

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Chura v. Batten Industries Inc.*,  
2023 BCSC 1040

Date: 20230616  
Docket: S174224  
Registry: Vancouver

Between:

**Jackie Chura**

Plaintiff

And

**Batten Industries Inc.**

Defendant

Before: The Honourable Madam Justice Lyster

## Reasons for Judgment

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Place and Dates of Trial:

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June 16, 2023

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**Introduction**

[1] The plaintiff, Jackie Chura, was employed by the defendant, Batten Industries Inc. (“Batten”), for just under nine years. Ms. Chura started her employment with Batten on April 4, 2008, originally in a receptionist position. By the time she was terminated, allegedly for cause, on January 11, 2017, Ms. Chura held a senior sales and management position with Batten.

[2] Batten is owned by James Roberts. Batten sells and distributes a variety of consumer products, including Batten’s signature product line, Nellie’s All Natural Products (“Nellie’s”), a line of laundry and cleaning products.

[3] Ms. Chura knew Mr. Roberts through her husband, Darren Chura, and was hired by Mr. Roberts as a result of that relationship. The two men went to school together, and the Roberts and Chura families were part of the same family friend group.

[4] Ms. Chura quickly became a trusted employee of Mr. Roberts, and Ms. Chura experienced good success in increasing sales of Nellie’s. She never had a formal written contract of employment.

[5] The employment relationship ended after Mr. Roberts came to believe that Ms. Chura had abused his trust, and that she had engaged in a variety of dishonest conduct. Batten relied on a wide range of conduct as establishing just cause for termination, including allegations of dishonestly claiming expenses, trading Batten products for Ms. Chura’s personal benefit, and using corporate accounts for her personal benefit. The most serious allegation is that Ms. Chura was in an undisclosed conflict of interest when she caused Batten to enter into a contract with a website company, WebStager, which provided a “kickback” to Mr. Chura for the contract, to Batten’s detriment and the Churas’ benefit. Those allegations are denied by Ms. Chura.

[6] Ms. Chura sues for wrongful dismissal. In addition to damages for reasonable notice, Ms. Chura submits that Batten breached its duty of good faith to her, and that Batten’s conduct was malicious, high-handed and unfair, and that as a result she is entitled to increased, punitive and aggravated damages.

[7] Batten submits in response that it terminated Ms. Chura for just cause due to her serious misconduct, breach of trust, breach of fiduciary duty and breach of her duty of good faith. It denies that she suffered any damages, and says that her claim should be dismissed with special costs. Batten counterclaims for losses it says it suffered due to Ms. Chura’s improper conduct. Batten also seeks punitive damages.

[8] In this decision, I will first introduce the witnesses and make some summary comments about the credibility and reliability of their evidence. I will then provide an overview of the parties’ relationship. I will then examine each of the allegations of misconduct, and make the necessary findings of fact. Having done so, I will determine whether Batten has proven just cause for the termination of Ms. Chura’s employment. If just cause is not proven, I will determine what damages Ms. Chura is entitled to. If just cause is proven, I will determine whether Batten is entitled to any damages.

[9] Each party seeks costs, including special costs. That issue was not fully addressed at trial, and I will provide the parties with the opportunity to make further

submissions on costs after this decision is issued, should they be unable to agree on them.

**Witnesses – Credibility and Reliability**

[10] Not surprisingly, given the nature of the allegations the parties make against one another, the credibility and reliability of the witnesses, not only of Ms. Chura and Mr. Roberts, but of most of the witnesses who testified, is in issue. In this section, I discuss the principles to be applied in assessing credibility and reliability, and then briefly introduce each witness, making some summary remarks about the credibility and reliability of their evidence. I make further necessary findings with respect to credibility and reliability in the course of my reasons.

[11] In *Bradshaw v. Stenner*, 2010 BCSC 1398, this Court made the following instructive comments on assessing credibility and reliability, which I apply in considering the evidence of the witnesses in this case:

[186] ...The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally....

[12] I am entitled to accept some, none, or all of any individual witness' testimony. Given the problems with both Ms. Chura's and Mr. Robert's evidence, this is an important principle in this case.

**Jackie Chura**

[13] Ms. Chura testified on her own behalf.

[14] I have significant doubts about the credibility of much but not all of Ms. Chura's evidence. Her evidence about a number of matters, including the WebStager allegations, whether she traded products, and some expense issues,

was not believable. I have been very cautious about relying on Ms. Chura's evidence, and have looked for corroboration where it can be found.

**Barb Osmond**

[15] Barb Osmond was a witness for the plaintiff. She was employed by Batten between 2000 and 2015. She was one of Batten's first employees, and handled everything from office management to shipping to accounting in Batten's early years.

[16] I found Ms. Osmond to be a credible and reliable witness. I am conscious of the fact she testified about workplace practices that were in place during her tenure, and that those practices may have changed since her retirement.

**Yvonne Anderson**

[17] Yvonne Anderson also testified for the plaintiff. She was and is the owner and Chief Executive Officer of Santevia Water Systems ("Santevia"), a company that often had a neighbouring booth to Batten at trade shows. Ms. Anderson is Ms. Chura's current employer.

[18] Ms. Anderson gave evidence about retail industry practices at trade shows and in particular about trading goods. She also testified about her interactions with Ms. Chura and Mr. Roberts.

[19] I found Ms. Anderson to be a generally reliable witness, although I did have concerns about her attempts to explain away her references to "trading" in her emails with Ms. Chura.

**Steven Arsenault**

[20] Steven Arsenault also testified for the plaintiff. Mr. Arsenault is the owner of WebStager. For reasons I will give in addressing the WebStager contracts, I found Mr. Arsenault to be an unreliable and incredible witness. I am unable to rely on his evidence in the absence of corroboration.

**James Roberts**

[21] I found Mr. Roberts to be an inconsistent witness, whose evidence was sometimes credible and reliable, and sometimes not. He was clearly hurt by what he saw as Ms. Chura's betrayal of him and his trust, which led him to see fault where there was sometimes no fault to be found. He had a tendency to make blanket, absolute statements, such as Ms. Chura never put in an eight-hour day, which did not stand up to scrutiny. He had a poor memory, with poor recall of details, which made his evidence often unreliable.

[22] I have exercised caution in relying on Mr. Roberts' evidence, and have looked for corroboration where it is to be found.

**Paula Grigg**

[23] Paula Grigg was an employee who managed PhotoGIFTCARD, a company owned by Batten which operated out of the same premises. In about 2015, Batten sold PhotoGIFTCARD, and Ms. Grigg joined Batten's sales staff. In that role she was responsible for Batten's North American sales, together with her sister, Wendy Thompson.

[24] Ms. Grigg worked closely with Ms. Chura and attended many trade shows with her. Ms. Grigg left Batten in or around February 2020.

[25] Ms. Grigg sometimes made assumptions about Ms. Chura's conduct that were not proven on the evidence. Ms. Grigg was a generally credible witness, although I had concerns about the reliability of her evidence on some points due to her tendency to make such assumptions.

**Calvin Fung**

[26] Calvin Fung is Batten's controller. He has a professional designation as a certified professional accountant.

[27] Mr. Fung is a current employee of Batten, and his loyalties clearly lay with Batten and Mr. Roberts. He was very nervous giving his evidence, especially when Mr. Roberts was in the courtroom.

[28] I had some specific concerns about Mr. Fung's credibility arising from a situation which arose in 2016 with respect to obtaining a replacement keychain for online banking with TD Commercial Banking ("TD") for Batten. Mr. Fung contacted TD about this issue, and was told he needed to contact Batten's representative from TD's cash management services to re-issue a keychain. He was then told that the request would need to come from Batten's system administrator, Ms. Osmond. Ms. Osmond had left Batten's employment by this time. Mr. Fung asked Ms. Chura to sign into Ms. Osmond's email, and impersonate her to make the request. Mr. Fung admitted in cross-examination that he lied to the bank because he needed to find a solution for Batten to this problem. While I appreciate that Mr. Fung needed to find a solution to this problem, I find his willingness to be dishonest to achieve that solution troubling, especially for a person with his professional designation. This incident has caused me to scrutinize Mr. Fung's evidence closely, particularly where it is uncorroborated.

### **Leanne Kask**

[29] Leanne Kask is a chartered professional accountant, who provides consulting and accounting services to a number of businesses, including Batten. Ms. Kask was heavily involved in the investigation into Ms. Chura's alleged misconduct, including attending the December 15, 2016 investigation meeting.

[30] Ms. Kask was extremely loyal to Mr. Roberts, which likely coloured some of her evidence.

### **Overview of the parties and their relationship**

#### **Ms. Chura's pre-Batten employment**

[31] Prior to being hired by Batten, Ms. Chura worked in a variety of positions. She worked in the United States for some years as a dental assistant, and moved to



Canada in 1991. In 2006, Ms. Chura worked for Scotia Capital Inc. She earned \$14,515.49 in employment income. In 2007, she worked for Wellington West Capital Inc., where she earned \$47,082.52. In 2008, she earned \$14,381.92 with that employer before moving to Batten during that year.

### **Ms. Chura begins work with Batten**

[32] In 2008, Mr. Roberts was visiting the Churas' home from time to time to take a shower while he was renovating his home. On one such visit, Ms. Chura told him that she was unhappy in her current employment, and wanted a change. He suggested that she come to work for him at Batten, as he needed a receptionist. She agreed to do so, and started working for Batten in April 2008.

### **Ms. Chura's earnings at Batten**

[33] In 2008, her first year of employment with Batten, Ms. Chura earned \$31,762.57, including \$3,429.19 in commissions.

[34] Ms. Chura's income with Batten steadily increased. In 2009, she earned \$48,581.00, including \$8,481.02 in commissions. In 2010, she earned \$62,560.00, including \$22,560.17 in commissions. In 2011, she earned \$70,253.00, including \$29,922.75 in commissions. In 2012, she earned \$84,716.00, including \$42,051.42 in commissions. In 2013, she earned \$91,592.00, including \$51,263.67 in commissions. In 2014, she earned \$114,304.00, including \$69,876.82 in commissions. Her notice of reassessment for 2015 indicates she had a net income in 2015 of \$114,156; the amount made up of commissions is not indicated. According to a letter dated October 24, 2014, signed by Batten's controller Mr. Fung, her gross salary at that time was \$99,723.58, and would exceed \$140,000.00 by year end. In 2016, her T-4 indicates she earned \$121,016.49. Her 2016 T-4 does not indicate what part of that amount was made up of commissions.

[35] It will be seen that not only did Ms. Chura's income steadily increase over the years, so too did both the proportion of her income made up of sales commissions and the gross amount of her commissions.

**Ms. Chura's duties and job title**

[36] As set out in their partial agreed statement of facts, the parties agree that Ms. Chura's primary responsibilities included managing the Nellie's brand. They further agree that her duties included overseeing the sales of Nellie's products, liaising with customers and suppliers, assisting with marketing efforts, and attending trade shows on behalf of Batten. They agree that she was a senior employee who had the ability to exercise autonomy and discretion in various elements of Batten's business.

[37] Ms. Chura's job title was a matter of some dispute in this trial. In the October 24, 2014 letter from Mr. Fung, he states that she is the "COO of Nellie's All Natural". Ms. Chura was never the Chief Operating Officer of Nellie's. She testified that she assigned herself the title of "COO", and that she did not exactly know what those letters meant. She used "COO" in her email signatures for a period of time; it can be seen for example in emails she sent in February, March and August 2015. At some point, Ms. Kask learned she was using the title COO and told her she had to stop, and Ms. Chura stopped using it. I do not believe that Ms. Chura randomly chose to insert "COO" into her email signature line without knowing what it meant. She was trying to assert a position she did not in fact have.

[38] In her emails in 2016, Ms. Chura used the title "International Account Manager" in the signature line. This accurately reflected her authority to deal with Batten's international sales.

[39] The parties disagree about the extent of Ms. Chura's authority and her role in relation to Mr. Roberts. On the whole, the evidence substantiates Batten's position that, in addition to her responsibility for international sales, Ms. Chura was Mr. Roberts' "right-hand person". Mr. Roberts was frequently not in the office, and had a fairly hands-off management style. Other employees would communicate with Ms. Chura, who in turn would communicate on their behalf with Mr. Roberts. Ms. Chura and Mr. Roberts had a close working relationship, and Ms. Chura was able to communicate with him about workplace issues and concerns in a way other employees were unable or uncomfortable doing. Mr. Roberts was not detail-oriented,

and frequently relied on Ms. Chura to deal with technical and other issues for him and Batten. Ms. Chura held a high degree of delegated authority and was trusted to make decisions on behalf of Batten and to direct other employees. She would occasionally check in or seek approval from Mr. Roberts for decisions when she felt it was appropriate.

**Batten’s business and work environment**

[40] Batten sells and distributes consumer products both in North America and internationally. As mentioned, Nellie’s is its signature brand.

[41] Batten underwent substantial growth in the years Ms. Chura was employed there. Its employees approximately doubled from about five to twice that. The work environment was quite informal, with few if any formal written employment policies. Ms. Chura, for example, did not have a written contract of employment.

[42] To the extent Batten could be said to have an organizational structure, it was flat. As I have discussed, Ms. Chura was Mr. Roberts’ right-hand person. Other senior staff, such as Mr. Fung and the person in charge of the warehouse, appear to have been of more or less equal authority, although everyone in the office, including Mr. Fung, appear to have looked to Ms. Chura for leadership and direction.

[43] Over time, the commission structure for sales staff, including Ms. Chura, changed. While a significant amount of evidence was led about such changes, it is not necessary to delve into it for the purposes of this decision.

**The Churas’ financial difficulties**

[44] The evidence established that the Churas experienced financial difficulties.

[45] For example, Ms. Chura’s 2013 and 2014 notices of assessment indicate that she filed her tax returns late, for which she was charged penalties, and she had arrears owing, with interest accrued on those arrears.

[46] In or about 2015, Ms. Chura’s wages were being garnished by Canada Revenue Agency (“CRA”) due to Mr. Chura having failed to pay his income taxes.

[47] Mr. Roberts loaned money to Ms. Chura on more than once occasion to assist her with her financial issues. On one occasion, in or around December 2015 or January 2016, Mr. Roberts accidentally made a \$7,200 payment onto Ms. Chura's MBNA credit card, rather than the Batten MBNA credit card. Ms. Chura testified that she called the credit card company and asked them to reverse the payment, but they were unable to as she owed money on her card which could not be released. She said Mr. Fung asked her to pay Mr. Roberts back, but she did not have the money to do so. Mr. Fung and Ms. Chura set up a payment arrangement whereby Mr. Fung would deduct money off of her web sales each month until she had paid back Mr. Roberts in full.

[48] Ms. Grigg testified that Ms. Chura spoke to her about her financial problems frequently. Ms. Grigg stated Ms. Chura talked about money problems a lot, that she understood the Chura family had CRA tax liability issues, and that Ms. Chura had her wages garnished. Ms. Grigg observed that Ms. Chura was very stressed as a result of her financial situation. All of this led her to have concerns about how Ms. Chura was dealing with her business expenses, which over time she started to scrutinize more closely.

#### **Investigation of alleged misconduct and termination of employment**

[49] Batten started to investigate Ms. Chura for potential misconduct in December 2016, likely as a result of concerns Ms. Grigg brought forward to Mr. Roberts at that time, including the Babur restaurant issue.

[50] On December 8, 2016, Mr. Roberts texted Ms. Chura asking her to call him as soon as she was finished a meeting. She called him back on the speakerphone from her car; two other Batten employees were in the car with her. Mr. Roberts told her not to come back to work that day or the following week and that he would contact her when he was ready. He told her Batten was going to conduct a "forensic investigation".

