N THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0731431 B.C. Ltd. v. Panorama Parkview Homes Ltd.,* 2024 BCSC 2357

Date: 20241223
Docket: S142529
Registry: Vancouver

Between:

0731431 B.C. Ltd., Daljit Singh Mattu, 0892995 B.C. Ltd., Rajpreet Singh Sangha, Grewal Management Ltd. and Jasprit Singh Grewal

Plaintiffs

And

Panorama Parkview Homes Ltd., 690174 B.C. Ltd., Jaswant Singh Sangha, Parmjit Kaur Sangha, Ranjit Singh Sangha, Svender Singh Sangha, Douglas William Wills, Balbir Kaur Dale, Crowe MacKay & Company Ltd. in its capacity as Trustee in Bankruptcy of Jaswant Singh Sangha, Panorama Parkview Homes Ltd. and 690174 B.C. Ltd.

Defendants

- and -

Docket: S151275
Registry: Vancouver

Between:

Daljit Singh Garcha and Jaswinder Kaur Garcha

Plaintiffs

And

690174 B.C. Ltd., Panorama Parkview Homes Ltd., Jaswant Singh Sangha, Parmjit Kaur Sangha, Raveen Sangha, Ranjit Singh Sangha, Svender Singh Sangha, Douglas William Wills, Balbir Kaur Dale, Grewal Management Ltd., Jasprit Singh Grewal, Crowe MacKay & Company Ltd. in its capacity as Trustee in Bankruptcy of Jaswant Singh Sangha, Panorama Parkview Homes Ltd. and 690174 B.C. Ltd.

Defendants

- and -

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Docket: B150826
Registry: Vancouver

In the Matter of the Bankruptcy of Jaswant Singh Sangha

- and -

Docket: B160405
Registry: Vancouver

In the Matter of the Bankruptcy of Panorama Parkview Homes Ltd.

- and -

Docket: B160406
Registry: Vancouver

In the Matter of the Bankruptcy of 690174 B.C. Ltd

Before: Associate Judge Muir
(As Registrar)

Reasons for Decision

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Counsel for Daljit Singh Garcha and Jaswinder Kaur Garcha:	G.A. Phillips
Counsel for Parmjit Kaur Sangha:	D. Magnus
Place and Dates of Hearing:	Vancouver, B.C. September 16–20, 2024
Place and Date of Judgment:	Vancouver, B.C. December 23, 2024

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I. INTRODUCTION

[1] This is a costs assessment hearing involving five actions and various costs awards. The hearing was set for five days and completed within the five days. The pre-hearing conference order of Associate Judge Robinson, made April 11, 2024, contemplated the parties making best efforts to schedule a two-day hearing prior to this hearing to address the apportionment issues raised. Unfortunately, that was not done and counsel skimmed through the issues and left a considerable volume of materials to be reviewed by me.

[2] The underlying trial was a hearing of two civil actions (the “civil actions”) and three appeals of notices of disallowance of bankruptcy claims (the “bankruptcy appeals”) involving the parties to a successful subdivision project at the corner of 130 Street and 60th Avenue in Surrey, British Columbia (the “project”).

[3] Trial reasons were delivered by Justice Sewell on April 1, 2021, indexed as 2021 BCSC 607 (the “Trial Reasons”).

[4] Supplementary reasons were delivered, after an accounting hearing before Sewell J. on October 1, 2021, indexed as 2021 BCSC 1925 (the “Accounting/Costs Reasons”).

[5] In the Trial Reasons, Sewell J. described the actions as follows:

> [7] […]
>
> 1. Vancouver Registry No. S151275 (the “Garcha Action”), in which Daljit Singh Garcha and Jaswinder Kaur Garcha (the “Garchas”) are plaintiffs and Jaswant, 690174, Panorama, Parmjit Sangha (“Parmjit”), Raveen Sangha (“Raveen”), Ranjit Singh Sangha (“Ranjit”), Svender Singh Sangha (“Svender”), Douglas William Wills and Balbir Kaur Dale (“Wills and Dale”), Grewal Management Ltd. (“Grewal Management”), Jasprit Singh Grewal (“Mr. Grewal”), and Crowe MacKay & Company Ltd. in its capacity as Trustee in Bankruptcy of Jaswant Singh Sangha, Panorama Parkview Homes Ltd. and 690174 B.C. Ltd. (the “Trustee”) are defendants;
> 2. Vancouver Registry No. S142529 (the “Grewal Action”), in which 0731431 B.C. Ltd. (“0731431”), Daljit Singh Mattu (“Mr. Mattu”), 0892995 B.C. Ltd. (“0892995”), Rajpreet

Singh Sangha ("Rajpreet"), Grewal Management, and Mr. Grewal are plaintiffs and Panorama, 690174, Jaswant, Parmjit, Ranjit, Svender and the Trustee are defendants;

3. Vancouver Registry No. B150826 in the Matter of the Bankruptcy of Jaswant Singh Sangha (the "Jaswant Bankruptcy"), being appeals of notices of disallowance of proofs of claim filed by the plaintiffs in the Civil Actions in that bankruptcy;
4. Vancouver Registry No. B160406 in the Matter of the Bankruptcy of 690174 B.C. Ltd. (the "690174 Bankruptcy"), being appeals of notices of disallowance of proofs of claim filed in that bankruptcy by the same plaintiffs; and
5. Vancouver Registry No. B160405 in the Matter of the Bankruptcy of Panorama Parkview Holdings Ltd. (the "Panorama Bankruptcy"), being appeals of notices of disallowance of proofs of claim filed by the same plaintiffs in that bankruptcy (proceedings 3 to 5 are referred to collectively as the "Bankruptcy Appeals").

[6] Due to the similarity in last names of many of the parties to these actions, I will refer to them by their first names, as did Sewell J., intending no disrespect.

[7] The project was conceived and managed by Jaswant, a defendant and one of the bankrupts, who was the sole shareholder and director of two companies, 690174 and Panorama, also defendants and bankrupts.

[8] The parties to the actions are described in the Trial Reasons as follows:

> [11] Jaswant is the central figure in all of the matters before me. He was born and educated in India but has lived in Canada for many years. He is obviously astute in business. As the Trustee observed in his testimony, Jaswant had the ability to identify and develop properties that could be profitably subdivided.
>
> [12] Jaswant is married to Parmjit. They have a daughter, Raveen. Raveen is the registered owner of the home in which Jaswant and Parmjit have lived for a number of years. Parmjit is a defendant in the Grewal Action and both Parmjit and Raveen are defendants in the Garcha Action.
>
> [13] The Garchas are long-term residents of Surrey who got to know Jaswant and Parmjit through attending community events.
>
> [14] Ranjit and Svender are Jaswant's brother and nephew.
>
> [15] Wills and Dale are a married couple who were long-time family friends of Jaswant and Parmjit. Wills and Dale became involved in real estate projects being managed by Jaswant in the 1990s. They allege that they

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> invested in those projects and that the proceeds of those previous investments were invested in the November 2010 Joint Venture.
>
> [16] Mr. Grewal is the sole shareholder and director of Grewal Management. Although it is a member of the 2011 Joint Venture, Grewal Management alleges that its investment in the Project was made pursuant to an oral joint venture agreement made in June 2011 that entitled it to a greater share of the proceeds from the Project than is allocated to it in the 2011 JVA.
>
> [17] Mr. Mattu was a long-time acquaintance of Jaswant's. He alleges that he invested in the Project through an oral joint venture agreement with Jaswant and his companies.
>
> [18] Rajpreet was introduced to Jaswant by Mr. Mattu. He invested in the October 2010 Joint Venture through 0892995 and alleges he later agreed with Jaswant that this investment and an additional $600,000 he provided to Jaswant would be invested in the Project pursuant to an oral agreement similar to the one alleged by Mr. Mattu. He was initially represented by the same counsel as Mr. Grewal and Mr. Mattu. However, he filed a notice of intention to act in person in July 2019 and represented himself and 0892995 at trial thereafter.
>
> [19] The Trustee is the Trustee in Bankruptcy of Jaswant, 690174, and Panorama, who has conducted a defence of the Garcha and Grewal Actions on their behalf.

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II. THE TRIAL REASONS

[9] The project involved the purchase and development of five contiguous lots. The lots were purchased at different times and with different agreements, including several written joint venture agreements.

[10] The first lot, referred to as Lot 1, was purchased in 2006. It is the subject of a joint venture agreement entered into in 2007 (the "2007 JVA") and is the source of the entitlement claimed in the Garcha Action.

[11] Lots 2 to 4 were purchased between 2007 and 2010 and arrangements had been made by 2010 to purchase Lot 5.

[12] A further joint venture agreement regarding development of the project, inclusive of the new lots, was entered into on November 15, 2010, by 690174, Panorama, Jaswant, Wills and Dale, Parmjit, Ranjit, and Svender (the "2010 JVA").

[13] The project had ongoing financial difficulties and, amongst other things, needed financing to complete the purchase of Lot 5. In 2011, Jaswant sought the

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assistance of Mr. Mattu in finding additional funds. Mr. Mattu introduced Mr. Grewal, ultimately a plaintiff in the Grewal Action.

[14] In June 2011, Mr. Grewal's company, Grewal Management, and the parties to the 2010 JVA executed a further joint venture agreement (the "2011 JVA").

[15] The project was ultimately successful and significant proceeds were paid into trust accounts, referred to as "vendor trust accounts", based on whichever bankrupt party was the responsible vendor.

[16] Justice Sewell decided that Jaswant and 690174 breached their fiduciary obligations to the participants in the 2007 JVA in numerous ways and noted the following in the Trial Reasons:

> [271] The cumulative effect of the numerous breaches of fiduciary duty was that the 2007 Joint Venturers were deprived of their beneficial ownership of Lot 1 and that the 2011 Joint Venturers have appropriated that benefit. As I will address later in the remedy section of these reasons, that is a result that a court of equity cannot permit.

[17] As a result, Sewell J. found:

> [279] Thus, I find that the 28.5% share of the 2011 Joint Venture obtained by 690174 is beneficially owned by the 2007 Joint Venturers. There is a direct and clear path from the ownership of Lot 1 into 690174's 28.5% share of the 2011 Joint Venture. No other person acquired any interest in that share of the 2011 Joint Venture.

