Court of King's Bench of Alberta

Citation: Bannister v Nanda, 2025 ABKB 123

Date: 20250303
Docket: 1603 13201
Registry: Edmonton

Between:

Melanie Bannister

Plaintiff

- and -

Swan Nanda also known as Swann Nanda

Defendant

Costs Endorsement
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] This decision addresses the costs claims made by each side arising from or connected with an order setting this matter for trial and ruling on other matters.

[2] The issues include:

- possible costs exposure for the defendant for an alleged misrepresentation to the Court by its counsel (**answer**: no misrepresentation was made);
- whether solicitor-client costs should be awarded to the plaintiff for its success in a set-trial application (**answer**: subject to an offsetting costs claim (discussed below), Schedule-C-level costs only would be awarded, in part because the global amount requested did not break out the work associated with that application from other work performed, and no statements of account or time records were provided for the associated work (or any of the work) to permit a reasonableness review);

- whether the defendant is entitled to costs for responding to a later-discontinued attachment-order-and-Mareva-injunction application (**answer**: no, with that application deficient on its face, requiring no particular response) or for responding to a later-discontinued 2020 action raising largely the same issues as the current action (**answer**: no, with that action requiring no material response); and
- whether the defendant is entitled to costs for successfully applying for an order striking segments of the plaintiff's supplementary affidavit order on the attachment front (**answer**: yes, in an amount equal to the costs awarded to the plaintiff on the set-trial front).

[3] The result is no net costs are payable by either side here.

II. Appearance before Hillier J.

[4] I start with the connected costs question arising from Hillier J.'s March 17, 2022 order in which he referred the set-trial-dates issue to me as the seized justice on this file.

[5] On costs, he ruled:

> Costs in relation to appearances by counsel from today, and representations made by counsel for the Defendants [Mr. Avnish Nanda], in relation to the non-existence of an agreement of a time estimate for trial, are awarded in favour of the Plaintiff, in an amount to be spoken to before Justice M. J. Lema.

[6] That ruling appears to have stemmed from counsel submissions during the hearing and from post-application (March 18, 2022) correspondence to the Court from Mr. Andrawis, to which Mr. Nanda responded, via letter to Hillier J. the same day (March 18, 2022), but which did not reach him until about a month later, due to QB Portal processing delays.

[7] Here are the key submissions from the application (from the Court's recording – March 17, 2022 – excerpt starting at 10:24:40 am):

> **Mr. Andrawis**: … Justice Lema is seized with an application for an attachment order ... that is before him. As well as there are applications by both counsel – they're disqualifying conflict-of-interest applications: one by myself against Mr. Nanda, and I was advised [recently] that he's going to bring a similar application against myself ….
>
> My submission, Sir, is that there is nothing barring this Court this morning from fixing a trial date.
>
> **My friend and I had, at least I thought we had, agreed on a time estimate for trial of five days**. That may very well be a year from now, Sir, maybe even more, and so I am quite confident that any matters that Justice Lema has seized himself with can be addressed well in advance of that. Justice Lema has advised us that he would make himself available to hear all of those matters on short notice.
>
> The other thing I want to point out, and [I want to] be very clear about this, my Lord, is that if, and I have already advised Ms. Roberts of this -- I don't know if she has passed along the message to Mr. Nanda, but certainly Ms. Roberts is

aware, -- I have advised her that if the Court grants the relief that I am seeking this morning [i.e. setting trial dates], that I at least would be prepared to withdraw my applications that are before Justice Lema in order to help speed things up. So I won't be seeking an attachment order if I get a trial date. I won't be seeking to disqualify Mr. Nanda if I get a trial date. Those are only brought because of what I feel are delays by the defendant.

Hillier J.: I have the essence of your position [including **the] representation that the estimate of trial time is something which had been discussed, if not fully agreed**. I'll [now] hear from counsel … Mr. Nanda on behalf of the defendants.

Mr. Nanda: good morning, Sir. … .. … with respect to setting a trial date, … we do oppose because Justic Lema has seized himself of a number of applications -- at least five or six of them – that have to be sorted [out] before we can set down a trial date. …..

