

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Broggian Diffusione Spa v. Dina Fine Jewellery Ltd.*,
2023 BCSC 1835

Date: 20231020
Docket: S230030
Registry: Vancouver

Between:

Broggian Diffusione Spa now known as B Distribuzione Spa in Liquidazione
Plaintiff

And

Dina Fine Jewellery Ltd. also known as Saatchi & Saatchi Fine Jewellery Since 1925 Ltd. also known as Saatchi & Saatchi Fine Jewellery Ltd. and the said Dina Fine Jewellery, Saatchi & Saatchi Fine Jewellery Since 1925 Ltd., and Saatchi & Saatchi Fine Jewellery Ltd.

Defendants

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for the Plaintiff:	P. Di Tomaso
Counsel for the Defendants:	K. Coady
Place and Date of Hearing:	Vancouver, B.C. October 4, 2023
Place and Date of Judgment:	Vancouver, B.C. October 20, 2023

Table of Contents

INTRODUCTION 3

LEGAL FRAMEWORK..... 3

ANALYSIS..... 4

Did Dina receive the Jewellery (were six boxes empty)? 7

Evidence of Mr. Broggian..... 7

Evidence of Mr. Norris..... 8

Evidence of Mr. Saatchi..... 9

Evidence of Ms. Saatchi..... 13

Did Dina pay to Broggian the three contested payments?..... 13

Was Saatchi a party to the contracts for the Jewellery? 15

**Is the Court able to find the facts necessary to decide the issues, and would
 it be unjust to do so? 16**

ORDERS 19

Introduction

[1] Broggian Diffusione Spa now known as B Distribuzione Spa in Liquidazione (“Broggian”) is a wholesale distributor of jewellery located in Italy.

[2] Dina Fine Jewellery Ltd. (“Dina”) is a retail jeweller in Vancouver, and does business as Saatchi & Saatchi Fine Jewellery. The involvement, if any, of Saatchi & Saatchi Fine Jewellery Since 1925 Ltd. (“Saatchi 1925 Ltd.”) in the events of this lawsuit is disputed. The action against Saatchi & Saatchi Fine Jewellery Ltd. has been discontinued.

[3] Broggian seeks judgment on summary trial against Dina and Saatchi 1925 Ltd. for \$73,997 for jewellery (“Jewellery”) ordered by and alleged to have been delivered to the defendants in 2019.

[4] Dina and Saatchi 1925 Ltd. oppose on the basis that the claim is not suitable for summary trial. They argue that the court cannot find the facts necessary to decide the issues, and that it would be unjust to do so. The defendants point to what they say are material conflicts in the affidavit evidence. The defendants raise three defences to the action, which give rise to the three facts in issue. The defendants allege that:

1. the Jewellery was not delivered to Dina;
2. Broggian has not accounted for all payments made by Dina; and
3. Saatchi 1925 Ltd. was not a party to the contracts for the Jewellery.

[5] I conclude that I am able to find those facts and determine the issues, and that it would not be unjust to do so. I grant judgment to Broggian for \$73,997 against Dina, and dismiss the action against Saatchi 1925 Ltd.

Legal Framework

[6] Pursuant to Rule 9-7(15) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], the Court may grant judgment on an issue or generally, on the hearing of a summary trial application, unless:

- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
- (ii) the court is of the opinion that it would be unjust to decide the issues on the application.

[7] Conflicting affidavits are not necessarily fatal to a summary trial application. A judge cannot decide an issue solely because she prefers one affidavit over another without a basis for doing so. However, other evidence may provide that basis. This could be, for example, documentary evidence, or evidence of independent witnesses: *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 219, 1989 CanLII 229 (C.A.); and *Cory v. Cory*, 2016 BCCA 409 at para. 10.

[8] In exercising its discretion as to whether it would be unjust to decide the issues, the court must consider all relevant factors including: the amount involved; the complexity of the matter; any urgency or prejudice from delay; the time and cost of the summary trial and a conventional trial in relation to the amount involved; the course of the proceedings; whether credibility is a significant issue; and whether the summary trial would introduce unnecessary complexity to the dispute or result in litigation in slices: *Inspiration Mgmt. Ltd.* at 214; and *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 28–31.

