
- all such discussions, promises, and assurances were made by Mr. Johal in his personal capacity. They were neither expressly nor impliedly made on behalf of Nu Tek Properties only. They were presented as and intended to be a personal commitment on Mr. Johal's part;
- indeed, while all three joint venturers were willing to sign a joint venture agreement showing their respective holding companies as the joint venturers, this was intended as a technical formality only. Each party knew and intended that the joint venture obligations would be performed by Mr. Aujla, Mr. Johal,

and Ms. Pasricha personally whether through their respective holding companies or otherwise. This was a joint venture undertaking premised on personal probity, promises, and trust beyond and notwithstanding any corporate veil that might otherwise import liability limited to corporate entities.

[103] These findings of fact lead to the legal conclusion that the Joint Venture Agreement dated November 30, 2006 and signed on December 4, 2006 was not the parties' original or whole agreement, but instead was, at best, the written portion of an agreement that was partly oral and partly written. An alternative characterisation is that the terms of the written Joint Venture Agreement were subject to either a collateral or "umbrella" oral agreement binding Mr. Aujla, Mr. Johal, and Ms. Pasricha personally (in addition to their holding corporations, if any) to pay the expenses of the joint venture (and to share any profits) in proportion to their respective percentage shareholdings in the capital of 0775 Ltd.

[104] None of the parties made any submissions regarding the parol evidence rule, or, indeed, to any case law in support of their respective submissions that the contract between the parties was/was not partly oral and partly written. Lest this decision be appealed, however, I wish to make it clear that I have addressed my mind to these issues.

[105] In *Thomson v. Thomson Estate*, 2024 BCSC 2039, I recently had occasion to address the parol evidence rule, its numerous exceptions, and the role of subsequent conduct as part of the factual matrix to be considered in interpreting the obligations of the parties (at paras. 26-33, 47-49, and 58-64). I will not repeat the legal analysis here, but suffice it to say in this case:

- the signed November 30, 2006 Joint Venture Agreement was subject to a collateral or umbrella agreement between the individual principals as described above;
- the parties did not encompass all of the contractual terms in the written agreement; and, indeed,

- the written agreement was intended as a technical formality only, as confirmed by their subsequent conduct, including deliberate non-compliance with the written terms.

[106] I note the written Joint Venture Agreement starts with a false premise, i.e. that 0775 Ltd. “has entered into a Contract of Purchase and Sale to purchase [the Royal Bay Property]”. In actual fact, 0775 Ltd. was not a party to any such contract. The November 10, 2006 CPS was between Mamic Developments and Mr. Bal, a contract that had been assigned by the latter to Nu Tek Properties only.

[107] The Agreement contemplated that management of the joint venture would be carried out by a “management committee”, a “manager” would be engaged for the project, all major decisions (including assignment of joint venturers’ interests or providing financial assistance to parties related to joint venturers) required unanimous prior written approval, *pro forma* annual budgeting, maintenance of “books of accounts”, preparation of monthly financial statements, and the like. None of these things occurred. In practice, the parties simply ignored almost every procedure contemplated by the written Joint Venture Agreement because they trusted each individual principal would “do the right thing”.

[108] Mr. Johal, Mr. Aujla, and Ms. Pasricha were well aware that advancing the project would require loans from banks or other institutional lenders. They knew from past experience that any such financing would require personal commitments from the individuals involved in the venture whether as direct covenantors, guarantors, signatories to promissory notes, and/or the granting of other collateral security on their own property (e.g. personal residences or other real estate). They were well aware that personal involvement and personal exposure in this type of real estate development joint venture was a common and accepted practice, and that it would be a feature of the Royal Bay Property joint venture as well. This was true not only of the first three individuals involved in the venture, but so too with Mr. Bal and Mr. Sra when they joined the enterprise in June 2007.

[109] It is worth noting that while Mr. Johal attempts in this litigation to limit liability of the Johal parties to the holding company, Nu Tek Properties, he was the individual who was primarily driving and managing the enterprise throughout. He was the person who made the representations and promises on which Mr. Aujla relied. In fact, he was neither a shareholder nor a director of Nu Tek Properties, although he purported to sign the written Joint Venture Agreement on behalf of that particular corporation. It is thus entirely appropriate in all the circumstances that he be personally liable as a joint venturer as well as a co-obligor.

[110] Plaintiff's counsel also points out the inconsistent positions and pleadings taken or filed by Mr. Johal in many of the subsequent lawsuits spawned by the failure of the joint venture. In some of these cases and at different times, Mr. Johal has pleaded or has given evidence which, on its face, confirms the individuals as being the shareholders of 0775 Ltd. or the persons responsible for the liabilities and loans incurred by the corporation. In this case, counsel for the plaintiffs is not specifically alleging "abuse of process" by the Johal parties in that regard, merely urging negative credibility assessments instead and I will take that approach. However, it is interesting to note that in the parallel litigation presently underway between Mr. Johal and Messrs. Sra/Baker in New Westminster Registry action S175772, Mr. Sra has filed an application to have the litigation dismissed as an abuse of process based on Mr. Johal's inconsistent/conflicting pleadings and evidence.

[111] Suffice it to say I have concluded as a matter of fact and law that the November 2006 agreement reached between Mr. Johal, Mr. Aujla, and Ms. Pasricha was partly oral and partly written, and that the individuals are personally liable to each other as joint venturers and co-obligors in addition to whatever liability might exist on the part of their respective holding companies which were the listed original shareholders in 0775 Ltd.

Legal Obligations of the Individual and Corporate Joint Venturers

[112] The term “joint venture” can be a potentially imprecise and ambiguous concept. Both the courts and academia generally agree that the law recognizes three types of joint ventures: the joint venture corporation, the joint venture partnership, and the contractual joint venture: Reiter and Shishler, *Joint Ventures: Legal and Business Perspectives* (Toronto: Irwin Law, 1999); *Amneet Holdings Ltd. v. 79548 Manitoba Ltd.*, 2004 MBCA 32 at paras. 13-15; see also Branden Cave, “Escaping the Shadow of Partnership: A New Framework for Distinguishing Contractual Joint Ventures from Joint Venture Partnerships” (2022) 80:1 UT Fac. L. Rev. 9.

[113] All three types of joint ventures require a contract between the parties, a contract that, depending on the circumstances, may be entirely in writing, entirely oral, or partly written and partly oral. The terms of the contract and the obligations of the joint venturers may be expressly stated or implied as a matter of common law or statute: *Phoenix Homes* at paras. 108, 118, 121-126.

[114] In *Phoenix Homes*, the two investors entered into an oral agreement to purchase and develop certain property using a company specifically incorporated for that purpose, a corporation in which they would have equal ownership and control, and into which funds would be injected equally using a corporate bank account and disbursed through mutual discussion and consent (including joint signatures on cheques). Because the parties did not enter into any form of written agreement and did not discuss beforehand the precise mechanics regarding management of the enterprise and/or the timing and procedures by which financial contributions would be accounted and reconciled, the Court implied various terms to fill “gaps” and to give business efficacy to their agreement.

[115] In *Phoenix Homes*, as here, although not giving rise to a formal partnership, the joint venture depended very much on trust and confidence between the individual principals as the basis for funding and management of the joint venture projects. As directors of the joint venture company, the individuals were also subject

to a statutory duty under ss. 142 and 147 of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] to:

- act honestly and in good faith in the best interests of the joint venture corporation;
- exercise reasonably prudent care, diligence, and skill in directing the business affairs of the corporation;
- abide by the *BCA* and in accordance with the articles of the company; and,
- disclose and secure approval for any transactions made on behalf of the corporation in which the director had a direct or indirect material interest.

[116] The Court in *Phoenix Homes* also incorporated into the oral contract recent Supreme Court of Canada case law which had articulated a “general organizing principle of good faith” including “a duty of honest performance, which requires the parties to be honest with each other in relation to the performance of their contractual obligations”: at para. 124.

[117] In the present case, the Buckley Hogan law firm prepared, and the individual principals signed, a formal Joint Venture Agreement which was treated as a technical formality only. Mr. Hogan's file opening notes indicate that a shareholders agreement was also to have been prepared and signed by the parties, however this never occurred (for reasons that have not been explained).

[118] Mr. Aujla, Mr. Johal, and Ms. Pasricha were aware and expected that they would be called upon by the banks or other lenders to the joint venture to personally execute covenants, guarantees, promissory notes and other security instruments. Their intention and their commitment to each other was that all parties would contribute capital to and pay the expenses of the joint venture in proportion to their respective percentage of shareholdings in 0775 Ltd. They essentially promised each other they would pay their fair share of all liabilities incurred in relation to that joint venture.

[119] Quite apart from their contractual and legal obligations of mutual good faith and honest performance of their contractual obligations as joint venturers, the parties were also personally exposed to equitable contribution and indemnity in their capacity as “co-obligors”. The parties agree that, as stated in the seminal text, Rowlatt, Marks & Moss, *Rowlatt on Principal and Surety*, 4th ed. (London: Sweet & Maxwell, 1982):

Where a co-surety pays the debt, or more than his proportion of it, and the principal is insolvent, the co-surety is entitled to contribution from his fellow co-sureties to equalize the burden. It makes no difference whether the co-sureties are bound jointly or severally or jointly and severally. Nor does it matter whether the co-sureties are bound by the same instrument or by separate instruments, whether in the same sum or different sums, whether at the same time or at different times. Nor does it matter whether the surety paying the debt knows of the existence of any other sureties, since the rule of contribution does not depend upon agreement, express or implied, but upon an equity arising from the mere fact of the existence of co-sureties for the same debt owed to the same creditor. The underlying principle of equity is that the creditors’ remedies against the co-sureties should be applied so as to apportion the burden rateably... where any of the co-sureties are insolvent, the contributions of the others are proportionately increased.

[120] As noted in an earlier version of the same text quoted in *Standard Brands Ltd. et al. v. Fox et al.; Dolphin Industries Ltd. et al., Third Parties* (1972), 29 D.L.R. (3d) 167, 1972 CanLII 1162 (N.S.S.C.):

The rights of a surety may be classified as follows:

- i) as against the creditor, to have his remedies exercised in his securities enforced
 - (a) against the principal or sureties in a prior degree with a view to the relief *in toto* of the surety,
 - (b) against every co-surety with a view to putting upon him his proportion of the burden in relief of every other surety *pro tanto*.
- ii) as against the principal debtor and sureties in a prior degree, to be indemnified and to have the remedies and securities of the creditor kept alive for that purpose.
- iii) as against co-sureties, to have ratable contribution towards the deficiency payable to the creditor, to have the remedy securities of the creditor kept alive for that purpose, and to have a ratable apportionment of payments or securities received by any surety from the debtor.

[121] See also, more generally, Kevin McGuinness, *The Law of Guarantee*, 3rd ed. (Toronto: LexisNexis, 2013), ch. 10 *Rights of a Surety*, particularly 10-4(A) *Contribution between Co-sureties*.

[122] It is on these legal and equitable bases that the Aujla parties seek, firstly, enforcement of contractual obligations and judgment against certain parties upon an accounting of respective contributions towards the joint venture and, secondly, judgment based on equitable remedies as a co-surety of the 0775 Ltd. obligations to lenders. The convoluted legal analytics will hopefully become clear as these Reasons proceed.

[123] Counsel for the Aujla parties suggests there is no need to overly-complicate the legal analysis. He submits that “the focus of these trials is on the liabilities of the parties remaining at the end of the venture and that there is no real dispute about each party's proportionate obligations [Johal/Nu Tek Properties –55%; Mr. Aujla/Aujla Developments – 35%; and Mr. Bal/H.B. Enterprises – 10%]”.

[124] But the analysis is not quite as simple as that.

[125] For example, Ms. Pasricha breached her contribution obligations from the outset by making a disproportionately low deposit payment, and she made no payment towards the amounts required to complete the purchase of the Royal Bay Property in February 2007 (above and beyond the proceeds of the Accredited Mortgage). The balance payable by the joint venturers at that time was approximately \$1,177,000, of which Mr. Aujla should ordinarily have paid approximately \$294,000 (25%), Ms. Pasricha should have paid approximately \$294,000 (25%), and Mr. Johal/Nu Tek Properties should have paid approximately \$588,000 (50%).

[126] In actual fact, the Aujla parties “overpaid” at closing by approximately \$306,000, Ms. Pasricha “underpaid” by approximately \$244,000, and Mr. Johal/Nu Tek Properties “underpaid” by at least \$61,000. Thereafter, Ms. Pasricha did not further participate in the joint venture, so how is her “underpayment” to be later taken

into account as between Mr. Aujla and Mr. Johal, and/or with respect to the later additions to the joint venture, Messrs. Sra and Bal?

[127] By way of another example, in October 2009, the registration of a collateral mortgage registered against the Walker Property resulted in Mr. and Mrs. Aujla paying approximately \$868,000 to York/Varsity following the sale of that property to third parties. This was an “involuntary” contribution by Mr. Aujla to satisfy 0775 Ltd.'s debt to York/Varsity but as a co-surety, Mrs. Aujla is also entitled to pursue indemnity from not only the principal debtor (0775 Ltd.), but also contribution from the other co-sureties including Mrs. Sra and Mrs. Johal. Are the latter co-sureties liable for contribution only proportionate to their spouse’s percentage shareholding in 0775 Ltd., or on some other basis?

[128] These questions call for an examination of the terms agreed between the parties regarding Ms. Pasricha’s departure from the joint venture and the subsequent inclusion of the Bal parties and the Sra parties. I turn to those issues now.

Pasricha Departure and Bal/Sra Addition

[129] None of the documents marked as exhibits at this trial were original documents. There is more than one photocopied version of the November 10, 2006 CPS marked as an exhibit. Some of the pages of these exhibits include almost illegible multigenerational photocopies of previously used documents such as a “limited dual agency agreement” and a “non-exclusive finders fee agreement” between Pemberton Holmes and Mamic Development.

[130] One version of the November 10, 2006 CPS includes a November 10, 2006 Addendum setting out nine conditions, one of which referred to an “attached plan” (which was not actually attached to the version marked as an exhibit). This Addendum, which was signed by Mr. Mamic, provides that the buyer (Mr. Bal or nominee) was to pay \$600,000 on or before November 29, 2006 “which will form part of the purchasing price”.

[131] Another Addendum ostensibly dated November 30, 2006 (the original date was whited-out), and signed only by Mr. Bal and Mr. Johal (on behalf of Nu Tek Properties), requires the assignee (Nu Tek Properties) to pay the seller (identified on the document as Mr. Bal) a “non-refundable” amount of \$350,000 on or before November 30, 2006 and a further \$250,000 by December 8, 2006. This document was presumably devised by Messrs. Bal and Johal to convince Mr. Aujla and Ms. Pasricha to make their respective (disproportionate) deposit payments.

[132] Another version of the November 10, 2006 CPS marked as an exhibit includes a December 8, 2006 Addendum, this time signed by Mr. Johal and Mr. Mamic, whereby the latter acknowledges receipt from the buyer of non-refundable deposits of \$350,000 paid November 30, 2006 and a further \$250,000 paid on December 8, 2006.

[133] It appears that Ms. Pasricha paid the aggregate amount of \$50,000 into 0775 Ltd.’s Khalsa Credit Union account on December 8, 2006, and this sum was also paid to Mamic Developments to conform with the \$600,000 part payment required by the November 10, 2006 CPS.

[134] In late December, Mr. Johal started negotiations with the Laurentian Bank of Canada regarding possible financing for the proposed 38-unit townhouse project. The loan contemplated a “predevelopment advance” of \$2.7 million at 2% over the bank’s prime lending rate, a commitment fee of \$100,000, unlimited and unconditional joint/several covenants from Mr. Johal, Mr. Aujla, and Ms. Pasricha, a current appraisal, and a general budget review by the bank’s cost consultant. The bank’s offer letter required the signature of the three covenantors and the payment of a \$10,000 deposit on or before January 3, 2007. These three individuals signed the correspondence and Ms. Pasricha and Mr. Aujla also signed a cheque in the amount of \$10,000 issued on 0775 Ltd.’s bank account in favour of the bank. The evidence is unclear as to the source of the \$10,000 but Ms. Pasricha was still ostensibly participating in the joint venture at this point in time.