Hillier J.: … I am hearing that there may be agreement that [the trial length is] five days and that at least --

Mr. Nanda: No-- no, Sir. There is no agreement. I had advised my friend that –

Hillier J.: This [setting-trial-date] matter is [directed] to Justice Lema on an expedited basis. I am sorry, counsel. The Court tried to assist here, but there will be a recommendation as to whether costs would be awarded against Mr. Nanda for not having sorted this matter out on today's date. This matter is adjourned *sine die* to be seized by Justice Lema who has agreed to take it on an expedited basis. I repeat -- costs will be addressed by Justice Lema.

Mr. Nanda: Did you say costs against me, Sir, or my client?

Hillier J.: Your client.

Mr. Nanda: Okay.

> **Mr. Andrawis:** thank you very much, Sir. … **I will find the email where Mr. Nanda and I agreed to five days, and I will bring that up to Justice Lema ….** [emphasis added]

[8] In his March 18, 2022 letter to Hillier J., Mr. Andrawis stated (in part):

Further to my appearance yesterday, I wanted to bring to your attention the emails which confirm that in fact a time estimate of 5 days was agreed to between the parties. The request for a time of 5 days **was actually made by Mr. Nanda himself on August 6, 2020**. As you can see [per an attached copy of an email chain including one from Mr. Nanda to Mr. Andrawis on that date], on August 11, 2020 we went a Form 37 back to Mr. Nanda for execution and he nonetheless refused to execute it. **As you know, he denied the existence of this agreement yesterday.**

Mr. Nanda has made no attempt to contact me or the court (to the best of my knowledge) to correct his misrepresentation from yesterday, and I ask your lordship to consider imposing additional costs against him arising from what

> occurred yesterday. I do not wish to presume what your Lordship was considering; however, I believe there was a possibility you may have granted the plaintiff's request, but for Mr. Nanda's false statement to the Court.
>
> I will of course raise these issues with Justice Lema as I indicated I would. [emphasis in original]

[9] In his August 6, 2020 email to Mr. Andrawis (in response to the latter's August 4, 2020 email sending a Request to Schedule a Trial Date and asking that various elements be completed), Mr. Nanda stated (in part):

> … I propose a 5 day trial just in case [i.e. presumably indicating a possible over-estimate of the trial time needed]

[10] As indicated, Mr. Nanda had attempted (post-application) to provide Hillier J. with his position on the trial-length estimate, via his March 18, 2022 letter, which includes these submissions:

> The August 6, 2020 email exchange between Mr. Andrawis and me provided to the Court in his letter deals with communications between counsel before the Plaintiff filed a collateral action and the emergence of additional matters in this proceeding that prevent my client from consenting to a trial date or agreeing to a 5 day trial period at this time. As the Affidavit of Swan Nanda, dated March 15, 2022 sets out in detail, there is significant work that still needs to be completed in this action, including the determination of the numerous applications seized by [Lema J.] and a consolidation of this action with the collateral action if it survives a summary-dismissal application.

[11] The other action launched on February 25, 2020 i.e. before the August 2020 email exchange.

[12] In any case, per Mr. Nanda, post-August-2020 developments undercut the five-day estimate provided then e.g. a December 1, 2020 attachment-order-and-Mareva-injunction by the plaintiff. And his position that the 2020 action should be dismissed summarily and, failing that, consolidated with the present (2016) action.

[13] The record confirms that Mr. Nanda expressed that (estimate-undercut) position via (at minimum) his August 19, 2020 email at 3.49 pm ("… If we consolidate, we have more parties and issues, and would **likely require more days for the trial**. … We cannot certify a matter for trial unless we have **figured out the scope of the trial**. Consolidation would mean we would be **enlarging the scope of the trial** …" – emphasis added) and August 19, 2020 emails at 4.14 pm and 4.35 pm to the same effect.

[14] While Mr. Andrawis disagreed that later developments undercut the five-day trial estimate, his client did not contest that Mr. Nanda had taken that position.

[15] Given these circumstances, it is not fair to conclude that Mr. Nanda had denied or at least unconditionally denied the existence of the "five-days" agreement at the Hillier application.