[18] In addition, the Garchas had claimed knowing assistance and knowing receipt on the part of the members of the 2011 JVs.

[19] Regarding knowing assistance, Sewell J. found that Panorama, Parmjit, Ranjit (and through him Svender, as counsel conceded) were liable for knowing assistance of the breaches of fiduciary duty of Jaswant and 690174.

[20] As to Wills and Dale, Sewell J. found:

> [316] Based on all of the forgoing I have concluded that Wills and Dale held their interest in Lot 4 as a nominee for 690174 or Jaswant. I find that they provided their covenants on the Acquisition Mortgage for Lot 4 to assist Jaswant to obtain that financing but that they did not have a beneficial

> ownership interest in that Lot. I find that there was an understanding that Wills and Dale would receive some compensation for giving their covenants for payment but that they had not agreed with Jaswant on the amount of that compensation by the time of his bankruptcy.
>
> [317] Therefore, Wills and Dale are in the position of volunteers with respect to their interest in the Project and hold their interest subject to the Garchas' proprietary claim. However, they are not jointly liable with 690174 and Jaswant on the basis of knowing assistance.

[21] Justice Sewell also found that there was no basis to find knowing assistance on the part of Grewal Management or Raveen.

[22] As to knowing receipt, Sewell J. held that Panorama, Ranjit, Svender, and Parmjit were liable for knowing receipt of a benefit from the breaches of fiduciary duty.

[23] He held that no claim had been established against Raveen.

[24] Because of his findings regarding the Garcha parties' entitlement to an interest in the project, Sewell J. found that it was not necessary to make an award against the parties found to have knowingly assisted or whom were in knowing receipt and he simply made a declaration as to their involvement: Trial Reasons at paras. 332 and 333.

[25] As to the claims of Mr. Grewal and Grewal management, Sewell J. found that these parties were bound by the terms of the 2011 JVA, which superseded any oral agreement, and he concluded:

> [435] I therefore conclude that Grewal Management is bound by the terms of the 2011 JVA, which limit it to receiving 14.25% of the net proceeds of the Project.

[26] As to Rajpreet and Mr. Mattu, they advanced funds to the project but were not signatories to any joint venture agreement. Justice Sewell found that there had been a separate joint venture with each of them regarding the project. He found that Jaswant owed a fiduciary duty to each of them, which he had breached, and that they both were entitled to a constructive trust remedy as a result.

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[27] Further, Sewell J. held that the Trustee had erred in disallowing the claims of the Garchas, Rajpreet, and Mr. Mattu, as he determined that these claims were not equity claims and not postponed to the claims of the general creditors in the bankruptcies.

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[28] Justice Sewell summarized in the Trial Reasons the orders made as follows:

> [639] In summary, I make the following orders:
>
> 1. Each 2007 Joint Venturer is the beneficial owner of its proportionate share of the assets of the 2007 Joint Venture.
> 2. Jaswant and 690174 breached their fiduciary duties to the 2007 Joint Venturers by:
>   i. Permitting financial charges that arose from 690174's outside dealings to be registered against Lot 1.
>   ii. Registering other financial charges against Lot 1 to provide security for obligations incurred by 690174 in pursuit of its separate business interests.
>   iii. Purporting to transfer the beneficial ownership of Lot 1 to the members of the November 2010 and 2011 Joint Ventures.
>   iv. Entering into the Land Swap Agreement, which transferred a significant portion of Lot 1 to the Anglican Diocese of New Westminster in exchange for land that was utilized for the benefit of the 2011 Joint Venturers without obtaining the informed consent of the 2007 Joint Venturers.
>   v. Executing a mortgage over Lot 1 to secure the WSCU financing that was used to finance the Project for the exclusive benefit of the 2011 Joint Venturers.
> 3. Panorama, Parmjit, Ranjit, and Svender are liable to the 2007 Joint Venturers in knowing assistance and knowing receipt.
> 4. The Garchas' claim for punitive damages is dismissed.
> 5. Jaswant breached an ad hoc fiduciary duty to Rajpreet and Mr. Mattu regarding the funds they advanced towards the Project.
> 6. The Vendor Trust Accounts are to be consolidated into one trust account to be disbursed in accordance with these reasons and the directions made on the accounting.
> 7. 22/23 of the 28.5% share of the net proceeds of the Project allocated to 690174 in the 2011 JVA is held in trust for the members of the 2007 JVA and 7/22 of that share is held in trust for the Garchas.
> 8. Grewal Management's claim is dismissed.

9. 9% of the net proceeds of the Project are subject to a constructive trust in favour of Mr. Mattu and 6.8% are subject to a constructive trust in favour of Rajpreet. The parties may make submissions at the Accounting Hearing as to how these trusts should affect their entitlement to the remaining 84.2% of Project proceeds.
10. The amount paid to satisfy the Virk Mortgage is to be borne proportionately by the Bankrupts and Parmjit.
11. The appeals of the disallowances of the claims are allowed, and the claims of the appellants are disposed of by the orders I have made in the trials of their claims.
12. There will be a declaration that the claims of the plaintiffs are not equity claims.
13. There will be an Accounting Hearing to address the issues identified in these reasons as requiring further submissions and to determine the costs of these proceedings.

III. THE ACCOUNTING/COSTS REASONS

[29] As no order was made consolidating the actions, only that they be heard together, Sewell J. concluded that the costs of each proceeding must be determined separately: Accounting/Costs Reasons at para. 52.

[30] Justice Sewell held that the Garchas were substantially successful and entitled to the costs of the Garcha action against the unsuccessful parties, including the Trustee in its personal capacity. They were not, however, entitled to the costs of their application to amend their notice of civil claim, on which two days were spent.

[31] The Garchas were held to be entitled to their costs against the 2010 Joint Venturers. The Garchas, not having been successful against Raveen, were not entitled to costs against her. The Garchas, however, were granted the Sanderson Order they sought, such that Raveen's costs are payable by Parmjit.

[32] Those costs were not addressed at the hearing before me.

[33] The Garchas were not successful against Jasprit Grewal or Grewal Management, and those parties were entitled to costs against the Garchas.

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[34] In the Grewal Action, the claims of the Mattu and Rajpreet parties were allowed but the claims of Mr. Grewal and Grewal Management were dismissed. The Mattu and Rajpreet parties were therefore awarded their costs against all defendants in that action. The defendants in that action are entitled to their costs against the Grewal parties.

[35] Although the Trustee argued that it should not have any liability for costs, that position was not accepted. As an unsuccessful party, the Trustee was held to be personally liable for costs of the successful parties in the actions. Justice Sewell, in the Accounting/Costs Reasons, held:

> [75] The Trustee was clearly an unsuccessful party. There is therefore no reason why the plaintiffs in the Civil Actions, except Grewal Management and Jasprit Grewal, should not have their costs of the Civil Actions from the time of the Directions Motion awarded against it. In addition, these plaintiffs are entitled to the costs of the applications to lift the stays of proceedings against 690174 and Panorama against the Trustee. I appreciate that Justice Bowden made no award of costs, but he did not order the parties to bear their own costs. Therefore, the usual rule that the successful party in the litigation is entitled to the costs of successful motions applies.
>
> [76] I find that the Civil Actions took up 85% of the time spent in trial. The Trustee must pay the costs of the Civil Actions on that basis.

[36] The Directions Motion Order ("DMO") referred to is that of Justice Bowden made June 26, 2018. It is that order which provided for the Trustee to be added as a defendant in the Garcha and Grewal Actions. The relevant terms of that order are:

> 1. Crowe MacKay & Company Ltd. in its capacity as Trustee of the Bankrupts and Trustee vested with the assets of the Bankrupts shall be added as a party defendant in the civil action commenced by the Grewal Parties in the Supreme Court of British Columbia Action No. 142529.
> 2. Crowe MacKay & Company Ltd. in its capacity as Trustee of the Bankrupts and Trustee vested with the assets of the Bankrupts shall be added as a party defendant in the civil action commenced by the Garcha Parties in the Supreme Court of British Columbia Action No. S 151275.
>
> […]
>
> 7. The Trustee is authorized to defend the Actions and any claim in the Actions that might affect any asset vested in the Trustee or in respect of which the Trustee may have a claim…
>
> […]

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> 11. The fees, disbursements and taxes (the “Fees”) of the Trustee and Fasken associated with the trials of the Actions and the trial of the Appeals may be billed monthly by them and paid monthly pro rata from the Vendor Trust Accounts maintained for the Bankrupts in trust with Fasken and Fasken is hereby authorized to pay the Fees of the Trustee and Fasken in acting for the Trustee in the trials of the Actions and the Appeal on a monthly basis provided bills are disclosed to the creditors and claimants in the Bankruptcies 7 days before any payment and subject to the obligation of the Trustee and Fasken to subsequently have those Fees assessed by the Registrar of this Court.

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[37] The Trustee was also held personally liable for the costs of the successful parties in the bankruptcy appeals. Thus, the Trustee was liable to pay costs to the Garchas, Mr. Mattu, 0731431, Rajpreet, and 0892995.

[38] The Trustee was entitled to its costs of the bankruptcy appeals by Mr. Grewal and Grewal Management.

[39] These costs were to be assessed pursuant to the B.C. *Supreme Court Civil Rules* [*Rules*] at Scale C, without any uplift costs.

[40] I emphasize that costs payable to the Trustee are for the benefit of the creditors of the Bankrupts’ estates. The costs payable by the Trustee are payable by the Trustee personally.

[41] As the actions were held to be of more than ordinary difficulty, the costs of the civil actions were ordered assessed at Scale C as well.

[42] In addition, Sewell J. ordered that the Garchas recover uplift costs in accordance with s. 2(5) and (6) of Appendix B of the *Rules*. In the Accounting/Costs Reasons, he found:

> [92] The circumstances of this case are unusual because the Garchas did not want to bring an action against the Trustee but were required to do so by order of this Court. The same order permitted the Trustee to pay its legal expenses of opposing their claim in part from funds that have been found to belong to the 2007 Joint Venturers. Thus, the Garchas have paid a significant portion of the Trustee’s legal expenses despite the fact that they succeeded in their action. The Trustee mounted an aggressive defence to the Garchas’ claim, which greatly increased the legal expenses that the Garchas have paid out of their own resources.