[135] In January, Mr. Johal and Mr. Sra scrambled to put together quotes and construction budgets for the project. Mr. Sra commissioned an appraisal of the land which was received from Mr. Baker on January 29, 2007 reflecting estimated market value of \$4,332,000 (38 townhouses, serviced and ready to develop) and a prospective gross sellout of value of \$24,884,000 (\$654,842 per unit average).

[136] The negotiations with Laurentian Bank collapsed as it appears Mr. Johal was unable to satisfy the bank's documents/information requirement in a timely way.

[137] With the February 10, 2007 completion date looming, Mr. Johal found himself scrambling not just to secure mortgage financing for the purchase but also to raise the money necessary for his own contribution towards the purchase price. He had no available cash himself to meet his obligations at that time.

[138] On February 8, 2007, the parties were able to secure last minute mortgage financing through a broker, Great Pacific Mortgage & Investments Ltd. The lender was Accredited Mortgage Ltd., the loan was in the principal amount of \$2,850,000, interest was payable at a hefty 12% per annum (compounded monthly), monthly payments were to be in the amount of \$28,500, and a lender's fee in the same amount was to be deducted from the first advance of the mortgage proceeds. Each of Ms. Pasricha, Mr. Aujla, and Mr. Johal were co-covenantors and guarantors of the loan.

[139] However, neither Ms. Pasricha nor Mr. Johal contributed any of their own money to the closing transaction, although Ms. Pasricha had at least made a \$50,000 contribution towards the deposit on December 8, 2006. Instead, Mr. Johal:

- made a deal with Mr. Bhandar and Mr. Sra to defer receipt of the realtor commissions payable at closing and to release Mamic Developments from all liability in respect of those commissions in exchange for a "credit" on the purchaser's statement of adjustments of \$150,000, and a promise by Mr. Johal to pay the full \$150,000 no later than February 22, 2007 with interest

thereafter at 18% per annum and with the security of a registered mortgage against the Royal Bay Property; and,

- borrowed \$400,000 from Samra Holdings Ltd. (owned by his friend, Mr. Bains) to be repaid on February 21, 2007, failing which interest would accrue at 15% and would be secured by a second mortgage against the Nu Tek Doors’ business premises owned by Mr. and Mrs. Johal through 0707890 B.C. Ltd.

[140] It appears from the Book of Documents put into evidence that a written loan agreement dated February 12, 2007 was signed between Mr. Johal and Messrs. Bhandar/Sra and that a promissory note was signed by 0707890 B.C. Ltd. and Mr. and Mrs. Johal in favour of Samra Holdings bearing the same date. There is no credible evidence that Mr. Aujla was informed of these transactions at the time or that he approved Mr. Johal’s offer to mortgage the Royal Bay Property in favor of Messrs. Sra/Bhandar.

[141] Mr. Johal was aware that there would likely be a cash shortfall for the closing and he asked Mr. Aujla to make a further contribution in the amount of \$50,000 to cover that contingency. Mr. Aujla did so and arranged to have the money put into the 0775 Ltd. bank account and then duly paid to Buckley Hogan. The “Purchaser’s Statement of Adjustments” prepared by Buckley Hogan at the closing therefore reflected the following credits:

Amount of Credit	Source
\$10,000	initial deposit paid by Mr. Sra
\$600,000	deposits paid by Mr. Aujla (\$550,000) and Ms. Pasricha (\$50,000) in November and December 2006
\$150,000	deferred realtor commission to be paid by “purchaser” to Sra/Bhandar

\$2,777,789.04	net mortgage proceeds from Accredited Mortgage
\$396,000	funds borrowed by Mr. Johal and received directly from Samra Holdings (less a 1% fee of \$4,000)
\$50,000	funds received from 0775 Ltd. (additional Aujla contribution)

[142] Hence, as at the date of closing, Ms. Pasricha had made it clear that she was no longer participating in the joint venture. She was in breach of her obligations under the Joint Venture Agreement between the parties and her liability exposure on that account included her unpaid proportionate contribution in the amount of \$240,000 and whatever other losses the remaining joint venture participants might incur as a result of her refusal to participate.

[143] Once again, Mr. Johal found himself scrambling to find another investor. He testified that he “reached out” to Mr. Sra and the latter then introduced Mr. Harvey Simons (“Mr. Simons”) and his corporation, Seville Properties Ltd.

[144] There is no meaningful or credible evidence before me regarding any negotiations or agreed terms for Mr. Simons’ participation in the joint venture. The only document in evidence is a February 28, 2007 “term sheet” letter from CWB to Mr. Johal respecting a credit facility for the Royal Bay Property development. That proposed loan was in the amount of \$15,917,000 for a two-phase construction of the project. The borrower was to be 0775 Ltd., however the loan was to be guaranteed by each of Messrs. Johal, Aujla, and Simons along with their respective corporations. These latter individuals all signed the proposed term sheet both in their individual capacities and as signatories for their respective corporations.

[145] Mr. Simons dropped out of the proposed venture. The evidence affords no explanation of what occurred, however, according to Mr. Johal, Mr. Sra “said he will do [Ms. Pasricha’s] 25%”. Again, there is no documentation and/or other credible

evidence respecting the precise terms on which Mr. Sra agreed to join the joint venture. The first document showing his involvement is a May 3, 2007 Commitment Letter from CWB to Mr. Johal at 0775 Ltd. updating the terms of the CWB loan for the joint venture project. This document is signed by Mr. and Mrs. Aujla, Mr. and Mrs. Johal, and Mr. Sra as “personal guarantors” of the loan.

[146] Mr. Johal testified that although Mr. Sra was “taking over” Ms. Pasricha’s position in the joint venture, Mr. Sra informed him that he was “tight on money” and would be awaiting proceeds from some sale before being able to make any contribution to the joint venture. Mr. Johal says Mr. Sra “promised to put money in”, however ultimately did not do so. There is no credible evidence Mr. Johal informed Mr. Aujla of Mr. Sra’s impecuniosity.

[147] It should be noted that in April 2007, Mr. Johal caused Nu Tek Doors to deposit \$175,000 into the account of 0775 Ltd. That same month, Mr. Johal issued two 0775 Ltd. payments to Mr. Sra in the aggregate amount of \$150,000 in satisfaction of the deferred realtor’s commission applied as a “credit” at the time of the closing transaction and which Mr. Johal had personally promised to pay. That same month, Mr. Johal also caused 0775 Ltd. to issue another cheque to Mr. Sra in the amount of \$15,476 in purported repayment of the \$10,000 deposit initially paid by Mr. Sra on behalf of Mr. Bal under the November 10, 2006 CPS and a further \$5,476 reimbursement of the amounts Mr. Sra had paid to Mr. Baker for the January 2007 appraisal. Mr. Johal cannot and does not explain why part or all of these payments were not simply withheld as a form of a contribution by Mr. Sra to the joint venture.

[148] In any event, it is important to note that even though Mr. Johal structured the deferred realtor’s commission as an obligation of 0775 Ltd. and arranged for the latter to pay the \$150,000 to Mr. Sra in April 2007, it was actually a personal obligation on his part. His payment of \$175,000 into the 0775 Ltd. bank account must not be “double counted” in any final accounting of net considerations by the joint venturers.

[149] There are some other instances during this period of time where Mr. Johal directed funds from the 0775 Ltd. bank account to third parties not associated with the joint venture. These misappropriations must also be taken into account at the end of the day, but they speak volumes about Mr. Johal's perception of his "good faith" obligations as a joint venturer.

[150] Insofar as Ms. Pasricha's departure was concerned, Mr. Johal testified she was not willing to transfer her shares to Mr. Sra unless she was repaid her deposit on the Royal Bay Property purchase. There is nothing in writing to corroborate this. He has produced two photocopy versions of a \$30,000 cheque dated June 25, 2007 made out to Ms. Pasricha and marked "refund of deposit on Royal Bay". They are both CWB cheques, however one version does not identify the payor. The other version has the payor name "Triple 7 Holdings Ltd." added, which is apparently another corporation related to the Johals. Whether any original cheque was actually provided to Ms. Pasricha and/or was cashed by her is unclear. There is no additional documentation in evidence confirming this occurred, although Mr. Johal claims this \$30,000 as a "contribution" to the 0775 Ltd. joint venture.

[151] When challenged by counsel why the directors of 0775 Ltd. did not simply resolve to cancel Ms. Pasricha's shares in 0775 Ltd. as a result of her contribution defaults and then issue new shares to Mr. Sra (instead of transferring Ms. Pasricha's shares to him), Mr. Johal stated "maybe we could have, just did not happen". When challenged about the \$30,000 payment to Ms. Pasricha when she was in breach of her own contribution obligations, Mr. Johal stated, "if this was wrong, it is wrong", i.e. presumably an acknowledgement that, if so, it should not be included in his list of contributions for accounting purposes. I agree with this exclusion.

[152] The Court does not have in this case the benefit of any testimony from Ms. Pasricha or Mr. Sra. What is clear on the evidence that is before the Court, however, is that neither Ms. Pasricha nor Mr. Sra made any significant financial contributions to the joint venture and neither have been taken to task for their respective defaults in that regard. In this very case, the plaintiffs discontinued their litigation against Ms.

Pasricha and Mr. Sra at different times before trial. The Court has not been advised of any satisfactory explanation why this occurred.

[153] I referred earlier to the parallel lawsuit issued by Mr. Johal, Nu Tek Properties, Nu Tek Investments, and 0775 Ltd. in New Westminster Registry action S175772 which sues Mr. Sra, Pemberton Holmes, Mr. Baker, and Ray Baker Appraisals (but does not sue KSRA Holdings Ltd.). That lawsuit seeks damages from Mr. Sra for professional negligence in his role as a realtor including “various fraudulent misrepresentations” regarding value of the Royal Bay Property before it was purchased by 0775 Ltd. It also alleges that Mr. Sra “failed to pay for his 25% shares of 0775 Ltd.,” causing the project to run into “financial trouble” and ultimately foreclosure. Among other things, the suit purports to seek judgment against Mr. Sra “for general damages in favour of Nu Tek, Nu Tek Investments, and [Mr. Johal] for their losses in the Royal Bay Project”. It remains to be seen how that litigation will be resolved.

[154] I referred earlier in the Chronology of Key Events (at para. 78 above) to the refinancing with CWB in mid-June 2007. The co-covenantors on the CWB mortgage included Mr. and Mrs. Johal, Mr. and Mrs. Aujla, and Mr. Sra (the bank ultimately obtained personal judgment against these individuals in June 2009 in the amount of \$3,044,224).

[155] At the time of the CWB commitment, Mr. Bal had not formally become a shareholder in 0775 Ltd. and the bank was unaware of his status as one of the joint venturers. As it turns out, the proposed first instalment on the CWB financing was insufficient to fully pay out Accredited Mortgage and Mr. Johal says he “reached out” to Mr. Bal to join the joint venture to secure additional funding.

[156] Mr. Bal testified that he was, in fact, the person who introduced Mr. Johal to CWB and that a little later in June 2007, he was asked by Mr. Sra and Mr. Johal to join the joint venture. He was shown an appraisal report and a *pro-forma* construction budget and he thought the proposition was “good business”. He was to buy 10% of Mr. Johal’s shares in 0775 Ltd. in exchange for \$125,000. CWB was not

informed of his involvement (so they would not have to “re-do the paperwork”) and this is why Mr. Bal did not appear as a co-covenantor on the CWB loan security documentation.

[157] Mr. Bal did not in fact pay the \$125,000 personally; instead, he obtained that amount from his friend Mr. Toor who issued a cheque in the name of his holding company, Touchwood Homes, payable to Buckley Hogan. This is why, when the 0775 Ltd. securities register was later amended, Mr. Bal's holding company, H.B. Enterprises, was assigned only 5% of the shares and the other 5% were assigned to Touchwood Homes (both by way of share transfers from Nu Tek Properties). Mr. Bal acknowledges that he was the “front man” for both entities insofar as any dealings with the other joint venturers were concerned and he says he does not know whether Messrs. Johal and Aujla were actually aware at the time of Mr. Toor's involvement in the background.

[158] In an affidavit sworn by Mr. Bal on July 21, 2014 in Mr. Aujla's Vancouver Registry action S127502, he states,

Upon request by Satnam Johal, I agreed to purchase 10% of the shares of 077 for the sum of \$178,000. I purchased the shares from Satnam Johal by paying him \$125,000 by bank draft, \$21,000 in various amounts over time by bank transfers, and the balance of \$32,000 by offsetting of funds he owed me on an unrelated matter.

[159] This is the same \$178,000 that Mr. Bal now claims as his capital contribution to the joint venture.

[160] What is clear from the whole of the evidence, and what I find as a fact, is that:

- Messrs. Sra, Bal, and Johal had a history of dealings on the Royal Bay Property and Mr. Bal was well aware of Mr. Johal's various promises to Mr. Aujla, a relatively unsophisticated and gullible participant in the joint venture;
- Mr. Bal was aware that Mr. Johal had attempted to use the \$640,000 Assignment Agreement to increase the price payable for the Royal Bay

- Property over and above the amount stated in the November 10, 2006 CPS, but Mr. Bal (and Ms. Pasricha) had rebuffed that effort and insisted that the transaction proceed for the original sale price;
- in February 2007, Mr. Bal signed the formal assignment of the November 10, 2006 CPS to 0775 Ltd. to enable the closing at the original purchase price and therefore knew full well there was no obligation on the part of 0775 Ltd. (or Mr. Aujla personally) to pay any assignment fee (\$640,000 or otherwise) to Mr. Bal as part of the transaction;
 - Mr. Bal was well aware of the terms of the CWB refinancing in early June 2007 and was invited by Mr. Johal to join the joint venture so that additional monies might be raised to pay off the Accredited mortgage as part of that refinancing;
 - Mr. Bal agreed to join the joint venture by purchasing 10 of the 0775 Ltd. shares held by Mr. Johal's company Nu Tek Properties;
 - Mr. Bal obtained \$125,000 towards that purchase price from Mr. Toor and later arranged for five of the 10 shares to be registered in the name of Mr. Toor's company, Touchwood Homes, all without informing either Mr. Johal or Mr. Aujla of Mr. Toor's involvement and they continued to deal with Mr. Bal as a 10% participant in the joint venture.

[161] Hence, as a matter of fact and law, while the assignment by Mr. Johal of 10% of the shares in 0775 Ltd. granted Mr. Bal a 10% beneficial ownership in the Royal Bay Property, it also assigned to him Mr. Johal's related personal promises and commitments to the other joint venturers, including the obligation to personally ensure payment of his proportionate part of all further expenses and liabilities incurred by 0775 Ltd. in relation to the joint venture.

[162] For his part, Mr. Aujla was told and clearly understood that, in addition to Mr. Sra replacing Ms. Pasricha as a 25% participant in the joint venture, Mr. Johal had also arranged for Mr. Bal to join the joint venture as a 10% participant with the same

obligation as the other joint venturers to contribute/pay for the expenses and liabilities of the joint venture proportionate to his shareholding (10%) in 0775 Ltd. At the request of the Buckley Hogan law firm, Mr. Aujla duly signed the security documentation related to the CWB refinancing and also the corporate resolutions necessary to change the shareholdings in and the directors of 0775 Ltd. He must be taken to have known that Mr. Bal did not sign the CWB security documentation and was not in fact a co-covenantor to CWB. As well, he must be taken to have realized that, with the resignation of Ms. Pasricha as a director in the corporation, there were only two directors remaining in the corporation as of mid-June 2007, i.e. himself and Mr. Johal.

[163] I also find, both as a fact and as a matter of law, that the \$640,000 assignment fee claimed by Mr. Bal was at no time any contribution by him to the joint venture nor was it the responsibility or liability of either 0775 Ltd. or the other joint venturers in their capacity as such.

[164] Lastly, I cannot accept Mr. Bal's uncorroborated evidence that he paid anything more than \$125,000 for 10 of Mr. Johal's shares in 0775 Ltd. That money, albeit paid by Mr. Toor's company directly to Buckley Hogan, is not a contribution by Mr. Bal to the capital of the joint venture but rather is properly credited as a contribution by Mr. Johal in that regard.

The June 9, 2010 Joint Venture Agreement

[165] This transaction is also set out in the Chronology of Key Events at para. 78 above along with the offer presented to the Court to purchase the Royal Bay Property in foreclosure accompanied by a \$200,000 deposit paid by another of Mr. Johal's companies, Nu Tek Investments. While this offer was approved by the Court, the parties later agreed to set it aside and to work towards redeeming the CWB mortgage by way of a refinancing. The \$200,000 deposit was not paid into court but rather was ultimately deposited into the trust account of CWB's lawyer. Once the new financing was put in place in December 2010, the parties agreed that

the deposit would be applied to 0775 Ltd.'s mortgage debt and it thus became a contribution by Mr. Johal towards the joint venture.