[16] As the (unofficial) transcript shows (see above), Mr. Nanda did say that "[t]here is no agreement" but then started to say "I advised my friend that …" i.e. presumably intending to provide an explanation of or at least context for that position i.e. the circumstances which, in his view, rendered the five-day estimate no longer applicable.

[17] However, at that point, the application effectively concluded, without Mr. Nanda having an opportunity to provide an explanation or more context for his position.

[18] The question here is not whether later circumstances had in fact undercut the five-day estimate.

[19] It is that a debate had arisen on the existence, or at least the continued existence, of the five-days agreement.

[20] That debate informs whether Mr. Nanda misdescribed the circumstances to Hillier J.

[21] I return to the hand-off of the costs issue on this point from Hillier J. to me.

[22] Per his assistant's email to counsel on April 22, 2022, after finding that Mr. Nanda had tried to respond to Mr. Andrawis's March 18, 2022 letter on a timely basis (as discussed above) Hillier J. directed:

> The Order as signed will be forwarded along with the updated email communications to Justice Lema for further disposition. It remains within his discretion whether any amount of costs for this adjournment process may be warranted.

[23] As I see it, via that note, Hillier J. left to me to decide whether any costs are payable by the defendants in connection with the set-trial-dates application before him and, if so, what amount i.e. in light of the "larger context" evidence provided by Mr. Nanda i.e. in showing, or trying to show, that the initial five-days agreement was superseded by later developments, including the outstanding applications in the 2016 action (including possible consolidation of the two actions).

[24] I find that, while the 2020 action was not a "new development", Mr. Nanda had at least an arguable case that the possible consolidation of the two actions would require more trial time (with at least one new party added as well as an allegation of fraud). While that consideration should perhaps have been factored in by Mr. Nanda when proposing his initial five-days proposal, nothing in the record shows that it was (instead that this consideration emerged after the estimate was proposed).

[25] I conclude that Mr. Nanda's initial (no-agreement) comment before Hillier J. was part of a larger (context-providing) submission he was not able to complete, that he provided the larger context by his March 18, 2022 letter, and that his agreement-superseded position was at least arguable.

[26] All to say: I find no basis to conclude that Mr. Nanda provided an inaccurate or incomplete description of the trial-time-estimate circumstances here.

[27] Accordingly, I find no basis for imposing costs of the set-trial-dates application before Hillier J. against Mr. Nanda's client.

[28] Mr. Nanda asked for costs against the plaintiff. Per him, Mr. Andrawis should not have written Hillier J. without first providing his proposed letter to Mr. Nanda for comment on whether further contact with Hillier J. was warranted and, in any case, on the merits of the cost dispute. In any case, per Mr. Nanda, Mr. Andrawis should not have put forward the August 6, 2020 correspondence without the "trial-estimate-no-longer-applicable" correspondence noted above.

[29] I interpret Hillier J.'s March 17, 2022 order and follow-up direction as referring only whether the defendant should pay costs to the plaintiff. If he had intended to refer any other dimension of costs (e.g. plaintiff-to-defendant) or costs generally, he would have said so.

[30] I find that Hillier J.'s limited referral to me – any costs payable by the defendant? (now answered: no) – reflected his implicit ruling that no other costs consequences were warranted for the application before him.

III. Costs of April 26, 2023 application (yielding June 14, 2023 order)

[31] The issue of setting trial dates (and other matters) came before me on April 26, 2023. I granted an order:

- directing the matter proceed to a five-day trial;
- directing discontinuance of the 2020 action;
- sealing portions of an affidavit filed by the plaintiff on February 9, 2022 and directing the filing of a redacted version of that affidavit;
- deeming discontinuance of the plaintiff's attachment-order and Mareva-injunction application as well as offsetting disqualification-of-counsel applications (actual or proposed);
- establishing a pathway to a binding JDR to resolve the 2016 action and, if none, directing the scheduling of the five-day trial; and
- inviting costs submissions.

[32] Both sides seek costs of this application.

[33] The plaintiff was successful on the set-trial aspect. It had been pressing, since at least the March 17, 2022 application before Hillier J. (and possibly since December 2019, per the plaintiff's costs letter), for the trial to be scheduled.