[43] Sections 2(5) and (6) of Appendix B of the *Rules* provide:

> **Scale of costs**
>
> 2 […]
>
> (5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).
>
> (6) For the purposes of subsection (5) of this section, an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which that party would be entitled under the scale of costs fixed under subsection (1) or (4).
>
> [Emphasis added.]

[44] The costs of the successful parties in the Grewal Action were to be assessed at Scale C without any uplift costs.

[45] Significant issues dealt with in these proceedings were the actions and remuneration received by the Trustee. They are dealt with at paragraphs 98 and following in the Accounting/Costs Reasons.

[46] The Trustee obtained payment for its fees and expenses as the matters progressed in accordance with various court orders.

[47] The DMO was held by Sewell J. to be a final order.

[48] The other orders were determined by Sewell J. to be interim orders and subject to variation by him in reliance on s. 37 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

[49] Justice Sewell discussed the concerns he had with the impact of these orders in the Accounting/Costs Reasons as follows:

> [101] The [DMO] referred to in paragraph 15 above authorized the Trustee and Fasken to withdraw funds to pay their accounts relating to the Civil Actions and the Garcha and Grewal Bankruptcy Appeals proportionately from the Vendor Trust Accounts established in the names of the Bankrupts,

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> including 690174. Because 690174 had the largest share of the Net Proceeds in the Vendor Trust account established in its name and the Trustee has been withdrawing funds rateably based on the amounts in the Vendor Trust Accounts, the majority of the funds withdrawn by the Trustee and Fasken have come from its Vendor Trust Account. However, in the RFJ I found that 21/23rds of 690174's share of the Net Proceeds was held in trust for the 2007 Joint Venturers.
>
> [102] This has resulted in most of the amount found to be held in trust for the 2007 Joint Venturers being used to pay the Trustee and Fasken's accounts. According to Schedule B of the Tenth Report, the amount remaining in the 690174 Vendor Trust Account as of April 13, 2021, was $790,485, compared to the proportionate share beneficially owned by the 2007 Joint Venturers of $2,675,046.

[50] In the Accounting/Costs Reasons, Justice Sewell found that the actions of the Trustee justified his intervention as they were unreasonable, unjustified, and they materially increased the cost and complexity of this litigation:

> [187] I find that the Trustee did not act impartially and in keeping with its duties as an officer of the court, failed to consider the financial consequences of its conduct on the creditors and the parties advancing trust claims, and has <u>failed to demonstrate any reasonable basis for the legal propositions it advanced in the litigation</u>. I also find that the Trustee failed to adequately keep the Court informed of the consequences of its actions on the creditors and the Trust claimants.
>
> […]
>
> [195] I find that the Trustee lost sight of its role as an officer of the court and instead adopted an aggressively adversarial role in the litigation. <u>In so doing it made a material contribution to the expense and complexity of the proceedings. This is illustrated by the lengthy written arguments filed on its behalf in the Civil Actions.</u>
>
> […]
>
> <u>[199] In my view the position taken by the Trustee on the Garcha claim and the resources expended in opposing it were both unreasonable and based on unsound legal analysis.</u>
>
> […]
>
> <u>[203] The Trustee also argued vigorously that Rajpreet and Mr. Mattu were equity creditors but did not lead or refer me to any evidence that supported such an argument. In my view this was because the Trustee failed to understand the concept of an equity claim in the context of a joint venture.</u>
>
> [204] I have therefore come to the conclusion that the Trustee adopted positions with respect to plaintiffs' claim without having any reasonable basis for believing they were correct.
>
> [205] A trustee cannot be said to act unreasonably merely because it takes a position in litigation that does not ultimately prevail. <u>However, if the taking of</u>

> that position cannot reasonably be supported, and the trustee expends an inordinate amount in advancing it, that action can be found to be unreasonable. My conclusion is that the Trustee's actions fall into that category in these proceedings.
>
> […]
>
> [211] I am of the view that the present state of affairs, if not remedied, would tend to bring the administration of justice into disrepute. The stark reality is that unless the Court intervenes, the only entities who will benefit from the Bankrupt Estates are the Trustee and its counsel. In addition, they will have benefited significantly from receipt of funds beneficially owned by the 2007 Joint Venturers. None of the services performed will be of any value to the creditors of the Bankrupt Estates who, subject to the results of the final taxation, will receive no dividend from the Bankruptcies.
>
> […]
>
> [215] Simply put, the Trustee's administration of the Bankrupt Estates and its participation in the litigation have been unmitigated disasters for the stakeholders. Even if the Trustee's remuneration is significantly reduced on its final assessment, there will be no funds to pay the unsecured creditors any dividend.
>
> [216] In my view, that result arose from the actions and decisions of the Trustee that frustrated the objectives of the BIA and deprived the 2007 Joint Venturers of their property.
>
> [217] I therefore conclude that the plaintiffs are entitled to a remedy under s. 37 of the BIA.
>
> [Emphasis added.]

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[51] As a result, Sewell J. reduced the entitlement of the Trustee to fees from in excess of $6 million to slightly over $4 million and ordered:

> [222] […]
>
> […]
>
> 2. The Trustee and Fasken will refund into an account held for the 2007 Joint Venturers any amount that they have withdrawn in excess of $1,000,000 from their share of the proceeds. In so doing they may utilize any funds remaining in trust to the credit of the other two Bankrupt Estates.

IV. LEGAL FRAMEWORK

[52] In addition to the orders and rules referenced above, I am required to assess costs in accordance with Rule 14-1 of the *Rules*, which provides:

Assessment of party and party costs

(2) On an assessment of party and party costs under Appendix B, a registrar must

(a) allow those fees under Appendix B that were proper or reasonably necessary to conduct the proceeding, and

(b) consider Rule 1-3 and any case plan order.

[…]

Disbursements

(5) When assessing costs under subrule (2) or (3) of this rule, a registrar must

(a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and

(b) allow a reasonable amount for those disbursements.

[53] There was also the direction of Sewell J. that on the assessment, the Registrar was to apply s. 7 of Appendix B of the *Rules* in assessing and apportioning the costs of these proceedings:

Apportionment if proceedings tried together

7. If 2 or more proceedings have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the registrar may

(a) assess 2 or more bills as one bill,

(b) allow an item once or more than once, or

(c) apportion the costs of an item or of the whole bill between the proceedings.

[54] The costs portions of the entered orders are as follows:

a. The Garcha civil action:

THIS COURT DECLARES THAT:

1. This Order is to be read in conjunction with the orders dated the same date in the other Proceedings (the "Companion Orders"), such that if the same remedy or obligation is specified for the same party or parties in this Order and the Companion Orders, it constitutes a single entitlement or obligation, rather than multiple, cumulative entitlements or obligations.

[…]

THIS COURT ORDERS THAT:

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4. The Plaintiffs are awarded costs against Parmjit, Ranjit, Svender, Wills, Dale and the Trustee in its personal capacity, jointly and severally, for this Garcha Action to be calculated and paid as follows:

    (a) the Plaintiffs are not entitled to any costs of the Plaintiffs' application to further amend their Notice of Civil Claim (heard on 20 January 2020 for two days);

    (b) The personal liability of the Trustee for the Plaintiffs' costs shall commence with the preparation for and attendance at the Directions Motions hearing of 26 June 2018;

    (c) The Plaintiffs' costs shall be assessed at Scale C with the uplift of 1.5 times the value of each unit (the "Uplift") in accordance with s.2(5) of Appendix B to the Supreme Court Civil Rules (the "Uplift Costs"); and

    (d) The Plaintiffs' costs shall be paid as follows:

        (i) The Plaintiffs' costs pre-dating the preparation for and attendance at the Directions Motion shall be paid: one-third from the Parmjit Share of the funds held in trust by the Trustee with Fasken; one-third from the Ranjit / Svender Share of the funds held in trust by the Trustee with Fasken; and one-third from the Wills / Dale Share of the funds held in trust by the Trustee with Fasken;

        (ii) The Plaintiffs' costs from and after the preparation for and attendance at the Directions Motion shall be paid: one-quarter from the Parmjit Share of the funds held in trust by the Trustee with Fasken; one-quarter from the Ranjit / Svender Share of the funds held in trust by the Trustee with Fasken; one-quarter from the Wills / Dale Share of the funds held in trust by the Trustee with Fasken; and one-quarter by the Trustee personally.

5. Raveen is awarded costs of the Garcha Action assessed at Scale C which costs are payable by Parmjit.

6. GML and Jasprit are awarded costs of the Garcha Action assessed at Scale C against the Plaintiffs.

7. All costs awarded in these Orders and in the separate Companion Orders pronounced 1 October 2021 shall be assessed by the Registrar, unless otherwise agreed by the parties, and the Registrar shall make determinations under s. 7 of Appendix B to the *SCCR* to assess and apportion the costs of the Proceedings and, for the purposes of such assessment(s), the Garcha Action and the Grewal Action consumed 85% of the Trial Time while the Bankruptcy Appeals consumed the rest of the Trial Time.

b. The order in the Grewal Action contains the same declaration as set out above and the following orders regarding costs:

[…]

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2. The parties are awarded costs at Scale C as follows:

   (a) Rajpreet and Mattu (the "Successful Plaintiffs") are awarded costs against Parmjit, Ranjit, Svender, Wills, Dale and the Trustee in its personal capacity, jointly and severally, for this Grewal Action provided, however, that the personal liability of the Trustee for these costs shall commence with the preparation for and attendance at the Directions Motion hearing of June 26, 2018. This costs order shall be paid as follows:

      (i) The Successful Plaintiffs' costs pre-dating the preparation for and attendance at the Directions Motion shall be paid: one-third from the Parmjit Share of the funds held in trust by the Trustee with Fasken; one-third from the Ranjit / Svender Share of the funds held in trust by the Trustee with Fasken; and one-third from the Wills / Dale Share of the funds held in trust by the Trustee with Fasken;

      (ii) The Successful Plaintiffs' costs from and after the preparation for and attendance at the Directions Motion shall be paid: one-quarter from the Parmjit Share of the funds held in trust by the Trustee with Fasken; one-quarter from the Ranjit / Svender Share of the funds held in trust by the Trustee with Fasken; one-quarter from the Wills / Dale Share of the funds held in trust by the Trustee with Fasken; and one-quarter by the Trustee personally.