[51] An investigation meeting was held on December 15, 2016, attended by Mr. Roberts, Ms. Kask and Ms. Chura. The parties agree that, at that meeting, Mr.

Roberts advised Ms. Chura that Batten had concerns regarding her performance, and certain expenses that she had charged to the company. They also agree that Mr. Roberts told Ms. Chura not to return to work after the meeting, until Batten had concluded an investigation into her conduct and made a determination.

[52] That meeting was video and audio recorded by Mr. Roberts, and the video recording and a transcript were admitted into evidence. Some of the allegations Batten now relies upon were raised during the investigation meeting. Others, notably the WebStager issue, were not.

[53] The parties agree that between December 15 and 28, 2016, Mr. Roberts asked Ms. Chura to attend a follow-up meeting. Ms. Chura advised that she would not meet with Mr. Roberts and requested that any further correspondence be in writing. They never had a follow-up meeting. I would add that there was no “forensic investigation”; Mr. Roberts had other Batten employees, such as Mr. Fung and Ms. Grigg, review Batten’s files and financial records in an attempt to determine the scope of Ms. Chura’s alleged wrongdoing.

[54] Ms. Chura submits that colleagues were told not to speak with her after she was suspended pending investigation. Text messages between Ms. Chura and her colleagues do not tend to substantiate this assertion. Ms. Chura texted “Andrew” and asked him “hasn’t he told you you’re not allowed to reach out to me”, to which “Andrew” responded that “no ive not been told anything by anyone”. The impression left by “Andrew’s” texts is that Batten employees were left in the dark about Ms. Chura’s absence, but not that they were told by Mr. Roberts that they were not to speak to her.

[55] On December 20, 2016, Ms. Chura emailed Ms. Grigg to ask her “are you guys not allowed to talk to me or do you not want to?”. Ms. Grigg replied that “we were told not to talk to you (or each other) about anything that’s going on.” Ms. Grigg testified she was not sure if Mr. Roberts actually gave that direction. The impression left by her evidence was that she was uncomfortable speaking to Ms. Chura in the circumstances, and wanted to shut down the conversation.

[56] On January 11, 2017, Batten gave Ms. Chura notice in writing that her employment was terminated, effective immediately, for just cause. In that letter, Mr. Roberts offered her a lump sum payment of \$20,000.00 upon receipt of a signed release. Perhaps needless to say, Ms. Chura did not accept that offer.

[57] Ms. Chura received a final pay cheque dated December 31, 2016 in the amount of \$2,101.55. Some items were deducted from that cheque.

[58] Ms. Chura submits that she was traumatized by the investigation process and the termination of her employment. On December 21, 2016, Ms. Chura's physician, Dr. Wayne Smith, wrote a letter to whom it may concern in which he stated that Ms. Chura was medically unable to attend to her employment duties, and that he had advised her not to attend work until further advised. On August 28, 2017, Dr. Smith wrote a second letter, indicating that Ms. Chura had been suffering from Major Depression "in reaction to her work place scenario". He wrote that she had not been well enough to work since his December 21, 2016 letter.

[59] Prescription receipts for February 2017 for Escitalopram, and for April, June and August 2017 for Bupropion, all prescribed by Dr. Smith to Ms. Chura, were admitted into evidence. I understand both medications to be anti-depressants.

### **Analysis of Allegations of Misconduct**

#### **Evolving allegations**

[60] Batten made a number of allegations of misconduct against Ms. Chura. Those allegations evolved over time. At the December 15, 2016 meeting, only some of the issues now relied upon by Batten were raised, and some of those were raised with little in the way of detail. No documentation was provided at that time.

[61] In its response to civil claim, filed June 13, 2017, Batten itemized eight varieties of misconduct, which it pleaded it became aware of in or about December 2016, as follows:

9. In or about December 2016, the Defendant became aware that the Plaintiff had engaged in serious misconduct, which constituted a fundamental breach of the Contract, in particular, the Plaintiff had:
  - a) knowingly submitted receipts for dinners out, room service meals, and other expenses which she did not pay for, in order to receive reimbursement for the receipts from the Defendant;
  - b) charged the Defendant for her family's cellphone data plan and personal phone upgrade expenses, which the Plaintiff knew were not authorized;
  - c) charged numerous personal items to the Defendant's credit card and accounts, which the Plaintiff knew were not authorized;
  - d) charged flights and hotel rooms for herself, and her daughter, to the Defendant's credit card, which the Plaintiff knew were not authorized;
  - e) traded the Defendant's products for products from other companies and business partners, for her personal use, which the Plaintiff knew was not authorized;
  - f) removed product from the Defendant's warehouse, including a \$200 humidifier, for her personal use, which the Plaintiff knew was not authorized;
  - g) consistently worked far less than a 40 hour week, which led to a significant decline in her work performance, despite warnings and attempts to remedy her conduct, and
  - h) engaged in a conflict of interest in which she caused the Defendant to retain an IT consultant who supplied a "kickback" to her (or her husband), to the detriment of the Defendant and for her (or her husband's) personal benefit.

(the "Breaches")

[62] On July 26, 2018, Ms. Chura requested particulars of the misconduct which Batten viewed a fundamental breach of contract. On May 4, 2021, Batten provided a list of the following 28 alleged instances of misconduct:

1. Babur Restaurant – paid for by client
2. Alleged US Customs Fees (Mexico Trip)
3. Sheraton Hotel (Mexico) – room and meal charges paid for by company credit card
4. Taxi/Uber Trips not taken but submitted for reimbursement (Mexico Trip)
5. Unauthorized personal purchase (book from Indigo)
6. Unauthorized personal purchase (pants from Loft)
7. Personal Citi Bike Rental in New York City charged to company

8. Charging family's cell phone plans to company
9. Shipping and duty charged to company for plaintiff's personal items
10. Shipping and duty charged to company for plaintiff's personal items
11. Personal item charged to company Staples account (printer)
12. Personal item charged to company Staples account (printer cartridges)
13. Personal item charged to company Staples account (laptop charger)
14. Personal item charged to company Staples account (leather portfolio)
15. Personal item purchased from Ecotrend charged to company
16. Personal item purchased from Ecotrend charged to company
17. Chicago Carriage Cab handwritten receipts – trips not taken
18. Family Trip to Capilano Suspension Bridge
19. Daughter's Flight to Las Vegas
20. Upgraded hotel room charge to accommodate daughter's stay in Las Vegas
21. Plaintiff and Daughter's Hotel Stay in Las Vegas (after trade show)
22. Daughter's Expenses in Las Vegas
23. Products taken from Batten warehouse for personal use and without authorization
24. Batten items traded for personal items
25. Personal kickbacks received through company contractor (WebStager)
26. Attempted to be reimbursed for Starbucks app reload
27. Surface Pro purchased by Batten and retained by Jackie until discovery
28. Wow Sticks

[63] Batten subsequently indicated at trial that item 11 on the May 4, 2021 list was included in error. The remaining 27 items encompass examples of seven of the eight breaches alleged in the response to civil claim. No further particulars were provided of the seventh breach alleged in the response to civil claim, being the allegation that Ms. Chura consistently worked far less than a 40-hour week, leading to a significant decline in her work performance.

[64] In order to determine if Batten has established just cause for the termination of Ms. Chura's employment, it is necessary to consider whether each of allegations



made by Batten was proven. Some of them can be grouped, which I have done in the analysis which follows. Once I have determined which allegations have been proven, I will go on to determine whether they establish just cause for the termination of Ms. Chura's employment.

### **Hours of work and performance**

[65] In its response to civil claim, Batten alleged that Ms. Chura "consistently worked far less than a 40 hour week, which led to a significant decline in her work performance, despite warnings and attempts to remedy her conduct".

[66] During the course of Ms. Chura's employment, she had worked fairly flexible hours. Her job required her to travel to trade shows, during which she would work long hours. She sometimes had to communicate with clients in different time zones, such as Korea, and would do so outside of regular business hours. Batten had also been accommodating when it came to things like allowing her to leave early to pick her children up from school when they were young.

[67] One year prior to the investigation meeting, in December 2015, Mr. Roberts and Ms. Kask met with Ms. Chura to tell her she was required to come into the office for 40 hours a week. Ms. Chura told them that she would try to do so, but that 40 hours in the office was incompatible with the nature of her duties, which required travel and work on evenings and weekends.

[68] The issue of Ms. Chura's attendance at work was not raised with her again until the December 15, 2016 investigation meeting. This was despite the fact that other employees, such as Ms. Grigg, were apparently concerned about Ms. Chura's tardiness and attendance.

[69] In the investigation meeting, this was the first specific issue raised. Mr. Roberts referred to the meeting a year earlier, and said that he had been pretty clear in his expectations. He said that Ms. Chura was "never here on time", and that he had video of her arrivals. In response to her question, Mr. Roberts said that he also had records of when she left.

[70] Ms. Kask testified in cross-examination that it was very clear from Batten’s video and alarm code logs that Ms. Chura was claiming to be working in the office when she was not. Mr. Roberts testified to the same effect in his examination for discovery, and at trial. Despite this testimony, Batten never disclosed any video recordings or other documentary evidence recording Ms. Chura’s arrivals and departures from work.

[71] During his cross-examination, Mr. Roberts was asked about his statement at his examination for discovery that Ms. Chura “never once made an eight hour day”. He admitted he did not know if that was true, and that his comment was “tongue in cheek”, that “there was a certain level of sarcasm there”, and that “I suppose I didn’t tell the truth, because I didn’t check every day”. This is an example of Mr. Roberts exaggerating, and being reckless with his evidence, which leads me to be cautious of relying on it in the absence of corroboration.

[72] I find that Ms. Chura did not consistently work 40 hours a week in the Batten office. It is not possible on the evidence before me to know precisely how many hours she did work, either at the office or remotely, given the nature of her employment, and the lack of any time logs or recordings.

[73] I accept that Mr. Roberts was troubled by Ms. Chura not being in the office 40 hours a week. He preferred employees to work in the office rather than at home. Ms. Chura’s failure to be in the office 40 hours a week appears to have become an irritation that made him feel taken advantage of. Batten did discuss the issue with Ms. Chura of her not working 40 hours in the office on one occasion prior to the investigation meeting. She was not, however, given multiple warnings about this issue. Indeed, there is no evidence that she was given a warning about the issue in the one meeting at which it was discussed, such a formal written warning.

[74] Scant effort was made by Batten to prove at trial that Ms. Chura’s job performance declined due to working less than a 40-hour work week. Given that her salary and commissions increased regularly through her employment, a reflection of

Nellie's sales increasing internationally through that period, it is difficult to see how such a decline in performance could be proven.

[75] I find that Batten has failed to establish that Ms. Chura worked far less than a 40-hour work week or that any lack of work hours resulted in a significant decline in her work performance.

**Business expenses**

[76] In its response to civil claim, Batten alleged that Ms. Chura "knowingly submitted receipts of dinners out, room service meals, and other expenses which she did not pay for, in order to receive reimbursements." A number of the specific particulars of misconduct fall into this category. Ms. Chura denies knowingly submitting any expenses she did not pay for in order to receive reimbursement. She submits that where she was reimbursed for any charges she had not incurred, there was no intention to deceive, and no over-payment was known to her prior to these proceedings.

[77] Before getting into the specifics of the allegations, it is helpful to review the evidence about how business expenses were dealt with at Batten generally.

[78] As part of their partial agreed statement of facts, the parties agree that as part of Ms. Chura's duties and responsibilities, she frequently incurred work-related expenses. They further agree that in order to be reimbursed for such expenses, Ms. Chura was required to submit receipts to a member of Batten's accounting department, who would issue her a reimbursement cheque.

[79] There was no written policy governing business expenses. Batten's unwritten policy was generally referred to by past and current employees and Mr. Roberts as an honour system. Employees were entitled to be compensated for expenses incurred by them for business reasons.

[80] When travelling to trade shows, employees such as Ms. Chura would incur a variety of expenses. Some major travel expenses, such as flights and hotel rooms,

were typically paid directly by Batten. Employees would incur expenses for things like food and local transportation, for which they were eligible for reimbursement. At times, particularly in the earlier years of Ms. Chura's employment, Batten would provide a cash advance to cover anticipated expenses. Late in her employment, Batten provided employees with company credit cards, which were to be used to pay for expenses.

[81] A number of witnesses testified about Batten's practices, and their individual practices, with regards to expenses. Ms. Osmond was responsible for dealing with expenses for Batten during the course of her employment. Employees would provide her with receipts and bills, she would review them, and reconcile expenses to ensure there was no double-payment. If she had questions, she would ask the employee in question. She would input the expenses into a spreadsheet and prepare a reimbursement cheque. She would provide the spreadsheet, receipts and cheque to Mr. Roberts for his review and signature. She said that Mr. Roberts occasionally asked her about certain expenses. Ms. Kask would also sometime review expenses and sign expense cheques.

[82] After he joined the company in 2010, Mr. Fung gradually took over the responsibility for expenses from Ms. Osmond. Initially, he used the same procedures Ms. Osmond did, but over time he implemented different ones. In particular, he created an expense form template that employees would fill out themselves. He did not recall when this change was implemented. Mr. Fung testified that the accounting department did not review expenses or ask questions to determine if they were appropriate, and merely assumed that receipts submitted were for legitimate company expenses.

[83] Rowena Wong joined Batten sometime after Mr. Fung, and assisted with expense reimbursements. She played a significant role in some of the expenses in dispute in this case, in particular those relating to the Las Vegas trade show in May 2016. Ms. Wong did not testify. I will address the evidence about her role when I come to the Las Vegas expenses.

[84] Over time, it would be fair to say that company practices with respect to expenses became somewhat more formalized. By the later years of Ms. Chura's employment, other employees, such as Ms. Grigg and Ms. Thompson, were filling out their own expense forms, and submitting them and their supporting receipts for reimbursement. Throughout her employment, however, Ms. Chura maintained the practice of simply giving her receipts and other supporting documents to whatever person was then responsible for expense reimbursement, and expected that person to review the receipts, generate an expense form and issue a repayment cheque for the approved expenses. The only expense forms that the evidence shows Ms. Chura reviewed were the two emailed to her by Ms. Wong for the Las Vegas trip.

[85] Mr. Roberts, or in his absence, Ms. Kask, would sign expense cheques prepared by Ms. Osmond, Mr. Fung or Ms. Wong. It does not appear that Mr. Roberts closely scrutinized, if at all, the supporting documentation provided with the cheques.

***Babur Restaurant***

[86] Batten alleges that Ms. Chura submitted a receipt for a dinner with a client at a restaurant in Toronto called Babur when in fact the dinner was paid for by the client. Ms. Chura admits that she may have mistakenly submitted the receipt but denies that she knowingly submitted it for reimbursement. She submits that the evidence does not show that she knowingly submitted the Babur receipt, that it was submitted at all, or that she was reimbursed for it.

[87] The Babur dinner occurred on September 18, 2015, while Ms. Chura and Ms. Grigg were in Toronto for a work trip. Ms. Chura and Ms. Grigg had dinner with a client named Roger Israni and a colleague of his. There is no dispute that Mr. Israni paid for the dinner. There is also no dispute that the dinner was claimed on Ms. Chura's expense form, in the amount of \$185.71. No form of payment was listed on the expense form.

[88] Ms. Chura denied picking up a copy of the bill for the Babur dinner or submitting it with her receipts. She suggested she might have accidentally picked it

up and mixed it up with her business-related receipts before handing them in to the accounting department. Ms. Chura did not fill out the expense form on which the Babur dinner was listed.