[34] As well, as reflected in the transcript above, Mr. Andrawis had advised the defendant that, if the trial were scheduled, he would abandon both the filed attachment-order-and-Mareva-injunction application and an actual or proposed disqualification-of-counsel application against Mr. Nanda. Mr. Andrawis's position continued through to the set-trial application. It was one of the material factors in my decision.

[35] Per the plaintiff, if the defendant had agreed earlier to a trial being scheduled, the defendant's steps to counter the attachment order and the disqualification application would not have been necessary.

[36] Per the plaintiff:

> It goes without saying that the successful party is entitled to costs as per the Rules. The plaintiff also relies on *McAllister v Calgary (City)*, 2021 ABCA 25 in relation to quantum.
>
> …

> During our hearing on the 26th of April [2023], Mr. Nanda submitted to you that he had never heard before that the plaintiff was willing to withdraw its applications in order to proceed to trial. [reference to that offer by Mr. Andrawis during the Hillier application]
>
> It was also my understanding that part of your Lordship's reasoning was that Justice Fraser had directed the parties to schedule a trial and removed the obligation for some form of ADR. That order was made in December of 2019.
>
> The plaintiff is seeking costs from late 2019 through to the date of your order [June 14, 2023]. I attach a copy of my redacted trust ledger confirming solicitor-client fees for that period of time. Fees alone are **$44,296.14**. These have been paid (Tab 3).

[37] Assuming for now that the plaintiff's success on the set-trial aspect represents success on the application overall, I note that the exhibited ledger reflects an invoice for legal fees in the stated amount "for all steps taken since last invoice which include but are not limited to **attachment order applications and preparation of affidavits in support thereof**[;] all hearing[s] before Justice Lema **and Justice Hillier**[;] all **correspondence to opposing counsel**[; and] all **discussions and negotiations with opposing counsel**."

[38] The plaintiff is asking for full-indemnity costs for the set-trial application before me.

[39] However, Mr. Andrawis did not explain what circumstance(s) warranted that level of costs here. Per ***Birch v Birch***, 2024 ABCA 284:

> Solicitor-client costs are generally awarded only when there has been reprehensible, scandalous or outrageous conduct by a party: *Young v Young*, 1993 CanLII 34 (SCC), [1993] 4 SCR 3, 134. They are only awarded in rare and exceptional circumstances, and may be available if misconduct occurs in the course of litigation: *FIC Real Estate Fund Ltd v Phoenix Land Ventures Ltd*, 2016 ABCA 303, para 4, 403 DLR (4th) 722. … para 8]

[40] To the extent the plaintiff would so characterize the defendant's resistance to setting a trial date, instead taking steps to counter the attachment-order and disqualification applications, or the defendant otherwise causing delay here, the plaintiff could have unilaterally abandoned those applications first i.e. if they were (as the plaintiff characterized them at one point) effectively tactical, aimed at getting the trial scheduled and the matter moved along. Or, in any case, brought the set-trial-dates application earlier.

[41] I do not see any of the defendant's or its counsels' conduct here as constituting "reprehensible, scandalous, or outrageous conduct" or misconduct of any other kind.

[42] Assuming solicitor-client costs were warranted, the plaintiff did not break out, from its global fees, those applicable to the immediate (set-trial-dates) application. As noted, the work description associated with the claimed $44,296.14 included work on "attachment order applications", the application before Hillier J. (featuring its own costs exercise, as reflected above), and unspecified-as-to-subject-or-time correspondence, discussions, and negotiations with opposite counsel.

[43] Moreover, the plaintiff did not provide detailed statements of account, time records, or other back-up information to demonstrate the reasonableness of the fees relating to the immediate application. Per ***Great North Equipment Inc v Penney***, 2025 ABKB 42:

> … [that is] necessary evidence [when seeking solicitor-client costs or a percentage thereof], per *McAllister* (paras 46-48); *Barkwell v McDonald*, 2023 ABCA 87 (paras 59-61); *Sunridge Nissan Inc v McRuer*, 2023 ABCA 128 (paras 57 and 58); *Petropoulos v Petropoulos*, 2023 ABCA 193 (para 18); *Sutherland v Sutherland*, 2023 ABCA 185 (para 4); *Klassen v Canadian National Railway Company*, 2023 ABCA 233 (para 8); and *Kantor v Kantor*, 2023 ABCA 329 (paras 12-14).