Analysis

[9] The evidence consisted of affidavits from: Mr. Fausto Broggian, the owner of Broggian; Mr. Jim Norris, Broggian’s agent in Vancouver; Mr. Mohammad Saatchi, the owner of Dina; Ms. Justine Saatchi, his spouse; and Gordon Pellow, a paralegal in the office of the counsel for Broggian. Mr. Pellow attaches the documents produced by Dina in this litigation, which importantly, include nearly 150 pages of contemporaneous text messages between Mr. Norris and Mr. Saatchi from early 2019 to mid-2022. No party took issue with the authenticity or admissibility of the text messages.

[10] The evidence establishes, and it is not in dispute, that during 2019: Dina ordered Jewellery from Broggian through Mr. Norris and agreed to pay Broggian for

the Jewellery upon delivery; eight boxes were sent from Broggian to Dina; and those eight boxes were received.

[11] Mr. Saatchi states that six of those boxes did not contain any of the Jewellery ordered, and were empty except for an invoice and certificates for Jewellery. The chart below summarizes the eight boxes delivered to Dina, by their invoice number, shipment date, amount of the invoice, and Mr. Saatchi's evidence as to whether or not the box arrived with the Jewellery. All boxes were delivered within about a week of the shipment date.

Inv. #	Shipment	Amount	Mr. Saatchi's evidence
155/19*	April 17, 2019	\$37,620.00	Jewellery not in box, but the box contained one ring from a previous order valued at \$1,380.50.
168/19	May 8, 2019	\$703.00	Jewellery received.
267/19	July 16, 2019	\$19,545.50	Jewellery received.
322/19	Sept. 3, 2019	\$9,519.00	Jewellery not in box.
371/19	Oct. 21, 2019	\$7,576.00	Jewellery not in box.
420/19	Nov. 28, 2019	\$13,936.00	Jewellery not in box.
443/19	Dec. 5, 2019	\$6,217.00	Jewellery not in box.
470/19	Dec. 16, 2019	\$12,071.00	Jewellery not in box.
Total		\$107,187.50	

[12] There is an asterisk beside invoice 155/19 because Mr. Broggian refers only to invoice 155/19, but the \$37,620 he states is due includes invoice 154/19, which is dated the same as invoice 155/19. Invoice 154/19 is not attached, but the ledger

attached by Mr. Broggian indicates the date and amount of invoice 154/19, and its amount combined with the amount of invoice 155/19 matches the total claimed in his affidavit for invoice “155/19”. The associated export document refers to both invoices, and the cheques written by Mr. Saatchi toward this invoice reflect that they were payments toward both invoices.

[13] The parties agree that the following payments were made to Broggian on account of the above invoices:

Date	Amount	Notation on cheque
Sept. 30, 2019	\$6,270.00	155-19 – 154/19 1-4
Oct. 30, 2019	\$6,270.00	155-19 – 154/19 2-4
Nov. 30, 2019	\$6,270.00	155-19/154/19 3/4
July 5, 2020	\$5,000.00	RPL for Ch#4357
Aug. 20, 2020	\$1,380.50	Outstanding all invoice from Jan 2019 – Dec. 2020 1-12
Dec. 30, 2020	\$3,000.00	All Invs 2019/2020 2-12
Jan. 30, 2021	\$5,000.00	All outstanding Inv. 2019/2020 3-12
Total:	\$33,190.50	

[14] Broggian alleges that it is owed \$73,997 (\$107,187.50 less \$33,190.50). The above payments do not include the three disputed payments (total of \$20,282) which Mr. Saatchi states were paid to Broggian on account of the invoices. Dina alleges it has overpaid Broggian by \$31,843.50 (\$21,629 Jewellery delivered (invoices 168/19 and 267/19 plus the ring with invoice 155/19), less \$33,190.50 (agreed payments) less \$20,282 (disputed payments)). It has not filed a counterclaim.

Did Dina receive the Jewellery (were six boxes empty)?

[15] I turn to the first defence and contested fact, being whether Dina received the Jewellery.

Evidence of Mr. Broggian

[16] Mr. Broggian states that: Broggian received orders for the Jewellery which were sold on a “payment on delivery basis”; in 2019, eight boxes containing the invoices and Jewellery were shipped to Dina; and those boxes were delivered. Mr. Broggian attaches the invoices, export documents, and shipping documents. Mr. Broggian states that Dina attempted to make payments from time to time but cheques it provided were returned with insufficient funds, or stop payments had been placed on cheques. Mr. Broggian attaches a form of ledger showing the amount owing to be \$73,997, along with a listing of the 51 cheques received and a notation as to whether they were paid, presented for payment and unpaid, were not deposited, or were blocked. This includes two sets of 10 and 12 cheques respectively (the first spanning from July 2020 to December 2021, and the second from August 2021 to June 2022) which the text messages, discussed below, show are a series of post-dated cheques. Both groupings of cheques total \$74,000, within \$3 of the amount claimed by Broggian.