[89] Mr. Roberts raised this expense in the December 15, 2016 investigation meeting. Ms. Chura said she did not have a clue who paid for the dinner, or where they went for dinner. Mr. Roberts said that he had a copy of the bill and who paid for it. He said he had a copy of the bill from Mr. Israni, and he was very clear that he paid for dinner. Ms. Chura said she had nothing to say and did not remember the dinner. Mr. Roberts said that “this is the one that actually put me over the top”. He recalled Ms. Chura asking if it was okay to buy Mr. Israni dinner.

[90] It is notable that while Ms. Chura told Mr. Roberts in the investigation meeting that she did not remember this dinner or who paid for it, at trial, some four and a half years later, she did remember the dinner and the fact Mr. Israni paid for it. She agreed in cross-examination that she picked up a copy of the receipt, and said that she did so to remember the restaurant. She testified that she must have mixed it up with her business receipts and that she must have submitted it with them. She did not recall receiving a reimbursement cheque, but said that she was sure she would have received such a cheque.

[91] Batten did not produce a copy of the Babur bill in these proceedings. Batten also did not produce a copy of the reimbursement cheque in which this expense would have been included. In cross-examination, Mr. Roberts could not say whether he had ever seen the transaction slip, but he had seen that it was paid for. He testified that “it was submitted, unless someone was incredibly creative and made all that up”.

[92] Mr. Fung testified that the reimbursement cheque that included the Babur dinner was listed on a Batten banking document showing credits and debits. The cheque was dated September 23, 2015, and was in the amount of \$1,156.51. Mr. Fung testified that he deducted \$1,000.00 from the amount claimed because an advance in that amount had been given to Ms. Chura. He said he would have had to

explain that to Ms. Chura, either by way of a handwritten note on the cheque stub, or in a conversation. He did not recall this particular conversation. Nor did Ms. Chura.

[93] Ms. Grigg testified about the Babur dinner. She knew that the Churas were having financial issues, and testified that she had concerns about Ms. Chura's expense reimbursement habits. Ms. Grigg had a feeling that Ms. Chura would try to submit the Babur bill. She testified that she saw Ms. Chura pick up the receipt from the table. She asked Ms. Chura why she wanted it, and Ms. Chura told her she wanted to be able to recall the name of the restaurant for future trips to Toronto. Ms. Grigg and Mr. Israni suggested to Ms. Chura that she take a picture of the receipt, but she took the receipt.

[94] On her return to Vancouver, Ms. Grigg testified that she decided to check Ms. Chura's expense report to see if she had claimed the Babur dinner. She talked to her sister, Ms. Thompson, before she looked at the expense report and told her that she was suspicious she was going to see something she did not want to see. Ms. Grigg testified that she wanted to say that before she looked at the expense report so it would not look like she was planting something. Ms. Grigg then went and spoke to Ms. Wong and looked at the expense report. She saw that the receipt for Babur had been submitted, and she remembered seeing the receipt. Ms. Grigg did not confront Ms. Chura about what she had seen, nor did she report what she had seen Mr. Roberts. Ms. Grigg testified she did not do so for two reasons. The first was that, until that point, she was not sure that Ms. Chura was doing anything wrong, and she felt bad for her due to her financial situation. The second was that Ms. Chura was Mr. Roberts' right-hand person, and she was worried that if she went to Mr. Roberts with this information and Ms. Chura claimed it was a mistake, that it would be really awkward for her to continue working with Ms. Chura. It was only late in 2016, when she and others were asked to go over Ms. Chura's expense reports, that she raised this issue with Mr. Roberts.

[95] Ms. Chura submits that Ms. Grigg's evidence about this, and other matters, lacks credibility. She points to Ms. Grigg's failure to raise this issue for over a year.

She submits that Ms. Grigg's reference to "planting" a document, together with Mr. Roberts' similar comment in his cross-examination, suggests that the allegation was fabricated.

[96] I found Ms. Grigg's evidence on this issue to be generally credible. The reasons she gave for not raising the issue when she first became aware of it make sense. She had to work closely with Ms. Chura, and it is understandable that she would have been reluctant to tell Mr. Roberts about the Babur issue in case she was not believed.

[97] The suggestion that this allegation was fabricated lacks merit. While Batten's document production about this expense was less than complete than it should have been, I find that Ms. Chura did pick up and submit the Babur receipt, and I accept Mr. Fung's evidence about the banking document which shows she received a reimbursement cheque that included payment for the Babur dinner. There is no other way it would have appeared as an expense on her expense form. No one planted any document related to this expense.

[98] I find that Ms. Chura knowingly submitted the Babur receipt in an effort to obtain reimbursement for an expense she did not incur. Her evidence on this issue was inconsistent and lacked credibility. There are much simpler ways to remember a restaurant than picking up a copy of a receipt you did not pay for. Further, her evidence on other issues lacked credibility, which leads me to be unable to rely on her evidence alone to support her version of these events. She clearly submitted the receipt with her other business expenses from that trip. The accounting department reason would have had no reason to think that the Babur receipt was anything other than an expense that Ms. Chura had paid and was properly claiming. She was paid for the amount she claimed. Even if she somehow had submitted it in error, it was Ms. Chura's responsibility to ensure that she only submitted receipts for properly incurred business expenses, and did not receive reimbursement for receipts submitted in error, which she clearly failed to do.



***Mexico Trade Show expenses***

[99] Ms. Chura attended a trade show in Puerto Vallarta, Mexico from January 28 to January 31, 2016. Batten alleges that Ms. Chura improperly claimed a number of items as expenses on this trip. Ms. Chura denies claiming any improper expenses related to this trip.

***US Customs fee***

[100] The first expense relates to an alleged US Customs fee of \$100.00. Ms. Chura submitted a WestJet boarding pass with a handwritten note that reads “\$50.00 US \$ Customs fee x 2”. The expense report, again not created by her, shows a \$100.00 WestJet expense being reimbursed. There is no indication on the expense report of the nature of this expense. Ms. Chura’s position at trial was that the \$100.00 was for a fee to change her flight, not a customs fee.

[101] In her examination for discovery, Ms. Chura testified that when she got to Puerto Vallarta, she told them she was there on business and they told her she had to pay a fee that they could not explain to her. She agreed that this was a random Mexican official telling her she had to pay a random amount. It was not US Customs. Later in her examination for discovery, Ms. Chura testified that she could not say what happened and what the charge was for because she could not remember. She had no explanation for the note.

[102] At trial, Ms. Chura testified that a Batten sales agent she worked with in Mexico told her she might have to pay a customs fee, and to tell them she was travelling for tourism rather than business. After the trade show, she checked in for her flight, which had been changed, so she had to pay a change fee, paid for her luggage, and asked whether she would have to pay a customs fee. She said there were some communication difficulties, and she wrote down “\$50 x 2”. She then went through customs, but she did not pay for anything. When she was asked about her evidence from the examination for discovery, Ms. Chura responded that she thought she was being asked about a process, not whether she had paid a fee or about what had happened. She maintained that she had not paid a customs fee, but had paid a

change fee, in cash. She had no explanation as to why there was no receipt submitted for a change fee, but there was one for a customs fee.

[103] I found Ms. Chura's evidence with respect to this expense inconsistent, confusing and ultimately unbelievable. At her examination for discovery, she clearly testified she paid a US customs fee; at trial she testified that she did not do so, but rather paid a fee to change her flight. She had no explanation for why, in that case, she submitted a copy of her boarding pass with the handwritten note about the customs fee, but there was no receipt provided for a change fee.

[104] I conclude that Ms. Chura knowingly submitted a receipt for a customs fee she did not pay. If she paid a change fee for her flight, there is no evidence of it.

***Room service charges***

[105] Batten submits that Ms. Chura improperly claimed expenses for room service while in Puerto Vallarta, despite the fact that she paid for hotel accommodation and room service with Batten's credit card. Ms. Chura acknowledges that she submitted the room service receipts, but says she did so not to obtain reimbursement, but rather to enable the accounting department to reconcile the charges with the hotel room bill. She relies on Batten's response to her question asking for Batten's precise policy with respect to room service expenses, which was that "Room service charges are included on the hotel room invoice. A separate receipt may be included in order to identify the nature of the expense."

[106] There is no dispute that Ms. Chura did submit receipts for room service charges, totalling approximately \$73.00 US. Nor is there any doubt that she was compensated for those charges, despite having paid for them with the Batten credit card.

[107] The difficulty with Ms. Chura's position with respect to these room service charges is that she did not submit an invoice for the hotel charges. Mr. Fung contacted the hotel during Batten's investigation to obtain a copy of the hotel bill,

which the hotel emailed to him on December 13, 2016. In other words, there was no hotel bill submitted against which the room service charges could be reconciled.

[108] Further, the fact is that Ms. Chura was reimbursed for room service expenses she did not incur. While the amount in issue is relatively small, it was incumbent upon her to ensure that she did not receive compensation for expenses she did not incur. She failed to do so.

***Uber and taxi trips***

[109] Batten alleges that Ms. Chura submitted Uber and taxi receipts for reimbursement for trips not taken in Mexico, totalling 2,050 pesos. Ms. Chura received reimbursement for the rides she claimed.

[110] Ms. Chura denies this allegation. Her evidence was that she took five taxi trips to and from different restaurants with her co-worker, Ms. Prewal, and one trip to the airport. She testified she paid cash and each time was provided with a blank receipt, which she filled out accurately herself.

[111] Batten did not offer any evidence that Ms. Chura did not take these taxi trips. Ms. Grigg testified that the handwriting on the receipts was Ms. Chura's, and that she had observed Ms. Chura on other occasions ask taxi drivers for blank receipts. Ms. Grigg was not present in Puerto Vallarta.

[112] I find that Batten has not proven that Ms. Chura did not take the taxi and Uber trips she claimed in Puerto Vallarta. The fact she filled out the receipts herself does not prove otherwise. No impropriety has been established with respect to this allegation.

***Book – Furiously Happy***

[113] Batten alleges that Ms. Chura improperly sought and received reimbursement for a book she bought, *Furiously Happy*. Ms. Chura bought the book at Park Royal shopping mall in North Vancouver on January 27, 2016.

[114] Ms. Chura acknowledges buying the book and submitting its receipt for reimbursement. She disputes that seeking reimbursement for it was improper, as it was her understanding based on past experience that Batten employees could seek reimbursement for reading material for business travel.

[115] Batten relies on what it says is an inconsistency between Ms. Chura's evidence on discovery and at trial on this issue. It submits that at discovery Ms. Chura testified that she was notified at the airport that there would be no entertainment on the flight, had not thought to bring a book, and was unprepared. It further submits that under cross-examination at trial Ms. Chura testified she was notified in advance that there would be no entertainment on the flight, bought a book, and was prepared.

[116] I have reviewed Ms. Chura's evidence on this issue at discovery and at trial, and do not find that her evidence was inconsistent in the manner submitted by Batten. At discovery her evidence was that "we were notified that there would be no entertainment on the flight, no Wi-Fi, and I had nothing to do". At discovery, she did not say when or where she was notified there would be no entertainment or when she bought the book. At trial, she testified that she bought the book to read on her own down time. She denied that she found out there was no entertainment when she was checking in, and said that she received a notice ahead of the flight. She was not sure exactly when she received the notice or bought the book. The only arguable inconsistency is whether Ms. Chura considered herself unprepared or not: at discovery she testified that she thought she was unprepared, but at trial she agreed she was prepared before the flight.

[117] Batten also relies on Ms. Grigg's evidence that, when she bought books for entertainment on flights, she would pay for those personally. It does not address Ms. Chura's evidence that Ms. Thompson also bought things like books for work travel and sought and received reimbursement for them. Nor does it address Ms. Osmond's evidence that she recalled an occasion when an employee expensed a magazine for a trip, and Mr. Roberts authorized it, because it was a five-hour trip.

[118] I find that Batten has not proven any misconduct on Ms. Chura's part with respect to the purchase of this book. There is evidence of other employees expensing reading material for business travel. Ms. Chura handed in a receipt from Indigo showing the purchase of *Furiously Happy*. The expense report created by Batten's accounting department gives an explanation of the expense that is consistent with Ms. Chura's evidence: "Chapters – book for flight 'Furiously Happy'". Clearly no issue was taken with that expense by either the accounting department or Mr. Roberts or Ms. Kask when they signed the reimbursement cheque. Batten's reliance on this item in these proceedings is misplaced.

***Pants from Loft***

[119] Batten alleges that Ms. Chura improperly sought and received reimbursement for a pair of pants she purchased from Loft in or about October 2016.

[120] Ms. Chura denies any wrongdoing. Her evidence was that she had bought a new pair of pants while in Las Vegas at a trade show. She ripped the pants on the Batten booth. She testified that when she returned to Vancouver she spoke with Eric Mew, a junior accountant with Batten, and explained why she was submitting the receipt for reimbursement. The receipt was accepted, an expense report was created showing the purchase, and Ms. Chura was compensated for the \$24.99 US pants.

[121] Mr. Mew did not testify, so Ms. Chura's evidence about this issue was not contradicted.

[122] I find that Batten has not established any impropriety with respect to Ms. Chura receiving reimbursement for the pants. It was reasonable for her to want to be compensated for a new pair of pants that she had ripped while working. She spoke with Mr. Mews about it, explained the reason she was seeking compensation, and was duly reimbursed. This is an example of Batten engaging in revisionist thinking about expenses Ms. Chura was properly reimbursed for.

***Bike rentals in New York***

[123] Batten alleges that Ms. Chura improperly sought and received reimbursement for the cost of a bike rental in New York during a trade show she and Ms. Grigg attended in July 2016. Ms. Chura acknowledges renting the bikes, but says that reimbursement for the rental was approved. She also submits that Batten has failed to prove that she was in fact reimbursed.

[124] Ms. Chura and Ms. Grigg decided to go for a bike ride around Central Park for pleasure while attending the trade show, and rented two bikes for a total cost, including late return fees, of \$92.89 US.

[125] Ms. Chura testified that when they decided to rent the bikes they called Mr. Fung on her cell phone, she believed on speaker, to seek his approval, and that he authorized the expense, following which they rented the bikes. Ms. Chura paid for the rental for both bikes on her personal credit card. She testified that Ms. Grigg did not provide her with cash for her share of the cost.

[126] There was evidence that Mr. Roberts had approved entertainment expenses for employees travelling for work on other occasions.

[127] Mr. Fung testified that Ms. Chura never called him for the approval of this expense. He testified that he took direction from her, not her from him. He testified that he understood this to be a company expense, as Ms. Chura would have no reason to submit personal expenses to him.

[128] Ms. Grigg testified that she and Ms. Chura determined when they went to rent the bikes that this was a personal expense, that Ms. Chura would pay for it, and Ms. Grigg would pay her back for her share. Ms. Grigg was pretty sure that she paid Ms. Chura cash for her share of the original rental price (not including the late charges that Ms. Chura sought reimbursement for from Batten). Ms. Grigg denied that she and Ms. Chura called Mr. Fung for authorization.

[129] On her return to Vancouver, on July 15, 2016, Ms. Chura sent Mr. Fung an email seeking reimbursement. She copied Ms. Grigg. The email read “Here are the charges on my personal debit card for our bike rentals in New York, cheaper than a cab, got exercise and we weren’t stuck in traffic!” She stated she was owed \$92.89.

[130] Mr. Fung testified that the expense was approved, he could not say by whom, and was paid out of petty cash. Ms. Grigg testified that she did not think she noticed the email when she was cc’d on it, but she and Mr. Fung talked about it later, during the investigation, when he asked her whether they used the bikes for transportation. She denied that they used the bikes for transportation. Mr. Fung did not recall such a discussion with Ms. Grigg.

[131] These events occurred some time ago, and it is understandable that witnesses might not recall all of the details about what occurred. However, there are clear conflicts in the evidence about this expense which need to be resolved.