[44] In the end, this was or at least became an uncomplicated application i.e. with the plaintiff reiterating its position that it did not need the attachment-order or the proposed disqualification applications if a trial was set. And with the defendant's own disqualification "application" never actually materializing. And with both disqualification applications appearing to be largely tactical – the plaintiff's as described above (apparently to move the action along) and the defendant's largely a response to the plaintiff's.

[45] On top of its $44,296.14 costs claim for its success on the set-trial application, the plaintiff sought a further $5,000 for "Delay Consequent to Alleged Conflict", per its costs letter.

[46] The thrust of this claim is the defendant raised the specter of an application to remove Mr. Andrawis as counsel (in response to his raising disqualification concerns of his own) but neglected to advance or even launch this claim in a timely fashion (or at all), causing delay for the plaintiff, who kept waiting for the application to come.

[47] No additional costs are warranted on this front. As discussed above, the plaintiff could have abandoned her (effectively tactical) disqualification application or at least her allegations of conflict of interest against Mr. Nanda unilaterally i.e. taken that issue off the table with a view to prompting a matching response.

[48] Or sought a declaration of "no conflict" for Mr. Andrawis.

[49] Or considered retaining new counsel, simply to get past the conflict issue (meritorious or otherwise).

[50] I do not see the threatened conflict application by the defendants as the material cause of any delay or at least extra delay here.

[51] Accordingly, no "delay" costs are warranted here.

[52] In light of her success on the set-trial aspect, should the plaintiff be declared the successful party on the application overall?

[53] That requires assessing the defendant's bid for costs for the same application, emphasizing different aspects of the order.

IV. Defendant's request for costs

[54] The defendant seeks "solicitor-client indemnity costs at a rate of 75% for the Plaintiff's abandoned attachment-order application", which was one part of the April 26, 2023 application.

[55] The defendant first points to an earlier attachment order obtained by the plaintiff, in the 2020 action, which was later set aside. But the set-aside order addressed the costs of that application. I do not see that application as having spill-over costs consequences here.

[56] The defendant relied primarily on (per him) unfounded allegations by the plaintiff that Mr. Nanda may have been personally involved in efforts by the defendant (denied by the defendant) to judgment-proof by divesting assets. Leading to the defendant's perceived need to retain new counsel to address that conflict-of-interest concern. And extensive questioning-and-response-affidavit work by that counsel to address that concern. With the situation exacerbated by a second affidavit in support of an attachment order which added to or elaborated on the perceived conflict concerns.

[57] As noted earlier, the plaintiff did not ever apply to disqualify Mr. Nanda. And no second attachment-order hearing ever proceeded.

[58] The answer here requires looking at whether the second attachment-order materials actually required a response or at least the responses made by the defendant.

[59] I first note that, as discussed above, as early as March 17, 2022 (if not earlier), Mr. Andrawis advised that neither the attachment order nor the (threatened) disqualification applications would proceed if a trial were set.

[60] If the defendant had engaged, or engaged earlier, on that proposal, much if not all of the skirmishing over those applications would have been unnecessary.

[61] More fundamentally, the second attachment-order application was bound to fail on its face i.e. without any need for response affidavit(s) from the defendant, questioning of the plaintiff, or any other defendant steps.

[62] The application was anchored in the plaintiff's affidavit sworn November 30, 2020.