[17] Although the invoice, shipping, and export documents are not direct evidence that the Jewellery was in the boxes, there are notations and declarations on these invoices, and other circumstances of the shipments, which are consistent with the Jewellery being in the boxes. First, the invoices list the specific items of Jewellery, the quantity, and the price. All but one contested invoice contains the words “in settlement of your order dated...” or similar wording, and most have a notation regarding the number of pieces of jewellery, which corresponds with the items listed. Second, the export documents indicate a declared “statistical value” and, on the assumption that, being shipped from Italy this was in Euros, those amounts correspond roughly with the associated invoice amounts which are in Canadian currency. There would be no reason for Broggian to declare a significant value if

nothing of value was inside the boxes. The export documents also have a box for “designation of goods” and six documents state “jewelry made of previous metals”, and one states “small parts of other the precious metals, even coated”. Mr. Broggian’s affidavit is missing this page of the export document for the eighth shipment. Third, Mr. Saatchi states that the contested packages were sent in boxes. There would be no point in sending a box instead of an envelope if just a paper invoice and certificates were all that were being shipped.

Evidence of Mr. Norris

[18] Mr. Norris states that: the orders corresponding to the invoices were placed by Mr. Saatchi; subsequently on multiple occasions he was informed by the account administrator at Broggian that cheques provided by Dina had bounced; and when he spoke to Mr. Saatchi about this, Mr. Saatchi repeatedly promised that these would be replaced with post-dated cheques. At times Mr. Saatchi provided him with replacement cheques, but Mr. Norris would then be informed by the account administrator that a cheque had been bounced or canceled. He states that he made repeated attempts to collect payment from Mr. Saatchi, who asked for extensions of time to pay and gave him numerous assurances that he would pay for the Jewellery and would provide replacement cheques. Mr. Norris states that at no time did Mr. Saatchi raise with him that Dina had not received the Jewellery ordered. Rather, Mr. Saatchi continued to make payment promises and to provide replacement cheques or reasons why he was not in a position to make payment. Mr. Norris states that Mr. Saatchi gave him replacement cheques totalling \$74,000, and he attaches an email received from Broggian when in September 2021 another cheque bounced. This cheque was the first in the series of post-dated replacement cheques provided by Mr. Saatchi which spanned from August 2021 to July 2022, in the total amount of \$74,000.

[19] The contemporaneous text messages between Mr. Norris and Mr. Saatchi are entirely consistent with Mr. Norris’ evidence. They confirm exactly what he describes. The Court was not brought to any documentary evidence that contradicted Mr. Norris’ evidence.

Evidence of Mr. Saatchi

[20] Mr. Saatchi states that he took over ownership of Dina from his father in 2016. From 2016 until the spring of 2019, Dina routinely ordered jewellery from Broggian through Mr. Norris. Typically, every few months, Mr. Saatchi, Mr. Norris, and a man by the name of Gianluca (whom Mr. Saatchi originally thought was the owner of Broggian) would meet, and he would place orders for jewellery on behalf of Dina. Usually a few weeks after that, he would receive a call from Mr. Norris telling him the jewellery was ready to ship from Italy. Mr. Norris would then attend Dina's store and pick up the payment cheques. If the invoice was large, Dina would pay in monthly installments with post-dated cheques. Typically, the jewellery would be delivered to the store a week to 10 days later. The jewellery would arrive in a box along with a copy of the corresponding invoice and individual paper certificates with a photo and description of each item. He states that on "a number of occasions, the invoice and certificates would arrive in one box, and the goods would arrive in a separate box at a later date".