[132] I do not accept Ms. Chura’s evidence that she called Mr. Fung on her cellphone while she was with Ms. Grigg, before renting the bikes, to ask for his authorization to rent them as a business expense. There is no evidence of anyone, including Ms. Chura, ever asking Mr. Fung for pre-approval of an entertainment expense on any other occasion. Mr. Roberts sometimes gave employees approval to be reimbursed for entertainment expenses while travelling, either of his own volition or on their request. But that is not what occurred here.

[133] Ms. Chura’s July 15, 2016 email is troubling. She wrote “Here are the charges on my personal debit card for our bike rentals in New York, cheaper than a cab, got exercise and we weren’t stuck in traffic!” Ms. Chura and Ms. Grigg rode the bikes in Central Park. They did not use them for business-related transportation or instead of a cab. In light of that fact, it makes no sense for Ms. Chura to have written that they were “cheaper than a cab” or that “we weren’t stuck in traffic”. I find that she wrote the email in order to create the impression that they used the bikes for business-related purposes rather than for personal use.

[134] Ms. Grigg’s evidence about whether she paid Ms. Chura back for the cost of renting her bike was somewhat equivocal. However, it is not necessary for me to make a finding on that point. Whether Ms. Chura had already been paid back a part of the rental cost or not, she was seeking reimbursement for the entirety of the cost of a personal expense that had not been pre-approved. In this regard, I accept Mr. Fung’s evidence that he would have understood the expense to be business-related, as Ms. Chura would have had no reason to submit personal expenses to him.

[135] I also accept Mr. Fung’s evidence that the “Posted” stamp on the July 15, 2016 email means that Ms. Chura was paid for the bike rentals. Ms. Chura had sent the email with “high” priority, and was generally quite concerned to obtain timely reimbursement for her expenses. Ms. Chura would not have sat idly by had she not been reimbursed for the bike rentals.

[136] I find that Ms. Chura improperly sought and obtained reimbursement for the personal expense of renting bikes to ride in New York.

***Charging family’s cell phone plan to Batten***

[137] Ms. Chura used her personal cell phone for business purposes. She was permitted to be reimbursed for the use of her personal cell phone for such business purposes. Batten did not have any written or formal policy dealing with cell phone expenses.

[138] Batten alleged in its response to civil claim that Ms. Chura “charged the Defendant for her family’s cell-phone data plans and personal phone upgrade expenses, which the Plaintiff knew were not authorized”. Ms. Chura denies that she did so, and submits that she acted consistently with Batten’s reimbursement policies for cell phone costs.

[139] Starting in February 2012, Ms. Chura submitted a portion of her family’s Telus cell phone bill for reimbursement by Batten on a monthly basis. She did not provide the whole bill, but just those parts that related to her cell phone usage. Batten reimbursed her for what she submitted.



[140] The pages she submitted included charges for data, originally costing \$30.00 a month. In October 2013, this item changed to shareable data, at \$50.00 a month. The portion of the bills submitted did not include any explanation of the shared data, but it appears to be common ground that it was data that was shared between Ms. Chura and the other members of her family. Batten paid for the entire cost of the shared data.

[141] Batten did not take issue with the cell phone bills Ms. Chura submitted for reimbursement at the times she submitted them. Batten did, however, want all of its employees to switch over to a Rogers business plan. Kim Tran, a logistics employee, tried to persuade Ms. Chura to do so, but she did not want to move from her family plan. Ms. Chura recalled Mr. Roberts talking to her about switching to Batten's plan and suggesting that she carry two phones. There is no evidence that anyone at Batten ever told Ms. Chura she was required to switch to the Batten plan.

[142] On or around November 17, 2016, Batten provided Ms. Chura with a cheque reimbursing her for her most recent cell phone bill. Ms. Chura testified that Mr. Fung brought her the cheque and told her that going forward Batten would only pay a flat amount for cell phone charges. She thought the flat amount going forward was \$60.00 or \$70.00. Ms. Chura did not submit any more cell phone bills after that conversation prior to the termination of her employment.

[143] Mr. Roberts raised the cell phone issue with Ms. Chura in the December 15, 2016 investigation meeting. While his evidence was far from clear, I think he agreed this was the first time he did so. Mr. Roberts also testified that he did not review or audit Ms. Chura's cell phone bills. He said he trusted the people who worked for him to turn in legitimate expenses. He called it an "honour system".

[144] There is no evidence that Ms. Chura charged Batten for "personal phone upgrade expenses". The evidence is clear that she did charge Batten for her family's shared data. She did so openly, as the bills she submitted showed the shared data. While Ms. Chura's cell phone bills were clearly an irritant, no one at Batten appears to have raised any specific concerns about the shared data until these proceedings.

Nor did anyone, until November 2016, tell Ms. Chura she would only be charged for a flat rate for her cell phone usage.

[145] In my view, Batten is the author of its own misfortune when it comes to Ms. Chura's cell phone expenses. It had no formal or written policy. It accepted the partial bills Ms. Chura submitted, and paid her for the expenses indicated on them. Batten did not ask her for complete copies of her bills. Batten clearly wanted its employees to move to a business cell phone plan, but it did not require Ms. Chura to do so. On the evidence before me, I am unable to conclude that Batten has established that Ms. Chura engaged in any misconduct in respect of her cell phone bills.

#### **Use of corporate accounts**

[146] In its response to civil claim, Batten alleged that Ms. Chura charged numerous personal items to its credit card and corporate accounts, which Ms. Chura knew were not authorized. Eight such items were listed in Batten's particulars. Ms. Chura's responses to those allegations varied, and I will address each of them specifically in turn.

[147] Before addressing the specific allegations about the use of corporate accounts by Ms. Chura, I will make some general observations about the corporate accounts.

[148] Batten had corporate accounts with a number of suppliers such as Staples. Batten and/or Mr. Roberts also had debt instruments, such as Paypal and corporate credit cards, which were used by Batten to buy goods and services. A number of the allegations of wrongdoing made against Ms. Chura relate to her allegedly using these accounts and instruments for personal, rather than business, purposes, and in some cases, not repaying Batten for those personal expenses.

[149] While it is likely Ms. Chura used these accounts and instruments more than others, I do not think she was alone in doing so. On August 29, 2016, Mr. Fung sent an email to Ms. Chura and three other employees asking if anyone charged amounts

to the YWCA and Paypal. Ms. Chura and Ms. Thompson each denied that the charges were theirs. The fact Mr. Fung sent that email to four employees suggests that he thought any of them could have made the charges.

[150] Record-keeping about employees' use of corporate accounts and expenses was somewhat informal. For example, a June 24, 2015 pay stub for Ms. Chura shows an amount paid to her of \$650.93. There are handwritten notes on the pay stub reflecting various amounts deducted from her pay, including CRA garnishment, the cost of a skin rejuvenation product, and the cost of a cell phone case. It appears from the pay stub that she was ultimately paid \$5.20 out of petty cash after all the various deductions for such things were made.

[151] I now turn to the specific allegations regarding Ms. Chura's use of Batten's corporate accounts.

***Shipping and duty charged to Batten for personal items***

[152] Batten alleged that Ms. Chura purchased items for personal use to be shipped to Batten, using Batten's shipping and receiving processes/accounts, and at Batten's expense, causing Batten to incur charges and duties on the items.

[153] Batten uses a warehouse in Blaine, Washington, operated to by Transgroup, for cross-border shipping and storage of its goods, including its trade show booths and products.

[154] Ms. Chura had a personal PO Box in the same Transgroup warehouse in Blaine. She testified that from time to time she asked Ms. Osmond and later Ms. Tran to bring her personal shipments shipped to her personal PO Box with Batten shipments coming across the border. She testified that because her personal items were coming on top of Batten stock or trade booth no additional charges were incurred.

[155] There were two specific personal shipments relied upon by Batten. The first was an order of cotton shirts and a facial toning device. Batten alleged that it cost

\$48.13 in duty and processing fees and \$17.79 in shipping charges to ship these items to its North Vancouver office for Ms. Chura's personal benefit. These items were shipped from Blaine to North Vancouver in or about November 2016. Invoices from Batten's expediter reflect those fees.

[156] Ms. Chura testified that she asked Ms. Tran to bring the facial toning device across the border for her. She denied ordering the cotton shirts. Ms. Chura accepted that some duty might have been payable on the toning device, but did not turn her mind to that fact.

[157] I accept that Ms. Chura did not order the cotton shirts. Ms. Chura submits that the evidence does not substantiate that it was her toning device in particular that resulted in the charges alleged by Batten. I accept that it is not possible to identify with precision which charges were incurred by Batten to bring Ms. Chura's toning device, as opposed to the cotton shirts, across the border. But it is obvious that Batten would have incurred some charges in doing so. Ms. Chura herself testified that shipping items cost money. And it would be apparent to anyone that duty would likely be payable on an item shipped across the border.

[158] I find that Ms. Chura asked Ms. Tran to have her toning device shipped to Batten's North Vancouver office, and that Batten incurred some expense in doing so. I further find that Ms. Chura had no intention to pay Batten for any expenses incurred by it in having her personal item shipped across the border when she knew, or certainly ought to have known, that Batten would incur expenses in doing so.

[159] The second item was a pair of gym shoes. Batten alleged that Ms. Chura's request to have a pair of gym shoes brought across the border resulted in charges incurred by it of \$39.32 in duty and processing fees and \$19.65 in shipping charges.

[160] Ms. Chura testified that the gym shoes were shoes she had worn while working at a trade show in Las Vegas in May 2016. At the conclusion of the trade show, she put the shoes in the Batten booth boxes and flew home in flip flops. The booth boxes were shipped to the Transgroup warehouse in Blaine. Ms. Chura

testified that at some point shortly after arriving home she asked Ms. Tran when the booth boxes would arrive back in North Vancouver. She was told that the booth boxes were going to remain in Blaine until the next trade show. Ms. Chura told Ms. Tran she had left her shoes in the booth boxes and asked if they would pull her shoes from the warehouse and include them in the next stock shipment from Blaine.

[161] Documentary evidence indicates that Ms. Tran placed an order to have some shoes shipped separately. Those documents indicate that Batten did incur the charges it alleges.

[162] Ms. Grigg attended the Las Vegas trade show. She testified that she was not aware of Ms. Chura leaving a pair of shoes in the booth. She also testified that after a trade show they repacked the booth by restacking the skids and shrink-wrapping it. According to Ms. Grigg, it would be obvious that a pair of shoes was there.

[163] The invoice for bringing gym shoes across the border is dated October 24, 2016. It refers to a pair of gym shoes, with a country of origin of China, and a value of \$45 USD. In an email dated September 12, 2016, sent while Ms. Chura was in Germany for a trade show, Ms. Chura told “Bill” that she knew she had received a box from Adidas, and asked him to hold on to it until she got an “RA number” to ship it back. Ms. Chura denied that the shoes referred to in that email were the same shoes that she asked Ms. Tran to ship across the border for her.

[164] Ms. Chura’s evidence about the gym shoes makes little sense. Why would she put her gym shoes in the Batten booth rather than in her own bag to take home? She would have had no way of knowing when the booth would be shipped across the border, and thus of when she would get her gym shoes back. Ms. Chura would have known that asking Ms. Tran to have the shoes extracted from the booth to be shipped across the border would take time, and presumably cost money. If the shoes were sufficiently unimportant to her that she was prepared to pack them away in the booth, it is difficult to believe that she then needed them badly enough to cause Ms. Tran and others to take the steps necessary to extract them and ship them.

[165] The simpler, and more probable, answer is that Ms. Chura never packed any gym shoes in the Batten booth, and the gym shoes that she asked Ms. Tran to ship across the border were the same ones she emailed “Bill” about in September 2016. I find that Ms. Chura did ask Ms. Tran to ship her gym shoes across the border, thereby causing Batten to incur expenses which she had no intention of paying.

***Personal items charged to Batten’s Staples account***

[166] Batten alleges that Ms. Chura used Batten’s Staples account to fund the purchase of personal items, and did not reimburse the company for the cost. There are three items in this category: a printer cartridge, an Apple power adapter, and a leather portfolio.

[167] Ms. Chura submits that Batten employees were permitted to use the company’s Staples account to order items for personal use, and that when she did so, the cost of such items would be deducted from monies owed by Batten to her.

[168] Ms. Osmond, Ms. Grigg and Mr. Fung all testified about the Staples account. When asked if employees were permitted to use the Staples account to make personal orders, Ms. Osmond said “we all did”. She gave as an example when she bought school supplies for her son; she paid Mr. Roberts personally for the cost. Ms. Osmond testified that if people bought things, she would take the “pink sheet” that came with order, and employees would tell her what they had bought, and she would write on the pink sheet who each item was purchased by, and she would leave it in Mr. Robert’s in basket so that the employees could pay him the cost.

[169] For her part, Ms. Grigg testified that she did not order personal items through Batten’s Staples account, nor was she aware of other employees other than Ms. Chura doing so. At the point Ms. Grigg was referring to, Ms. Chura was in charge of the Staples account, and would do the ordering for the office.

[170] Mr. Fung testified that no one other than Ms. Chura used the Staples account to purchase personal items. For example, in late 2015, he was aware that she used

it to purchase an Apple TV. He deducted the cost of the TV, \$214.49, from the amount Batten owed her on a reimbursement cheque for expenses.

[171] Late in Ms. Chura's employment, Batten decided to change some of its practices. On December 8, 2016, Mr. Fung sent out an email to all staff, including Ms. Chura, with respect to Staples ordering. All staff were to give their requests to a particular staff member who would do the order. Further, and in bold, "No ordering for personal reasons and paying back the company under any circumstances". Clearly, by December 2016, Batten was no longer prepared to allow employees to use its corporate accounts for personal purposes. From the timing, it is obvious that this change was triggered by Batten's investigation into Ms. Chura.

[172] With that by background on Staples, I turn to each of the three items in issue. The first was a printer cartridge which Ms. Chura ordered for her personal use on April 15, 2016. It cost \$191.20. Ms. Chura testified that Ms. Wong brought the cartridge to her together with the pink slip and Ms. Chura told her it was for personal use. Ms. Chura did not know if the cost of the printer cartridge was deducted from her earnings.

[173] The evidence does not disclose if the cost of the printer cartridge was deducted from Ms. Chura's earnings. Given the evidence about the cost of other items, for example the Apple TV, being deducted from Ms. Chura's earnings, I accept that it should have been deducted in the normal course.

[174] The second item was an Apple laptop adapter/charger which Ms. Chura ordered on the Staples account in about August 2016. Ms. Chura testified that she ordered it to use with a used Apple laptop that Mr. Roberts had gifted to her son. It cost \$111.84. Ms. Chura testified that she let Annie, who was the customer service person who would receive the package when it was delivered, know that it was for personal use and to please let accounting know that when it came in. Ms. Chura did not know if the cost of the charger was deducted from her earnings. Like the printer cartridge, the evidence does not disclose if the cost of the charger was deducted, but I accept that it should have been in the normal course.

[175] The third item was a leather portfolio. Ms. Chura testified that she ordered the leather portfolio for business use. It cost \$73.10. She testified that she understood it was an approved business expense, because other people had ordered similar items and were using them.

[176] Batten took the position that the portfolio was for personal use rather than business use, but did not establish that position on the evidence. I find that the portfolio was purchased by Ms. Chura for business use.

[177] Mr. Roberts raised Ms. Chura's use of the Staples account at the December 15, 2016 investigation meeting. He asked her if she had ever paid for what she had ordered on Staples, and she said she did not know, and that she would give the pink receipt to Mr. Fung with her items circled and her name written beside them. She said she did not know what gets charged to her account because she had no record of it. Mr. Roberts told Ms. Chura that he had been talking to Mr. Fung about this issue, and he could find no record of any items being deducted.