[63] Its focus was an alleged real estate investment by the plaintiff:

> In 2009 I entered into an agreement with the defendant whereby I provided the sum of thirty thousand ($30,000) in exchange for an interest in a condominium property. The Agreement **charged land** in the Province of Alberta, such lands [being] legally described as [legal description].
>
> Attached hereto and marked as Exhibit A is a copy of the said agreement **charging land**.
>
> On or about the 26th day of June 2016, I, through my counsel, filed a statement of claim to **recover** *inter alia* the aforesaid **sum of money**.
>
> The aforesaid lands, in addition to being **charged by the aforesaid agreement**, were charged by a mortgagee, namely Bank of Montreal.
>
> Attached hereto and marked as Exhibit B is a **certificate of title showing the plaintiff's interest in the land** registered as instrument number … as well as well as the mortgage ….
>
> …
>
> The aforesaid condominium property is **the only security the plaintiff has for the funds advanced** to the plaintiff. [paras 2-6 and 10]

[64] Here is Exhibit A (the asserted agreement):

Property Ownership Agreement

This Agreement made as of October __, 2014

BETWEEN SWANN NANDA AND NEELAM NANDA of the Province of Alberta, located at [address #1]

AND MELANIE BANNISTER of the Province of Alberta, located at [address #2]

Description of Agreement

1) This Agreement concerns the property located at [address #3] ("property").
2) The parties herein agree that the property will be **held jointly** with the following ownership percentages: SWANN NANDA 30%, NEELAM NANDA 30% and MELANIE E. BANNISTER 40%.
3) The parties further agree to the following:
    a. All the expenditures in connection with the property shall be shared equally, including but not limited to the following:
        i. Legal, accounting, professional fees;
        ii. Property taxes;
        iii. Maintenance and repairs;
        iv. Advertising costs for tenancy;
        v. Condo fees;
        vi. Management and administration fees;
        vii. Insurance;
        viii. Mortgage and interest payments;
        ix. Office expenses;
        x. Utilities; [and]
        xi. Other such expenses in connection with the maintenance of the property.

Accepted [apparent signatures of plaintiff, defendant, and Ms. Nanda, with apparent dates of signing]

[65] This agreement, if proved, is not for a loan. No lands were charged or security otherwise given.

[66] The apparent transaction was for a 40 per cent stake in the identified property.

[67] As reflected by the plaintiff herself in a June 26, 2017 caveat filed by her listing her as a "beneficial owner."

[68] The affidavit closes with this paragraph:

> … I make this affidavit in support of an Order for:
>
> a. Judgment in the amount of $160,000 which counsel for the defendant admitted to receiving [and other relief].

[69] The affidavit is otherwise silent on the $160,000 aspect i.e. provides no particulars of that money or what transaction(s) it relates to.

[70] The plaintiff did not refer to any other affidavit in her second attachment-order application.

[71] I acknowledge that the plaintiff's statement of claim refers to a loan of that amount.

[72] But no evidence of it was put forward in support of the attachment-order application.

[73] With evidence put forward only on the condominium-investment front, and with no evidence that the plaintiff did not receive her 40 per cent interest or that the defendant breached the property ownership agreement in any way, the plaintiff did not show, as required by paragraph 17(2)(a) of the *Civil Enforcement Act* ("Attachment Order"), that "there is a reasonable likelihood that the claimant's claim against the defendant will be established."

[74] Neither did the plaintiff provide the undertaking required by ss 17(4) *CEA*.

[75] Turning to the conduct of the defendant perceived by the plaintiff as justifying an attachment order, here are the details (per her):

> On or about the 9th day of October 2020, I discovered through my counsel that one or more of the defendants transferred its assets to a numbered company and encumbered it.
>
> Attached hereto and marked as Exhibit E are copies of Transfers of Land made by Swan Nanda to [#Co1] and [#Co2]. The said Transfer [sic] of Land was executed before Dev Nanda whom I verily believe is the son of the defendant. The Transfer of Land is for consideration in the amount of $105,000 whereas the assessed value according to the City of Edmonton website is $224,000. [reference to City of Edmonton document showing that value]
>
> … the said Certificate of Title shows that the defendant has encumbered the properties for an amount significantly greater than the assessed or market value and as such I verily believe and am advised that there would be no equity in the property should I obtain a judgment in court. I verily believe that because the defendant did not pay close to the assessed or market value that this was not a transaction made in the ordinary course of business.
>
> … the defendant engaged in **another transaction** which is likely to defeat the ability of the plaintiff to recover any monies should the plaintiff be successful at trial.
>
> The defendants have encumbered [another property, described] with mortgages and assignments of rent in the amount of $700,000 which the plaintiff verily believes exceeds the market value of the lands. [emphasis added]