[166] In their submissions, counsel for Mr. Aujla provides five pages of argument why the 2010 joint venture agreement is invalid. I agree with most of those arguments but it is unnecessary to dwell upon the issue at length. Counsel for Mr. Johal acknowledges his client's testimony at trial that the parties "reverted back" to the original Joint Venture Agreement and that the parties agreed that the \$200,000 would be used to redeem the Royal Bay Property. He submits that the second Joint Venture Agreement is therefore of no force and effect. I agree and find as a matter of fact and law that this is the case.

The December 2010 Revised Joint Venture

[167] The December 2010 refinancing was particularly complicated. The purpose was to ensure the payout of the CWB loan but it also triggered a requirement to refinance the York/Varsity mortgage and to pay out other debt encumbrances registered against title (the builders lien and the "Bhullar Judgement"). The steps taken included:

- a revised \$1.8 million mortgage in favour of York/Varsity;
- a \$1 million loan from Cambro Capital secured by a mortgage of both the Royal Bay Property and the Johals' residence;
- a \$325,000 mortgage of Johal property;
- a \$397,000 mortgage of Aujla properties;
- a payment to York/Varsity on account of the earlier financing (approximately \$565,000); and,
- the payment of various Bal debts in the amount of \$221,000 to clear title to certain property so that the Cambro mortgage might have priority.

[168] The transaction also resulted in an agreement between Messrs. Aujla, Johal, and Bal to reconfigure their respective continued participation in the joint venture. This involved the termination of any ongoing interest by Mr. Sra/KSRA Holdings and Mr. Toor/Touchwood Homes. The result was that upon completion of the refinancing transactions, the respective joint venture interests were as follows:

- Mr. Johal/Nu Tek Properties – 55% (55 shares in 0775 Ltd. in the name of Nu Tek Properties);
- Mr. Aujla – 35% (35 shares in 0775 Ltd. in the name of Aujla Developments);
and
- Mr. Bal – 10% (10 shares in 0775 Ltd. in the name of H.B. Enterprises).

[169] As before, each joint venturer’s ongoing obligation was to pay any expenses/liabilities and divide any profits of the joint venture in accordance with their proportionate interest. At the same time, Messrs. Johal, Aujla, and Bal were all co-covenantors and /or guarantors on the debt to York/Varsity and Cambro Capital.

Disputed Contributions and Transactions

The \$867,000 Walker Property Payment to York/Varsity

[170] The dispute here is not whether any payment was made by the Aujlas to York/Varsity but rather how that payment should be characterized for the purposes of any contribution accounting between the parties.

[171] The difficulty arises because when the Aujlas sold the Walker Property shortly after the September 2009 refinancing with York/Varsity, the latter insisted on payment of the collateral mortgage the Aujlas had granted over the Walker Avenue Property as additional security for the transaction. Mr. Aujla was outraged that he had once again been compelled to pay down the joint venture debt in an amount that grossly exceeded his 25% proportionate liability in that regard. He insisted, and ultimately received, on being provided with a mortgage by 0775 Ltd. of the Royal

Bay Property and, indeed, later issued litigation seeking to enforce payment of the “loan” amounts due to him.

[172] The Johal parties submit that the \$867,204 paid to York/Varsity was not a capital contribution made to the joint venture by Mr. Aujla/Aujla Developments but rather was simply a loan to 0775 Ltd. by Mr. and Mrs. Aujla for which they are only entitled to obtain a judgment in debt against 0775 Ltd. alone.

[173] I cannot and do not accept the Johal parties’ submissions on this point.

[174] York/Varsity were entitled at law to insist upon payment to them of the Walker sale proceeds by virtue of the collateral mortgage that had been granted in their favour by the Aujlas as part of the 0775 Ltd. refinancing. That payment reduced the 0775 Ltd. debt to York/Varsity and also the liability in that regard of the co-covenantors on the mortgage, including Mr. and Mrs. Sra and Mr. and Mrs. Johal. The payment is properly considered to be a contribution, albeit involuntary, by Mr. Aujla to the joint venture for which the other joint venturers are liable to pay their proportionate share. At the same time, it also constitutes at law a payment by one set of co-obligors (Mr. and Mrs. Aujla) for which full indemnity is available from 0775 Ltd. along with contribution directly from the other co-obligors including the Sras and the Johals personally, although I acknowledge that the Sra’s are no longer a party to these proceedings.

[175] I should address here the question of the extent to which such co-sureties are liable to each other and how, if at all, that liability might be affected by the contractual obligation of the joint venturers to contribute only in accordance with their respective percentage shareholding in 0775 Ltd.

[176] The co-sureties changed over time as the composition of the joint venture itself changed. At the time of the September 2009 refinancing with York/Varsity, the composition was:

- the Johal parties – 40%

- the Aujla parties – 25%
- the Sra parties – 25%
- the Bal parties – 10%

For reasons that are not clear, the Bal parties somehow avoided inclusion as co-sureties or signatories with respect to the York/Varsity loan. They therefore have no exposure to the Aujlas' Walker Property proceeds co-surety claim, although contractual exposure under the Joint Venture Agreement remains an issue.

[177] As the *McGuinness* text, *supra*, explains, the principles of contribution and indemnity as between co-obligors are equitable in nature, being an example of the law of the unjust enrichment. The underlying principle of equity is that co-sureties are obliged to bear the burden proportionately or rateably. Should any of the co-sureties be proved to be insolvent and therefore unable to contribute, the contributions of the other co-sureties will generally be increased proportionately, unless there is a clear and enforceable agreement between the parties for a different sharing of liability.

[178] In this case, the fundamental principle underlying the joint venture in all of its various iterations was that the joint venturers would contribute towards the expenses and liabilities of the joint venture in proportion to their percentage shareholding in 0775 Ltd. At no time did the parties turn their mind to or expressly agree on the mechanics of increased exposure in the event one or more of them was unable or refused to contribute.

[179] In all the circumstances, I conclude that it is appropriate for any liability as co-sureties to be limited to the same percentage contribution that the appropriate related joint venturer agreed to make from time to time as and when the joint venture evolved. Hence, for example, as a co-surety who was required to pay the Walker Property proceeds, Mrs. Aujla is entitled to recover only a 40% contribution from Mrs. Johal, a 25% contribution from Mrs. Sra (although she has not been sued), and

no contribution at all from the Bal parties. In my view, this is an appropriate and equitable outcome having regard to the manner in which the joint venture undertaking was structured.

The Aujla Contribution to the December 2010 ReFinancing

[180] The issue in dispute here is whether, as the Johal parties now submit, certain payments in the amount of \$221,665.25 towards the Bal parties' debt should be treated as a personal loan by Mr. Aujla to Mr. Bal and therefore not taken into account as any contribution by Mr. Aujla to the joint venture.

[181] I conclude that the payment was not a personal loan. Rather, it was a payment by 0775 Ltd. of Mr. Bal's debt in order to perfect proposed security over his property in favour of Cambro Capital. Hence the full amount of the Aujla net mortgage proceeds (\$397,337.92) should be treated as a contribution by Mr. Aujla to the joint venture and taken into account for the purposes of any equalization liability by the other joint venturers.

[182] The various credits and debits related to the December 10 refinancing are set out in Buckley Hogan's "Statement of Disbursement of Funds & Authority to Pay" along with another "Authority to Pay" document signed on December 17, 2010. The first document reflects the net proceeds received by the law firm as part of the refinancing process:

- York/Varsity mortgage – \$1,676,000
- Cambro mortgage – \$887,441.20
- Johal mortgage – \$189,500
- Johal mortgage – \$133,397.97
- Aujla mortgage – \$397,337.92
- Funds in trust (Bal) – \$40,000

- Total – \$3,323,677.09

[183] From these proceeds, disbursements were made to pay out the CWB mortgage, the earlier York/Varsity mortgage as of December 14, 2010, a certain builders lien filed against the Royal Bay Property, and a judgment registered against title by the Gurinderjit Bhullar in the amount of \$62,500.

[184] The Buckley Hogan Statement ultimately reflects a “balance of funds payable to you” (i.e. 0775 Ltd.) in the amount of \$221,665.25. This particular document was approved and consented to by Mr. Johal on behalf of 0775 Ltd.

[185] The second authority to pay document, also drawn up by the Buckley Hogan firm albeit not on their letterhead, reflects the disbursement of the \$221,665.25 balance as follows:

- 0865858 B.C. Ltd. – \$40,000 (direct repayment of the \$40,000 loan taken out by Mr. Bal);
- Mr. Sandher – \$163,498.73; and
- Mr. Toor – \$18,166.53.

[186] These payments related to Mr. Bal's debt alone and thus represent a significant benefit that he received from the joint venture, one that actually exceeded the amounts he had contributed to the joint venture by that point in time.

[187] On July 21, 2014, Mr. Bal swore an affidavit in Vancouver Registry action S127502 explaining these payments, at least in part (he said nothing about the \$40,000 payment). In that affidavit, he states:

- As part of the new financing, Cambro required a mortgage registered against title to his personal residence to be discharged so that it could be pledged as collateral security for the new mortgage being granted by Cambro;

- Mr. Toor and Mr. Sandher had a mortgage registered against Mr. Bal's personal residence and the joint venturers agreed that 0775 Ltd. would advance funds to pay off that mortgage and which would be treated as an “advance [against] future proceeds from 0775 Ltd.”;
- The funds were then disbursed by Mr. Hogan “as authorized and instructed”; and,
- While Mr. Bal signed a “pledge of my personal residence” in favour of Cambro, the latter never actually registered it against title.

[188] There are two copies of the second Authority to Pay document in evidence, one of which is signed by Mr. Johal alone and the other is signed by Mr. Aujla alone. It is not clear whether Mr. Bal ever signed the original document or, indeed, whether there even exists an original document which bears more than one signature.

[189] I note that after the encumbrances were discharged from Mr. Bal's residence, Mr. Bal transferred title to the property to his wife for no consideration.

[190] On February 18, 2012, Mr. Aujla and Mr. Johal each signed a “Company Resolution” purporting to reflect a directors’ resolution which,

- acknowledged that 0775 Ltd. had “lent money” to Mr. Bal and H.B. Enterprises (setting out the particulars of the \$221,665.26 amount) and,
- authorized Mr. Aujla to recover the loan from Mr. Bal and H.B. Enterprises which “loan and interest must be returned within 30 days from February 18, 2012 to avoid any further legal action”.

[191] I am satisfied on the evidence, and find as a fact, that the \$221,665.26 payment made towards Mr. Bal's debts was a loan from 0775 Ltd. and not a personal loan from Mr. Aujla, and that the latter's net mortgage proceeds of \$397,337.92 represent a contribution by Mr. Aujla to the joint venture as part of the December 2010 refinancing.

The Various L51/Uland Transactions and Payments

[192] Mr. Johal's version of these events can be summarized as follows:

- Mr. Johal met a realtor, Mr. Sekhon, in the summer of 2011 at a social event and shortly thereafter informed him about the Royal Bay Property project and also about two lots on 57th Ave. in Surrey that he had for sale. He provided Mr. Sekhon with certain compaction records regarding the two lots.
- In January 2012, Mr. Sekhon procured two offers from Mr. Ryan Johal (son of Manjinder Johal, neither any relation to Mr. Johal) to purchase one lot (lot 5) for \$425,000 and the other lot (lot 1) for \$400,000, which offers were both accepted by Mr. Johal on behalf of Nu Tek Properties Ltd. on January 27, 2012.
- The sale prices were well below market value and reflected an agreement between Mr. Johal and Ryan Johal/Mr. Sekhon that an offer would be made by Ryan's father to purchase the Royal Bay Property and, once that latter sale completed, Mr. Johal would then receive a bonus payment from Ryan Johal in the amount of \$225,000.
- Mr. Sekhon duly procured an offer from L51 Venture Corp, ostensibly owned by Manjinder Johal, dated February 4, 2012 to purchase the Royal Bay Property for \$3,600,000 with a \$100,000 deposit to be paid within 72 hours of "subject removal". The only subject precedent was a "feasibility study by the purchaser at their cost on/or before 6 March 2012". A copy of the title search for the property was attached to the contract.
- This L51 CPS was signed by each of Mr. Johal and Mr. Aujla on March 1, 2012. On March 6, 2012, an addendum was signed confirming removal of the feasibility study condition. All these documents were signed by Mr. Manjinder Johal on behalf of L51 and Messrs. Aujla/Johal on behalf of 0775 Ltd. and all signatures were witnessed by the same individual (an indecipherable scrawl, presumably belonging to Mr. Sekhon).

- The \$100,000 deposit was paid by way of a Toronto Dominion Bank draft in that amount dated March 5, 2012 payable to Mr. Sekhon's realty company, Omax Realty Ltd. [this draft was actually signed by Mr. Aujla's son, Jatinderpal].
- Thereafter, a series of addenda to the L51 CPS were signed extending the completion dates through to October 30, 2013 in exchange for multiple payments to York/Varsity on account of outstanding interest under their mortgage. One such addendum dated May 14, 2012 contained a term whereby L51 assigned the CPS to Uland Development, an addendum that was signed only by Mr. Aujla on behalf of 0775 Ltd. and a document which Mr. Johal says was never disclosed to him.
- [The validity of some of the signatures on some of these addenda is disputed by each of Mr. Manjinder Johal, Mr. Aujla, and Mr. Johal (i.e. alleged instances of forgery), however each and every signature is witnessed, again by a scrawl presumably belonging to Mr. Sekhon].
- Ultimately, some 15 separate "deposit" payments totaling \$550,000 were made towards the York/Varsity mortgage (not including a \$255,000 payment also made on the mortgage which is addressed later) before the proposed L51/ Uland purchase fell away. By that time, Cambro had initiated their own foreclosure action and had obtained an *order nisi* including personal judgment against the various individual joint venturers.

[193] In their consolidated counterclaim in the Main Action, the Johal defendants seek damages against Mr. Aujla for breach of both "fiduciary duty" and his obligations of "good faith" owed to 0775 Ltd. and to its shareholders/directors on the basis that the L51 CPS and subsequent events were secretly orchestrated by Mr. Aujla without informing the other joint venturers and in order to "acquire benefit for himself and/or his close family members" (presumably through an attempted "improper seizure" of the "opportunity" to acquire the Royal Bay Property"). The damages claimed in that regard are based on increased mortgage and interest

exposures on the part of 0775 Ltd. and its various co-sureties that presumably would otherwise have somehow been avoided.

[194] On August 31, 2015 Mr. Johal issued New Westminster Registry action 173603 in the name of Nu Tek Properties/0775 Ltd. against Ryan Johal, Ryan Construction Ltd., L51 Venture Corp., Parmjit Johal, and Tejinderpal Singh Sekhon seeking damages in the amount of \$225,000 on account of the “side-deal” accompanying the January 2012 purchase of the two Surrey lots owned by Nu Tek Properties. That litigation ultimately settled with the Ryan Johal defendants paying either \$72,000 or \$74,000 to Nu Tek Properties (there are two different partially signed versions of the settlement agreement) and \$1.00 to 0775 Ltd. The settlement agreement stated that all the defendants (including Sekhon) had “conspired to defraud Nu Tek and 0775 Ltd. into providing price reductions on two residential lots....and failed to complete the purchase of the Royal Bay Development”.