[178] Batten's informal manner of keeping track of deductions from employee's cheques makes it impossible to determine on the evidence before me if the cost of the laptop charger and printer cartridge was deducted from Ms. Chura's earnings. Given Batten's practices at that time, they ought to have been deducted if Ms. Chura informed Ms. Wong or Mr. Fung that they were purchased by her for personal use. Given my concerns about Ms. Chura's credibility, I am unable to find on the basis of her uncorroborated evidence that she did so. Even if she did do so, I find that Ms. Chura should have followed up to make sure that she had paid for items she ordered for personal use, and find that she failed to do so. At best, she left that to accounting to figure out.

***Personal items purchased from Ecotrend***

[179] Batten alleges that Ms. Chura purchased items from Ecotrend Logistics, a natural health product distributor, for personal use. According to Batten, Ecotrend invoiced Batten for these items. It alleges that Ms. Chura did not inform Batten about the purchases, and failed to pay for them.



[180] Ms. Chura submits that she was permitted to order wholesale priced items from Ecotrend through Batten's business account, and that the charges were to be deducted from other amounts owing to her by Batten.

[181] In May 2016, Ms. Chura purchased a product called BioSecrets Argan Oil through Ecotrend. The \$21.46 charge was deducted from her .pay cheque.

[182] In June 2016, Ecotrend issued an invoice to Batten for two items Ms. Chura had ordered, another BioSecrets Argan Oil, and Rishi Silver Needle tea. The invoice indicated that they were a "Personal Order for Jackie". The total charge for these two items was \$62.23. In November 2016, Ecotrend issued another invoice to Batten for BioSecrets Argan Oil, again marked as a "Personal Order for Jackie". The amount charged was \$42.92. There was apparently also an order in September 2016, although I have been unable to locate the invoice in the exhibits. According to an email from Mr. Fung to Mr. Roberts dated December 19, 2016, itemizing various personal items that had been charged back to Ms. Chura, and which was forwarded to Ms. Chura on that same date, the September charge was \$70.02, and was not paid back yet.

[183] Batten did not include the May or September 2016 charges in its particulars, but did include the June and November 2016 charges.

[184] The December 19, 2016 email from Mr. Fung to Mr. Roberts clearly demonstrates that Ms. Chura frequently purchased personal items from suppliers such as Ecotrend, and that Batten deducted the charges from monies owing to her. No explanation has been provided by Batten as to why it did not deduct the June and November 2016 charges, which were clearly marked as personal orders for Ms. Chura on the invoices, from monies owed to her, as they did with respect to the other Ecotrend charges. The most likely explanation is that Batten's accounting department simply missed the fact that they were personal charges and failed to deduct them from monies owing to Ms. Chura. While Ms. Chura ought to have been proactive in ensuring that Batten charged her for these expenses, I do not find any wrongdoing by Ms. Chura with respect to the Ecotrend items.

**Taxi receipts from Chicago Trade Show**

[185] Batten alleges that Ms. Chura submitted taxi receipts for trips not taken at a trade show in Chicago in March 2016. The four receipts in issue are all from the same cab company, Chicago Carriage Cab Co., and are blank other than the amount paid. The total of the four receipts is \$91.00 US. There is no dispute that Ms. Chura wrote in the amounts, and that she was reimbursed for the amounts she wrote in. She submits that she paid the amounts in cash, and that she accurately wrote in the amounts she paid.

[186] Ms. Chura was at the Chicago show with Mr. Roberts, his wife, and Ms. Thompson. As best as can be determined by the dates of receipts she submitted, Ms. Chura was in Chicago between March 3 and 8, 2016. She submitted several receipts for taxis during that period that she paid for by credit card in addition to the four undated handwritten ones in issue.

[187] Ms. Chura testified about the trips represented by the handwritten receipts. In direct, she said that the most expensive, at \$47.00 US, was from a night out drinking with Mr. Roberts and some business associates. She testified that the cab was delayed by a police incident, then travelled some distance to drop off a business associate to whom they had offered a ride at his hotel, then some further distance to their hotel. She said that she paid the cab driver and tipped more than usual because of Mr. Roberts' and the associate's intoxicated behaviour during the trip. She testified that two of the trips, for \$10.00 US and \$13.00 US, were from the convention centre to their hotel and back to pick up and drop off stock. She did not specifically recall the fourth trip, for \$21.00 US, but thought it might have been from going out to dinner on another night.

[188] In cross-examination, Ms. Chura denied that she took a stack of receipts and wrote down numbers on them and submitted them to get a little extra cash from Batten from this trip. She said it was just a coincidence that the four receipts were all from the same cab company when the receipts paid for by credit card were from a variety of companies.

[189] As mentioned in addressing Batten's similar allegations regarding taxi receipts from Mexico, Ms. Grigg recalled Ms. Chura taking blank receipts from cab drivers. She assumed Ms. Chura was doing so to make up expenses, but she had no direct knowledge of Ms. Chura doing so. Ms. Grigg was not at the Chicago trade show, and has no direct knowledge of what occurred there. I place no weight on this evidence from Ms. Grigg.

[190] In direct, Mr. Roberts did not recall taking a taxi with Ms. Chura to return a friend of his to his hotel from a bar or restaurant. In cross, while Mr. Roberts testified that he usually went to the Chicago trade show every year, so he was likely there in 2016, he could not recall the names of anyone else who attended. Given his complete absence of recall about the Chicago trade show, I place no weight on his evidence that he did not recall taking the taxi ride described at some length by Ms. Chura.

[191] Batten submits that Ms. Chura's evidence about the lengthy cab trip with Mr. Roberts stretched credulity. I did not find her evidence on that point incredible. The detail suggested to me that she was telling the truth. Further, she could not have known that Mr. Roberts would simply not recall such a trip rather than deny it outright, so it would have been risky for her to make up such a story. I do not find it improbable that a taxi driver would give a customer a blank taxi receipt rather than filling it out themselves. It does give me some concern that the four blank receipts from Chicago were all from the same cab company. Nonetheless, I find on a balance of probabilities that Batten has not established that Ms. Chura fraudulently filled out these four receipts to obtain reimbursement for expenses not actually incurred by her. I find it more likely that Ms. Chura filled the receipts out accurately and submitted them to receive compensation for expenses actually incurred by her.

### **Family trip to Capilano Suspension Bridge**

[192] On August 16, 2016, Ms. Chura took a client and his son to the Capilano Suspension Bridge. She also took her family on the trip. Ms. Chura submitted

receipts for the entire cost of the outing, which she was reimbursed for. Batten alleges that doing so was improper, which Ms. Chura denies.

[193] The client in question was Bruce Son of Eden Hill in Korea. Eden Hill was Batten's largest Nellie's client, and Ms. Chura was responsible for the sales relationship. Mr. Son contacted Ms. Chura about his plan to visit Canada from Korea. On August 7, 2016, Mr. Son emailed Ms. Chura about his hotel options. He could not find any reasonably priced hotels in the West End of Vancouver, and asked if Batten would agree to pay for two nights, and Eden Hill would pay for two nights. Ms. Chura forwarded the email to Mr. Roberts to ask for his opinion, and Mr. Roberts told her to pay for all nights. In cross-examination, Mr. Roberts agreed that it was his expectation that Ms. Chura would attend to Mr. Son and his child while they were in Vancouver. It was a business development opportunity. It was not his first visit to Vancouver, and Mr. Roberts believed that Ms. Chura had attended to Mr. Son and his guests on the previous occasions, and that Batten had covered Mr. Son's expenses.

[194] Ms. Chura testified that Mr. Son was bringing his seven year old son. Mr. Son requested that they not go out to dinners with Mr. Roberts as they had on his previous visits, but rather make it more of a family experience. Mr. Son felt that it was important that he meet Ms. Chura's family, and asked her to bring her family on the outing to the Capilano Suspension Bridge. Ms. Chura agreed to do so, as Eden Hill was their largest account, although she did not think her family would want to come, as they lived in North Vancouver.

[195] Ms. Chura brought her husband and three children on the outing, and paid for all admissions, snacks and drinks for everyone. She submitted the receipts, which totalled \$505.48, and was reimbursed for them.

[196] I find that all expenses submitted by Ms. Chura for the Capilano Suspension Bridge outing were properly incurred business expenses, designed to entertain Nellie's most important client and to accommodate his request that she bring her family.

**Daughter's stay in Las Vegas**

[197] Ms. Chura attended a trade show in Las Vegas between May 2 and 6, 2016. Ms. Grigg and Mr. Roberts and his wife also attended this trade show. Ms. Chura had her daughter come for part of the trip to celebrate her eighteenth birthday. Her daughter arrived on May 5. Both Ms. Chura and daughter stayed one day after the trade show ended, and Ms. Grigg left, returning home on May 8.

[198] Batten makes a number of allegations about expenses submitted by Ms. Chura for her daughter's stay, which it submits were improperly submitted.

[199] Ms. Chura accepts that some of her daughter's expenses were initially charged to Batten, but says that she repaid all charges made known to her by Batten months before the termination of her employment.

[200] Ms. Chura purchased her and her daughter's flights to Las Vegas approximately a month before the trip. Both Ms. Chura's and one of her daughter's flights were charged to Batten's credit card. Ms. Chura testified that she booked her daughter's flight to Las Vegas on her points. When she booked her daughter's flight home, she did it at the same time she booked her own, so they would be on the same flight. Ms. Chura testified that she provided two credit cards to the airline, one for her flight and one for her daughter's, but the airline in error booked both flights on one credit card, the Batten credit card. Ms. Chura testified that she did not realize this error at the time, and only discovered it after her return. She says that she contacted Ms. Wong and said she would pay Mr. Roberts back in cash, which she did. Mr. Roberts confirmed in his evidence that Ms. Chura did pay him back in cash.

[201] I am very doubtful about Ms. Chura's evidence on the payment for her daughter's flight. I accept that it is possible that a mistake could have been made by the airline that resulted in both flights being booked on Batten's credit card. But as Ms. Chura acknowledged on cross-examination, within a day or two of booking, she would have received a receipt from the airline which would have shown what credit card or cards the flights were booked on. She testified that she did not believe that

she checked it. I will return to this issue after reviewing the evidence about the remainder of this trip.

[202] Ms. Chura did not tell Mr. Roberts that her daughter would be joining her for part of the Las Vegas trip in advance of the trip. She testified in cross that she did not think it mattered. On May 3, 2016, at 6:56 pm, Ms. Chura sent an email to Mr. Roberts in which she advised him her daughter would be coming to Las Vegas on May 5 to celebrate her birthday. She told him it would not affect work, but she thought he should know. She concluded with “I hope you don’t mind and please know that I will be paying for her”. In cross, Ms. Chura testified that she did not know if Mr. Roberts was in the air when she sent that email, but she did know he was in the process of travelling to Las Vegas. She said that she sent the email as a courtesy, and that she probably sent it because Mr. Roberts was coming.

[203] Ms. Grigg testified that when they got to Las Vegas somebody told Ms. Chura that Mr. Roberts was coming to the show. Ms. Grigg already knew Ms. Chura’s daughter was coming, and was agreeable to her staying in the same hotel room as her and Ms. Chura. Ms. Grigg testified she was feeling awkward about the situation if Mr. Roberts were to arrive and not know that Ms. Chura’s daughter was there, so she asked Ms. Chura to let him know before he got to Las Vegas. She said there had been an earlier trade show where Ms. Chura had arranged for too many people to be there, and Mr. Roberts was not happy about it, and she did not want a repeat of that situation. Ms. Grigg testified that Ms. Chura agreed, and found out from the office when Mr. Roberts would be in the air and she timed her email for when he would be flying so he would have it when he arrived. Ms. Grigg was not cross-examined about this evidence. I accept it.

[204] On the evidence, I find that if Ms. Chura had not learnt that Mr. Roberts was going to be in Las Vegas she would never have told him her daughter was joining her on the trip. This is important in assessing the evidence about the other issues arising about her daughter’s expenses in Las Vegas.

[205] Ms. Chura, Ms. Grigg and Ms. Chura's daughter, once she arrived, all stayed in one hotel room at the Mirage in Las Vegas. The hotel room was paid for by Batten. Ms. Chura purchased a room upgrade for the room at the time of booking it. Batten alleges this upgrade was to accommodate Ms. Chura's daughter. Ms. Chura denies that. Her evidence was that she purchased an upgrade to obtain a room with a view and an early check in. She denied that it was to obtain a bigger room. Ms. Chura also testified that she had upgraded rooms while travelling on business for Batten on earlier occasions, and that was never raised with her as a problem. The cost of the upgrade was \$11.20 US per night, including taxes.

[206] In cross-examination, Ms. Grigg testified that their room had two queen sized beds, and that that was fairly standard when she and Ms. Chura travelled together for work.

[207] I find that Ms. Chura did not obtain the room upgrade because of her daughter, and that such room upgrades had been accepted in the past.

[208] Ms. Chura and her daughter stayed an extra night at the Mirage after the trade show ended and Ms. Grigg had left. The extra night was charged to the Batten credit card at a cost of \$194.88 US. Ms. Chura testified that she went to the hotel's front desk to tell them her daughter would be arriving by herself and picking up a key. She testified she also told the front desk that she and her daughter would be staying an extra night and provided her credit card details. She testified that it was only in the course of these proceedings that it was brought to her attention that the last night had been charged to the Batten credit card rather than her own.

[209] I am doubtful about Ms. Chura's evidence with respect to the extra night at the Mirage. As in the case of her daughter's flight, she says that she provided her credit card but somehow the service provider erred and charged the item to Batten rather than her. That could be a coincidence. But Ms. Chura testified that she realized the flight had been charged to Batten when her husband noticed the charge was not on their credit card bill. If Ms. Chura and her husband noticed that missing

charge, one would have thought they would have noticed the missing hotel room charge too.

[210] Batten also raised issues about Ms. Chura's daughter's expenses while in Las Vegas, alleging that Ms. Chura charged Batten \$294.05 US for those expenses.

[211] Ms. Chura testified that when she and Ms. Grigg met Mr. Roberts and his wife at the trade show, she told them that her daughter had never flown anywhere by herself before. He asked his wife to pick Ms. Chura's daughter up at the airport in a cab or limo and take her out for a birthday lunch. Mr. Roberts' wife did so. Later that day, Mr. Roberts told Ms. Chura and Ms. Grigg to take Ms. Chura's daughter out for dinner and dessert and to "spoil her". Ms. Grigg and Ms. Chura took her daughter out for dinner at the Yard House Restaurant and then they went out to a Cirque de Soleil show called *Love*. Both Mr. Roberts and Ms. Grigg agreed in their testimony that Mr. Roberts told them to take Ms. Chura's daughter out and spoil her. Ms. Grigg was not sure if the show was also authorized by Mr. Roberts.

[212] I will not go through all of the various expenses Batten claims were for Ms. Chura's daughter and improperly expensed by Ms. Chura. They mostly consisted of her daughter's meals and snacks, as well as Ms. Chura's meals and snacks after the end of the trade show. They also included the birthday dinner and show, despite the fact that Mr. Roberts had clearly authorized at least the birthday dinner.

[213] Ms. Chura testified that when she returned to Vancouver, she gave Ms. Wong a pile of receipts and told her that she had not gone through them, and there would be some charges for her daughter in there. Ms. Wong told her to leave it with her and they would address it later.