[76] Starting with the transfer to the first number company, I find no legitimate asset-dissipation concerns:

- the combined face value of the Scotia Mortgage Corporation mortgages as of January 15, 2020 (the transfer date) was $295,200;
- the plaintiff did not give or point to evidence showing the balances owing on those mortgages at that time. In theory, the face amounts, or even more (with interest), may have been owing at the time of transfer;
- the plaintiff did not provide any evidence or point to anything else indicating that City-assessed values are equal to or have any particular correlation to market values;
- the plaintiff did not prove that the City assessment showing an assessed value of $224,000, referencing a particular municipal address, corresponded to the property in question, referenced only by legal description;
- in any case, the assessment was undated, with no other clue as to its date;
- the asserted "overburdening" (borrowing in excess of market value), if any, was actually done by the number company purchaser, not the defendant, occurring at the same time as the January 15, 2020 transfer; and
- the plaintiff did not provide evidence in this affidavit showing the shareholder(s) of the number company. If this was Mr. Nanda's own (wholly owned) company or at least a company in which he held shares (and the company's address is the same as Mr. Nanda's), the transfer out of this property (i.e. from his personal assets) to the number company would be offset by the increase in value of his shareholdings in the company i.e. would not represent true dissipation of his personal assets.

[77] I conclude that the plaintiff failed to show, at least concerning the transfer of this property, that "there are reasonable grounds for believing that the defendant is dealing with [his] exigible property, or is likely to deal with that property, (i) otherwise than for the purpose of meeting the defendant's reasonable and ordinary business or living expenses, and (ii) in a manner that would be likely to seriously hinder the claimant in the enforcement of a judgment against the defendant."

[78] In other words, to satisfy the hurdle imposed by para 17(2)(b) *CEA.*

[79] As for the transfer to the second number company, the certificate of title provided reflects not a transfer but a consolidation of titles, with no value or consideration figures reflected. And the plaintiff did not supply any evidence of market value or the balances owing on the registered encumbrances at the time of the consolidation. Or any other evidence bearing on or submissions explaining how the consolidation affected or could affect its interests or even showing the predecessor owner(s) of the consolidated titles.

[80] As for the third property mentioned (final paragraph of affidavit excerpt), the plaintiff did not supply any documentary evidence (e.g. copy of certificate of title) or any evidence at all anchoring her belief that the property in question was encumbered to the extent of $700,000 or that its market value was less than that or otherwise how this property factored in to the attachment-order analysis.

[81] On its face, the attachment-order application anchored on this evidence and absence of evidence was a non-starter.

[82] The defendant did not have to tender any evidence of its own on this front, cross-examine the plaintiff, consider a disqualification-of-counsel application against Mr. Andrawis, or retain independent counsel on this front i.e. to resist this application.

[83] Instead, the defendant should have done nothing, leaving it to the plaintiff to advance, if ever, this sure-to-fail application.

[84] To the extent the defendant seeks costs alternatively for having to respond to the emergence of the 2020 action e.g. steps to seek its summary dismissal or, in the alternative, to have that action consolidated with the 2016 action, the defendant did not need to take any of those steps, for these reasons:

- as explained by the plaintiff, the principal driver of the 2020 action was the wish to add Realtus Group of Companies Limited and MVG Market Valuation Group Ltd as defendants;
- they are (or were) one in the same, with the former being a new name for the latter company;
- the company (which I will call Realtus) was struck by the Registrar of Corporations on February 2, 2013;
- the plaintiff commenced the 2020 action, naming Realtus as an added defendant, on February 25, 2020;
- per para 227(2)(b) of the *Business Corporations Act*, the plaintiff could have commenced its civil action against Realtus as late as two years after its dissolution i.e. by February 2, 2015;
- after that date, the plaintiff could only sue Realtus if it first revived it under s. 208 *BCA*;
- until December 2, 2021, a struck corporation could be revived for up to five years post-dissolution. In this case, that meant an initial revival deadline of February 2, 2018;
- as a result, the plaintiff's action against Realtus was a nullity, as a proceeding against a non-existent person;
- on December 2, 2021, the revival period was amended to ten years (*Business Corporations Amendment Act*, 2021, SA 2021, c 18, s 50);
- assuming retroactive effect, that meant a new revival deadline of February 2, 2023; and
- the plaintiff did not take any steps to revive Realtus at any point.