   (b) Parmjit, Ranjit, Svender, Wills, Dale and the Trustee are awarded costs against GML and Grewal payable from the GML Share of the funds held in trust by the Trustee with Fasken.

   (c) All costs awarded in these Orders and in the separate Companion Orders shall be assessed by the Registrar, unless otherwise agreed by the parties, and the Registrar shall make determinations under s. 7 of Appendix B to the *SCCR* to assess and apportion the costs of the Proceedings and, for the purposes of such assessment(s), the Garcha Action and the Grewal Action consumed 85% of the Trial Time while the Bankruptcy Appeals consumed the rest of the Trial Time.

c. In the bankruptcy appeals, the orders all contained the following terms as to costs:

   […]

   3. The costs of the Bankruptcy Appeals of each of the Plaintiffs Garcha, Mattu and Rajpreet as against the Trustee personally; as well as the Trustee's costs as against the Plaintiffs Jasprit and GML, (as set out below) are to be assessed in accordance with the Supreme Court Civil Rules at Scale C.

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4. The Trustee personally pay to the Plaintiffs Garcha their costs of their Bankruptcy Appeals, including but not limited to the application of the Plaintiffs Garcha in the 690174 Bankruptcy to lift the stay of proceedings against the Bankrupts 690174 and Panorama in the Garcha Action.
5. The Trustee personally pay to Mattu their costs of their Bankruptcy Appeals, including but not limited to the application of Mattu in the 690174 Bankruptcy to lift the stay of proceedings against the Bankrupts 690174 and Panorama in the Grewal Action.
6. The Trustee personally pay to Rajpreet their costs of their Bankruptcy Appeals, including but not limited to the application of Rajpreet in the 690174 Bankruptcy to lift the stay of proceedings against. the Bankrupts 690174 and Panorama in the Grewal Action.
7. GML and Jasprit pay to the Trustee its costs of the Bankruptcy Appeals of GML and Jasprit.
8. All costs awarded in this Order and in the Companion Orders shall be assessed by the Registrar, unless otherwise agreed by the parties, and the Registrar shall make determinations under s. 7 of Appendix B to the *Supreme Court Civil Rules* to assess and apportion the costs of the Proceedings and, for the purposes of such assessment(s), the Garcha Action and the Grewal Action consumed 85% of the Trial Time expended while the Bankruptcy Appeals consumed the other 15% of the Trial Time expended in the Proceedings.

V. POSITIONS OF THE PARTIES ON SCOPE OF ASSESSMENT AND APPORTIONMENT

[55] It should be noted that Raveen neither submitted a bill of costs nor attended the assessment hearing. Although Rajpreet submitted a bill of costs, he did not attend the hearing as I gather he was ill.

[56] I will set out the positions of the parties in some detail, to show the variety of solutions proposed by the parties and their disagreements.

A. The Garchas

[57] The Garchas argued that they should be entitled to 100% of their costs, without any apportionment. They submit that if a successful party is awarded costs of its action, then that party is entitled to 100% of its costs of the action unless the court orders otherwise.

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[58] In support, the Garchas referred me to *MA Concrete Ltd v. Truter*, 2017 BCSC 1314 and *Intergulf Investment Corporation v. 0954704 B.C. Ltd.*, 2017 BCSC 1137.

[59] The Garchas point out that their investment in the project was wrongfully subsumed by others and that they were required to attend this lengthy trial in order to recoup their entitlement, despite some consensus that the Garcha Action was more straightforward than other matters.

[60] As to the costs of the Grewal Parties, counsel for the Garchas submitted that as a separate bill of costs had not been presented for the costs awarded to the Grewal Parties in the Garcha Action, that he was prevented from taking a position regarding their costs.

B. The Trustee

[61] The Trustee's position on apportionment is that the 100 days of trial time must be apportioned between the five proceedings in accordance with the order of Sewell J. They argue that Sewell J. started the apportionment by declaring that the bankruptcy appeals took 15% of the trial time and that the civil actions took 85%.

[62] They argue that I must complete the process by determining the portion of the trial used for the Grewal Action and for the Garcha Action. As all of the evidence at trial could be used in all five of the proceedings, the Trustee suggests a 50/50 division of the 85% of the civil trial time.

[63] The Trustee also points out that it is only responsible for costs after the preparation for and attendance at the DMO.

[64] In the Grewal Action, the Trustee submits that the trial time should be divided among the three parties—one-third to the successful Mattu Parties, one-third to the successful Rajpreet claim, and one-third to the unsuccessful Grewal claim.

[65] As to the Garchas, the Trustee submits that the Garchas are not entitled to costs of their unsuccessful claim against the Grewal Parties and it suggests that as

they are one-fifth of the defendants, that the Garchas should receive only fourth-fifths of their claimed trial units.

[66] As to the bankruptcy appeals, the Trustee notes that all parties entitled to costs have claimed the 150 units for the 15% trial time accorded to these appeals.

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C. Ranjeet, Svender, and Wills and Dale

[67] These parties argue that the rule against double recovery applies when assessing costs. Work done for the joint benefit of both proceedings is not claimable twice. The maximum amount of units for each tariff item remains the same as for one bill of costs. Here there is no evidence of any work done for the benefit of one action to the exclusion of the others.

[68] Thus, they argue the task before me is to apportion the tariff units between the multiple bills of costs.

[69] These parties point out that an assessment under s. 7 of Schedule B to the *Rules* can only occur in the absence of an order apportioning costs. Here, they argue that the trial judge ordered an apportionment of the trial by directing that the civil actions took up 85% of the trial time and the bankruptcy appeals took up 15% of the time.

[70] Thus, they submit that, as there has been an order apportioning costs, I lack jurisdiction under s. 7 to further apportion costs. The result, they submit, is that all bills of costs presented in either of the civil actions are entitled to 85 trial days, other than the Garchas, who are entitled to 83 trial days. The bills of costs presented in the bankruptcy appeals are to receive 15 trial days.

[71] They thus argue that, for example, the unsuccessful plaintiff in the Grewal Action is liable for costs for the trial as follows:

a) The defendant groups Ranjit/Svender, Wills/Dale, Parmjit, and the Trustee would each be entitled to 850 units for tariff item 35; 425 units for tariff item 34 Total: 1,275.

b) The Trustee would be entitled to an additional 150 units for item 35 and 75 units for item 34 in the bankruptcy appeals.

c) Total units payable by the unsuccessful plaintiff in Grewal Action for tariff items 34 and 35 alone: 5,325 x $170 = $905,250 prior to GST/PST

[72] They argue that this is in accordance with the 'normal rule' where a plaintiff unsuccessfully sues four separate defendants in a matter involving a 100-day trial.

[73] They referenced *Silvicon Services Inc. v. Millar & Others,* 2005 BCSC 1753 in support.

D. Parmjit

[74] Parmjit submits that there is little guidance in how a Registrar should apportion costs where multiple actions are heard together. He referenced para. 24 of *West Lonsdale Medical Clinic Inc. v. 0706394 B.C. Ltd.*, 2020 BCSC 170:

> [24] In the context of multi-party litigation with mixed success, this Court held in *Seaport Crown Fish Co. v. Vancouver Port Corp.*, [2000] B.C.J. No. 64 [(S.C.)]:
>
>> 33 The variety of orders, or lack of consensus, on a formula for costs in multi-party litigation illustrates the scope of discretion available to a court seeking to fashion an order of costs consistent with the rules and responsive to the circumstances of the case. The variety of potential circumstances makes a firm rule impossible of formulation.
>>
>> 34 Any award must be governed by the principle that a successful party is usually entitled to costs reflecting its success.

[75] Counsel for Parmjit referenced *Northwest Organics, Limited Partnership and Northwest Group Properties Inc. v. Roest*, 2020 BCSC 372 [*Northwest Organics*], where Registrar Nielsen (as he then was) noted:

> [69] In circumstances where multiple proceedings have been tried together section 7 of Appendix B allows the registrar a variety of options during the assessment of costs. The registrar can assess two or more bills as one, allow a tariff item once or more than once, or apportion the costs of an item or an entire bill between the proceedings, but it does not, in my view, allow for the doubling of the daily rates provided in the tariff in circumstances where two actions are tried together with the same counsel.

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[76] It was argued that a rough and ready approach should be taken, referring to *Tomas v. Mackie,* 2015 BCSC 364 at para. 23:

> [23] Assessing costs pursuant to Supreme Court Civil Rule 15-1 necessitates a rough and ready approach as per *Christen v. McKenzie*, 2013 BCSC 1317. When costs are to be awarded to multiple parties within the litigation, an assessment must be made which apportions the preparation by viewing the totality of the litigation. The rough and ready approach does not require a detailed parsing of what has occurred, but it does require an overall perspective to put the matter in context of what was done by the parties up to the point the litigation resolved.

[77] Further, it was submitted that if I divide trial time as between the actions as submitted by the Trustee, that after 15% of the trial time is deducted for the bankruptcies, the remaining time should be divided two-thirds for the trial of the Grewal Action and one-third for trial of the Garcha Action. It is submitted that while there was overlap in the two actions, the Grewal Action was more time-consuming and took significantly more resources than the trial of the Garcha Action.

[78] With regard to the Trustee's position, Parmjit disagrees with the manner in which the Trustee has broken each of the actions into successful parties and says that a full set of costs should be granted to each successful party for their action based on their pro-rata share of trial time.

[79] Parmjit further argues that the Trustee's calculations are incorrect as they fail to include the fact that the Garchas were unsuccessful in their claim against Raveen. They submit that the Garchas should not be rewarded for their failure to succeed against Raveen.

[80] Should I decide to apportion costs, Parmjit submits that there should be similar treatment between all of the various bills to avoid inequities.

E. The Mattu and Grewal Parties

[81] The Mattu and Grewal Parties presented one bill of costs and submit that their "unified" bill of costs is the most realistic, practical, and proportionate way to assess their costs as all five proceedings were essentially treated as one proceeding.