[21] Mr. Saatchi states when the first box containing invoice 155/19 arrived with the certificates but not the Jewellery, he was not initially concerned because it was not uncommon for Broggian to ship jewellery in a separate box from the invoice and certificates. He states that Mr. Norris had already picked up the cheques from Dina which corresponded with the 155/19 invoice and on "multiple occasions" he told Mr. Norris that Dina had not yet received the Jewellery from the 155/19 invoice. Mr. Saatchi states that throughout the fall and winter of 2019, Broggian continued to ship boxes to Dina that contained invoices and certificates, but other than the two boxes for invoices 168/19 and 278/19 (which he agrees did contain the corresponding Jewellery), the Jewellery for the remaining invoices was never received. Mr. Saatchi states that throughout 2019, he "repeatedly" told Mr. Norris that he was concerned the Jewellery was not being delivered to Dina, and trusted Mr. Norris each time he assured him the Jewellery would eventually arrive.

[22] Mr. Saatchi states that when he realized that Broggian was "cashing cheques that corresponded to the undelivered Jewellery listed in invoice 155-19" (these are

the three \$6,270 cheques dated from September 30 to November 30, 2019), and when Broggian continued to deliver empty boxes, in about December 2019 he issued stop payments on the remaining cheques that had been issued to Broggian. He was concerned that Broggian would continue to cash cheques corresponding to that invoice without delivering the Jewellery.

[23] Mr. Saatchi states that he agreed to issue new cheques on behalf of Dina after Mr. Norris promised that the outstanding Jewellery would be delivered and that Broggian would return Dina's old cheques. However, no further Jewellery was delivered and the outstanding cheques were never returned, despite repeated demands, so he issued a stop payment on the new cheques.

[24] Mr. Saatchi states that there was "some confusion between Dina and Broggian and each company's records regarding what amounts were owing and what items had been and had not been delivered". He states that when Mr. Norris continued to demand payment from Dina, he tried "on multiple occasions to meet with Norris and resolve the apparent discrepancy, but this never happened".

[25] Finally, Mr. Saatchi states that in 2020 and in January 2021 he made payments to Broggian in response to Mr. Norris' demands. He states that he "trusted Norris was demanding money for amounts that were still outstanding to Broggian for goods that had been or would be delivered" and he "understood that these payments were made to settle the total amount outstanding to Dina". He states that after the cheque was cashed in January 2021, he refused to make any further payments on behalf of Dina as he was certain that Dina had paid more than enough to cover the Jewellery it had received. When Mr. Norris continued to demand payment, he tried on "multiple occasions" to meet to resolve the "apparent discrepancy". Mr. Saatchi does not address the last set of 12 replacement cheques he provided to Broggian that spanned from August 2021 to July 2022 in the amount of \$74,000.

[26] There are multiple difficulties with Mr. Saatchi's evidence. His evidence is directly contradicted, numerous times, by his prior inconsistent statements, admissions, and actions, as evidenced by the nearly 150 pages of contemporaneous

text messages between him and Mr. Norris, and the payments and sets of replacement cheques he provided. In summary, the text messages establish that:

- a) Between 2019 and 2022, Mr. Norris regularly contacted and met with Mr. Saatchi for payment of all of the invoices;
- b) At no time did Mr. Saatchi state, imply, or even hint in any text message, that Dina had not received the Jewellery referenced in the invoices, contrary to his evidence that he repeatedly told Mr. Norris that the Jewellery had not been received. Even when Mr. Norris sent messages that for example, stated “You have been in possession of \$80,000 worth of jewellery for almost 3 years”, Mr. Saatchi did not contest this statement;
- c) Instead, on numerous occasions, Mr. Saatchi acknowledged the debt by promising to pay the invoices, and apologized for not paying. In addition to originally post-dated cheques, Mr. Saatchi also provided two sets of replacement post-dated cheques, each totalling \$74,000, the amount outstanding under the all the invoices, including invoice 154/19. These sets of replacement cheques were provided well after the Jewellery had allegedly not been received in 2019.
- d) It is clear that Dina was in financial trouble. Cheques written to Broggian were returned NSF, or Mr. Saatchi asked Broggian not to cash cheques. Mr. Saatchi frequently delayed meetings between him and Mr. Norris to discuss payment or for Mr. Norris to pick up cheques, and Mr. Saatchi had various reasons as to why payments were not being made;
- e) While Mr. Saatchi may have put stop payments on cheques, there was no suggestion by him that he did this because Dina had not received the Jewellery or Mr. Norris had not returned post-dated cheques after Mr. Saatchi had provided him with replacement cheques. Rather, the text messages and Mr. Norris’ evidence indicates that after a few cheques had bounced, Broggian did not present the remainder of the post-dated

cheques to be cashed, and that Mr. Norris had taken steps to return the previous set of cheques to Mr. Saatchi; and

- f) Contrary to Mr. Saatchi's evidence, there was never any confusion about what was owing. In all of the text messages, there is only one statement made by Mr. Saatchi, in July 2020, that suggested there may be a discrepancy in what each party calculated was owing. The conversation concerned replacement cheques Mr. Saatchi was going to provide. Mr. Saatchi stated that his accountant had come to a different figure than Broggian as to what was owing. However, shortly after this, Mr. Saatchi provided Broggian with post-dated cheques that equalled the amount that Broggian said was owing. I conclude that any discrepancy was minor and was resolved in favour of Broggian.