[195] The Aujla version of the relevant events can be summarized as follows:

- none of the Aujlas knew Mr. Sekhon, however, in early February, 2012 he showed up unannounced at Mr. Aujla's residence to propose a possible sale of the Royal Bay Property to a company called L51 Ventures which was owned by a supposed developer, Manjinder Johal. Mr. Aujla had never heard of L51 nor did he know Manjinder Johal;
- Mr. Johal discussed the proposed sale with his son, Jatinderpal, and both thought the proposed sale at \$3,600,000 was a “good idea”;
- Jatinderpal discussed the proposition with his sister, Kiran, and they “decided to go forward”. Mr. Sekhon suggested an entity should be structured at “arms length” from Aujla Developments. Mr. Sekhon incorporated and selected the name of the corporate vehicle, “Uland Developments”, and set it up so that Kiran Aujla was the sole shareholder and director of that corporation. No formal assignment agreement was prepared or signed as between L51

Ventures and Uland, however at Mr. Sekhon's suggestion the assignment was noted on an addendum dated May 14, 2012 to the L51 CPS;

- Uland Development opened a bank account at the Toronto Dominion Bank and both Jatinderpal and Kiran Aujla were signatories on that account. Kiran was not actively involved in Uland's further dealings with respect to the Royal Bay Property. Jatinderpal was running things "with [her] approval", was providing all the money for the various extensions of the L51 CPS, and was dealing with the third-party consultants and also the city regarding the necessary plans and approvals for rezoning and increasing the density of the proposed development;
- Uland ultimately made 15 payments as "deposits"/York/Varsity mortgage payments in the aggregate amount of \$550,000 between March 2012 and October 13, 2012. In addition, Uland also paid a further \$127,403 to various development consultants and/or to the City of Colwood between June 2012 and November 2013 in an effort to advance the rezoning/increased density for the project; and,
- the proposed venture fell apart in October 2013 when it became apparent that an increased density would not be permitted in light of a restrictive covenant that had been registered years earlier on title to the Royal Bay Property limiting any development to 38 units (the original design of Mamic, assumed by the joint venture).

[196] Manjinder Johal was called as a witness by the defendants. It was quickly apparent that he had little memory of the events. He described himself as a house builder, although he said he does not have a license. He does not speak English very well, nor does he read English with much comprehension. He had little understanding of the L51 CPS transaction.

[197] According to Manjinder Johal, it was Mr. Sekhon who "did everything", including the incorporation of L51 Ventures. He said he does not know what

Mr. Sekhon did in regard to the transactions and he does not remember if he even paid any money in connection with respect to those dealings.

[198] When presented with copies of the L51 CPS and its various addenda, Manjinder Johal identified his signature on the February 4, 2012 contract, the March 6 and March 27, 2012 addenda but thereafter stated all the addenda signatures “did not look like his” (and indeed they do not look similar to the signatures Manjinder Johal accepted as his own).

[199] What is clear from all of the above, and what I find as a fact, is that the entire L51/Uland chapter of this drama was orchestrated by Mr. Sekhon with the willing participation of Jatinderpal Aujla (and his sister Kiran Aujla). Mr. Aujla was aware of what his children were attempting to do and he signed the various addenda required to extend the completion dates for that proposed take over through to its collapse in October 2013.

[200] Like Mr. Aujla, Jatinderpal Aujla was also a shareholder and director in Aujla Developments, the corporate entity which held the shares of 0775 Ltd. Both were subject to good faith obligations of honest performance in relation to the joint venture undertaking and both of them breached that obligation by failing to frankly inform Mr. Johal and Mr. Bal of their intentions and efforts to acquire the Royal Bay Property development outside of the original joint venture. Similarly, none of the Aujlas informed either Mr. Johal or Mr. Bal of the Uland involvement but instead perpetuated the appearance of an ongoing involvement by L51 Ventures.

[201] In all these circumstances, none of the Jatinderpal Aujla/ Uland payments made to either reduce the York/Varsity mortgage or to restructure the development of the Royal Bay Property can properly be considered a financial contribution by the Aujla parties to the joint venture.

[202] The Johal parties submit that the consequence for the Aujlas’ inappropriate attempt to take over the Royal Bay Property project through L51/Uland should be not only dismissal of any claims seeking credit for the Uland payments made but also

that any interest accrued between March 7, 2012 to October 30, 2013 on both the York/Varsity and Cambro mortgages should be “debited against the equity contributions of Aujla Developments”. The Johal parties have purported to make their own calculations of such interest in the cumulative amount of \$526,000 under the York/Varsity mortgage and \$237,000 under the Cambro mortgage. If the Court is reluctant to accept these interest calculations, then the Aujla parties submit the matter should be referred to the Registrar of the Court for determination.

[203] The Johal submissions on this line of argument are rather muddled. First and foremost, they fail to address the law of causation insofar as any assessment of damages is concerned. There is simply no evidence that the Royal Bay Property could have been sold in the marketplace at any price approximating the mortgage debts. The L51 offer of \$3,600,000 was the highest offer by far that materialized in the period 2012 to 2015, and even then it was \$266,000 less than the parties had originally paid for the property in 2006. The offers in the subsequent foreclosure proceedings ranged from a low of \$1,830,000 to a high of \$3,151,000.

[204] Mr. Johal accepted the L51 offer and the subsequent extension payments because he thought it was the most attractive opportunity to get rid of the Royal Bay Property for the least amount of loss to 0775 Ltd. and the joint venturers. If an increase in density had turned out to be available to Uland, Mr. Johal would have happily exited the venture with a sigh of relief. He simply did not have the necessary financial resources to see the project through to completion.

[205] In June 2013, Mr. Johal called a directors meeting at which, in the absence of Mr. Aujla, he and Mr. Bal (not actually a director) purported to give Mr. Johal authority to defend the Cambro foreclosure proceeding on behalf of 0775 Ltd. and yet he did not procure offers until 2015. The offers that materialised did not match, let alone exceed, the outstanding debt.

[206] It’s clear that the Aujlas conferred a benefit on 0775 Ltd. and the joint venture participants (including the other co-obligors on the loans) by making payments on the York/Varsity mortgage from 2012 through October 2013 in the amount of

\$550,000 (Uland) and Mr. Aujla's \$255,120 payment in October 2012. Mr. Aujla is not entitled to any "contribution credit" for the Uland payments and the joint venturers have not sustained any loss in that regard. Mr. Johal's assertion that "had he known" about the assignment to Uland, he would not have agreed to it is an assertion which I do not accept but even if that were so, he has not established that 0775 Ltd. or the joint venturers sustained any loss as a result of the L51/Uland transaction that would otherwise have been avoided. Absent such loss, liability for breach of fiduciary or good faith duties cannot exist.

[207] The Johal parties' counterclaim for damages from the Aujla parties for breach of fiduciary duty or other duties of good faith in respect of the L51/Uland transaction must be and is dismissed.

[208] The remaining issue relates to the \$255,120 payment made by Mr. Aujla towards the outstanding York/Varsity judgment registered against Mr. Aujla's property on Formby Street, Burnaby and 51st Ave., Langley. This payment was specifically referenced and contemplated by the parties in the September 14, 2012 addendum to the L51 CPS signed by both Mr. Aujla and Mr. Johal. At the time, Mr. Aujla was trying to refinance those properties and a discharge of the judgment was required in order for that refinancing to proceed. An agreement was reached between the York/Varsity solicitor, Mr. Markus, and Mr. Aujla's notary, Ms. Chung, for such a discharge to be registered in exchange for \$255,120.34 which was to be credited against York/Varsity's "legal fees and arrears on the main debt".

[209] The registration of the York/Varsity judgment against Mr. Aujla's properties occurred because he was a co-covenantor on the 0775 Ltd. mortgage loan. Enforcement of that judgment triggered the obligation to pay the \$255,120 and the 0775 Ltd. debt (and that of the other co-obligors) was reduced accordingly. That payment was thus not only a further contribution to the disintegrating 0775 Ltd. joint venture (embroiled as it was in at least four different lawsuits at the time) but also entitled Mr. Aujla to contribution from his co-obligors to the tune of their percentage shareholding in the joint venture (at that time 55% – Johal parties, and 10% – Bal

parties). These obligations must therefore be factored into the final tally between the parties as a credit for the Aujla parties.

The September 2015 Johal Settlement with Cambro

[210] In September 2015, Mr. Johal reached a settlement with Cambro Capital, the principal terms of which were as follows:

- Mr. Johal had 60 days to procure an “acceptable offer” from a third party to purchase the Royal Bay Property at an amount not less than \$2,700,000 (Cambro already had an offer in that amount in hand);
- if the accepted offer was lower than \$3,150,000, then Mr. Johal would be liable to pay Cambro the difference between the final sale amount and the said \$3,150,000;
- if Mr. Johal was able to procure an accepted offer of \$3,150,000, then, provided that this resulted in a concluded sale of the property, Cambro Capital would no longer seek collection from and would release from any and all liability Mr. Johal, Mrs. Johal, Nu Tek Properties, and Nu Tek Investments;
- however, Cambro Capital expressly reserved all rights to continued collection of any shortfall in their judgment against 0775 Ltd., Mr. Aujla, and Mr. Bal;
- if any of the latter parties made claims or sought contribution or indemnity from Mr. Johal, this would not interfere or prevent Cambro Capital from continuing collection proceedings against those parties; and,
- if Cambro Capital was paid \$3,150,000, then they would immediately release their mortgage against Mr. Johal's property.

[211] As it turns out, Mr. Johal was able to secure an acceptable offer for the Royal Bay Property from 1051906 BC Ltd. (Mr. Gurdev Sandhu) in the amount of \$3,151,000 and that offer was approved and accepted by the Court in the York/Varsity foreclosure proceedings on October 15, 2015. The closing date for the

transaction was December 16, 2015 at which time the purchaser was to receive title to the property free and clear of the York/Varsity and Cambro encumbrances.

[212] It appears Mr. Sandhu developed cold feet about the project, however Mr. Johal was able to convince his friend, Mr. Bains, to take care over ownership of 1051906 BC Ltd. and the sale transaction completed as scheduled. As a result, the York/Varsity mortgage was paid out in full (\$2,694,000) and \$460,000 was paid down on the Cambro Capital indebtedness leaving a remaining balance of \$969,913.

[213] The result of the settlement made between Cambro Capital and Mr. Johal was thus that the Johal parties were released from any further liability to Cambro Capital and the latter's mortgage against Mr. Johal's property was discharged. However, Cambro Capital were at liberty to, and they did in fact, continue collection proceedings against Mr. Aujla.

[214] With chutzpah that might well be admirable in other circumstances, Mr. Johal asserts, albeit not very forcefully, that he should be given "contribution credit" for the difference between \$2.7 million and \$3,150,000 (i.e. \$450,000) as a "benefit" received by the joint venture that would not otherwise have been received but for his extra effort.

[215] I cannot agree with this submission. To the contrary, Mr. Johal was acting throughout only in his own interest without concern for the interests of his joint venturers whom he was throwing under the bus. He stated during his testimony at trial, "while the ship is sinking, everyone wants to protect themselves", and this of course is precisely what he managed to do without being required to pay anything himself to Cambro. Hence, since no actual payment was made by Mr. Johal that might otherwise have qualified as a contribution to the joint venture and/or a credit towards any claims by co-obligors, he is not entitled to any credit on account of the Royal Bay Property sale to 1051906 BC Ltd.

The May 2017 Aujla Fraudulent Conveyance Settlement with Cambro (\$712,500)

[216] This \$712,500 claim is the subject matter of New Westminster Registry action S-247756 referred to earlier as “the Indemnity Action” and more particularly described in paras. 65 to 75 and 79 to 81 of these Reasons for Judgment. In their submissions, the Aujla parties say that the \$712,500 “must be addressed both as a joint venture contribution in the accounting and as a claim for contribution and indemnity against co-obligors on the Cambro loan” (emphasis added).

[217] The Cambro loan was secured by way of mortgages on both the Royal Bay Property and Mr. and Mrs. Johal’s residence. Hence, 0775 Ltd. and Mr. and Mrs. Johal were the primary debtors on that loan.

[218] Additional security was provided by way of a joint and several demand promissory note signed by 0775 Ltd., Mr. and Mrs. Johal, Mr. Aujla and Mr. Bal. As well, Mr. Aujla, Mr. Johal, and Mr. Bal each signed a guarantee of 0775 Ltd. and Mr. and Mrs. Johal’s obligations under the mortgages.

[219] The Cambro foreclosure petition was issued on March 27, 2013 and the respondents included 0775 Ltd., Mr. and Mrs. Johal, Mr. Aujla, and Mr. Bal among others. It sought the usual remedies, including:

- a declaration respecting the validity of the charges granted by the mortgages of the Royal Bay Property and the Johal residence;
- a declaration as to amounts due and redemption provisions; and,
- personal judgment against 0775 Ltd., Mr. and Mrs. Johal, Mr. Aujla, and Mr. Bal [at that time, in the amount of \$1,363,587].

[220] The *order nisi* was granted by this Court on October 21, 2013. The claim for personal judgment against Mrs. Johal was adjourned generally, however personal judgment was granted against 0775 Ltd., Mr. Johal, Mr. Aujla, and Mr. Bal in the amount of \$1,338,859.

[221] As noted above, the Court-ordered sale of the Royal Bay Property completed on December 16, 2015 and \$460,000 of the net sale proceeds were paid down on the Cambro Capital indebtedness leaving a remaining balance of \$969,900. As a result of the settlement agreement made between Cambro Capital and the Johals, Cambro Capital ceased collection of their judgment from the Johal parties but expressly reserved rights to continue collection against 0775 Ltd., Mr. Aujla, and Mr. Bal.

[222] The collection proceedings against Mr. Aujla took the form of a fraudulent conveyance action issued on July 31, 2015. That action sued not only Mr. Aujla but also his two children, Jatinderpal and Kiran, to whom Mr. Aujla had transferred his interest in the Formby Street property (to Jatinderpal) and the East 39th Ave. property (to Kiran). The claim also sought to “trace” for execution purposes certain sale proceeds from a Langley property which had also been transferred by Mr. Aujla to Jatinderpal and which the latter sold in May 2015.

[223] The fraudulent conveyance action was settled on May 23, 2017 pursuant to which all three defendants jointly and severally agreed to pay Cambro Capital \$712,500 in exchange for,

- a consent dismissal of the action “as though dismissed on the merits following trial”;
- a release of all claims against Jatinderpal and Kiran Aujla;
- a covenant not to pursue further collection of the Cambro judgment against Mr. Aujla (which judgment was stated to have “merged” all of Mr. Aujla's liabilities respecting the Cambro mortgage, the guarantee and/or the promissory note); and,
- preserved Cambro’s rights to continue collection of the balance of the judgment shortfall from Mr. Bal and 0775 Ltd.

[224] The settlement agreement expressly provided:

8. The plaintiffs acknowledge and agree that the Payment is being made by the Aujla parties on account of the Judgment which, in turn, was obtained in part because of the Guarantee.

9. Nothing in this Agreement shall be construed as impairing the Aujla Parties' right to seek contribution and indemnity from Gurdip's co-guarantors under the Guarantee, Harinder Bal and Satnam Johal and Kulwinder Johal.

[225] In their Response to Civil Claim in this Indemnity Action, among other things, the Johals,

- deny that Mr. Aujla actually paid any money to Cambro, whether to settle claims in relation to the promissory note and mortgage or otherwise;
- say that the payment was made by Jatinderpal and Kiran Aujla to resolve the fraudulent conveyance claims; and,
- deny that Mrs. Johal guaranteed the 0775 Ltd. debt and hence say there is no basis for any indemnity liability on her part in favor of Mr. Aujla.

[226] The uncontradicted evidence from all four Aujla witnesses at trial is that the transfers of the parents' property interests to their children was done because of increasing health and stress concerns on the part of the parents and on the basis that Jatinderpal and Kiran had promised to deal with the various debt obligations that the parents had incurred. This may have been so but it is not much of a legal defence to the fraudulent conveyance action. It is not a legal issue that I am required to decide (and I do not decide it), however suffice it to say the settlement reflects a very high likelihood that Cambro's fraudulent conveyance claim would have succeeded, that the conveyances would have been set aside and title restored in the name of Mr. and Mrs. Aujla, and that Cambro Capital would thereupon have executed their unpaid judgment against Mr. Aujla against the properties.

[227] I accept that Jatinderpal and Kiran Aujla had assumed management of their parents' financial affairs, including resolution of outstanding judgment debts. While they may have been the persons who raised the \$712,500 settlement amount, that payment was clearly made on behalf of their father to settle the Cambro judgment

enforcement proceedings against him. It was, for all practical purposes, a payment on behalf of Mr. Johal notwithstanding that it also ultimately allowed Jatinderpal and Kiran to retain registered title to their respective properties.

[228] Hence, the \$712,500 payment to Cambro was in fact a payment by Mr. Aujla in reduction of the joint-venture indebtedness to Cambro and Mr. Aujla is entitled at law to seek indemnity from 0775 Ltd. as primary debtor and contribution from the other joint venturers/co-obligors in accordance with their respective percentage shareholding in the venture (at that time 55% – Johal parties, and 10% – Bal parties).