[82] They argue their bill of costs must be apportioned between:

a) The Garchas (for the Grewal Parties' entitlement in the Garcha Action);

b) Ranjit, Svender, Wills and Dale (for the Mattu Parties' entitlement in the Grewal Action);

c) Parmjit (for the Mattu Parties' entitlement in the Grewal Action); and

d) The Trustee (for the Mattu Parties' entitlement in the Grewal Action).

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[83] The Mattu and the Grewal Parties indicated they were willing to present their claims as separate bills of costs if it is necessary to do so for procedural reasons or to meet formalities required by the *Rules*. However, counsel pointed out that separate bills in different proceedings would allow the Mattu and the Grewal Parties to claim maximum units on the separate bills.

[84] For example, if the Grewal Parties produced a separate bill of costs for the Garcha Action, they would claim the maximum on each tariff item on both bills. The question before the court would then shift to reducing duplication.

[85] The Mattu and the Grewal Parties agree with Parmjit that the trial time should be apportioned so that one-third of the 85% of trial time not already apportioned to the bankruptcy appeals by Sewell J. should be attributed to the Garcha Action.

[86] The Mattu and the Grewal Parties submit that the same apportionment percentages should be used for allocating all tariff items, not just trial time. They argue that it is logical that the amount of time spent at trial would roughly mirror the amount of time spend on pre-trial matters.

VI. ANALYSIS AND CONCLUSIONS ON SCOPE OF ASSESSMENT AND APPORTIONMENT

[87] Despite submissions to the contrary, the analysis must start from the clear direction that Sewell J. gave to me as Registrar, which is included in the each of the orders as follows:

> All costs awarded in this Order and in the Companion Orders shall be assessed by the Registrar, unless otherwise agreed by the parties, and the

> Registrar shall make determinations under s. 7 of Appendix B to the *Supreme Court Civil Rules* to assess and apportion the costs of the Proceedings and, for the purposes of such assessment(s), the Garcha Action and the Grewal Action consumed 85% of the Trial Time expended while the Bankruptcy Appeals consumed the other 15% of the Trial Time expended in the Proceedings.

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[88] Thus, I have been specifically directed to invoke s. 7 of Appendix B of the *Rules* to assess and apportion the costs in these actions.

[89] As noted above, s. 7 of Appendix B provides:

> **Apportionment if proceedings tried together**
>
> 7. If 2 or more proceedings have, by order, been tried at the same time or tried one after the other and no order has been made as to apportionment of costs, the registrar may
>
> (a) assess 2 or more bills as one bill,
>
> (b) allow an item once or more than once, or
>
> (c) apportion the costs of an item or of the whole bill between the proceedings.

[90] Costs cases which involve actions which have been ordered tried together can have many permutations and combinations. That is perhaps particularly the case here.

[91] The cases that deal with s. 7, some of which are quoted above, are *ad idem* that the section confers a discretion on the Registrar, bound, of course, by the costs award made by the trial judge. The existence of that discretion is recognized, for example, in the reasons of Master Baker in *Silvicon*, where he notes as follows:

> [6] […]
>
> I have no doubt that in the case of one or some of several defendants being successful, the trial judge can direct certain discretion to the taxing officer. That is made clear in Warren J.'s quote at para. 7 in his decision in *(Canada) Inc. v. Future Shop Ltd.* of *The Law of Costs*:
>
>> A trial judge who dismisses a plaintiff's action with costs [may leave the issue of the number of bills of costs to be allowed the defendants] to the assessment officer to decide what proper costs under the rules the defendants are entitled to have assessed…
>>
>> [Citations omitted.]

[92] Other than directing that the civil matters consumed 85% of the trial and the bankruptcy appeals 15%, there was no guidance provided by Sewell J. as to how the assessment and apportionment was to be accomplished.

[93] In submissions it was suggested that I avail myself of the procedure set out in *Rule* 18-1(10).

[94] In *M.A. Concrete v. Truter*, 2017 BCSC 314, Master Baker, as Registrar, found himself in a similar position. He noted:

> [16] To the extent that the issues depend on the intentions of the trial Judge, the obvious avenue for me as Registrar would be to resort to Rule 18-1(10):
>
> > (10) Before the master, registrar or special referee has concluded a hearing of an inquiry, assessment or accounting, he or she may, in a summary or other manner, ask the opinion of the court on any matter arising in the hearing.
>
> I think, then, it would have been appropriate to remit the matter back to Cohen, J., and ask his intention or opinion respecting his award of 75% costs to MAC. That is impossible; however, as Mr. Justice Cohen has retired and it seems to me that any other Judge of the court considering the issue would be in the same shoes as I am.

[95] Similarly, here, Sewell J. has retired and any other Justice of the court would be in the same position as I in considering the issues.

[96] In the result, in *M.A. Concrete*, the trial judge allowed the plaintiff's claim and awarded costs to the plaintiff reduced by 25% and did not award costs to the defendant despite her success on the counterclaim. The court of appeal disagreed with no costs being awarded to the defendant and awarded her costs, again reduced by 25%.

[97] Master Baker assessed the plaintiff's costs based on the entire action, but assessed costs for the defendant based on only the time consumed by the counterclaim, concluding that much of the success of the defendants was obtained in its defence to the action, as opposed to the counterclaim, and that the trial judge had dealt with that portion of the case by the award of costs to the plaintiff.

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[98] From all of the cases, I conclude that in determining how to assess and apportion costs in accordance with s. 7, I must look at the whole picture, including the result and the actions of the parties. I also do not consider it appropriate to take some universal formula and apply it to all of the costs awards. The circumstances of each party that was awarded costs is unique and each must be considered in light of the totality of the actions.

[99] I found the decision in *Intergulf Investment Corporation v. 0954704 B.C. Ltd*., 2017 BCSC 430 [*Intergulf*] useful as well. There, two actions were heard together, based on contracts of purchase and sale for three properties. Intergulf Investment had entered into the contracts and two of them were later assigned to Lions Gate Village Project Ltd.

[100] Similar to the case before me, in *Intergulf*, two actions were commenced and ordered to be tried together. The plaintiffs, Intergulf Investment Corporation and Lions Gate Village Project Ltd., were successful and costs awarded to them. The defendants argued there should only be one bill of costs assessed for both plaintiffs, but the trial judge concluded that both plaintiffs should have the costs of their actions, including costs of the full trial.

[101] Of course, as counsel pointed out, that was a decision of the trial judge. But it confirms for me that the broad direction of Sewell J. to assess and apportion costs and the discretion granted by s. 7 would allow me to assess costs of the entire civil trial or the entire bankruptcy appeals to more than one party or group of parties.

[102] What I cannot do, per *Northwest Organics*, is assess more than one set of costs in an action for parties represented by the same counsel.

[103] Generally speaking, I conclude that Sewell J. directed me to assess and apportion costs in a manner consistent with the interests of justice, his decisions in the actions, and such that they do not unfairly award or burden any party.

[104] I will, therefore, deal with each party entitled to costs separately.

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[105] As to the bankruptcy appeals, the Trustee has submitted a separate bill of costs in each proceeding, for its entitlement against the Grewal Parties.

[106] The Garchas have submitted one bill of costs for all three bankruptcy appeals, in which they claim units for all three proceedings.

[107] The Mattu and the Grewal Parties only presented one 'unified' bill of costs. Thus, although they claim for all of the trial days—separating out the bankruptcy and the civil days—they claim only once for the tariff items that apply to general preparation whereas the Trustee and the Garchas have claimed these units in their bills of costs for both the civil and bankruptcy appeals.

[108] As noted by Sewell J., these actions were never consolidated and, thus, I conclude that the bankruptcy appeals are entitled to have a separate bill of costs from the civil actions and, hence, the general tariff units for correspondence, etc., may be claimed both in the civil action and the bankruptcy appeals.

[109] There is a further issue that arises after the costs are assessed. That is that the responsibility of the Trustee for costs only arises after the preparation for and attendance at the DMO application. Unfortunately, the Trustee based all of his calculations on the actual date of the DMO order, and clearly the division must be made earlier than that.

[110] The division will also, to some extent, be affected by what costs are allowed in tariff items pre- and post-DMO preparation.

[111] These issues were not, and some could not be, properly argued before me. The division in the orders of Sewell J. is clear. Once the parties have revised their bills of costs in accordance with the assessment herein, that division can be made. If there are issues or the parties cannot agree, there is liberty to apply. I will make myself available, if possible, to hear such an application, but I will not seize myself of this in case I am not readily available.

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A. The Garchas

1. Entitlement

[112] The Garchas were found by Sewell J. to have been substantially successful in their civil action and therefore entitled to their costs, other than for the two days required for their application to amend the notice of civil claim.

[113] They were not successful in their action against Raveen. In that regard, in the Accounting/Costs Reasons, Sewell J. held :

> [57] The Garchas were unsuccessful in their claim against Raveen. Raveen is entitled to her costs of the action. However, the Garchas seek a “Sanderson Order” requiring Parmjit to pay Raveen’s costs.
>
> [58] In *Davidson v. Tahtsa Timber Ltd.*, 2010 BCCA 528, Justice Kirkpatrick outlined the requirements for the making of a Bullock or Sanderson Order. To justify such an order the successful plaintiff must show that it was reasonable for the successful defendant to have been added as a defendant and that there was some conduct on the part of the unsuccessful defendant which caused the successful defendant to be brought into the action: see also *Grassi v. WIC Radio Ltd.*, 2001 BCCA 376 at para. 34.
>
> [59] In this case I am satisfied that there was such conduct on the part of Parmjit. In this regard I rely on my finding that Jaswant and Parmjit were pursuing a joint enterprise with respect to the Project. I find that they utilized Raveen and her company to facilitate the acquisition of the Garchas’ investment in Lot 1 and to carry out the Land Swap Agreement. Raveen’s participation in these actions was sufficient to make it reasonable for the Garchas to bring Raveen into the action. However, Jaswant is bankrupt and there are no assets in his estate. I therefore order that Parmjit is responsible for the payment of Raveen’s costs of these proceedings.