[27] I will give an example. In January 2020, Mr. Saatchi wrote to Mr. Norris stating that he was having an issue with Dina's bank account again, and that the account was frozen. On January 13, 2020, Mr. Saatchi texted that he expected that the freeze would be lifted by the end of the month. He then stated:

... I will have the accountant prepare the cheque's for the outstanding invoices as well as the MAM watches. ...

My sincere sincere apologies to you and [Gianluca].

Ps this is because the amount of money Coming is a large amount so you have no worries about the invoices [emoji happy face]

[28] Mr. Saatchi did not suggest that the Jewellery had not been received. Instead, he stated that Dina would pay the outstanding invoices, apologized and told Mr. Norris he should have "no worries". Further, if Mr. Saatchi's thought that the three \$6,270 cheques which had been cashed had now covered all or almost all of the outstanding invoices for Jewellery received, it would be inconsistent for him to say that the "amount of money Coming is a large amount". By this time, all of the remaining six contested boxes had arrived at Dina, and according to Mr. Saatchi, none of them contained any Jewellery. Subsequently, Mr. Saatchi provided Broggian with the two sets of replacement cheques totalling \$74,000.

Evidence of Ms. Saatchi

[29] Ms. Saatchi provided a very short affidavit in which she states that for the period from July to December 2019, she recalls “boxes” being delivered to Dina by Broggian, and that “on multiple occasions” her husband opened the boxes and found only papers and no merchandise. She also states that on “multiple occasions” she overheard phone calls between her husband and Mr. Norris, where her husband asked Mr. Norris about the missing merchandise, and she recalls that her husband sounded frustrated. She did not hear Mr. Norris’ response. Ms. Saatchi’s evidence suffers from the same difficulties as Mr. Saatchi’s evidence.

Did Dina pay to Broggian the three contested payments?

[30] I turn next to Dina’s second defence and contested fact, which is that Dina or Saatchi made three other payments for which Broggian has not accounted. The three alleged payments are:

Date	Amount	Comments
April 30, 2019	\$7,641.00	This is cheque #69 drawn on a Saatchi account. Notation is: Inv#s: 1558/18 and 1559/18.
May 24, 2019	\$7,641.00	This is cheque #4322 drawn on a Dina account. Notation is: Inv# chq#rpl #60
Nov. 5, 2020	\$5,000.00	This is a wire transfer to Marco Gaudino at Credit Agricole Cariparma in Valenza
Total	\$20,282.00	

[31] Mr. Saatchi states that these payments were on account of the invoices, and the last payment was made to Broggian. Again, there are several difficulties with Mr. Saatchi’s evidence.

[32] The notation on the first cheque indicates that it was drawn from a Saatchi account in satisfaction of two invoices that are not the subject of this action, and likely from 2018. There is no documentary evidence otherwise. Mr. Saatchi does not explain this notation.

[33] The notation on the second cheque is difficult to decipher, but does not refer to any of the subject invoices. Rather, the notation seems to indicate that it was a replacement for cheque #60. This cheque is dated a month after the first box was delivered, and four months before any of the post-dated cheques referencing the 154/19 and 155/19 invoice were cashed. It therefore is unlikely to be a “replacement” cheque for any amount owing on those invoices. There is no documentary evidence otherwise. Mr. Saatchi does not explain this notation.

[34] The third payment is a wire transfer. Mr. Saatchi’s evidence and the text messages show that the meetings with Mr. Norris occasionally included a person by the name of Gianluca. Up until mid-2020 there is no mention of a company called GiLoro in the text messages, and the messages are exclusively about debt owing to Broggian. However, starting in about mid-2020, the text messages indicate that Mr. Saatchi was now also ordering jewellery from a separate company called GiLoro that was owned by Gianluca. The many relevant text messages after this time clearly draw a distinction between amounts owing to Broggian, and amounts owing to Gianluca or GiLoro.