[214] Ms. Grigg testified that she was concerned that Ms. Chura had not paid for her daughter's expenses separately. She went to see Ms. Wong and asked to see the expense report. She reviewed the expense report and receipts and noticed many charges that were attributable to Ms. Chura's daughter. She told Ms. Wong, who asked her to highlight the items on the expense report that were for Ms. Chura's



daughter. Ms. Grigg did so, and Ms. Wong said she would speak to Ms. Chura. On May 25, 2016, Ms. Wong emailed Ms. Chura an updated expense report that took into account Ms. Grigg's highlighting. She told Ms. Chura that she owed \$6.75 Canadian and \$170.18 US. Neither her daughter's airfare nor the extra night at the hotel were included. The \$6.75 charge was deducted from Ms. Chura's cell phone reimbursement cheque, and she paid the \$170.18 to Mr. Roberts in cash at the same time she paid him for her daughter's flight.

[215] Ms. Chura submits that Batten is not entitled to rely on any of the Las Vegas charges as constituting just cause. She submits that the majority of these issues, which resulted from errors, were resolved amicably, well before the termination of her employment. The only unresolved issue was the extra night at the Mirage, and she submits that she has provided a reasonable explanation for that expense.

[216] I agree with Ms. Chura that most of these expenses were addressed long before the termination of her employment. Ms. Chura's conduct with respect to many of these expenses remains troubling, however. As I have said, I am doubtful of her evidence about the airfare and extra night at the Mirage. The latter was never raised by her with Batten, and was certainly not resolved prior to the termination of her employment. Her behaviour in not telling Mr. Roberts that her daughter would be there until she learned that he too would be attending suggests that she was trying to keep her attendance a secret. Her cavalier attitude with respect to providing Ms. Wong with receipts that had not been separated out between business and personal is reflective of Ms. Chura's general approach to expenses – she left it to accounting, and was quite happy to receive reimbursement to which she was not entitled if it was not discovered by them.

### **Humidew**

[217] In its particulars, Batten alleged that Ms. Chura took products from Batten's warehouse for personal use and without authorization. At trial, Batten alleged a single instance of such conduct, which it termed the theft of a humidifier known by

the brand name of “Humidew”. Ms. Chura acknowledges taking the Humidew from the warehouse, but says that she did not steal it.

[218] By way of background, Batten employees were allowed to take small items such as Nellie’s laundry soap from the warehouse without charge. They were supposed to sign such items out on an inventory sheet. Employees were not permitted to take more expensive items out of the warehouse. Ms. Osmond testified that for more expensive items employees could talk to Mr. Roberts, and he would give them discount prices. Ms. Osmond also said that sometimes there were demo models or returned product that was not saleable, and employees could take those too, provided they signed them out on the sheet. She also said that sometimes people got a little lax and forgot to sign out such items. Ms. Osmond testified that she would never take an item like a humidifier out of the warehouse. Such an item required Mr. Roberts’ approval of a discounted price. Ms. Chura testified that she agreed with Ms. Osmond’s evidence about this.

[219] In these proceedings, Ms. Chura requested Batten to produce the sign out sheets for November 2016. Batten produced the sheets for December 2016-January 2017. They indicate the product and the quantity taken, the name of the person taking it and the reason. Some reasons are for business purposes, and some are personal.

[220] Turning to the Humidew allegation, there is no dispute that Ms. Chura had the Humidew removed from the warehouse. She asked the warehouse manager, John Mac, to retrieve it for her and he put it in her car. Neither Ms. Chura nor Mr. Mac signed the Humidew out on the sign out sheet. This occurred in late November or early December 2016.

[221] Mr. Roberts raised the Humidew issue with Ms. Chura in the December 15, 2016 investigation meeting. He put it to her that she had taken product out of the building, specifically a Humidew, the previous week. Ms. Chura’s response was that “I said, all I said, and everybody heard it – I don’t want it, I just want to see if does enough square footage. It’s not unwrapped, it’s not used, and I was handed ...”

[222] At trial, Ms. Chura had a different explanation. She testified that she was quite sick at work with a cold. A couple of employees suggested she try the humidifier to reduce her symptoms. She was not keen to try it, because the product had a lot of warranty issues with leaking and not working as well as promised. Despite being leery, Ms. Chura agreed to try it. She told Mr. Mac she would take a demo and try it. She forgot to pick one up when she was leaving, and called Mr. Mac on the phone from her car and asked him to bring a humidifier out to her car, which he did. Ms. Chura testified that she assumed Mr. Mac signed it out. Ms. Chura testified that she took it into the house but she never used it. She mailed it back to Batten, unopened, on January 25, 2017.

[223] Ms. Chura did not identify who the employees were who heard her say she was taking a humidifier home to test it in the version she gave in the investigation meeting. In cross-examination, she testified that Ms. Grigg, Ms. Tran and Mr. Mac were possibly present when she was sick and persuaded her to take a humidifier home to try.

[224] Ms. Grigg testified that she did not recall discussing a humidifier with Ms. Chura. She denied having a conversation with Ms. Chura in 2016 about her illness and the value of a humidifier. She denied ever persuading Ms. Chura to take a humidifier home. Ms. Grigg also testified that she purchased humidifiers from Batten through the receptionist.

[225] I do not find Ms. Chura's evidence about this incident believable. There is no explanation for the difference between her evidence at trial and the prior inconsistent explanation she gave to Mr. Roberts at the investigation meeting, only a week or two after she took the humidifier home. Her evidence about taking the humidifier home to see if it alleviated her cold symptoms but never using it makes little sense. No other employee testified hearing Ms. Chura say she was taking the humidifier or having a conversation with her in which they persuaded her to take one home. Ms. Grigg specifically denied doing so.

[226] A humidifier is not like a bag of laundry soap – it is not an item that an employee would be permitted to remove for their own use without permission from Mr. Roberts. Clearly Ms. Chura did not take it home to test it to see if it covered the square footage claimed – she never opened the box. Ms. Chura did not sign the humidifier out, nor did she check to ensure Mr. Mac did on her behalf.

[227] I would not go so far as to say Ms. Chura stole the Humidew. But I do find that she took it without reasonable explanation or authorization, contrary to Batten’s commonly understood policies.

**Batten items traded for personal items**

[228] In its response to civil claim, Batten pleaded that Ms. Chura “traded the Defendant’s product for product from other companies and business partners, for her personal use, which the Plaintiff knew was not authorized”. Ms. Chura acknowledges sharing products with others, but submits that she did not do so beyond what is customary and authorized in her sales role. She denies stealing any product.

[229] A substantial amount of evidence was led with respect to trading within Batten’s industry, and specific trades Ms. Chura was alleged to have improperly engaged in. It was clear, on all the evidence, that trading of small items was commonplace among exhibitors at trade shows. For example, Ms. Grigg testified that small trades of products like water bottles and soap products would occur between neighbouring booths at trade shows. Ms. Anderson, the CEO of Santevia, testified about the importance of such practices generally within the industry. It is part of networking, gaining influence, and increasing brand awareness.

[230] Samples of product may also be given away for similar reasons. For example, in late 2016, Ms. Chura sent free samples of Nellie’s products to a company in China in an effort to expand the brand’s international footprint. Doing so was within her authority as the person in charge of international accounts.

[231] The issue is whether Ms. Chura engaged in trading or gifting outside of her authority at Batten's or for personal rather than Batten's benefit.

[232] Batten alleges four instances of such unauthorized trading for personal benefit, which I will deal with in turn. The first allegation concerns a set of sheets that Ms. Chura gave to Ms. Anderson. Ms. Anderson testified that at the BC Homeshow in 2014 she gave some Santevia products as gifts to Batten employees, including Ms. Chura, Ms. Grigg and Ms. Thompson. She gave Mr. Roberts some Santevia products with a value of \$90.00, and Mr. Roberts told Ms. Chura to "give her whatever she wants". Ms. Anderson looked over the products Batten had on display and wanted a set of sheets, but they were not available at the show. Mr. Roberts remembered being at a trade show where he met Ms. Anderson, but had no recollection of any conversation.

[233] Some months later in March 2015, Ms. Chura and Ms. Anderson had a lengthy email exchange. The beginning of it does not appear to be in evidence. On March 18, 2015, Ms. Chura emailed Ms. Anderson asking about some filters she needed for a water filtration system she had purchased from Ms. Anderson. She asked her what Nellie's items she needed. Ms. Anderson replied on March 24, 2015, telling Ms. Chura what filters she needed, and asking if she wanted to have them shipped to her or given to her at an upcoming trade show. The price was \$185.89. Ms. Chura asked if that was what she would owe Ms. Anderson, to which she replied "That is how much you owe me in trade!", and asked if she had anything new and interesting, stating that "Always need sheets!". Ms. Chura asked what size, and was told queen size. The next day, March 25, 2015, Ms. Chura emailed that she had sent Ms. Anderson a sheet set.

[234] Ms. Anderson testified that the common term at trade shows is "trade" but that items are really a gift. She said her reference in her email to what Ms. Chura would "owe her in trade" was a joke.

[235] It is difficult to know what to make of this exchange. Ms. Chura clearly did trade Ms. Anderson some sheets owned by Batten for some water filters for her

personal use. Batten obtained no benefit from this exchange. Ms. Anderson owns Santevia, and can do whatever she likes with her products; the same was not true of Ms. Chura. Sheets are not the same as water bottles or soap samples. This was not at a trade show. The complicating factor is Mr. Roberts' earlier direction to Ms. Chura to give Ms. Anderson whatever she wanted, a direction he did not deny giving. In light of that earlier direction, I find that Ms. Chura could reasonably have believed that she was at liberty to give Ms. Anderson anything she wanted, in exchange for her earlier gift to Mr. Roberts, and gave her the sheets she had earlier identified that she wanted. In the absence of that earlier direction, I would have found Ms. Chura's conduct on this occasion to be improper.

[236] The next allegation is that Ms. Chura traded Nellie's laundry soap and dryer balls for a towel rack and bath mat for her home. In 2013, 2014 and 2015, Ms. Chura sent Michael Rine samples of Nellie's bulk laundry soda, dishwasher nuggets, dryerballs, and oxy brighteners. Mr. Rine's family was connected to Ace Hardware, which Ms. Chura testified was an important distributor of Nellie's products in the United States. He was employed as the National Sales Manager for InterDesign, Inc. which Ms. Chura testified is a bath and storage company. Ms. Chura testified that she sent him these samples to share with people as he travelled to Ace Hardware Stores. She testified she would connect with Mr. Rine every year at the Chicago trade shows, and sometimes at Ace Hardware trade shows.

[237] Mr. Rine emailed Ms. Chura on December 28, 2016, which was after she was no longer coming into Batten's premises, to ask for more of these products. He asked her to tell him what he owed her.

[238] Ms. Chura testified that Mr. Rine gifted her a hand towel rack on one occasion, but it was not connected to any of the samples she had sent him.

[239] I am doubtful that Ms. Chura gave these products to Mr. Rine so he could share them with people at Ace Hardware stores. The December 28, 2016 email sounds much more like he wanted them for his personal use. Nonetheless, I accept that it had some value to Batten for Ms. Chura to cultivate a positive business

relationship with Mr. Rine by providing him with some samples. There is no evidence whatsoever of Ms. Chura ever receiving a bath mat from him, but she did receive a hand towel holder. I accept that it was within Ms. Chura's scope of authority to provide Mr. Rine with Nellie's products to foster a positive business relationship given that Mr. Rine had connections with a distributor of those products. The fact that Ms. Chura openly had the samples sent to Mr. Rine through Batten's normal distribution processes supports that this was acceptable business activity.

[240] The third allegation is that Ms. Chura traded Nellie's laundry soap and dryer balls in exchange for vitamins for personal use. Specifically, it is alleged that she traded with Rory Henderson of Nordic Naturals for this purpose.

[241] Ms. Chura denied that she ever traded product with Ms. Henderson. She said that she sent her sample products because Ms. Henderson is well-connected in the natural stores sector, and that her relationship with Ms. Henderson had benefitted Batten because it led to connections to new sales accounts that she would not otherwise have been able to access. Ms. Chura also testified that Ms. Henderson had gifted her product, the last time being in late 2019 or early 2020, after the termination of her employment with Batten.

[242] On July 29, 2014, Ms. Chura had a number of Nellie's products shipped to Ms. Henderson. On February 27, 2015, Ms. Chura had some oxy brightener pouches shipped to Ms. Henderson. On September 27, 2016, Ms. Chura had a number of "Thank you samples" of various Nellie's products sent to Ms. Henderson.

[243] There is an email exchange between Ms. Chura and Ms. Henderson in February 2015 in which they discuss an upcoming trade show and they each ask each other what products they need.

[244] I do not accept Ms. Chura's evidence that she did not trade product with Ms. Henderson. The email thread clearly shows that they did. I accept that doing so provided Ms. Chura with personal benefit, but it likely also benefitted Batten, much

as Ms. Chura's gifts to Mr. Rine were of benefit to Batten. The samples were sent openly, and I conclude that doing so was within the scope of Ms. Chura's authority.

[245] The fourth allegation relates to Ms. Chura trading Nellie's laundry nuggets in exchange for skincare products for her personal use. This allegation relates to Jean-Phillippe Sidaner of MyChelle Dermaceuticals.

[246] Ms. Chura testified that Mr. Sidaner had gifted her and other Batten employees with skin care products, but not in exchange for any Batten products. She denied ever sending him any Nellie's or other products.

[247] There is an email exchange between Ms. Chura and Mr. Sidaner from August 2015 about an upcoming trade show. She asked him for some products and asked him "Shall I bring you anything?". Ms. Chura denied that this was indicative of a trade of some kind.

[248] Once again, I find that Ms. Chura was "trading" product but that she was doing so within the scope of her authority. There is, however, no evidence that she specifically gave Mr. Sidaner laundry nuggets in this connection.

[249] Before leaving the subject of trading, I would note that while I have not found Ms. Chura to have engaged in any improper conduct in these various exchanges, I have found her denials of having engaged in trading Batten product for products for her own use entirely unconvincing. The email exchanges clearly show that she was trading product, and that she gained a personal benefit in doing so. Her denials of that fact are damaging to her credibility generally.

### **Starbucks**

[250] Batten alleges that Ms. Chura attempted to be reimbursed by Batten for reloading her Starbucks app. Ms. Chura denies doing so.

[251] Ms. Chura had a Starbucks app on her cell phone. The evidence shows that she sometimes used the Starbucks app to purchase food and beverages for herself and Ms. Grigg while they were travelling to trade shows. From time to time she



would use her credit card to reload the app. This could appear on the same receipt as purchases using the app, which can certainly be confusing. She also sometimes used her credit card to pay for food and beverages from Starbucks, rather than the app.

[252] Ms. Grigg could not recall Ms. Chura using the Starbucks app to pay for purchases at trade shows, but that she always used her credit card. I find Ms. Grigg was mistaken in this evidence, as the receipts, for example from the Anaheim trade show in March 2016 and the Las Vegas trade show in May 2016, show otherwise.

[253] The documents in evidence show that Ms. Chura would submit the Starbucks receipts to accounting, sometimes showing both reloads and food and beverage purchases. She would be reimbursed for the food and beverage expenses, not the Starbucks reloads. Batten's accounting department appears to have had no difficulty determining which items she should have been reimbursed for, and reimbursed her for those items, not the reloads.

[254] Batten has not proven any misconduct in respect of Ms. Chura's use of the Starbucks app and associated reimbursements.

### **Surface Pro**

[255] Batten alleges that Ms. Chura wrongfully retained a Surface Pro computer she had in her possession when she was terminated, and did not return it until her examination for discovery in May 2018. Ms. Chura says that the Surface Pro was a gift and that she only ultimately returned it because she did not want the "grief" associated with trying to retain it.

[256] Strictly speaking this is not an allegation that Batten relies upon as just cause for dismissal, as these events occurred post-termination, but Batten did list it in its particulars, and I deal with it here.