[114] The Garchas were also not successful against the Grewal Parties and, as noted, the Grewal Parties were awarded costs against the Garchas.

[115] The Trustee takes the position that the civil trial time must be split between the two actions and that because the evidence was so intertwined there should be a rough and ready split of 50/50. Others took the view that the Grewal Action consumed two-third of the trial time.

[116] I do not agree. Essentially, the argument is the same as that made in *Intergulf*—that one bill of costs should be shared by all successful plaintiffs.

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[117] Here, the Garchas were forced to sue to recoup an investment made, the benefit of which was wrongly and knowingly taken by the defendants other than the Grewal Parties and Raveen.

[118] They were forced to participate in a lengthy trial where the evidentiary issues were inextricably intertwined. There was no basis upon which they could choose to not participate in some of the trial, their attendance at the entire trial was required and I conclude that they are entitled to their costs for all of the trial time in the civil actions.

[119] The Trustee also argued that the Garchas' bill of costs must be reduced for time spent in the action against the Grewal Parties. Parmjit takes the position that the Garchas' bill should be reduced for time spent in the action against Raveen.

[120] I see no reason to parse the success of these parties. Costs were awarded for their substantial success and, in my view, they are entitled to those costs for the entire action.

[121] Further, Sewell J. held that it was reasonable to bring Raveen into the action and granted a Sanderson Order against Parmjit as a result.

[122] In my view, there is no basis here for paring down the costs of the Garchas based on time spent on unsuccessful aspects of their claim.

[123] Thus, I conclude that the Garchas are entitled to their costs of the entire civil action, including the costs for all of the days of trial that Sewell J. apportioned to the civil claims other than the two days devoted to their amendment application.

2. The Garchas' bills of costs

a) The civil actions

i. Tariff items

[124] All parties agreed that these proceedings were complex, lengthy, and difficult. That was recognized by Sewell J. in awarding costs at Scale C and in awarding uplift

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costs to the Garchas. There was a general consensus among the parties that the maximum units for many of the discretionary items in the tariff was appropriate. I agree. A 100-day trial involving five actions clearly puts these actions at the upper end of the spectrum of the tariff.

[125] I note that after the first day of this hearing, counsel for the Garchas produced a further amended bill of costs, it is that bill that is being considered here and the appointment is amended accordingly.

[126] The Trustee in several cases objects to the units claimed on the basis that they are “pre-DMO”. With respect, that confuses the issue. The Garchas are entitled to their costs for all pre-DMO activities. Once those costs are certified, however, the Trustee is not responsible for paying any costs arising in the pre-DMO period.

[127] The Garchas claim the maximum units for tariff items 1 to 3, being 10, 30, and 10 respectively.

[128] Counsel for Ranjeet, Svender, and Wills and Dale objected that much of the preparation claimed would be attributable to the bankruptcy appeals.

[129] While it is true that there was undoubtedly considerable preparation for the bankruptcy appeals, they were not consolidated with this action. As noted by Sewell J., the Garchas are entitled to their costs in both. I do not see any reason to apportion this tariff item between the actions. I consider that the civil action was sufficiently complex to warrant the allocation of the maximum units for these tariff items and they are allowed as sought. The bankruptcy appeal costs will be considered below.

[130] Tariff item 6, process for commencing and prosecuting a proceeding, is claimed at 10. Counsel for Parmjit submits that this should be reduced to 6. The Trustee says 5, based on much of it being pre-DMO—as noted I do not consider that a reason to reduce the award to the Garchas.

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[131] This was a very convoluted process for the Garchas. The prosecution of the action itself was fraught with difficulties. I consider that 10 units is appropriate here.

[132] Tariff item 9, response to counterclaim and if necessary, reply, is claimed at 20. The maximum in the tariff is 10, however, the Garchas claim for two replies—one dated March 19, 2020 in reply to Parmjit and Raveen, and the other dated November 16, 2018 (subsequently amended March 19, 2020) in reply to the Trustee. Those documents were four and eight pages respectively, but were quite detailed.

[133] I do not consider it proper to award double the tariff maximum regardless of the number of replies required. Given that essentially three replies had to be prepared, however, I will award the maximum of 10 units.

[134] Tariff item 10, process for obtaining discovery and inspection of documents, is claimed at 40 units. The Garchas claim for obtaining discovery from each defendant group. The total number of documents disclosed was less than 1000. The maximum tariff amount for such disclosure is 10 units. I award the maximum of 10 units.

[135] Tariff item 11, process for giving discovery and inspection of documents. The Garchas disclosed 212 documents. The maximum units for this category are 10. Parmjit submitted that 5 units were appropriate, the Trustee argued for 3. Although the proceeding was complex as noted, the actual production of documents by the Garchas does not seem to rise to the maximum. I will award 8 units.

[136] The Garchas claim 10 units for tariff item 15, process for making admission of facts. They claim this in regards to the agreed statement of facts agreed to by all parties and submitted at trial. The Trustee objects that the agreed statement of facts is properly claimed under trial preparation, not under this tariff item. Parmjit agrees 10 units are appropriate.

[137] The agreed statement of facts is 31 pages long and quite detailed. I see no reason why this would not qualify as a process to make admission of facts. No authority was cited to me in support, I agree that a notice to admit and a response

would also properly come under this category, but I do not see that as excluding an agreed statement of facts. I will award 10 units for this tariff item.

[138] Tariff item 19 covers preparation for and attendance at examinations for discovery for each day of attendance. There are 4 units allowed for the party conducting the examination and 3 units for the party being examined. The Garchas claim 27.5 units under this heading for eight examinations conducted by their counsel and four examinations of them.

[139] It is noted that for two of the examinations, both of Jaswant, he did not attend and a notice of non-attendance was obtained after 30 minutes.

[140] Counsel for Parmjit argues that the ambit of the tariff is not broad enough to cover examinations that did not proceed. Counsel for the Trustee had no objection.

[141] The examinations did require preparation, and they did require an attendance, however brief. I am satisfied that these qualify for an award in this category. The units claimed for tariff item 19 are allowed at 27.5.

[142] Similarly, for tariff item 20, attendance on examination of a person for discovery, etc., Parmjit argues that the two attendances for examination where Jaswant did not appear should be disallowed. For the same reason as for tariff item 19, I allow the full amount claimed for item 20, of 56.5 units.

[143] Tariff item 21, for preparation for an application … referred to in item 22, for each day of hearing …, is claimed at 16.5 units. Three units are not opposed and those are allowed.

[144] In tariff item 21(b), 13.5 units are claimed for preparation for a hearing before Justice Walker on March 11, 13 and April 12, 2024 and a further 22.5 units under tariff item 22(b) for that hearing. These are objected to by the Trustee and Parmjit on the basis that they are after the trial order. Further, counsel submit that no costs award was made by Walker J. and that there was mixed success at the

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hearing. They argue that if the Garchas want costs of this application they must seek them from Walker J.

[145] I agree. The 13.5 and 22.5 units are not allowed. No additional units are claimed under tariff item 22.

[146] Tariff item 26, preparation for an application … referred to in item 27, is claimed by the Garchas at 130 units.

[147] All of the units claimed are disputed by Parmjit and the Trustee.

[148] The claims are made for actions required of counsel for the Garchas in other actions or proceedings, which he refers to as analogous proceedings.

[149] The availability of recovery for these analogous proceedings is said to arise from the wording of tariff item 27, which applies to the hearing of a proceeding, including petition, special case … or any other analogous proceeding.

[150] The plain fact is that a party cannot recover costs in this action for activities conducted in another matter, despite the fact that counsel for the Garchas felt that his involvement was mandatory to protect the interests of his client in this action.

[151] All of the units claimed for items 26 and 27 are disallowed.

[152] Tariff item 29 is for preparation for attendance referred to in item 30, for each day of attendance. The Garchas claim 25 units.

[153] The units claimed for a hearing before Sewell J. on March 28 to 31, 2022 are objected to on the basis that the hearing was in all actions. It is argued that the units must therefore be apportioned between all actions.

[154] Counsel for the Garchas claimed these in the civil actions and not the bankruptcy appeals on the basis that the majority of the time was for the civil actions. I have no basis on which to conclude that his view is incorrect.

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[155] Further, the Trustee notes that one of the dates claimed was in the Sidhu action, one of the analogous proceedings referenced by counsel for the Garchas.

[156] The Trustee also takes issue with the claim for the costs of this assessment hearing.

[157] In that regard, I note my conclusion in the case of *MFSJ862 v. FFSJ862*, 2023 BCSC 273, as follows:

> [93] Rules 16-1(19) and (20) of the *Rules* provide:
>
> > **Form of bill of costs**
> >
> > (19) A bill of costs must be in Form F71.
> >
> > **Appointment to assess costs**
> >
> > (20) A person who seeks to have costs assessed must
> >
> > (a) obtain a date for an appointment before a registrar,
> >
> > (b) file an appointment in Form F55 to which is attached the bill of costs to be assessed, and
> >
> > (c) at least 5 days before the date of the appointment, serve a copy of the filed Form F55 appointment and any affidavit in support in accordance with subrule (24).
>
> [94] In *Bayshore Law Group v Watton*, 2011 BCSC 1297, Justice Stromberg-Stein determined as follows:
>
> > [25] *Rule* 14-1(21)(b) requires that a copy of the accounts to be reviewed be attached to the appointment. Bills that are not attached to the appointment cannot be the subject matter of the review to which the appointment relates (*McGarvey v. MacKinnon*, 2001 BCSC 88, [2001] B.C.J. No. 59, 2 C.P.C. (5th) 287 (Registrar), at para 30. A registrar's jurisdiction is limited to a review of the material attached to the appointment.
>
> [95] As a result, I have concluded that I have no jurisdiction to assess the costs for anything other than what was included in the bill of costs attached to the appointment.
>
> [96] The fact that the parties called evidence and appeared to agree that these costs should be assessed is not sufficient to clothe me with jurisdiction to do so.
>
> [97] That is obviously a conundrum when it comes to the costs of the assessment itself. The actual costs of the assessment cannot be known until the assessment is completed. And if they are put over, there will need to be a further hearing for which the claimant will be entitled to her costs—which presumably would have to be then assessed separately. It would be a never-ending process.