[229] Insofar as any indemnity/contribution claim against Mrs. Johal is concerned, counsel for the Johals submits that Cambro Capital never secured a judgment against Mrs. Johal and hence any payment by Mr. Aujla of the judgment granted to Cambro Capital on October 21, 2013 cannot and does not amount to any payment of any crystallized liability of Mrs. Aujla. She had raised a defence to the Cambro Capital mortgage foreclosure and this was why the October 21, 2013 *order nisi* directed that the claim against Mrs. Johal was to be adjourned generally. Paragraph 9 of the *order nisi* also provides “*nothing in this order shall restrict the respondent Kulwinder Johal from raising any defence she may choose with respect to the subject mortgage*”.

[230] I do not agree that Mrs. Johal should somehow escape contribution liability to Mr. Aujla in respect of the \$712,500 payment to Cambro Capital. She did not testify at this trial and thus has not substantiated any defence to the Cambro Capital claim or to any contribution liability based on that loan. She, along with her husband and 0775 Ltd. were the primary debtors under the mortgages and she was also jointly and severally liable along with the other signatories to the \$1 million promissory note signed in favour of Cambro Capital. While she was able to escape ultimate liability to Cambro Capital by virtue of the settlement agreement made between her husband and Cambro Capital on September 21, 2015, any such side-deal does not as a matter of law automatically discharge her from any contribution liability towards co-

obligors such as Mr. Aujla (and it might be noted that she was actually being sued for such contribution at the time pursuant to the Consolidated Notice of Civil Claim first issued in New Westminster Registry action 136837 on May 15, 2015).

[231] For the reasons stated earlier, however, even though Mrs. Johal was not herself one of the joint venturers (only her company Nu Tek Properties and her husband Mr. Johal), it is nevertheless appropriate that her contribution liability is limited to the proportionate Johal 55% shareholding in the joint venture at the relevant time period.

[232] I acknowledge Mr. Aujla's argument that s. 53 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 combines with Mrs. Johal's capacity as a "direct mortgagor"/debtor to possibly permit contribution recovery in a higher amount (particularly if one of the other co-obligors is insolvent, which has not actually been proved in this case). However, in my opinion, the appropriate equitable remedy in this case should be based on the intent of the joint venturers that respective liabilities would reflect their percentage shareholding in the joint venture.

[233] Ultimately, I conclude that the \$712,500 payment to Cambro Capital was made to satisfy Mr. Aujla's liability to that entity and is properly taken into account as a credit triggering contribution from Mr. and Mrs. Johal (and Mr. Bal, too) when the final tally is taken between the parties.

The Accounting (Contribution Claims and Cross Claims)

[234] As noted earlier, the original written Joint Venture Agreement contemplated monthly financial statements and a periodic accounting between the parties of their respective contributions with a view to identifying and presumably rectifying "over-contributions" and "under-contributions". No such balancing of accounts occurred, although the 0775 Ltd. bank accounts (including monthly bank statements) were available and the parties presumably kept their own "running tally" or other informal assessment from time to time.

[235] Mr. Bal first initiated litigation between the parties in February 2010 when he launched his suit seeking payment of the assignment fee allegedly due to him by 0775 Ltd. and/or Nu Tek Properties.

[236] In August 2011, Mr. Aujla filed his two lawsuits seeking repayment of his respective \$397,000 and \$875,000 contributions. His third lawsuit, combining those two amounts, was issued in October 2012.

[237] In the meantime, CWB had issued its foreclosure proceedings in March 2009 and York/Varsity issued its foreclosure proceedings in July 2011.

[238] This litigation prompted the need for an accounting. Mr. Johal eventually produced his first comprehensive listing of the Johal contributions to the joint venture between November 2006 and early June 2007. Most, but not all the payments were cross-referenced to certain cheques. The source of each payment/adjustment was also identified. At that time, he calculated that his aggregate contributions during that period totalled approximately \$1,607,000.

[239] Counsel for Mr. Aujla commissioned an expert report dated December 23, 2022 from Ms. Farida Sukhia, CPA, CA, CBV (“Ms. Sukhia”), a partner with Blair MacKay Mynett Valuations Inc. Ms. Sukhia was provided with supporting documentation produced in this litigation (including the Johal accounting) and she was asked to compile an updated accounting of each party's contribution to the joint venture enterprise. Her report, which is very helpful, was marked as an exhibit at the trial.

[240] At trial, counsel for the plaintiffs provided the Court with four schedules setting out the contributions of the Aujla parties, Uland, the Bal parties, and the Johal parties respectively. The schedules reflect the numbers in the Sukhia expert report along with an indication which amounts the Aujla parties were prepared to admit or acknowledge. The Johal schedule also included various additional items which were presented at the trial and which had not been previously listed in the earlier Johal accounting (all of which additions were “rejected” by the Aujla parties).

[241] While I accept that the actual calculations set out in the Sukhia expert report are accurate, I have recharacterized some of the transactions involved, rejected some, and included others. The results are set out below.

The Aujla Contributions/Payments

[242] The schedule of Aujla contributions/payments is relatively simple:

Date	Description	Amount
November 30, 2006	2006 CPS deposit, paid into 0775 Ltd. account	\$350,000
December 8, 2006	CPS deposit paid into 0775 Ltd. account	\$200,000
February 12, 2007	Bank draft to complete purchase of Royal Bay Property, deposited in Buckley Hogan trust account	\$50,000
September 15, 2008	CWB loan payment	\$22,500
September 1, 2009	Payment of Hamilton Duncan legal fees	\$16,738
October 14, 2009	Payment to York/Varsity from Walker Avenue sale proceeds	\$867,204
December 14, 2010	Aujla property net mortgage proceeds	\$397,338
February 23, 2011	Show home invoice payment to GV Kitchen Arts	\$23,500
February 23, 2011	Royal Bay Property premium payment to Gold Key Insurance	\$2,440
October 3, 2012	Net Aujla mortgage proceeds paid to solicitor	\$255,120

	for York/Varsity re interest/legal fees	
September 16, 2013	Payment of "delinquent" Royal Bay Property tax arrears to prevent tax sale	\$26,000
June 15, 2017	Settlement payment to Cambro Capital	\$712,500
	Total Contributions/Payments	\$2,923,340

[243] I am satisfied, and find as a fact, that Mr. Aujla made all the above payments and that they are properly taken into account for the purposes of reconciling the liabilities of the respective joint venturers and co-sureties.

Bal Contributions/Payments

[244] Mr. Bal claims he made the following contributions towards the joint venture:

Date	Description	Amount
November 25, 2006	Assignment fee	\$684,000
June 15, 2007	Acquisition of 10% of common shares of 0775 Ltd. from Nu Tek Properties	\$178,000 (\$125,000 borrowed from Touchwood Homes, \$32,000 offset of funds owed by Mr. Johal and \$21,000 in various amounts over time by bank transfers)
November 25, 2010	Funds received from 0865858 BC Ltd. injected into December 2010 refinancing	\$40,000
January – October 2010	Unpaid project management fees	\$75,000

	(10 x \$7,500)	
May – July 2015	Surrendered deposit re May 28, 2015 CPS between Cambro Capital and 1004223 BC Ltd. (Mr. Gurbachan Singara)	\$61,392
	Total Contributions/Payments	\$1,038,392

[245] I have already dealt with some of these items in these Reasons for Judgment. The claim for an assignment fee in the amount of \$684,000 is, if it is even enforceable, not a liability of 0775 Ltd. or the joint venture. It is also not a contribution towards the joint venture which, of course, Mr. Bal did not join until June 2007.

[246] With respect to the claim for \$178,000, there is no doubt that the Buckley Hogan law firm received \$125,000 from Touchwood Homes, an amount that was actually a loan to Mr. Bal from Mr. Toor. However, as Mr. Bal himself testified in an early affidavit, this amount was payable to Mr. Johal/Nu Tek Properties to acquire 10% of the latter's shares in 0775 Ltd. Hence the payment to Buckley Hogan actually represents an indirect contribution by Mr. Johal to the joint venture, not by Mr. Bal.

[247] With respect to the claimed additional payments to Mr. Johal by way of a debt-offset and a further \$21,000 over time by bank transfers, the simple fact of the matter is that not a shred of evidence was adduced to corroborate the existence of either the debt or the payments and, given Mr. Bal's credibility problems, I am not prepared to accept his uncorroborated testimony in that regard. In any event, of course, even if those transactions existed, they would represent a payment towards the purchase price of the Johal/Nu Tek Properties shares, not a contribution to the joint venture.

[248] I do find as a fact that, in late November/early December 2010, Mr. Bal borrowed \$40,000 which he "contributed" to the joint venture refinancing that took

place at that time. However, that money was received from 0865858 BC Ltd. and was almost immediately repaid to that entity by the joint venture. Hence the contribution is a net zero and is not taken into account when the final tally between the parties is made.

[249] The claim for the project management fees is also unsupported. The existence of an agreement between the parties to pay such fees has not been established on the evidence and, again, I am not prepared to accept Mr. Bal's uncorroborated assertions to the contrary. I do acknowledge, however, that he made some efforts following the December 2010 refinancing to move the project forward. Unfortunately, none of the parties (other than Mr. Aujla) were able or prepared to inject any further cash into the undertaking at the time and Mr. Bal's efforts soon came to an end when the unpaid trades and consultants refused to cooperate. I find that no management fees were payable to Mr. Bal and they are neither a liability of 0775 Ltd. nor any form of monetary "contribution" by Mr. Bal to the joint venture.

[250] There is in evidence a copy of a CPS dated May 28, 2015 made between Cambro Capital and 1004223 B.C. Ltd., a company on whose behalf appears the signature of Mr. Gurbachan Singh Singara. That document actually reflects a series of offers and counter-offers for the Royal Bay Property, ultimately for a purchase price of \$3,030,000, in respect of which a \$61,392 deposit was paid. The sale was originally supposed to complete on June 29, 2015 but it was extended to July 14, 2015 by agreement of the parties on the condition that the deposit would be retained by Cambro Capital in the event of non-completion.

[251] It appears that Mr. Bal may have had some involvement in this attempted sale to 1004223 B.C. Ltd. but again there is not a shred of documentation corroborating that involvement, let alone any financial contribution by him to the deposit. I am not prepared to accept any uncorroborated testimony from Mr. Bal to the effect that he did indeed make some or all of this payment, even assuming it was actually applied in reduction of the 0775 Ltd. indebtedness.

[252] In short, Mr. Bal made zero financial contribution directly to the joint venture even though he and H.B. Enterprises had agreed to contribute/pay 10% of the joint venture's expenses and liabilities from mid-June 2007 onward.

[253] Indeed, Mr. Bal came out ahead of the game.

[254] First, Mr. Johal issued a cheque in the amount of \$10,000 to Mr. Bal on April 12, 2007, drawn on the 0775 Ltd. bank account. No rationale whatever has been provided for that payment other than a suggestion it was a "loan". It is an example of Mr. Johal wrongly treating 0775 Ltd.'s money as his own and is a payment that is properly deducted from any contributions that Mr. Johal may have legitimately made to the joint venture (there are several other examples of such misappropriations).

[255] Mr. Bal was apparently paid \$20,000 by York/Varsity as a referral fee with respect to the credit facility put in place with that lender in mid-2009. This was a payment made to him by the mortgage broker which arranged this facility and to whom Mr. Bal had referred the business. It was paid from that broker's own fee and hence had no impact on the net amount of the loan received. Nevertheless, it is a good example of how Mr. Bal chose to line his own pockets instead of seeking to make a contribution to the joint venture by way of a possible reduction of the broker's fee and a corresponding increase in the net amount of the loan that would have been available to the joint venture.

[256] Mr. Bal also benefited financially from the December 2010 financing. As set out above, that financing resulted in,

- a payout of the Bhullar Judgment against both Mr. Bal and Mr. Johal in the amount of \$62,500; and,
- a payout of two encumbrances on Mr. Bal's property (Sandher \$163,498.73/Toor \$18,166.53) in order to clear title so that a collateral mortgage might be granted for the refinancing.

[257] I will address the Bhullar Judgment payment in the context of Mr. Johal's contribution. With respect to the Sandher/Toor obligations, Mr. Bal says he was expecting he would repay the joint venture the above amounts once the project was developed and sold. That, of course, did not occur and hence he remains indebted to the joint venture in the amount of \$181,665. Mr. Aujla thus has a 35% beneficial interest in that debt which is included in his award of damages against Mr. Bal.

[258] In summary, Mr. Bal made no financial contributions to the joint venture. Indeed, if the \$10,000 "loan" and 50% of the Bhullar Judgment were added to the \$181,665 debt, he would owe the joint venture in excess of \$223,000, before accounting for any additional liabilities he (and his spouse) may have to the Aujla parties.

Johal Contributions/Payments

[259] It is rather remarkable that Mr. Johal was able to persuade Mr. Aujla to pay \$550,000 as a non-refundable "deposit" towards the purchase price for the Royal Bay Property based on an assurance that he (Mr. Johal) would "put in his money" or "his share" at the time of closing. A reasonable person in Mr. Aujla's position would very likely have understood this was a promise to inject at least \$1.1 million into the joint venture at that time. That, of course, did not occur.

[260] The joint venture agreement contemplated borrowing from a "chartered bank or other institutional lender". The Laurentian Bank financing proposal likely met that qualification but for reasons that are not entirely clear, that proposal did not proceed.

[261] The simple fact of the matter is that none of Mr. Johal, Ms. Pasricha, or Mr. Sra had the financial means (or perhaps even the intention) to timely inject cash into the venture to proportionately match Mr. Aujla's initial contributions. This is why Mr. Johal had to resort to a non-conventional lender like Accredited Mortgage for very costly short-term financing to complete the purchase. This is a pattern that repeated itself throughout the venture and was the primary reason for its failure.

[262] Reproduced below is the schedule prepared by plaintiff's counsel and which sets out Mr. Johal's list of contributions (debits and credits) for the period 2006 to 2012, along with additional items presented at trial totaling \$1,777,025. The list also includes the "Aujla position" on each item, which would essentially reduce the Johal contribution by approximately \$500,000 to the lesser amount of \$1,277,424:

Schedule A - Johal Contributions					
Transactions noted are based on S. Johal's list at Common Book 992 and 993 with additional entries noted in Plaintiff's Submissions					
Date	Description	Amount	Reference	From	Aujla Position
Oct-11-2006	Kuldeep Sra/Deposit	\$10,000.00	CK 113	Satnam	0.00
Nov-30-2006	Opening bank account	\$100.00	Cash	Satnam	0.00
Dec-08-2006	Paid Pasricha later paid by Satnam	\$30,000.00	Deposit	Nu Tek Prop	0.00
Dec-19-2006	Paid Kuldeep back Ck \$113 Dec 19/06	\$10,000.00	Ck 113	Nu Tek Prop	0.00
Feb-13-2007	Nexterra Env Ck #5 Feb 13/07	-\$20,000.00	Ck 05	775 KCU Acct	-20,000.00
Feb-13-2007	Bhullar Dev Ck #6 Feb 13/07	-\$1,500.00	Ck 06	775 KCU Acct	-3,000.00
Feb-16-2007	Unknown payer	\$0.00	Ck 07	775 KCU Acct	-2,000.00
Feb-12-2007	Samra loan to Satnam on Completion	\$396,000.00	Trust Acct	Satnam	396,000.00
Mar-15-2007	Nexterra Env Ck #10 Mar 15/07	-\$5,000.00	Ck 10	775 KCU Acct	-5,000.00
Apr-12-2007	Deposit by Satnam Apr 12/07	\$90,000.00	Ck 004	Nu Tek Doors	90,000.00
Apr-12-2007	Loan to Bal		Ck 13	775 KCU Acct	-10,000.00
Apr-12-2007	Deposit by Satnam Apr 12/07	\$85,000.00	Ck 003	Nu Tek Doors	85,000.00
Apr-04-2007	Payment to Sra (Re CWB Fee and Appraisal)		Ck 12	775 KCU Acct	-15,476.00
Jun-18-2007	Amar Bains loan by Satnam re Finance	\$253,584.86	Trust Acct	Satnam	253,584.86
Jul-03-2007	Transferred by BH from 775 Trust to Bhullar Dev Sales Trust			775 BH Trust	-27,319.07
Aug-13-2007	Transferred by BH from 775 Trust to pay Nu Tek Invts bill			775 BH Trust	-494.20
Jul-05-2007	Nexterra Env Jul 05/07	-\$3,908.07		775 KCU Acct	-3,908.07
Dec-31-2007	Paid Fees and Interest to Accredited	\$107,084.86	Trust Act	Satnam	0.00
Jan-04-2008	Kuldeep Sra Paid for Bill	\$929.25	Ck 1345	KS/ Satnam	0.00
Apr-22-2008	CWB Mortgage Payment	\$15,500.00	Ck 189	NuTek Doors	15,500.00
Jun-12-2008	Focus Corporation	\$10,000.00	Ck 93	Kuldip Sra	0.00
Jul-03-2008	Zeidler Partnership	\$2,500.00	Ck 1366	Satnam	2,500.00
Jul-23-2008	CWB Mortgage Payment	\$13,200.00	Ck 1374	Satnam	13,200.00
Aug-25-2008	CWB Mortgage Payment	\$14,500.00	Ck 1376	Satnam	14,500.00
Oct-15-2008	CWB Mortgage Payment	\$6,500.00	Ck 282	Nu Tek Doors	6,500.00
Nov-28-2008	CWB Mortgage Payment	\$13,000.00	Ck 1412	Satnam	13,000.00
Nov-28-2008	Barkatali Lalani Corp of the # Company	\$535.00	Ck 1279	Satnam	535.00
Feb-05-2009	CWB Mortgage Payment	\$11,000.00	Ck 1415	Satnam	11,000.00
Apr-06-2009	Ray Baker Appraisal	\$2,218.63	Ck 159	Kuldip Sra	0.00
Jun-12-2009	0775740 BC Ltd.	\$7,500.00	Ck 1440	Satnam	0.00
Jun-15-2009	Hamilton Duncan Legal Fee	\$2,000.00	Ck 1439	Satnam	0.00
Jun-25-2009	CWB Mortgage Payment	\$14,100.00	Ck 1411	Satnam	14,100.00
Aug-27-2009	Ray Baker Appraisal	\$1,023.30	Ck 191	Kuldip Sra	0.00