[35] By July, 2020, Mr. Norris was pressing Mr. Saatchi for cheques for the amount owing to GiLoro. On October 29, 2020, Mr. Norris texted:

The first two cheques for GiLoro BOUNCED. This is bad. Gianluca is upset because the banks in Italy take a very dim view of companies that deposit cheque’s that bounce. Plus the charges on depositing and then NSF fees Is about \$200 per cheque in Italy. ...

I suggest a wire transfer right away for the total Amount of the two cheques plus \$400. ...

[36] The same day, Mr. Norris sent Mr. Saatchi the payee name and address of where the money should be sent. It was to a Marco Gaudino with an address in

Valenza, and a bank account at Credit Agricole Cariparma in Valenza. The instruction on Broggian invoices about where to make payments is different. On November 2, 2020, Mr. Norris asked Mr. Saatchi how he was going to resolve the bounced cheques “for GiLoro”. The wire transfer was sent the same day, and it was sent to Marco Gaudino’s account at the Credit Agricole Cariparma bank. There is a picture of the wire transfer document within the texts. It is the same wire transfer document that Mr. Saatchi attaches to his affidavit, and which he states was a payment to Broggian. Mr. Saatchi does not explain these text messages and payment details and how they could be a payment to Broggian.

Was Saatchi a party to the contracts for the Jewellery?

[37] Finally, I turn to the third defence and contested fact, being whether Saatchi 1925 Ltd. was a party to the contracts for the Jewellery. Mr. Broggian states that “Dina Fine Jewellery Ltd. doing business as Saatchi & Saatchi” ordered the Jewellery. He does not state that Saatchi 1925 Ltd. ordered the Jewellery.

[38] Mr. Norris states that Dina and Saatchi 1925 Ltd. “conduct business out of the same premises”. He does not state on what basis he makes this conclusion. He states that Mr. Saatchi placed the orders for the Jewellery through him, but does not state that Saatchi 1925 Ltd. placed the orders.

[39] The order forms, if there are any, are not in evidence. There is no evidence or document evidencing that Saatchi 1925 Ltd., as well as Dina, was a party to the contracts. The only documents evidencing the contracts are the invoices, and the invoices are made out to Dina and not Saatchi 1925 Ltd. There is nothing in the text messages that is an admission by Mr. Saatchi that Saatchi 1925 Ltd. was also a party to the contracts.

[40] Mr. Saatchi states that Saatchi 1925 Ltd. was not involved in the operation of Dina. There is no evidence contradicting his assertion.

Is the Court able to find the facts necessary to decide the issues, and would it be unjust to do so?

[41] In considering the whole of the evidence, I conclude that I am able to determine the three contested facts and the issues, and that it would not be unjust to do so.

[42] The defendants argue that this Court cannot find that the Jewellery was delivered because there is a “head on” conflict between the evidence of Mr. Broggian and Mr. Norris on the one hand, and Mr. and Ms. Saatchi on the other. The defendants argue that it would be unjust to decide this issue because these are issues of credibility, the action is relatively new and they should be given an opportunity for further discovery and cross-examination on affidavits, or this matter should go to trial.

[43] Broggian argues that Mr. Saatchi’s evidence that Broggian shipped six empty boxes is highly improbable in itself, and that there is a basis against which to assess the conflicting evidence, being the documents and text messages. Broggian argues it would not be unjust to decide the issues because the claim is a straightforward debt claim, the amount involved is relatively small, and the defendants have had ample opportunity to conduct an examination for discovery and have never requested one. Through his affidavit, Mr. Saatchi has already given his explanation of the difficulties with his evidence. There is no documentary evidence that suggests any basis upon which the evidence of Mr. Norris or Mr. Broggian evidence could be attacked, and the defendants have not suggested any.

[44] I conclude that I am able to find that Dina received all the Jewellery. While there is conflicting evidence between the witnesses, there is also a body of extensive, contemporaneous and objective evidence in the 150 pages of uncontested text messages spanning two and a half years, invoices, shipping and export documents, and notations on the cheques provided by Mr. Saatchi. This body of evidence provides the basis on which I can assess, and do prefer the evidence of Mr. Broggian and Mr. Norris, over that of Mr. and Ms. Saatchi.