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> [98] The only solution that I can see is for a party who is entitled to special costs to predict, as closely as possible, the amount for the assessment and include that in the bill of costs. I note that this is commonly done where ordinary costs are awarded in civil matters. Counsel usually include future costs in the tariff amounts claimed (e.g., for the hearing and for entering the order).
>
> [99] Thus, the application for both the costs of the September 29, 2022 hearing and the costs of this assessment are dismissed with liberty to file and serve a new appointment with respect to those costs.

[158] Thus, I consider it appropriate for the costs of this proceeding to be claimed and the claim for the Sidhu action disallowed, such that the total units for this tariff item are allowed at 24.

[159] The same arguments apply to the next tariff item, item 30, attendance before a registrar to settle an order …. The Garchas claim 50 units. The units are allowed at 48.

[160] Counsel for Parmjit objects that these hearings were largely in the bankruptcy appeals. The evidence of counsel for the plaintiff is that these proceedings involved all actions. He said he claimed all of these hearings under the civil bill of costs, as the majority of the issues were civil. The Trustee simply objects on the basis that some of these were in the pre-DMO period. As noted that is not a proper objection to the Garchas' bill of costs—it goes to payment of those costs. I also have a note that at the hearing, counsel for Parmjit indicated he had no objection to the units claimed.

[161] In the circumstances, all of the units claimed for tariff items 31 and 32 are allowed. I do not have any sufficient basis to quarrel with the application of these units to this action.

[162] The next tariff items are for preparation for and attendance at trial. Although there was some initial dispute, all parties agreed that the trial was 100 days and that 15 of those days were apportioned by Sewell J. to the bankruptcies. Thus, the Garchas are entitled to units for 85 days, less the two days required for their application to amend. The Garchas are allowed 83 days at five units for preparation and 83 days at 10 units for the trial.

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[163] I note that the Garchas originally claimed entitlement to additional units for the attendance of an articled student at the trial. After some argument, counsel conceded that was not appropriate and that claim was withdrawn.

[164] Tariff item 36 is for written argument. The units range from one to a maximum of ten. The Garchas have claimed 60 units, based on the number of written arguments done.

[165] Both the Trustee and Parmjit objected to this claim and both referenced the decision of Registrar Sainty in *Brar v. British Columbia Medical Association*, 2008 BCSC 1108, at para. 32, where she noted:

> [32] Mr. Wade has claimed the maximum allowable (10 units) for each written argument he prepared during the inquiry. When I suggested to him that he was restricted to 10 units, in total, for all of the arguments no matter how numerous, he commented that it would be "news to the profession". I must say that it was news to me that more than the maximum number of units for an Item (written argument) ought to be allowed where a person prepared more than one argument. The tariff is clear. The Item relates to written argument. In my view that encompasses all of the written arguments produced – be there one or 50 of them. The tariff does not provide for a range of units for *each* argument (as it provides a range of units, for example, for each pre-trial, settlement conference, judicial case conference or mini-trial). As a registrar, my discretion to fix the costs (*i.e.*, the number of units) "is restricted to fixing the proper number of units where a range is allowed, or to refusing items that simply do not apply to a particular litigant." (See *Silvicon Services Inc. v. Millar & Others* 2005 BCSC 1753, a decision of Master Baker, as registrar.) I cannot, in my view, read into the tariff a provision that would allow the BCVMA to claim units for each argument. To do so is outside my jurisdiction. In my view, this is an appropriate case in which to allow the maximum (10) units under this Item.
>
> [Footnote omitted.]

[166] Thus, given the number of arguments made and the noted complexity of this case, I allow 10 units for this tariff item.

[167] For tariff item 40, process for setting down a proceeding for trial, there is one unit allowed. The Garchas claim 5 units on the basis that there was one notice of trial and five requisitions for continuations.

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[168] The Trustee and Parmjit object saying that the one unit allowed is to cover all such process.

[169] I agree, tariff item 40 is allowed at 1 unit.

[170] Item 46, preparation for a mediation if the mediation is not held due to a reason other than the party's refusal … to attend, is claimed at three units. This is objected to by Parmjit, but consented to by the Trustee. Parmjit says the plaintiff refused to attend. The Garchas say that the mediation did not proceed because the Trustee indicated that any settlement would have to be approved by the Superintendent of Bankruptcy and the court and Mr. Taylor, then counsel for the Mattu and Grewal Parties, refused to proceed on that basis.

[171] In those circumstances, the Garchas are entitled to 3 units for this tariff item.

ii. Disbursements

[172] I will only deal with disbursements that were challenged.

[173] The Garchas claim $4,211.75 for photocopies, being 16,847 pages at $0.25 per page.

[174] The Trustee challenged this and argued it should be reduced by the "standard" deduction of 25% to account for matters that are not properly claimable against the other parties as opposed to the client, and matters that are properly overhead, referencing *Antulov v. Emery*, 2018 BCSC 898 at para. 86.

[175] The evidence is that the actual number of photocopies and scans was 18,530, of which 1,683 were attributed to the bankruptcies.

[176] There is no evidence as to how these numbers were tallied—whether they were estimates or tracked by file. There is no indication that the copies were all used for matters properly collectable in a bill of costs. In addition, the evidence is that electronic documents were copied to be added to a paper record kept by counsel. There is no evidence as to the reason or necessity for this.

[177] In the circumstances, photocopies are allowed at $3,200.

[178] Initially, the Trustee contested disbursements for transcripts of an examination for discovery in the Grewal action and for a transcript of a court hearing on September 13, 2016.

[179] During the course of this hearing, the Trustee withdrew its objection.

[180] Parmjit maintained his objection to the September 13, 2016 hearing. It appears that transcript was in an analogous proceeding. I can find no reference by counsel for the Garchas as to its necessity. In the circumstances, that disbursement of $120.95 is not allowed.

[181] Counsel for the Garchas also claims parking as an expense in the amount of $1,969.84. He notes that his office is in Richmond, and although that does not trigger the tariff item for travel, it was a necessity to bring his car due to the amount of material he had to transport. Although parking is often held to be an item of overhead, where counsel can establish its necessity it can be recovered. I am satisfied it was necessary and this disbursement is allowed.

[182] Counsel for Parmjit also noted several invoices attached to the affidavit of justification of Ms. Fish, a paralegal employed by counsel for the Garchas, that are attributable to other actions. Specifically noted were pages 33–54, 66–82 and 86–87 of that affidavit. By my calculation, the first set of these total $378.50, the second set total $290 and the third $14. I did not see any explanation of the different file references on these invoices and they are disallowed.

[183] No issue was taken with the balance of the disbursements and they are allowed as claimed.

b) The bankruptcy appeals

i. Tariff items

[184] The bankruptcy appeal bills of costs were ordered to be assessed using the civil tariff.

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[185] The Garchas' bankruptcy appeal bill of costs covers all three appeal actions. The Trustee took no issue with the costs being grouped this way.

[186] The first item claimed is tariff item 2, claimed at 30 units. That would be the maximum for one bill of costs and is acceptable.

[187] For tariff item 6, process for commencing a proceeding, the maximum is 10 units, but as the Garchas have grouped their bills of costs for all three appeals in this bill, they claim 30 units. the Trustee has no objection. I am of the view that this item would have should be parsed between the three actions, thus 10 units are allowed.

[188] The next claim is for tariff item 7, which is for defending a proceeding or prosecuting a counterclaim. The Garchas neither defended these actions nor commenced a counterclaim, thus, this tariff item is not allowed.

[189] Tariff items 19 and 20 are for preparation and attendance at an examination for discovery. Counsel for the Garchas submitted that the civil tariff does not correspond exactly to bankruptcy proceedings and thus he has claimed for an interview conducted by the Trustee of the Garchas. He argues that, again, this is covered under the "analogous proceeding" section of the tariff item.

[190] It is disputed on the basis that an interview is not the equivalent or analogous to the types of proceedings covered by the tariff item. I agree. Therefore, the amounts claimed under tariff items 19 and 20 are disallowed.

[191] For tariff item 23, application by requisition or by written submissions, the Garchas claim 50 units. The maximum under the tariff is 5 units. The Garchas claim five units each for, not only their own submissions, but for those of the other parties. This item is allowed at the maximum 5 units for the Garchas' own submission.

[192] Tariff item 26, preparation for an application or other matter referred to in item 27, for each day is claimed at 32.5 units. The Trustee has no objection and this is allowed as claimed.

[193] Similarly, tariff item 27 are the hearings to which item 26 referred. They are claimed at 65 units and the Trustee has no objection. They are allowed as claimed.

[194] Tariff items 29, 30, 31 and 32, for 2, 4, 3 and 5 units respectively, are not opposed and are allowed as sought.

[195] Preparation for and attendance at trial, tariff items 34 and 35, are claimed at 75 and 150 units respectively. That is not opposed and they are allowed as claimed.

[196] Tariff item 36 for written argument is claimed at 10 units. Again, that is not opposed and is allowed as claimed.

[197] Tariff item 38 is for attendance to speak to trial list. The Garchas claim 7 units for 7 emails to scheduling to obtain dates. An email is not an attendance. This is disallowed.

ii. Disbursements

[198] The Trustee takes no issue with any of the disbursements claimed and they are allowed as presented.

B. The Grewal, Mattu, and Rajpreet Parties

1. Entitlement

[199] The Mattu and Rajpreet parties were held to be substantially successful in their action and were awarded their costs.

[200] The Grewal parties were unsuccessful and costs were awarded against them.

[201] Thus, apportionment issues arise, as parties represented by the same counsel are not normally entitled to duplicate costs for the same work.

[202] An additional issue is whether Rajpreet is entitled to a separate bill of costs. He became self-represented, I gather, approximately 25 days into the trial. His bill of costs, however, claims for the entire action, as if throughout he was separately

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represented from the other plaintiffs. As noted, he did not attend this assessment hearing, as I gather he was ill.

[203] The Trustee and Parmjit took the position that Rajpreet was not entitled to any costs in addition to the Mattu and Grewal parties' bill of costs.

[204] They submit that, as co-plaintiffs in this province are not entitled to separate representation, only one bill of costs can be assessed.