[85] All to say: the defendant did not have to take any steps to respond to the 2020 action on the Realtus front.

[86] As for the 2020 action including Mr. Nanda's spouse, she was removed by consent from the 2016 action (Consent Order of Master Schulz on October 2, 2018). I do not see anything in

the 2020 statement of claim concerning Ms. Nanda's alleged role that would create any incremental exposure for her i.e. any additional allegations beyond what was alleged in the 2016 action.

[87] Finally, as for added allegations of fraud in the 2020 action, they were limited to allegations aimed at the asserted advances by the plaintiff being received by Realtus and not Mr. Nanda.

[88] As I read the statement of defence (including its amended version), Mr. Nanda is not defending on the basis that Realtus was the recipient of the advances and the party responsible for repaying them. Instead, he appears to acknowledge initial or at least ultimate receipt of the advances.

[89] I see no basis on which fraud could be established here.

[90] All to say: the 2020 action was effectively a paper tiger.

[91] The defendant did not have to take any material steps to respond to it i.e. other than filing a defence effectively mirroring that in the 2016 action.

[92] Particularly given the noted proposal by Mr. Andrawis to discontinue the 2020 action if a trial date were set in the 2016 action.

[93] Concluding on this aspect, I see no basis for awarding costs to the defendant for anything to do with the second attachment-order application or the 2020 action.

[94] That leaves the elements of the June 14, 2023 order (stemming from the April 23, 2023) application bearing on sealing segments of the plaintiff's supplementary affidavit on the attachment-order front.

[95] In a nutshell, I found that those segments were fundamentally irrelevant on the attachment-order scales, veering off into perceived conflict-of-interest concerns, which did not surface in a disqualification application or (apparently) any other proceedings.

[96] Given the sealing, it is not appropriate to provide any further details of the sealed paragraphs.

[97] But it was necessary for the defendant address those paragraphs. Not necessarily to retain separate counsel, since they were effectively dispatched on a relevance basis i.e. without having to address any perceived conflict of interest. Or to file any competing materials. Or do anything other than apply for directions on the appropriate treatment of the impugned paragraphs.

[98] I find that the defendant is entitled to costs on this aspect or at least would be if this were the sole focus of the April 26, 2023 application.

[99] Scale- and quantum-wise, I do not see anything "reprehensible, scandalous, or outrageous" here. While the impugned paragraphs should not have been included, they were aimed in an attachment-order direction, not at a disqualification or other proceedings. And in service of an attachment-order application that was doomed to fail in any case and which was not assisted by the impugned paragraphs.

[100] I also recognize here (again) that Mr. Andrawis had offered to abandon pursuit of an attachment order and, by implication, the need for any additional evidence on that front.

[101] If this were the only aspect of the order being considered, I would award Schedule-C-level costs of the application in favour of the defendant to reflect his success in narrowing the affidavit in question.

V. Conclusion

[102] To this point and having assumed a single-issue focus when gauging first the plaintiff's bid for costs on the set-trial front and second the defendant's on the seal-affidavit front, I have concluded that each would be entitled to Schedule-C-level costs from the other.

[103] Taking a whole-application focus, I conclude that we had divided success here on issues of materially equal significance.

[104] The appropriate outcome is to declare that the parties bear their own costs of the application and of this costs exercise as well.

VI. Closing note

[105] I apologize to the parties and their counsel for the long delay in releasing this decision.

[106] The parties' costs materials were submitted in late August and early September 2023 and they made periodic requests for an update on the status of the decision.

[107] The responsibility for the delay rests solely with me.

Heard by way of written submissions on August 25, August 29 and September 5, 2023.
Dated at Edmonton, Alberta this 3rd day of March, 2025.

Michael J. Lema
J.C.K.B.A.

Appearances:

Michael S. Andrawis
Barrister & Solicitor
for the Plaintiff

Avnish Nanda
Nanda & Company
for the Defendant