[257] The Surface Pro was purchased by Batten in January 2015. Ms. Chura used the Surface Pro. Her evidence at trial was that Mr. Roberts gave it to her as a

personal gift, and that she used it mainly for personal matters, and for work only when she was travelling to trade shows, when she would log in remotely. Mr. Roberts did not testify about whether he gave the Surface Pro to Ms. Chura as a gift.

[258] Batten requested the return of the Surface Pro through counsel on several occasions after the termination of her employment. The first was a letter dated June 13, 2017 in which counsel demanded the immediate return of Batten property in Ms. Chura's possession, being a laptop and cellular phones. Counsel also demanded that Ms. Chura not take steps to wipe any information off of those devices.

[259] Counsel for Ms. Chura replied on June 14, 2017. That letter does not appear to be in evidence. Counsel for Batten replied on July 5, 2017. He wrote that Ms. Chura was provided with a company Surface Pro and asked for its immediate return. Counsel for Ms. Chura advised the court, and I accept, that he inadvertently missed that letter during vacation, and that Ms. Chura did not see it as a result. Counsel for Batten again wrote counsel for Ms. Chura on April 6, 2018, requesting the immediate return of the Surface Pro.

[260] Ms. Chura brought the Surface Pro with her and gave it to counsel for Batten at Mr. Roberts' examination for discovery on May 29, 2018. She was asked about it at her examination for discovery the following day. She testified that she brought it because it had been requested by counsel. She was asked whether she had returned the computer because it was the possession or property of Batten. Ms. Chura replied that it was provided to her by her employer, and that it was her understanding that she used it for work, but it was for personal. When asked whether she recalled Batten asking for the return of this computer during the litigation process, Ms. Chura testified that she did not think so. She said there was a request for laptops, but she thought that was a different laptop that Mr. Roberts had given her son. When she was asked why it took her so long to return the Surface Pro, Ms. Chura testified it was because her personal things were on it, as she thought it was hers. She needed to back up the information on another computer,

which took a fair amount of time. She also testified that she cleaned everything off of the computer.

[261] At trial, in direct, Ms. Chura testified that she returned the Surface Pro because it was requested, and “it wasn’t worth the grief associated with it”. In cross-examination, she testified that she thought Batten was requesting the return of the laptop that Mr. Roberts had gifted to her son.

[262] I do not believe Ms. Chura’s evidence with respect to the Surface Pro. Her evidence that it was a gift was halting and ambiguous. She said that it was her understanding that she was given it for personal use and that she would take it to trade shows to log into Batten’s accounting program. When her counsel asked her whether she understood it to be a gift, she said that it was mainly because it was loaded with all her personal information.

[263] Batten asked for the return of a laptop once, and specifically the Surface Pro on two subsequent occasions. I accept that the second letter, being the first one to specifically mention the Surface Pro, was not brought to her attention. But the first and third were. Her counsel never wrote back and said she would not be returning the Surface Pro because it was a gift. She testified that she thought the generic reference to a laptop was to the laptop Mr. Roberts gifted her son. But if she understood that, then it would have made sense for her to instruct her counsel to write back stating that that computer was gift. She did not do so. When she did return the Surface Pro her evidence about why she had not done so sooner at the examination for discovery was halting. She never clearly stated at examination for discovery that it was because the Surface Pro was a gift.

[264] I find that Ms. Chura did not return the Surface Pro, not because it was a gift, but because she had both personal and business-related information on it. In direct contravention of Batten’s demand in the June 13, 2017 letter, she wiped the Surface Pro clean, meaning that Batten did not have access to whatever business-related information had been stored on it. This is important, both with respect to Ms. Chura’s

credibility generally and specifically with respect to the WebStager allegations which I will be addressing shortly.

**Wow Sticks**

[265] Batten listed “Wow Sticks” in its particulars, without any further details. Wow Sticks are stain removers.

[266] The evidence at trial with respect to the Wow Sticks was as follows. Ms. Grigg testified that a gentleman came into Batten’s offices and said that he wanted to purchase some Wow Sticks. She found this unusual as wholesalers do not typically show up at the office. According to Ms. Grigg, another employee spoke with the gentleman, who told her that he had previously purchased Wow Sticks from Ms. Chura and paid her cash. This is obviously hearsay evidence, and I do not rely on it for the proof of the facts asserted.

[267] In direct, Ms. Chura testified about a gentleman from China by the name of Eugene Wang who contacted her about being interested in Nellie’s products and arranging a meeting at Batten’s offices. She testified that he purchased product on that occasion. She also testified that when Mr. Wang came to the office, there was a problem with the accounting program, so she handwrote a receipt on a US Order Form showing Mr. Wang paying \$300.00 in cash for 96 cases of Wow Sticks.

[268] On cross-examination, Ms. Chura was asked whether she pocketed the cash. She denied doing so. She said she gave the US Order Form she had used as a receipt and the cash to Mr. Fung.

[269] Mr. Fung testified that Batten had no record of a previous purchase of Wow Sticks by Mr. Wang.

[270] Batten has not established that Ms. Chura pocketed \$300.00 in cash from Mr. Wang for the purchase of Wow Sticks. She denies she did so, and the documentary evidence from Batten does not establish that she did. The fact that Mr. Fung could

not find a record of the earlier purchase does not mean that Ms. Chura stole the money.

**WebStager**

[271] Batten alleged in its response to civil claim that Ms. Chura “engaged in a conflict of interest in which she caused the Defendant to retain an IT consultant who supplied a ‘kickback’ to her (or her husband), to the detriment of the Defendant and for her (or her husband’s) personal benefit.” This allegation relates to Ms. Chura’s role in Batten retaining WebStager, a company which provides digital services, to redevelop its websites.

[272] Ms. Chura denies being in any conflict of interest. There is no dispute that Ms. Chura’s husband, Darren Chura, was paid a commission by WebStager. He was paid 20% of the value of WebStager’s new project contracts with Batten. Beyond that, much is in dispute about the WebStager issue, including whether Mr. Roberts knew that Mr. Chura was receiving payments from WebStager at any time to the termination of Ms. Chura’s employment. Ms. Chura, Mr. Roberts, Ms. Grigg, Mr. Fung and Steven Arsenault, the principal of WebStager, all testified about the WebStager issue. I will assess the witness’ evidence, which diverged on some key points, as necessary in making my findings of fact.

[273] Mr. Arsenault was originally on Batten’s list of witnesses, but Batten ultimately did not call him as a witness. As the result of an oral ruling I made on October 29, 2021, cited at 2021 BCSC 2737, Ms. Chura was permitted to reopen her case to allow her to call Mr. Arsenault as her witness. Rather than repeat it here, reference can be had to that ruling for much of the history of Mr. Arsenault’s role in this proceeding.

[274] Mr. Arsenault is a long-time business associate of Mr. Chura. Mr. Arsenault and Mr. Chura were previously involved in other companies, such as Omni Auto and Hefco. Ms. Chura, Mr. Chura and Steve Cook were partners in Hefco. Mr. Arsenault testified in cross-examination that Mr. Chura worked for WebStager for 12 years, but that Mr. Arsenault paid him a total of only approximately \$24,000.00 over those 12

years for work on only two projects, Batten and another project he could not recall. His evidence about this was lacking in detail and lacked credibility, as it is unlikely that Mr. Chura was paid only \$24,000.00 over 12 years of work. Ms. Chura and Mr. Arsenault both testified that Mr. Arsenault and Mr. Chura still work together.

[275] Mr. Roberts asked Ms. Chura to find Batten a new web developer, as he was unhappy with Batten's current company, Fuse. Ms. Chura testified that she did not know where to begin with this task, so she asked her husband, who worked in technology. She testified that he recommended two options, Fuse and WebStager, and that she discussed those recommendations with Mr. Roberts and Ms. Grigg, disclosing that the recommendations came from Mr. Chura. I agree with Batten's submission that Ms. Chura did not really provide two recommendations, given that Batten was already using Fuse and unhappy with its service. In effect, she recommended WebStager.

[276] The evidence is not clear precisely when Ms. Chura recommended WebStager to Mr. Roberts, but it was probably in early 2013. It is noteworthy that almost a year before on May 16, 2012, Ms. Chura emailed Mr. Chura about "OBB", a service provided by WebStager. She thanked him for some information he had provided, and wrote: "I really need a short blurb on what social broadcasting actually is. He will never sit down and read all of this without feeling overwhelmed and just walk away". "He" was a reference to Mr. Roberts. Mr. Chura then emailed Mr. Arsenault, writing that "What I need for Jackie and in general is a stand alone sales & support piece of what social casting is and the tolls and solutions that OBB provides..." Mr. Chura went on to write that he required this information in order to close deals. Mr. Arsenault agreed in cross-examination that Ms. Chura coached him and Mr. Chura on how to sell services to Mr. Roberts, and that Mr. Chura ultimately asked him for his support in closing the deal with Mr. Roberts.

[277] Ms. Grigg testified that Ms. Chura said her husband hired WebStager for his businesses and Ms. Chura suggested Batten (and PhotoGIFTCARD) hire WebStager. Ms. Grigg testified that she never knew that Ms. Chura's husband was

an employee or consultant of WebStager and did not know that Mr. Chura was receiving compensation from WebStager for WebStager's work for Batten. Ms. Grigg understood that Mr. Chura had previously used WebStager and had recommended the company to Batten. When WebStager was later not living up to expectations, Ms. Grigg complained to Ms. Chura, who suggested she use Mr. Chura's connections to WebStager to solve the issues. Ms. Chura advised Ms. Grigg that her husband could get WebStager's attention. Ms. Grigg believed that was because Mr. Chura was the referral source for WebStager and had used the company previously, not because Mr. Chura was being paid by WebStager.

[278] A meeting was held in a coffee shop attended by Mr. Arsenault, his partner Mimi Klingsat, Mr. Chura, Ms. Chura and Ms. Grigg to discuss WebStager providing services to PhotoGIFTCARD, a subsidiary business of Batten's. This meeting occurred in or about April 2013. Ms. Chura followed up from this meeting with an email to Mr. Arsenault, copies to Mr. Chura and an email address for PhotoGIFTCARD on April 17, 2013. In that email she provided information that would enable Mr. Arsenault to get in the "back end" of PhotoGIFTCARD and Nellie's website, so that he could see how they operated and what changes might need to be made.

[279] Mr. Arsenault emailed the same group on April 25, 2013, reporting that everything was just about complete and that "Darren has the Nellies". It is not clear what that meant.

[280] On June 3, 2013, Mr. Arsenault and Mr. Roberts signed a contract for WebStager to provide services to Batten for PhotoGIFTCARD.

[281] A second contract was later entered for WebStager to provide services to Batten for Nellies. The date that contract was signed is not in evidence, but there is an email from Mr. Chura to Mr. Arsenault dated September 30, 2013 attaching the Nellie's contract and referring to "our meeting today". Mr. Arsenault testified that he met with Mr. Chura and Mr. Roberts in Mr. Roberts' office to discuss this contract.

Mr. Roberts did not recall meeting with Mr. Chura at this or any time about WebStager.

[282] On November 26, 2013, Ms. Chura emailed Mr. Arsenault, copying Mr. Chura and PhotoGIFTCARD (which I understand to be the email address used by Ms. Grigg at the time), asking for quotes for WebStager or OBB to host PhotoGIFTCARD and Nellie's. She wrote that she wanted to "present this to James ASAP as Fused is not very helpful and we need a few issues resolved".

[283] Ms. Grigg would contact Mr. Arsenault for IT support for the PhotoGIFTCARD website, sometimes, as on an email dated December 16, 2013, copying Mr. Chura. Mr. Arsenault also frequently copied Mr. Chura on such emails, as he did for example on December 29, 2013, June 17, 2014 and October 20, 2014. Ms. Chura was also often copied on emails Mr. Chura was copied on. Mr. Roberts never was.

[284] On April 24, 2014, Ms. Chura wrote an email to Mr. Chura about the Nellie's website, complaining about the customer service they were receiving from WebStager. She began the email by writing: "Since you are the broker for this website I will direct this email to you in order to get these issues resolved."

[285] On June 26, 2014, Ms. Chura sent an email to Mr. Arsenault, Mr. Chura, Ms. Thompson and PhotoGIFTCARD setting up a meeting at Batten on June 30, 2014 to discuss various issues related to the websites. Another meeting was scheduled to deal with PhotoGIFTCARD issues for October 23, 2014, with Ms. Grigg, Ms. Chura, Mr. Chura and Mr. Arsenault to be in attendance.

[286] Mr. Roberts and Mr. Arsenault had very little to do with one another during the course of WebStager's involvement with Batten. Their relationship took a significant turn for the worse in February 2015 over a dispute relating to Batten selling PhotoGIFTCARD's website. Mr. Roberts claimed Mr. Arsenault tried to "extort" money from him in relation to this sale. Mr. Arsenault claimed Mr. Roberts left a threatening voicemail on his answering machine. It is not necessary to determine the details of that dispute. What is important for the purposes of this case is that the two



men heartily disliked one another from that time forward. After that, Mr. Roberts wanted to stop all business dealings with WebStager, and asked Ms. Chura to change companies, but that did not occur prior to the termination of her employment. Very shortly after her termination, Batten did change web service providers.

[287] There is a significant factual dispute about what Ms. Chura knew, and when, about Mr. Chura's involvement in WebStager and the fact he was being paid by WebStager for its work with Batten. At her examination for discovery, Ms. Chura was asked what her husband's involvement was with WebStager, other than recommending the company initially. Ms. Chura stated that her husband had done some other work with WebStager, but that she did not know to what capacity. When asked further about her husband's ongoing involvement with WebStager's work for Batten, Ms. Chura stated that "there wasn't much ongoing in the beginning" and that he helped with "deficiencies". When asked who hired her husband to assist with the deficiencies, Ms. Chura said that she did not pay him, she just asked him as her husband to do it. She said he was doing it for free. She said that the sum total of what he did was: tell her about WebStager, and act as a translator between her and Mr. Arsenault when discussing deficiencies.

[288] Ms. Chura was asked at discovery whether she or WebStager paid her husband a finder's fee for setting up WebStager with Nellie's or Batten, to which she said she was not sure. She was also asked if she knew what the fee was, and she said no.

[289] In response to a request arising from her examination for discovery, Ms. Chura later stated that her husband provided contract services to WebStager and received commission payments for accounts serviced on behalf of WebStager.

[290] On direct and cross-examination at trial, Ms. Chura said that her husband did contract work for WebStager and was paid 20% for the "initial build and development of the website". She stated that it was just on "the initial amount, not on invoices". On cross-examination, Ms. Chura said she found out during the examination for discovery process that her husband had been paid a commission in relation to

WebStager's work for Batten. When asked whether she had any idea prior to May 2018, Ms. Chura said no.

[291] On cross-examination, Ms. Chura was confronted with the questions she had been asked on discovery and stated that she did not know if she knew at the time of the examination for discovery if Mr. Chura got paid or what he got paid. She specifically denied knowing in April 2014 that her husband had been paid a commission for his work with WebStager, noting it was only during her examination for discovery that she found out, and stating that she does not ask him about his work and specifics.

[292] When Batten's counsel suggested on further cross-examination that Ms. Chura knew in 2012 that her husband would get paid by WebStager if the contract with Batten came to fruition, she responded that "I don't know if I knew at the time". Several questions later, she said that she knew from 2012 onward that her husband was paid by WebStager for contract work, but that she just did not know how much or to what degree.

[293] During the trial, on the evening of June 7, 2021, after Batten's counsel had finished his cross-examination of Ms. Chura, Mr. Arsenault disclosed a package of documents to the parties relating to WebStager. Batten had been seeking these documents from Mr. Arsenault for some time. Ms. Chura was recalled for the purposes of further cross-examination on June 10, 2021.