Sep-02-2009	Buckley Hogan Company Filing	\$277.00	Ck 1479	Satnam	277.00
Sep-03-2009	Gold Key Ins Royal Bay	\$448.00	Ck 1487	Satnam	448.00
Sep-22-2009	Thurber Eng Royal Bay	\$2,600.00	Ck 1495	Satnam	2,600.00
Oct-05-2009	Thurber Eng Royal Bay	\$3,500.00	Ck 70	Kuldip Sra	0.00
Unknown	Gold Key Ins Royal Bay	\$292.00	Ck 064	Satnam	-292.00
Dec-14-2009	Ray Baker Appraisal	\$2,730.00	Ck 6	Satnam	-2,730.00
Dec-15-2009	Westwood Consulting Ltd	\$6,000.00	Ck 7	Satnam	6,000.00
Jan-11-2010	Hamilton Duncan Legal Fee	\$10,000.00	Ck 11	Satnam	-10,000.00
Jul-21-2010	Deposit by Satnam in Court	\$200,000.00	Draft	Nu Tek Inv	200,000.00
Sep-20-2010	Insta Funds Sep 20/10 #14001	\$7,500.00	Ck 14001	Satnam	-7,500.00
Dec-17-2010	Refinanced Lot #1 & Lot #5	\$322,897.97	Trust Act	Nu Tek Prop	322,897.97
Dec-14-2010	Satnam 50% share to pay out Bhullar	-\$31,250.00		Bhullar	-31,250.00
Dec-14-2010	Bal 50% share to pay out Bhullar				-31,250.00
Apr-05-2012	Hamilton Duncan Legal Fee	\$16,451.12		Nu Tek Prop	0.00
Subtotal (as claimed in CR 992-993):		\$1,607,313.92			1,277,423.49
Additional items added late in trial or not listed in CR992-993					
Jun-15-2007	10% of Nu Tek common shares in 07757540 sold to Touchwood Homes	\$125,000.00		Touchwood Homes	0.00
May-31-2013	Hamilton Duncan Legal Fee	\$20,271.00		Nu Tek Prop	0.00
May-16-2015	SAS Law in Trust	\$4,000.00	Ck 738	Nu Tek Prop	0.00
Dec-04-2015	Stern LLB Law Firm	\$12,180.00	Ck 735 and Ck 881	Nu Tek Prop	0.00
Jun-30-2016	M Yasin & Co Inc.	\$8,260.00	Ck 837 and Ck 496	Nu Tek Prop	0.00
Subtotal of new items:		\$169,711.00			0.00
TOTAL JOHAL CONTRIBUTIONS (accepted debits less credits):		\$1,777,024.92			1,277,423.49

[263] It should be noted that counsel added some discount or adjustment entries into the Johal list, entries that did not appear in the list that was put into evidence at trial. Examples include the April 12, 2007 "Loan to Bal" deduction in the amount of \$10,000 and the April 4, 2007 "Payment to Sra" deduction in the amount of \$15,476. There are several other such "adjustments". I address them below.

[264] What is clear, and what I find as a fact, is that between November 30, 2006 and mid-June 2007 (the first iteration of the joint venture), Mr. Johal made the following contributions/payments in relation to the joint venture:

Date	Description	Amount
February 12, 2007	Payment towards completion of land purchase (loan from Samra)	\$396,000
April 12, 2007	Deposit to 0775 Ltd. account (paid by Nu Tek Doors)	\$90,000
April 12, 2007	Deposit to 0775 Ltd. account (paid by Nu Tek Doors)	\$85,000
	Total Contributions/Payments	\$571,000

[265] As indicated in the listing above, Mr. Johal makes claim to additional sums that were allegedly contributed by him to the joint venture during the November 30, 2006 to early June 2007 period, claims which are disputed by the Aujla parties. There are also certain deductions that have to be taken into account.

[266] I start with the \$10,000 deposit that had been paid, apparently by Mr. Sra, in connection with the November 10, 2006 CPS for the Royal Bay Property. This appears at least three times in the Johal list (October 11, 2006, December 19, 2006, and April 4, 2007). The evidence regarding this deposit is somewhat confusing. It appears Mr. Johal provided this \$10,000 to Mr. Sra earlier in 2006 in relation to the September 2006 CPS between Mamic Developments and Nu Tek Properties for the Royal Bay Property. That transaction “fizzled out” (according to Mr. Johal) but it appears the money was not returned to Mr. Johal; instead, it was later used as the deposit for the November 10, 2006 CPS (with Mr. Bal or nominee as the purchaser).

[267] Mr. Johal acknowledged at trial that the October 11, 2006 and December 19, 2006 entries on his list are the same transaction (supposedly paid to Mr. Sra on December 19, 2006), however the chronology submitted to the Court by Mr. Johal’s counsel makes no reference to any such December 19, 2006 payment. It instead

refers to the April 4, 2007 0775 Ltd. cheque to Mr. Sra in the amount of \$15,476 which, as noted on the cheque, was for reimbursement of the deposit on the Royal Bay Property and of an additional \$5,476 for the January 2006 appraisal prepared by Ray Baker Appraisals. On Mr. Johal's own list, that \$15,476 payment to Mr. Sra is noted to be for "CWB fee and appraisal".

[268] At trial, counsel for Mr. Johal acknowledged his client had testified that the \$15,476 was "issued by mistake" and that Mr. Sra had not paid this money back to the joint venture. He suggested that the \$15,476 should be "deducted from Mr. Sra's contribution to the joint venture". I accept that submission.

[269] It certainly appears that, at some point in time, Mr. Johal paid Mr. Sra \$10,000 and this deposit was credited towards the purchase price at the time the Royal Bay Property sale was completed on February 12, 2007. Hence, Mr. Johal is entitled to be credited with that \$10,000 as a contribution to the joint venture, albeit only once.

[270] In the Book of Documents marked as an exhibit, there is a copy of a December 30, 2006 cheque drawn on 0775 Ltd.'s bank account at Khalsa Credit Union in the amount of \$10,000 payable to Laurentian Bank. It was signed by Ms. Pasricha and Mr. Aujla. There is no evidence, let alone credible corroborated evidence, that Mr. Johal deposited the \$10,000 used to fund that payment.

[271] Mr. Johal apparently anticipated there would be a shortage of funds at the time of completion, and he somehow persuaded Mr. Aujla to issue an additional cheque for \$50,000 to 0775 Ltd., which in turn was passed on to Buckley Hogan at the time of closing. As it turns out, there was actually a surplus of funds in Buckley Hogan's trust account at the end of the transaction in the amount of \$42,844.29. This amount was then returned to 0775 Ltd.'s bank account at Khalsa Credit Union, whereupon Mr. Johal proceeded to issue a series of cheques to third parties for matters unrelated to the joint venture as follows:

- February 13, 2007 – Nexterra – \$20,000
- February 13, 2007 – Bhullar Developments – \$1,500
- February 16, 2007 – (unknown recipient) – \$2,000

March 15, 2007 – Nexterra – \$5,000
April 4, 2007 – Mr. Sra – \$15,476 (discussed above)
April 12, 2007 – Mr. Bal – \$10,000 (“loan”)
Total: \$53,976

[272] None of these payments were authorized by Mr. Aujla. They are an example of Mr. Johal treating 0775 Ltd.’s money as his own, something which he did not acknowledge as improper until many years later. In any event, all of these amounts, including one of the double-counted \$10,000 deposits, must be deducted from Mr. Johal's listed contributions for accounting purposes as between the joint venturers for the period November 30, 2006 through early June 2007. The Johal parties’ “net” contribution to the joint venture during that period was therefore $(\$571,000 + 10,000 - \$53,976 =) \$527,024$.

[273] We then turn to the contributions made by the Johal parties during the second iteration of the joint venture between mid-June 2007 and the December 2010 refinancing.

[274] The documentation respecting the June 2007 CWB refinancing and payout of the Accredited Mortgage balance includes an Authority to Pay document signed by Mr. Johal and directing the disbursement of the funds received. The gross amount of the initial advance from CWB was \$3 million, however holdbacks for CWB legal fees, the “commitment fee” of \$110,000, and the \$150,000 “interest reserve” reduced the net mortgage proceeds to \$2,728,029.89. The Buckley Hogan law office was also provided \$125,000 from Touchwood Homes (the amount Mr. Bal had to pay to purchase 10 of Mr. Johal’s shares in 0775 Ltd.) and \$253,584.86 received as a result of Mr. Johal mortgaging his premises to Mr. Amarjit Bains.

[275] The total funds in the Buckley Hogan trust account was \$3,106,614.75 and, after payout of the Accredited Mortgage, outstanding property taxes on the Royal Bay Property, and the Buckley Hogan legal fees, the balance in Buckley Hogan trust account was \$27,319.07. Instead of transferring that money into the bank account of

0775 Ltd., Mr. Johal instructed Buckley Hogan to transfer the \$27,319.07 to another file in the Buckley Hogan office called “Bhullar Development Sale”.

[276] The result of all of this was a contribution by the Johal parties to the joint venture calculated as follows: $\$125,000 + \$253,584.86 - \$27,319.07 = \$351,266$.

[277] The Buckley Hogan records also indicate that \$494.90 was later transferred respecting corporate records for a non-joint-venture-related entity, Nu Tek Investments. This, too, must be taken into account; it reduces the June 2007 Johal net contribution to the joint venture to \$350,771.

[278] Mr. Johal’s list of contributions also contains a December 31, 2007 entry of \$107,084.86 regarding “paid fees and interest to Accredited”. This entry is double-counting. In June 2007, there was a dispute with the Accredited Mortgage about the outstanding balance which was eventually settled, and the \$107,085 payment came from the personal mortgage proceeds of \$253,585 (the Bains loan). That \$107,085 is therefore not an additional contribution that is to be taken into account.

[279] Following this on counsel's list of the Johal contributions are various payments which are disputed. They include a July 5, 2007 payment from the 0775 Ltd. bank account of \$3,908.07 to Nexterra, another misappropriation by Mr. Johal in favour of one of his family members. Mr. Johal claims credit for a \$10,000 payment to Focus Corporation made by Mr. Sra, but that is obviously not a Johal contribution and cannot be included. So, too, with a \$929 payment made by Mr. Sra on January 4, 2006.

[280] Recall that Mr. Johal claims as a contribution a \$30,000 payment he allegedly made to Ms. Pasricha in June 2007 in exchange for her agreeing to transfer her shares to Mr. Sra. That appears in his list of contributions as a December 8, 2006 entry, but the two slightly different photocopied versions of the \$30,000 cheque were both dated June 25, 2007. As noted earlier at paras. 150-151, even if such a \$30,000 payment was made, I do not agree that it properly qualifies as a contribution

by Mr. Johal to the 0775 Ltd. joint venture and it is not to be taken into account for the purposes of any final tally.

[281] There is no doubt that the Johal parties did indeed make other payments between April 2008 and December 2010 that properly qualify as contributions to the joint venture. This includes several payments made to CWB after the interest reserve was exhausted and payments to suppliers such as the insurance broker and an engineering firm. Other payments are disputed. These disputed payments include payments to the law firm Hamilton Duncan and payments to Ray Baker Appraisals (which were actually made by Mr. Sra, not Mr. Johal). These objections are well-founded.

[282] The objection to the Hamilton Duncan legal fees is based on Mr. Aujla's submission that this particular law firm acted as Mr. Johal's counsel on many different files and the allocation of these retainer payments to the joint venture has not been substantiated on the balance of probabilities.

[283] Mr. Johal lists as a contribution to the joint venture four payments made to the Hamilton Duncan law firm:

June 2009 – \$2,000
January 2010 – \$10,000
April 2012 – \$16,451.12
May 31, 2013 – \$20,271
Total: \$48,722.

[284] Hamilton Duncan sued Mr. Johal, Nu Tek Properties, and 0775 Ltd. in January 2011. The Notice of Civil Claim alleged four different retainers, namely, the RK Olympic action (2010, \$27,526 outstanding); the CWB action (2009-2010, \$9,840 outstanding); the First Private Mortgage transaction (August-September 2009, \$1,282.90 outstanding); and a Second Private Mortgage transaction (August-September 2009, \$10,578 outstanding).

[285] The Notice of Civil Claim sought judgment as follows:

- as against Mr. Johal, \$49,227 in respect of the RK Olympic and the First Private Mortgage retainers;
- judgment against Mr. Johal and Nu Tek Properties in respect of the CWB retainer in the amount of \$9,840; and,
- judgment against Mr. Johal and 0775 Ltd. in respect of the Second Private Mortgage retainer in the amount of \$10,578.

[286] The pleading also alleged the existence of a personal guarantee executed by Mr. Johal in respect of any and all payments owed to the law firm by 0775 Ltd. A copy of that personal guarantee dated June 16, 2009 was put into evidence in the “Johal Book of Documents”, marked as an exhibit.

[287] Default judgment was granted in the lawsuit on March 29, 2011 against each of the parties in the amounts claimed and, as part of the attempted execution process, the relevant certificates of judgment were registered against the various properties owned by the respective defendants.

[288] In April 2012, Mr. Johal sold one of the properties owned by Nu Tek Properties on 57th Avenue in Surrey, a property against which Hamilton Duncan had registered their judgment against Nu Tek Properties in the amount of \$9,840. The amount required to discharge that judgment was \$16,451, which comprised the principal amount of the judgment together with both pre- and post-judgment interest and costs to April 27, 2012. This, of course, coincides with one of the four entries in Mr. Johal’s list of joint venture contributions.

[289] I am satisfied that the judgments granted for legal services related to the CWB litigation and the First and Second Mortgage transactions are matters related to the joint venture, and payment of these accounts, if made, would constitute a contribution by the Johal parties to the joint venture. The difficulty lies with the determination whether the other three payments made by the Johal parties towards the Hamilton Duncan accounts were for matters related to the joint venture (properly taken into account) or for unrelated matters such as the RK Olympic retainer (not

properly included). The evidence on this point is jumbled and the submissions are vague.

[290] In the end, and on an admittedly arbitrary basis, I allocate the \$2,000 and \$10,000 retainer payments to the joint venture for present accounting purposes, and I decline to include the \$20,271 payment in that regard.