[45] As set out above, there are numerous difficulties with Mr. and Ms. Saatchi's evidence. Mr. Saatchi has attempted unsatisfactorily to explain the inconsistencies between his evidence now and his previous statements, admissions and actions. In contrast, neither Mr. Broggian's evidence nor Mr. Norris' evidence was undermined in any way, nor a suggestion of how it might be. Mr. Norris' evidence is entirely consistent with the text messages, which show that Dina was struggling financially and unable to pay the amounts that Mr. Saatchi acknowledged were due to Broggian. Not once in over two and a half years of text messages did Mr. Saatchi suggest that the Jewellery was not received. The defendants argue that the text messages are not the complete communications between Mr. Saatchi and Mr. Norris because there were also telephone calls and meetings. That is true. However, if Mr. Saatchi's evidence was credible, I would expect at least some suggestion in those text messages that the Jewellery was not received. Not only is that missing, but Mr. Saatchi's promises of payment, and his issuance of two sets of replacement cheques, long after the Jewellery was allegedly not received, are inconsistent with this contention. The defendants also argue that they have not had an opportunity to address the 154/19 invoice. They do not identify what they need to address. I disagree. The fact that Broggian was claiming the amount owing under this invoice is readily apparent from the form of ledger attached to Mr. Broggian's affidavit.

[46] I also conclude that it would not be unjust to decide this issue. This is a simple claim in contract. The amount involved is not large. If the defendants had wanted to conduct an examination for discovery, they could have done so prior to this hearing. I am mindful of the object of the *Rules* at Rule 1-3 of a just, speedy, and inexpensive determination of each claim on its merits, and in a manner that is proportionate to the amount involved, the importance of the issues, and the complexity of the proceeding. Given the many difficulties already apparent in Mr. Saatchi's evidence that he has unpersuasively tried to explain, his admissions, and that Mr. Norris' evidence is entirely consistent with the objective contemporary text messages, I do not find that cross-examination on the affidavits, or a full trial, would be proportionate or result in any better decision on the merits. Rather, in the circumstances of this case, it would only work against the object of the *Rules*.

[47] Turning to the three contested payments, the defendants argue that the Court cannot find that these were not paid to Broggian in satisfaction of the invoices in issue, or in the case of the wire transfer, that it was not paid to Broggian at all. The defendants again argue that there are “head on” contradictions in the evidence concerning this issue. Broggian again refers to the documentary evidence, and in particular the notations on the cheques and the details of the wire transfer which are reviewed above.

[48] I conclude that I am able to find these facts, again because the contemporaneous objective evidence provides the basis against which to assess and prefer evidence. The two cheques were paid to Broggian, but the notations on the two cheques show that the payments were on account of different invoices. The defendants argue that Broggian has not explained where the two cheque payments went. In my view, Broggian has no obligation to explain where they went when the evidence shows they were on account of different invoices and Broggian is not suing for a deficiency on those invoices. Further, the two sets of replacement post-dated cheques that Mr. Saatchi provided to Broggian totalled the amount that Broggian claimed it was owed, without considering these payments. It would be inconsistent for him to provide cheques for this total amount if these payments were already made on account of the invoices in issue. The wire transfer document and the text messages show convincingly that the wire transfer was not paid to Broggian, but to a different person for amounts owing to GiLoro.

[49] Nor do I find that it would be unjust to determine this issue for the same reasons I did not find it was unjust to determine whether Broggian had delivered all of the Jewellery.

[50] Finally, I find that Broggian has not established that Saatchi 1925 Ltd. was a party to the contracts for the delivery of the Jewellery. There is no evidence or documents which establish this alleged fact. Broggian argues that Saatchi 1925 Ltd. operated out of the same premises, and that Mr. Saatchi is the owner of both Dina and Saatchi 1925 Ltd., but that does not make Saatchi 1925 Ltd. a party to the

contracts. Mr. Saatchi states that Saatchi 1925 Ltd. was not involved with the Jewellery orders, and there is no evidence otherwise. I do not find that it would be unjust to determine this issue for the same reasons I did not find it was unjust to determine the other issues.

Orders

[51] Broggian will have judgment against Dina for \$73,997 plus interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. Unless there are formal offers of which I am unaware, Broggian will have its costs of this action at Scale B. If counsel need to speak to costs, they should make arrangements with Supreme Court Scheduling to do so at 9:00 a.m. on a convenient date within the next 30 days.

“Norell J.”