[294] The documents disclosed included emails Mr. Arsenault had sent to Mr. Chura on several different days prior to and during the trial; however, Ms. Chura claimed not to have received them and that she had "no idea" they were sent. I do not believe this evidence. In fact, Mr. Arsenault sent 600 pages of emails to Mr. Chura before and during the trial, despite refusing to provide them when asked by counsel for Batten. Mr. Arsenault admitted that he could have provided the documents as requested back in 2018. Mr. Arsenault was trying to assist Ms. Chura by providing these documents to her husband, and not to Batten.

[295] Later on the afternoon of June 10, 2021, while Ms. Chura was undergoing the further cross-examination on the documents disclosed by Mr. Arsenault on June 7, Mr. Arsenault disclosed yet further documents to the parties. Counsel only became aware of these documents after Ms. Chura's further cross-examination was concluded. As a result, Ms. Chura had to be recalled yet again for further cross-examination on these additional documents.

[296] Mr. Arsenault's conduct in sending Mr. Chura documents before and during the trial, while failing to disclose those documents to counsel for Batten as requested by him, together with his conduct in subsequently disclosing massive amounts of documents at moments seemingly strategically chosen to ensure counsel for Batten did not have them in hand while cross-examining Ms. Chura, is extremely troubling. It had a profound effect on the manner in which this trial unfolded, causing a number of mid-trial applications, Ms. Chura being recalled on two occasions, and much attendant delay. This conduct, together with his tortured explanations for it when he finally did give evidence, are fatal to his credibility.

[297] The second batch of documents disclosed by Mr. Arsenault were cancelled cheques from WebStager to Mr. Chura dated between June 4, 2013 and December 8, 2014. Most of them bear re lines indicating they were for Nellie's and/or PhotoGIFTCARD. They amount to \$13,869.91. Two of them bear Ms. Chura's signature on the reverse, indicating that she endorsed and deposited them. Ms. Chura testified that she did not know if she knew at the time these cheques were written and deposited if Mr. Chura was being paid by WebStager for work for Batten. She testified she was not really paying attention to what he was getting paid for.

[298] On the whole of the evidence, I find that Ms. Chura did know before WebStager was ever retained by Batten that Mr. Chura would receive a fee for his services in relation to that contract. I do not believe her evidence that she did not know when she deposited two of the cheques from WebStager that Mr. Chura was being paid for that work. Further, she clearly knew that Mr. Chura had done more work than recommended by WebStager and acted as a translator for technical

issues. Her April 24, 2014 email to Mr. Chura as the “broker” for the website, to whom she went to get problems fixed, demonstrates that. I find Ms. Chura’s attempts to obfuscate these facts deeply damaging to her credibility.

[299] Another significant issue in dispute is whether Mr. Roberts knew that Mr. Chura was working with WebStager and getting paid for that work. Mr. Roberts denies any knowledge of those facts. He testified that Ms. Chura never told him that Mr. Chura would be or was getting paid by WebStager in connection with Batten’s contracts. Ms. Chura did not testify that she ever told Mr. Roberts directly that Mr. Chura was getting paid, but she testified that “everybody knew” since Mr. Chura was copied on emails between WebStager and Batten staff and he attended meetings at Batten offices and elsewhere.

[300] Mr. Arsenault testified that Mr. Chura was the “project manager” for WebStager’s work for Batten, and that “everyone knew” that fact and that he was being paid. Mr. Arsenault was unable to explain why, if that was so, Mr. Chura and Mr. Roberts were never on the same email in the hundreds of pages of emails involving WebStager and Batten.

[301] I find that Mr. Roberts did not know that Mr. Chura was getting paid by WebStager in connection with its contracts with Batten. It is possible that Mr. Chura attended one meeting with Mr. Arsenault and Mr. Roberts in September 2013. Even if he did, that would not necessarily indicate that Mr. Chura was getting paid by WebStager. Mr. Roberts was not copied on the many emails on which Mr. Chura was copied. Mr. Chura likely did attend one other meeting at Batten’s offices, but there is no evidence Mr. Roberts was there or knew anything about it. Certainly Ms. Chura never told Mr. Roberts that Mr. Chura would be or was getting paid by WebStager, a fact she did not deny. I find that Ms. Chura purposely kept the fact that her husband was getting paid by WebStager a secret from Mr. Roberts.

[302] It was only after Ms. Chura was terminated, when he was “tipped off” by Mr. Cook, that Mr. Roberts learned that Mr. Chura had been paid by WebStager. This explains why the WebStager issue was not raised at the investigation meeting. If

Mr. Roberts had known about Mr. Chura being paid by WebStager prior to the termination of Ms. Chura's employment, he would most certainly have raised it as an issue with her at the investigation meeting if not before.

[303] I will return to the legal significance of these facts, and whether they establish that Ms. Chura was in a conflict of interest, in my analysis of whether Batten has established just cause for the termination of Ms. Chura's employment.

### **Legal Analysis – Did Batten have just cause to terminate Ms. Chura's employment?**

#### **Introduction**

[304] Both parties rely on the Supreme Court of Canada's decision in *McKinley v. BC Tel*, 2001 SCC 38 [*McKinley*] as the leading case with respect to termination for cause. The central question is whether the actions of the employee may reasonably be said to have given rise to a breakdown in the employment relationship. In *McKinley*, the Court affirmed the need for courts to take a "contextual approach" to this question, holding at para. 48:

[W]hether an employer is justified in dismissing an employee on the grounds of dishonesty is a question that requires an assessment of the context of the alleged misconduct. More specifically, the test is whether the employee's dishonesty gave rise to a breakdown in the employment relationship. This test can be expressed in different ways. One could say, for example, that just cause for dismissal exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly inconsistent with the employee's obligations to his or her employer.

[305] The Court in *McKinley* made clear that not all acts of dishonesty are sufficient to constitute just cause, stating at para. 57:

[57] Based on the foregoing considerations, I favour an analytical framework that examines each case on its own particular facts and circumstances, and considers the nature and seriousness of the dishonesty in order to assess whether it is reconcilable with sustaining the employment relationship. Such an approach mitigates the possibility that an employee will be unduly punished by the strict application of an unequivocal rule that equates all forms of dishonest behaviour with just cause for dismissal. At the same time, it would properly emphasize that dishonesty going to the core of

the employment relationship carries the potential to warrant dismissal for just cause.

[306] The burden is on Batten as the employer to establish just cause. As stated by this Court in *Langan v. Kootenay Region Métis Association*, 2008 BCSC 1169 at para. 69:

[69] Thus the onus is on the defendants to establish: (1) the employee's deceitful conduct on a balance of probabilities; and (2) that the nature and degree of the dishonesty or other misconduct warranted dismissal.

[307] I have already made my findings of fact with respect to the deceitful conduct alleged by Batten. Batten made a large number of allegations, not all of which have been proven. In summary, I have found that misconduct has been established with respect to the following allegations:

- Seeking and obtaining reimbursement for the Babur restaurant bill Ms. Chura did not pay for;
- Seeking and obtaining reimbursement for a US Customs fee she did not incur in Mexico;
- Seeking and obtaining reimbursement for room service charges she did not incur in Mexico;
- Seeking and obtaining reimbursement for the rental of bikes in New York used for personal purposes;
- Causing Batten to incur expenses to ship her personal goods, namely a facial toning device and gym shoes, across the border;
- Using Batten's Staples account to purchase a laptop charger and printer cartridge, and not ensuring that she reimbursed Batten;
- Seeking reimbursement for expenses, or paying for them with the Batten credit card, which were for the benefit of her daughter in Las Vegas; and

- Taking the Humidew.

[308] I have also already made my findings of fact with respect to the WebStager contract, but have not yet engaged in the legal analysis to determine if Ms. Chura's conduct in that connection was improper. I will now embark on that analysis, before returning to the question of whether Batten has established just cause.

**Did Ms. Chura engage in improper conduct in relation to WebStager?**

[309] I have found that Ms. Chura recommended WebStager to Mr. Roberts. I have further found that Mr. Chura was paid by WebStager for the two contracts entered into by WebStager and Batten, and that Ms. Chura was aware of that fact at all material times. I have further found that Ms. Chura did not tell Mr. Roberts that Mr. Chura was being paid by WebStager, and that Mr. Roberts was not aware of that fact.

[310] Batten submitted that this conduct constituted both a conflict of interest and a breach of Ms. Chura's duty of good faith and honesty to her employer. Ms. Chura submitted that she was not dishonest and was not in a conflict of interest, as she did not cause the contract with WebStager, the contract was not to Batten's detriment, and she did not purposefully hide her husband's involvement.

[311] I have already found that Ms. Chura did hide the fact her husband was being paid by WebStager. The fact Mr. Chura was being paid by WebStager was a material fact, which might have operated on Mr. Roberts' judgment. Ms. Chura was, therefore, under a legal duty to disclose that fact to Mr. Roberts, and she did not fulfil that duty: *Procon Mining & Tunnelling Ltd. v. McNeil*, 2010 BCSC 487 [*Procon*] at para. 135 .

[312] I further find that Ms. Chura did cause Batten to retain WebStager. Mr. Roberts looked to Ms. Chura for a recommendation for a new web company. She recommended WebStager. Mr. Roberts relied on her advice. While Ms. Chura says that she provided two recommendations, the other being Fuse, the company Batten was already using, the whole reason Mr. Roberts wanted Ms. Chura to find a new

web service provider was because Batten was unsatisfied with Fuse’s performance. In reality, Ms. Chura provided only a single recommendation, WebStager. Further, she worked in cooperation with Mr. Chura and Mr. Arsenault to get Mr. Roberts to agree to retaining WebStager. But for Ms. Chura’s involvement, Batten would never have retained WebStager.

[313] I also find that Batten suffered detriment as a result of Ms. Chura’s actions. Mr. Arsenault testified that he would have charged Batten the same price whether he was paying Mr. Chura 20% of the amount or not. This makes little sense from a business perspective for WebStager, and given my conclusions about Mr. Arsenault’s lack of credibility, I do not accept that evidence. In any event, I accept Batten’s submission that there is a presumption that, where an employee takes a bribe or secret commission, “the true price of the goods as between him and the purchaser must be taken to be less than the price paid to, or charged by, the vendor by, at any rate, the amount of value of the bribe”: *Procon* at para. 93. If that presumption is rebuttable, it has not been rebutted by the plaintiff in this case.

[314] In *Procon*, the Court considered whether the employees in issue, who had taken secret commissions, were fiduciaries. At para. 81, the Court held that it was not essential that they be fiduciaries to be liable, as liability with respect to secret commissions can arise regardless of whether the employee is a fiduciary. At para. 83, the Court noted that fiduciaries are not limited to officers or directors, and that “A senior manager with more meaningful autonomy in supervising and carrying out the operations of the corporate victim, will be more likely to be found to be a fiduciary”.

[315] Ms. Chura had substantial autonomy in carrying out Batten’s sales operations. She had the primary relationship with some of Batten’s most important customers, such as Eden Hill. She was in a position to have a marked impact on Batten’s economic interests: *M-I Drilling Fluids Canada, Inc. v. Cottle*, 2018 ABQB 143 at para. 35. She was trusted by Mr. Roberts, and properly seen by her colleagues as his right-hand person. I am persuaded that she was a fiduciary and,



as such, had fiduciary obligation to act in Batten's best interests and to avoid placing her personal interests in conflict with Batten's: *M-I Drilling* at para. 36.

[316] Ms. Chura's conduct in relation to WebStager was a breach of her fiduciary duties, as well as her duties of good faith and honesty to her employer. Further, in ensuring that Batten retained WebStager, and in doing so ensuring that her husband, together with herself, would benefit financially, Ms. Chura put herself in a position where her interests conflicted with those of Batten. Her failure to disclose that conflict was a breach of her common law employment duties. That is true even if Ms. Chura was not, as I have found, in a fiduciary relationship with Batten.

### **Just cause**

[317] In my view, Ms. Chura's misconduct in relation to WebStager, standing alone, would be sufficient to constitute just cause for the termination of her employment. Her dishonesty and self-dealing went to the heart of the employment relationship, and was fundamentally and directly inconsistent with her obligations to her employer.

[318] I have also found Ms. Chura to have engaged in other forms of misconduct in relation to claiming expenses to which she was not entitled, either because they were not incurred at all as in the Babur restaurant example, or because they were personal in nature, as in the case of the New York bike rentals. Some of her misconduct might be characterized as negligent rather than dishonest, for example in failing to ensure that she was not reimbursed for room service charges paid for by Batten in Mexico or not ensuring that she did not receive reimbursement for her daughter's expenses in Las Vegas or not ensuring that she repaid Batten for personal items purchased on the Staples account. Taken in isolation, these latter examples of misconduct would likely not rise to the level of just cause. Taken together, however, the various forms of misconduct in which Ms. Chura engaged leave no doubt that she engaged in a long-standing pattern of dishonest and deceptive behaviour that meant that the employment relationship could no longer

viably exist. Simply put, it would be impossible for Mr. Roberts to ever again trust Ms. Chura.

[319] For these reasons, I dismiss Ms. Chura’s action for wrongful dismissal in its entirety. As a result, I need not consider her damage claims.

**Batten’s Counterclaim**

[320] Batten seeks damages in its counterclaim for the various expenses wrongfully claimed by Ms. Chura and the commissions paid to Mr. Chura. On the basis of the findings I have already made, I find that Batten is entitled to the following damages:

- a) Babur Restaurant: \$185.71
- b) US Custom fees: \$128.08 (\$100.00 USD)
- c) Mexico trade show room charges: \$83.85 (1309 pesos)
- d) New York City bike rentals: \$118.88 (\$92.89 USD)
- e) Laptop charger and printer cartridge: \$282.55
- f) Duty/processing fees for personal items shipped: \$159.85 (\$124.89 USD)
- g) Extra night in Las Vegas: \$260.52 (\$194.88 USD)
- h) WebStager commissions: \$15,043.34

[321] The basis for most of these figures is self-evident. I have accepted counsel’s calculation of the Canadian dollar equivalencies where the expense was in American dollars or Mexican pesos. I did not order damages for the Humidew, because Ms. Chura brought it back unopened. I have only ordered damages for the extra night in Las Vegas, as I believe Ms. Chura paid back all the other personal expenses from Las Vegas. I have calculated the WebStager commissions on the basis that Mr. Chura was paid 20% of the new WebStager business invoices, not all WebStager invoices, as I think the evidence supports that that was likely his deal with WebStager.

**Conclusion**

[322] I have dismissed Ms. Chura’s claim in its entirety. I have granted damages to Batten for the counterclaim items I have just listed.

[323] Batten also sought punitive damages against Ms. Chura. I decline to order punitive damages. In my view, Ms. Chura has been sufficiently punished for her misconduct by the termination of her employment and the damages I have ordered on the counterclaim.

[324] Both parties sought costs, including special costs. I indicated to counsel at trial that I would provide them with an opportunity to make submissions on costs following my decision. Although it did not succeed in proving all of its allegations, Batten was substantially successful, in that it established just cause, and in the normal course would be entitled to its costs. Should the parties be unable to agree on costs, and in particular if Batten wishes to pursue an application for special costs, it may do so by submitting a written submission to Supreme Court Scheduling within 30 days of this decision, in which case Ms. Chura will have 15 days to respond and Batten a further seven days to reply. I would, however, urge the parties to attempt to resolve the issue of costs without further application to this Court. This trial was scheduled for five days. For a variety of reasons, it ballooned to 23 days, spread out over nearly a year and a half. It is in the parties’ interests to bring it to an end without further litigation.

“L.M. Lyster J.”

LYSTER J.