[291] Mr. Johal claims as a contribution to the joint venture the \$200,000 deposit paid by Nu Tek Investments in connection with that company's offer in the foreclosure proceedings to purchase the Royal Bay Property for \$3,800,000. This was in furtherance of the June 9, 2010 new Joint Venture Agreement discussed earlier in these Reasons for Judgment. The parties thereafter agreed to set that venture aside and "revert back" to the original undertaking with the \$200,000 being credited to the foreclosure claim (the money was being held in the trust account of CWB's lawyer). All of this came to fruition as part of the December 2010 refinancing, and the \$200,000 is more appropriately considered as a contribution during that final iteration of the joint venture created at that time.

[292] Lastly, for the purposes of the second iteration of the joint venture (June 2007 – December 2010), there remains to be considered Mr. Johal's claim for contribution credit in the amount of \$7,500 representing a bank draft issued by Mr. Johal to InstaFund as a fee in relation to proposed refinancing by that particular entity. This draft was actually returned by InstaFund in late September 2010 after they decided not to proceed with the loan. The \$7,500 is therefore not properly included as a contribution by Mr. Johal to the joint venture.

[293] According to the Court's arithmetic, these additional credits (\$115,182) and deductions (\$3,908) should be combined with \$350,771, resulting in a net contribution by the Johal parties to the second iteration of the joint venture in the amount of \$462,046.

[294] We then come to the December 2010 refinancing and the third and last iteration of the joint venture agreement whereby the parties' respective interests

became 55% Johal/Nu Tek; 35% Aujla/Aujla Developments; and 10% Bal/H.B. Enterprises.

[295] The December 2010 refinancing resulted in the CWB mortgage debt being repaid in full. The \$200,000 deposit earlier paid by Nu Tek Investments had been applied in reducing that debt and the parties agree that the \$200,000 is properly recognized as a contribution by the Johal parties to the joint venture.

[296] The refinancing required each of Mr. Johal and Mr. Aujla to further mortgage properties owned by them. The net mortgage proceeds contributed by the Johal parties at that time totalled \$322,897.

[297] As part of the December 2010 refinancing, it was necessary for a certain judgment obtained by Gurinderjit Bhullar in the amount of \$62,500 to be discharged from title. This judgment had been obtained by Ms. Bhullar against Mr. Bal and Mr. Johal personally, and it was an obligation for which they were jointly and severally liable. The issue with respect to this judgment is not so much that it was paid from the refinancing proceeds, but rather whether the full \$62,500 or only half of that amount (\$31,250) should be deducted from Mr. Johal's contribution of \$322,897.

[298] Mr. Aujla argues that it would be unfair to split this deduction between Mr. Bal and Mr. Johal when Mr. Bal is already in a "negative contribution position" and is "unable to pay anything". He says "it would appear more appropriate to treat this as a \$62,500 deduction for Mr. Johal's tally unless and until Mr. Johal can demonstrate that Mr. Bal's contributions are what they should have been".

[299] I am inclined to agree, although perhaps not for precisely the same reason. This judgment was a joint and several liability as between Messrs. Bal and Johal. Each was exposed to paying 100%, in which event the payor would be able to seek 50% contribution from the other. Here, it was Mr. Johal who was required to pay the \$62,500 to remove the judgment from title to his property. This was not a debt of 0775 Ltd. or Mr. Aujla. In such circumstances, it is fair to debit the Johal

contributions by the full amount of the judgment and leave Mr. Johal with his resulting contribution claim against Mr. Bal.

[300] Accordingly, for the purposes of tallying up between all the parties, Mr. Johal's \$322,897 contribution must be reduced by \$62,500 to \$260,397.

[301] I referred earlier to Mr. Johal's claims respecting the joint venture payment of legal fees to Hamilton Duncan on April 5, 2012 in the amount of \$16,451.12, and on May 31, 2013 in the amount of \$20,271. I allow the \$16,451.12 amount, but disallow the \$20,271 payment.

[302] The two other claims for legal fees in the amount of \$4,000 to SAS Law on May 16, 2015 and \$12,180 to Stern LLP on December 4, 2015 apparently relate to criminal proceedings brought against Mr. Johal for failing to file corporate tax returns on behalf of 0775 Ltd. Mr. Johal claims that Mr. Aujla removed the minute book for 0775 Ltd. in December 2010 and that he (Mr. Johal) "did not have the ability to get the financial statements of 077 prepared and the returns filed". This is a nonsensical explanation, and I do not accept it. From the first day of this joint venture, Mr. Johal simply ignored all the formalities required by the written joint venture agreement and made no effort whatsoever to undertake any reconciliation of contributions until he was forced to do so by litigation. This was almost certainly because he had not lived up to his commitment of proportionate contribution and it is only appropriate that he bear the consequences of his own noncompliance with his responsibilities as a director and the main shareholder of 0775 Ltd. These payments should not be included as contributions on the part of the Johal parties for the purposes of any final tallying.

[303] Lastly, the Johal list includes as a contribution to the joint venture the sum of \$8,260 paid to an accounting firm M. Yasin & Co on June 30, 2016. This firm apparently prepared financial statements for 0775 Ltd. for the years 2006-2013 at the request of Mr. Johal's counsel in 2014 for the purposes of the litigation underway at that time. Absent agreement between counsel as to sharing the costs of this exercise (and there is no evidence to that effect before me), this would seem to be a

disbursement for expert assistance in the litigation. It is not a “contribution” by the Johal parties to the joint venture but may be included as part of a costs assessment once this litigation is completed.

[304] I conclude that the Johal parties’ financial contribution to the third iteration of the joint venture following the December 2010 refinancing was [$\$200,000 + \$322,897 + \$16,451 - \$62,500 =$] \$476,849.

The Final Tally

[305] In summary, the joint venturers made the following contributions and the following under/over payments towards the joint venture during its first iteration in the period November 2006 to the beginning of June 2007:

Total Contributions – \$1,177,024
Johal Obligation (50%): \$588,512
Contribution: \$527,024
Underpayment: \$61,488
Aujla Obligation (25%): \$294,256
Contribution: \$600,000
Overpayment: \$305,744
Pasricha Obligation (25%): \$294,256
Contribution: \$50,000
Underpayment: \$244,256

(See Appendix A to these Reasons for the itemized details)

[306] With respect to the second iteration of the joint venture during the period June 2007 to the December 2010 refinancing, the total contributions to the joint venture were \$1,386,159 broken down as follows:

Johal Obligation (40%): \$554,463
Contribution: \$462,046
Underpayment: \$92,417.96
Aujla Obligation (25%): 346,539.68
Contribution: \$906,442
Overpayment: \$559,902.33
Bal Obligation (10%): \$138,615.87
Contribution: \$0
Underpayment: \$138,615.87

Sra Obligation (25%): \$346,539.68
Contribution: \$17,671
Underpayment: \$328,868.50

(See Appendix B to these Reasons for the itemized details)

[307] With respect to the third and final iteration of the joint venture following the December 2010 re-financing, the total contribution by the parties was \$1,893,747 broken down as follows:

Johal Obligation (55%): \$1,041,560.90
Contribution: \$476,849
Underpayment: \$564,711.81

Aujla Obligation (35%): \$662,811.48
Contribution: \$1,416,898
Overpayment: \$754,086.52

Bal Obligation (10%): \$189,374.71
Contribution: \$0
Underpayment: \$189,374.71 (plus 35% of the unpaid \$181,665 debt to 0775 Ltd.)

(See Appendix C to these Reasons for the itemized details)

[308] Each of the joint venturers were contractually bound to make contributions towards the expenses and liabilities of the joint venture in accordance with their respective percentage shareholdings in 0775 Ltd. What is clear from all the above is that Mr. Aujla substantially overpaid, and the other joint venturers all underpaid in that regard. The latter were therefore in breach of their contractual obligations and are obliged to compensate the Aujla parties. The challenge in the unique circumstances of this case is determining how this balancing of accounts is to occur and, in particular, determining the precise amount the Johal and Bal parties are to pay and how/whether the Pasricha/Sra shortfalls are to be factored into the equation.

[309] I have considered three possible approaches.

[310] The first approach is to use the sum of underpayments by the Johal and Bal parties, excluding the Pasricha/Sra underpayments altogether. This would result in liability to Mr. Aujla/Aujla Developments by Mr. Johal/Nu Tek Properties (now 0707890 BC Ltd.) in the amount of approximately \$719,000 and by Mr. Bal/H.B.

Enterprises in the amount of approximately \$328,000 [the arithmetic is set out in Appendix D to these Reasons].

[311] The second approach involves calculating the sum of underpayments by the Johal/Bal parties (as above) but also allocating the under-contributions of Ms. Pasricha and Mr. Sra to their successors. This approach would entail an assumption of Ms. Pasricha's underpayment by Mr. Sra in June 2007, and the later assumption of Mr. Sra's overall underpayment by the Johal (60%) and Aujla (40%) parties in December 2010. This would result in a net overpayment by the Aujla parties of approximately \$1,390,000 payable by the Johal parties in the amount of \$1,062,492 and the Bal parties in the amount of \$327,991, before adding in 35% of the unpaid \$181,665 debt owed by Mr. Bal to 0775 Ltd. [see Appendix D for details].

[312] The third approach is to simply take the sum of all contributions by the Aujla, Johal, and Bal parties throughout the joint venture and calculate their respective over- or under-payments having regard only to their shareholding allocations in 0775 Ltd. following the December 2010 re-financing (Johal parties - 55%; Aujla parties - 35%; Bal parties - 10%). This approach essentially disregards the three separate iterations of the joint venture and, indeed, the participation of Ms. Pasricha and the Sra parties altogether. This is the formula proposed by plaintiff's counsel and also used by counsel for the Johal parties in his reply calculations (which, of course, also ask the Court to disregard certain significant contributions by the Aujla parties and results in the latter owing the Johal parties).

[313] This third approach would result in a net overpayment by the Aujla parties of approximately \$1,387,000 payable by the Johal parties in the amount of \$948,174 and the Bal parties in the amount of \$438,926 (before adding in 35% of the unpaid \$181,665 debt owed by Mr. Bal to 0775 Ltd.) [see Appendix D].

[314] In my opinion, fairness requires that the Pasricha and Sra contribution shortfalls should be factored into the equation. It was these contribution failures which caused the demise of the joint venture and which also, along with Mr. Johal's own lack of timely capital, caused the Aujlas' over-contribution right from the start

and its continuation throughout the project. To ignore that reality is to unfairly further penalize the Aujla parties.

[315] The third approach, advocated by plaintiff's counsel, does represent a form of "rough justice" but, in my view, the second approach evens the playing field further.

[316] The third iteration of the joint venture was a "re-set" that explicitly responded to the Pasricha/Sra shortfalls. The reallocation of the Sra/KSRA shares in 0775 Ltd. to Mr. Johal (60%) and Mr. Aujla (40%) bestowed upon the latter a proportionately increased beneficial interest in the Royal Bay Property itself. The assumption of that increased interest rightly included an assumption and absorption of the related contribution shortfalls as between the two remaining original joint venturers. The outcome fairly increases the Johal parties' exposure under the third approach by a little over 10% and reduces the Bal/H.B. Enterprises exposure by the same amount.

[317] In the result, upon the balancing of proportionate contributions and shortfalls respecting the costs of the joint venture project in accordance with their respective percentage obligations in that regard, I award damages to Mr. Aujla and Aujla Developments against Mr. Johal and Nu Tek Properties (now 0707890 BC Ltd.) in the amount of \$1,062,492, and against Mr. Bal and H.B. Enterprises in the amount of \$391,573 (\$327,991 shortfall plus 35% of unpaid \$181,665 debt to 0775 Ltd.).

Alternative/Additional/Overlapping Claims

[318] In their pleadings, the plaintiffs also assert liability on the part of both the Johal and Bal parties for breach of fiduciary obligations and misrepresentation. They argue that the defendants failed to make their required proportionate contributions, they took money from the joint venture without authorization for their own benefit, they diverted money from the joint venture to other companies and persons without authorization, and they otherwise persisted in wrongful conduct throughout. They argue that the accounting and resulting judgment in contract is "only a partial remedy for the wrongs done" and they seek additional damages in that regard.

[319] The plaintiffs assert that there are “damages beyond the disproportionate contributions” although they acknowledge that measurement of these damages is “problematic”. They submit “the most appropriate measure would be to order the defendants to pay the Aujla parties the full amount of the latter's contributions and payments to the joint venture”. They say such a remedy would “serve contract, tort, fiduciary and equitable principles concerning compensation”.

[320] In my view, all of this is overreach and I am not inclined to grant the relief sought. Neither Mr. Aujla nor Jatinderpal were naïfs. They entered into this joint venture project because they thought there would be a substantial return on their investment. They agreed to make over-contributions to the venture even though they knew little or nothing about the financial ability of the other joint venturers to make their contribution. They willingly eschewed the formalities of a formal joint venture agreement which might have better protected their interests. The family continued to “invest” considerable sums in an ill-advised attempt to pursue the development project in the name of Uland. In several respects, the Aujlas were the authors of their own misfortune and, to some extent, it might even be said that they do not come to equity with the required proverbial “clean hands”.

[321] *Restitutio in integrum* by way of damages in tort is not appropriate compensation here. Damages in contract based on an accounting and a balancing of financial contributions to the joint venture is a sufficient remedy in the circumstances.

[322] The question of contribution and indemnity in equity as between co-obligors is, however, a claim that has merit in this case. The spouses of the individual joint venturers were co-debtors and/or co-sureties on most of the debt incurred by 0775 Ltd. in furtherance of the joint venture. These spouses are rightly exposed to liability to Mr. and Mrs. Aujla on this account.

[323] I am referring here to the \$867,204 "Walker property payment" made by the Aujlas to York/Varsity discussed at paras. 167-179 of these Reasons for Judgment, and also to the \$712,500 settlement amount paid in connection with the May 2017

transaction between Mr. Aujla (and his two children) and Cambro Capital. I have concluded that both payments are properly taken into account as contributions by the Aujla parties to the joint venture and they have been included in the balancing/equalization exercise and the resulting judgments set out above.

[324] Both payments also constitute a reduction of debt by one co-obligor for which there exists a cause of action for indemnity or contribution from the other co-obligors involved in the underlying loan transaction.

[325] The \$867,204 payment to York/Varsity was made by Mr. and Mrs. Aujla (who had granted the collateral mortgage security to York/Varsity) and the other covenantors liable on the York/Varsity loan were Mr. and Mrs. Johal (and their company 0707890 BC Ltd.) and Mr. and Mrs. Sra (neither of whom were involved in the litigation at trial).

[326] In paras. 175-179 of these Reasons, I explain how the liability between co-sureties is appropriately limited to the same percentage contribution that the related joint venturer agreed to make from time to time as and when the joint venture evolved. As a result, Mr. and Mrs. Aujla are entitled to judgment against Mr. and Mrs. Johal jointly and severally for 40% of the amount the Aujlas were compelled to pay York/Varsity and judgment is granted against them in that regard in the amount of \$346,882.

[327] Similarly, the \$712,500 payment made to Cambro Capital in May 2017 is discussed at paras. 216 to 233 of these Reasons for Judgment. This payment was likewise a contribution by the Aujla parties to the joint venture but at the same time triggered liability for indemnity or contribution from 0775 Ltd. and Mr. and Mrs. Johal as the primary debtors and Mr. Johal and Mr. Bal as guarantors of the Cambro Capital loan. Hence, Mr. Aujla is entitled to judgment against Mr. and Mrs. Johal jointly and severally for 55% of the \$712,500 (i.e. \$391,875) and against Mr. Bal for 10% of the said \$712,500 (i.e. \$71,250). Judgment is granted against these parties accordingly in New Westminster Registry action S-247756.

[328] With respect to interest on these awards, counsel for Mr. Aujla says that, in their position as subrogated co-obligors, his clients are entitled to claim the benefits of the remedies and security that had been granted to the lender/creditor (York/Varsity and Cambro Capital respectively), which includes, among other things, the right to interest on their contribution claim in the same amount as that applicable to the underlying loan (prime +11.75% or 14% per annum whichever is higher, in the case of York/Varsity, and 18% per annum, calculated monthly, not in advance, in the case of Cambro Capital). Such interest, whether pre-judgment or post-judgment, would have the effect of doubling the resulting judgment debt of the defendants, if not more.

[329] I recognize that this joint venture undertaking has decimated the finances of both the Johals and the Aujlas, if not the Bals, and that collection of the judgments in this case may be highly problematic. This is no doubt why the plaintiffs have made parallel claims as co-sureties so as to secure judgments against spouses who were not joint venturers. Still, I consider that awarding interest in the range of 14 to 18%, an amount that far exceeds the registrar's rate prescribed by statute, is excessive and inequitable in the circumstances.

[330] I decline to award interest in the amounts claimed. Instead, I direct that both pre- and post-judgment interest issues in this case are to be determined in accordance with the *Court Order Interest Act*, R.S.B.C. 1996, c. 79.

[331] There is some degree of overlap as between the judgment for damages for breach of the joint venture contract (the "balancing" of the contributions) and the judgments granted for indemnity/contribution for the Walker Property Payment and the Cambro Settlement Payment. Those payments have given rise to a separate judgment for the indemnity/contribution cause of action but have also been included in the balancing of accounts taken as part of the breach of contract cause of action. Hence, depending on what sort of judgment recovery is made from which judgment debtor, there is a potential for "double recovery" that might require some sort of "credit" towards the other judgment(s). If this occurs and the parties are unable to

agree on the required adjustments, they may apply to the Court for any necessary determinations in that regard.

Summary, Final Orders and Conclusion

[332] In the consolidated New Westminster Registry action S-136837, judgment is granted as follows:

1. Mr. Gurdip S. Aujla and Aujla Developments Ltd. are awarded damages for breach of the joint venture contract against Mr. Satnam S. Johal and 0707890 B.C. Ltd., jointly and severally, in the amount of \$1,062,492.47 and against Mr. Harinder S. Bal and H.B. Enterprises Inc., jointly and severally, in the amount of \$391,573.33, together with pre-judgment interest respectively thereon under the *Court Order Interest Act*;
2. The claims by Mr. Gurdip S. Aujla and Aujla Developments Ltd. against Mr. Satnam S. Johal, 0707890 B.C. Ltd., Mr. Harinder S. Bal, and H.B. Enterprises Inc. for damages in tort and/or for breach of fiduciary duty are dismissed;
3. The counterclaim of Mr. Satnam S. Johal, Mrs. Kulwinder K. Johal, and 0707890 B.C. Ltd. against Mr. Gurdip S. Aujla, Mrs. Varinder K. Aujla, and Aujla Developments Ltd. is dismissed;
4. With respect to the claim for indemnity/contribution for the Walker Property Payment, Mr. Gurdip S. Aujla and Mrs. Varinder K. Aujla are granted judgment against 0775740 B.C. Ltd. for \$867,204, and against Mr. Satnam S. Johal and Mrs. Kulwinder K. Johal jointly and severally for \$346,882 together with interest respectively thereon from the date of the said Walker Property Payment to the date of judgment under the *Court Order Interest Act*.

[333] In New Westminster Registry action S-247756, Mr. Gurdip S. Aujla is granted judgment against 0775740 B.C. Ltd. for \$712,500, against Mr. Satnam S. Johal and Mrs. Varinder K. Johal jointly and severally for \$391,875, and against Mr. Harinder

S. Bal for \$71,250 together with pre-judgment interest respectively thereon from the date of the Cambro Settlement Payment to the date of judgment under the *Court Order Interest Act*.

[334] The plaintiffs have been successful and would ordinarily be entitled to costs of these actions which, due to the complexity of the case, I would direct to be assessed on Scale C of Appendix B of the *Supreme Court Civil Rules*. If the parties for any reason disagree with this outcome and wish to make submissions regarding any other proposed costs award, they may apply to the court in the usual manner.

“Kent J.”

APPENDIX A

Accounting of proportionate contributions/shortfalls respecting the costs of the joint venture project		
JOINT VENTURE ITERATION #1 (November 2006 - mid-June 2007, CWB Refinancing)		
Johal parties:	50%	
Aujla parties:	25%	
Pasricha:	25%	
AUJLA CONTRIBUTIONS/PAYMENTS		
30-Nov-06	\$350,000	CPS deposit paid into 0775 Ltd. account; see paras. 78, 100, 242.
08-Dec-06	\$200,000	CPS deposit paid into 0775 Ltd. account; see paras. 78, 242.
12-Feb-07	\$50,000	Bank draft to complete purchase of Royal Bay Property; see paras. 141, 242.
	Iteration 1 - Aujla total:	\$600,000
BAL CONTRIBUTIONS/PAYMENTS		
	Iteration 1 - Bal total:	\$0
JOHAL CONTRIBUTIONS/PAYMENTS		
12-Feb-07	\$396,000	Payment toward completion of land purchase (loan from Samra); contribution; see para. 264.
12-Apr-07	\$90,000	Deposit to 0775 Ltd. account (paid by Nu Tek Doors); contribution; see para. 264.
12-Apr-07	\$85,000	Deposit to 0775 Ltd. account (paid by Nu Tek Doors); contribution; see para. 264.
Feb - April 2007	-\$53,976	Mr. Johal issued a series of cheques to third parties (including Nexterra, Bhullar Developments, etc) for matters unrelated to the joint venture; see para. 271.
Unknown	\$10,000	At some point, Mr. Johal paid Mr. Sra \$10,000 and this deposit was credited towards the purchase price when the Royal Bay Property sale was completed; see para. 269.
	Iteration 1 - Johal total:	\$527,024
PASRICHA CONTRIBUTIONS/PAYMENTS		
08-Dec-06	\$50,000	Paid into 0775 Ltd.'s account; see para. 133.
	Iteration 1 - Pasricha total:	\$50,000
Balancing of Iteration 1 - sum of contributions by all parties:		
	\$1,177,024	
Johal obligation (50%):	\$588,512	
Contribution:	\$527,024	
Underpayment:	\$61,488	
Aujla obligation (25%):	\$294,256.00	
Contribution:	\$600,000	
Overpayment:	\$305,744.00	
Pasricha obligation (25%):	\$294,256.00	
Contribution:	\$50,000	
Underpayment:	\$244,256.00	

APPENDIX B		
Accounting of proportionate contributions/shortfalls respecting the costs of the joint venture project		
JOINT VENTURE ITERATION #2 (June 2007 - December 2010, York/Varsity + Cambro Refinancing)		
Johal parties:	40%	
Aujla parties:	25%	
Bal/Touchwood parties:	10%	
Sra:	25%	
AUJLA CONTRIBUTIONS/PAYMENTS		
15-Sep-08	\$22,500	CWB loan payment; see para. 242.
01-Sep-09	\$16,738	Payment of Hamilton Duncan legal fees; see para. 242.
14-Oct-09	\$867,204	Paid to York/Varsity; see paras. 172-173, 242.
	Iteration 2 - Aujla total:	\$906,442
BAL/TOUCHWOOD CONTRIBUTIONS/PAYMENTS		
15-Jun-07	\$178,000	Acquisition of 10% of common shares of 0775 Ltd. from Nu Tek Properties; \$125,000 actually represents a contribution by Mr. Johal (not Mr. Bal) to the joint venture (see para. 164); the remainder is not a contribution to the joint venture; see para. 246.
	Iteration 2 - Bal total:	\$0
JOHAL CONTRIBUTIONS/PAYMENTS		
15-Jun-07	\$125,000	Contribution. See above under Bal, and para. 274.
18-Jun-07	\$253,584.86	Contribution; received as a result of Mr. Johal mortgaging his premises to Mr. Amarjit Bains; see para. 274.
03-Jul-07	-\$27,319.07	Deduction. Transferred by Buckley Hogan from 775 Trust to Bhullar Dev Sales Trust; see para. 275.
13-Aug-07	-\$494.20	Deduction. Transferred by Buckley Hogan from 775 Trust to pay Nu Tek Invs bill; see para. 277.
05-Jul-07	-\$3,908.07	Deduction. Payment from 0775 Ltd. bank account to Nexterra; see para. 279.
22-Apr-08	\$15,500.00	Contribution; Canadian Bank Mortgage payment.
03-Jul-08	\$2,500	Contribution; Zeidler Partnership.
23-Jul-08	\$13,200	Contribution; Canadian Bank Mortgage payment.
25-Aug-08	\$14,500	Contribution; Canadian Bank Mortgage payment.
15-Oct-08	\$6,500	Contribution; Canadian Bank Mortgage payment.
28-Nov-08	\$13,000	Contribution; Canadian Bank Mortgage payment.
28-Nov-08	\$535	Contribution; Barkatali Lalani Corp of the numbered company.
05-Feb-09	\$11,000	Contribution; Canadian Bank Mortgage payment.
15-Jun-09	\$2,000	Contribution; Hamilton Duncan legal fees; see para. 290.
25-Jun-09	\$14,100.00	Contribution; Canadian Bank Mortgage payment.
02-Sep-09	\$277	Contribution; Buckley Hogan Company Filing.
03-Sep-09	\$448	Contribution; Gold Key Ins Royal Bay.
22-Sep-09	\$2,600	Contribution; Thurber Eng Royal Bay.
Unknown	\$292	Contribution; Gold Key Ins Royal Bay.
14-Dec-09	\$2,730	Contribution; Ray Baker Appraisal
15-Dec-09	\$6,000	Contribution; Westwood Consulting Ltd.
11-Jan-10	\$10,000	Contribution; Hamilton Duncan legal fees; see para. 290.
	Iteration 2 - Johal total:	\$462,046
SRA CONTRIBUTIONS/PAYMENTS		
04-Jan-08	\$929.25	Contribution; "Kuldeep Sra Paid for Bill"
12-Jun-08	\$10,000	Contribution; payment to Focus Corporation

06-Apr-09	\$2,218.63	Contribution; Ray Baker Appraisal
27-Aug-09	\$1,023.30	Contribution; Ray Baker Appraisal
05-Oct-09	\$3,500	Contribution; Thurber Eng Royal Bay
	Iteration 2 - Sra total:	\$17,671
Balancing of Iteration 2 - sum of contributions by all parties:	\$1,386,159	
Johal obligation (40%):	\$554,463.48	
Contribution:	\$462,046	
Underpayment:	\$92,417.96	
Aujla obligation (25%):	\$346,539.68	
Contribution:	\$906,442	
Overpayment:	\$559,902.33	
Bal/Touchwood obligation (10%):	\$138,615.87	
Contribution:	\$0	
Underpayment:	\$138,615.87	
Sra obligation (25%):	\$346,539.68	
Contribution:	\$17,671	
Underpayment:	\$328,868.50	

APPENDIX C		
Accounting of proportionate contributions/shortfalls respecting the costs of the joint venture project		
JOINT VENTURE ITERATION #3 (Following the December 2010 Refinancing)		
Johal parties:	55%	
Aujla parties:	35%	
Bal parties:	10%	
AUJLA CONTRIBUTIONS/PAYMENTS		
14-Dec-10	\$397,338	Full amount of Aujla net mortgage proceeds; see paras. 181, 191, 242.
23-Feb-11	\$23,500	Show home invoice payment to GV Kitchen Arts; see para. 242.
23-Feb-11	\$2,440	Royal Bay Property premium payment to Gold Key Insurance; see para. 242.
03-Oct-12	\$255,120	Net Aujla mortgage proceeds paid to solicitor for York/Varsity; see paras. 208-209, 242.
16-Sep-13	\$26,000	Payment of 'delinquent' portion of Royal Bay Property tax arrears to prevent tax sale; see para. 242.
15-Jun-17	\$712,500	Settlement of fraudulent conveyance action; joint and several payment to Cambro; see paras. 70, 228, 242.
	Iteration 3 - Aujla total:	\$1,416,898
BAL CONTRIBUTIONS/PAYMENTS		
May - July 2015	\$61,392	Surrendered deposit re May 28, 2015 CPS between Cambro Capital and 1004223 BC Ltd.; not a contribution.
25-Nov-10	\$40,000	Funds received from 0865858 BC Ltd. injected into Dec. 2010 refinancing; claim is a net zero; not taken into account for final tally; see para. 248.
Jan 2011 onward	\$75,000	Unpaid project management fees; neither a liability of 0775 Ltd. nor a monetary contribution to joint venture; see para. 249.
	Iteration 3 - Bal total:	\$0
JOHAL CONTRIBUTIONS/PAYMENTS		
21-Jul-10	\$200,000	Contribution. Deposit paid by Nu Tek Investments; parties agreed to apply to York/Varsity loan; see paras. 165, 291.
17-Dec-10	\$322,897.97	Contribution. Net mortgage proceeds. See para. 296.
14-Dec-10	-\$62,500	Deduction. Judgment by Gurinderjit Bhullar; see paras. 297-299.
05-Apr-12	\$16,451.12	Contribution. Hamilton Duncan legal fees. See para. 301.
	Iteration 3 - Johal total:	\$476,849
Balancing of Iteration 3 - sum of contributions by parties:		
	\$1,893,747	
Johal obligation (55%):	\$1,041,560.90	
Contribution:	\$476,849	
Underpayment:	\$564,711.81	
Aujla obligation (35%):	\$662,811.48	
Contribution:	\$1,416,898	
Overpayment:	\$754,086.52	
Bal obligation (10%):	\$189,374.71	
Contribution:	\$0	
Underpayment:	\$189,374.71	

APPENDIX D		
Final Tally Formulae/Approaches		
APPROACH #1	(treating each iteration separately, Pasricha/Sra amounts excluded)	
Iteration 1		
Johal:	\$61,488.00	Amount owing to Aujla at this iteration.
Pasricha:	\$244,256.00	Pasricha is not a party to this dispute; so disregard.
Iteration 2		
Johal:	\$92,417.96	Amount owing to Aujla at this iteration.
Bal:	\$138,615.87	Amount owing to Aujla at this iteration.
Sra:	\$328,868.50	Sra is not a party to this dispute; so disregard.
Iteration 3		
Johal:	\$564,711.81	Amount owing to Aujla at this iteration.
Bal:	\$189,374.71	Amount owing to Aujla at this iteration.
Total owed to Aujla by Johal:	\$718,617.77	
Total owed to Aujla by Bal:	\$327,990.58	
APPROACH #2	(allocation/assumption of Pasricha/Sra shortfalls at each iteration)	
Iteration 1		
Johal underpayment:	\$61,488	
Aujla overpayment:	\$305,744.00	
Pasricha underpayment:	\$244,256.00	
Iteration 2		
Johal underpayment:	\$92,417.96	Underpayment at iteration 2
	\$61,488.00	Underpayment at iteration 1
	\$153,905.96	Overall underpayment at iteration 2
Aujla overpayment:	\$559,902.33	Overpayment at iteration 2
	\$305,744.00	Overpayment at iteration 1
	\$865,646.33	Overall overpayment at iteration 2
Bal underpayment:	\$138,615.87	Underpayment at iteration 2
Sra underpayment:	\$328,868.50	Underpayment at iteration 2
	\$244,256.00	Pasricha underpayment at iteration 1
	\$573,124.50	Total Sra underpayment at iteration 2
Iteration 3		
Johal underpayment:	\$564,711.81	Underpayment at iteration 3
	\$153,905.96	Overall underpayment at iteration 2, calculated above
	\$343,874.70	60% of total Sra underpayment
	\$1,062,492.47	Total underpayment at iteration 3
Aujla overpayment:	\$754,086.52	Overpayment at iteration 3
	\$865,646.33	Overall overpayment at iteration 2, calculated above
	\$229,249.80	40% of total Sra underpayment (subtracted)
	\$1,390,483.05	Total overpayment at iteration 3
Bal underpayment:	\$189,374.71	Underpayment at iteration 3
	\$138,615.87	Underpayment at iteration 2
	\$327,990.58	Total underpayment at iteration 3

APPROACH #3	(proposed by plaintiffs' counsel: applying final shareholding percentages to parties' total contributions)	
Sum of all contributions by Aujla, Johal, and Bal:	\$4,389,259	
Johal obligation (55%):	\$2,414,092.24	
Overall contribution:	\$1,465,918.61	
Underpayment:	\$948,173.63	
Aujla obligation (35%):	\$1,536,240.51	
Overall contribution:	\$2,923,340.00	
Overpayment:	\$1,387,099.49	
Bal obligation (10%):	\$438,925.86	
Overall contribution:	\$0	
Underpayment:	\$438,925.86	
ADDITIONAL AMOUNTS OWING TO AUJLA PARTIES		
Owing by Bal Parties:	\$63,582.75	The December 2010 refinancing triggered a requirement to payout two encumbrances on Mr. Bal's property (Sandher/Toor); see paras. 256-257, 317. Bal owes 0775 Ltd. \$181,665, and the Aujla parties are beneficially entitled to 35% of this amount.