[205] They point to various decisions, including *McLeod Lake Indian Band v. British Columbia* (1997), 46 B.C.L.R. (3d) 129 (S.C.) at para. 19:

> [19] There is ample authority in law to support the proposition advanced by the Province that co-plaintiffs having started an action together are not entitled to be separately represented since a separate representation may create uncertainty as to the manner in which the various steps of the action are to be handled. *Attorney General of Canada v. Canadian Pacific Ltd.* (1981), 1981 CanLII 767 (BC SC), 127 D.L.R. 493 (B.C.S.C.).
>
> […]
>
> [24] It seems clear on the law as it stands in this province that absent leave of the Court co-plaintiffs must be represented by the same firm of solicitors, and that such leave should only be granted in rare circumstances to avoid injustice. […]

[206] And *Fédération des parents francophones de Columbie-Britannique v. British Columbia (Attorney General)*, 2012 BCCA 422 at para. 8, where the court notes:

> [8] In accordance with what appears to be a requirement of British Columbia law, the plaintiffs are jointly represented by the same counsel (see *Canada (Attorney General) v. Canadian Pacific Ltd.* (1981), 1981 CanLII 767 (BC SC), 127 D.L.R. (3d) 493, 30 B.C.L.R. 230 (S.C.); *Vo v. Gibson* (1989), 1989 CanLII 2794 (BC CA), 39 B.C.L.R. (2d) 37, 36 C.P.C. (2d) 316 (C.A.); *McLeod Lake Indian Band v. British Columbia* (1997), 1997 CanLII 570 (BC SC), 46 B.C.L.R. (3d) 129 (S.C.)). […]

[207] There is no suggestion that leave was granted for these plaintiffs to be separately represented.

[208] Counsel for the Trustee submitted, only in the alternative, that any costs for Rajpreet should be strictly limited to the 23 days he attended trial after he became self-represented.

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[209] Counsel for Parmjit did not agree with any amount of separate costs for Rajpreet. He submitted that to allow separate costs could result in a co-plaintiff firing plaintiffs' counsel, in name only, in order to obtain a tactical advantage by seeking two awards of costs.

[210] I gather that given some issue with or between the clients, Mr. Taylor, plaintiff's counsel in this action at the time, filed a notice of intention to withdraw for all three groups. The Mattu and Grewal parties objected to him getting off the record and that came before Sewell J. who apparently made an order as to timing. I gather that was resolved when Rajpreet filed a notice of intention to act in person. That was not addressed by Sewell J.

[211] I cannot conclude given the circumstances that there was any tactical purpose in Rajpreet deciding to terminate his relationship with plaintiffs' counsel.

[212] It does appear that the other parties and the trial judge acquiesced to Rajpreet being self represented.

[213] As noted by Sewell J. in the Trial Reasons:

> [18] Rajpreet was introduced to Jaswant by Mr. Mattu. He invested in the October 2010 Joint Venture through 0892995 and alleges he later agreed with Jaswant that this investment and an additional $600,000 he provided to Jaswant would be invested in the Project pursuant to an oral agreement similar to the one alleged by Mr. Mattu. He was initially represented by the same counsel as Mr. Grewal and Mr. Mattu. However, he filed a notice of intention to act in person in July 2019 and represented himself and 0892995 at trial thereafter.
>
> [Emphasis added.]

[214] Obviously, at that point, no one was interested in stopping the proceedings in order for the Mattu, Grewal, and Rajpreet parties to find one counsel acceptable to them all and who could step in and continue the trial. The potential prejudice is obvious.

[215] What does that mean for his costs? Rajpreet was awarded costs by Sewell J. In my view, these parties are entitled to separate costs for steps taken when they

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were self-represented, but not for any steps taken jointly with the Mattu and Grewal parties.

[216] There is evidence that Rajpreet did take some independent steps at trial. As noted by the Trustee, he attended 23 days of the trial after he began representing himself. I gather he did some cross examination and submitted a closing statement. There is no evidence of any other separate steps taken by Rajpreet.

[217] Clearly, the majority of the tariff items claimed in his bill of costs are pre-trial. There is no evidence that the disbursements claimed by him were separately incurred.

[218] Invoking s. 7(b) of Appendix B of the *Rules*, I conclude that Rajpreet is entitled to costs assessed at 23 trial days times 10 units per day or 230 units. Those will be in addition to the trial days claimed in the Mattu, Grewal, and Rajpreet Parties' bill of costs. Thus, those days are awarded twice. Those should be parsed 15%, or 34.5 units, to the bankruptcy appeals and the balance to the civil action.

[219] As to the Mattu, Grewal, and Rajpreet parties' bill of costs, counsel for these parties suggested various ways, such as parsing who was active during which days of trial, to, in some scientific manner, divide up the trial time. Counsel for these parties submitted, for example, that the Grewal Action was the shortest matter dealt with by Sewell J. and that his involvement in the trial proceedings was small.

[220] I do not believe that is the appropriate approach here, where the issues at the trial appear to have been largely inextricably intertwined.

[221] As was noted in *Tomas* at para. 23:

> [23] Assessing costs pursuant to Supreme Court Civil Rule 15-1 necessitates a rough and ready approach as per *Christen v. McKenzie*, 2013 BCSC 1317. When costs are to be awarded to multiple parties within the litigation, an assessment must be made which apportions the preparation by viewing the totality of the litigation. The rough and ready approach does not require a detailed parsing of what has occurred, but it does require an overall perspective to put the matter in context of what was done by the parties up to the point the litigation resolved.

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[222] Thus, I conclude that the amounts claimed in the bill of costs of Rajpreet, Mattu and Grewal parties should be apportioned two-thirds to the successful claim of the Mattu and Rajpreet parties and one-third to the unsuccessful claim of the Grewal parties.

[223] Thus, the Mattu and Rajpreet parties will have two-thirds of their costs of the entire civil action, including two-thirds of the 85 days of trial allocated to the civil actions by Sewell J. In addition, Rajpreet will have separate costs assessed as 23 trial days times 10 units = 230 units, with 34.5 of those units attributable to the bankruptcy appeals.

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2. Bill of Costs of the Grewal, Mattu, and Rajpreet Parties

a) The civil actions

i. Tariff Items

[224] As noted, the bill of costs presented was a unified bill of costs. For clarity, I am assessing the Second Revised Bill of Costs dated September 20, 2024. The appointment is amended to include this bill of costs. No separate claim was made for the bankruptcy appeals. For the purposes of the civil action then, bankruptcy matters must be set aside.

[225] In addition, certain objections were taken to the units claimed. The Trustee tried to parse the preparation units between the civil action and the bankruptcy appeals. I do not consider that appropriate. Just as for the Garchas, the Mattu/Grewal/Rajpreet parties are entitled to separate bills of costs in both the civil and bankruptcy appeals.

[226] These parties are entitled to the maximum units for tariff items 1–3 and 6 of 10, 30, 10, and 10 respectively.

[227] Tariff items 10 and 11 are for making and giving document disclosure. These items are both claimed at the maximum of 10 units. I do not know the number of documents disclosed. In my view it is appropriate to mirror the Garcha bill of costs and these are allowed at 10 and 8 respectively.

[228] The next section is tariff item 19(a) for preparation for examinations for discovery and 19(b) for the party being examined. The claim is for 60 and 12 units respectively. The Trustee does not object, other than to point out that some are pre-DMO order.

[229] Parmjit submits that they should not be entitled to recover costs for the examination for discovery of Mr. Grewal, presumably on the basis that he was unsuccessful—that, however, is dealt with in the apportionment of the bill of costs of only two-thirds to Rajpreet and the Mattu parties.

[230] Parmjit also submits that they should not be entitled to recover costs for the examination of Rajpreet—presumably because Rajpreet claimed the same discovery in his bill of costs. That has been dealt with by my determination that Rajpreet is not entitled to separate costs of actions undertaken when he was jointly represented.

[231] Thus, the parties are entitled to 60 units for 19(a) and 12 units for 19(b).

[232] Apparently, tariff item 20 for the discoveries themselves was accidentally omitted in the original bill of costs. It is claimed in the Second Revised Bill of Costs for the same discoveries for which preparation was allowed. The unit entitlement is 8 and 5 respectively. The parties are therefore entitled to 128 units for item 20(a) and 20 units for item 20(b).

[233] Items 21 and 22 are for preparation for and hearing of applications.

[234] For tariff item 21(a), these parties claim 4 units for 2 unopposed applications and for 21(b) 39 units for 13 applications. The dates of the applications and whether they were opposed are set out in a schedule to the bill of costs. For tariff items 22(a) and (b), 8 and 70 units respectively were claimed for the same applications.

[235] The Trustee takes objection only based on the applications being pre-DMO, which, as noted, is not a reason to disallow the claim for costs. By letter of May 27, 2024, Parmjit says no units should be allowed unless costs were awarded on the applications, but does not identify any applications on which costs were not allowed.

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[236] I have an affidavit from Mr. Taylor, then counsel for these parties, who deposes that all services shown in the bill of costs were reasonable and necessary, but he does not attach or depose specifically to the orders granted. It was sworn before the letter of objection from counsel for Parmjit. I am sensitive to the fact that Mr. Taylor ceased being counsel of record for the Mattu and Grewal Parties in 2022.

[237] The issue of whether costs were awarded on these orders was not dealt with by counsel for Parmjit on the application before me. He took issue with the fact that 16 applications were claimed for in the amended bill of costs and only 15 were listed in the schedule B attached to the bill of costs. This issue was rectified in the Second Revised Bill of Costs and only 15 are claimed.

[238] Given the matter was not addressed at the hearing, I must presume that counsel for Parmjit was not pursuing the issue of costs awards for these applications. Tariff items 21 and 22 are therefore allowed as sought.

[239] The next items claimed are tariff items 31 and 32, preparation for and attendance at a settlement conference, case planning conference or trial management conference. These parties claim 3 and 5 units respectively, that is not opposed and these are granted as sought.

[240] The next claim is for items 34 and 35, preparation for and attendance at trial. These parties claim for 100 days, for the full trial. Justice Sewell allocated 85 days to the civil trial and these categories must be reduced accordingly. They are allowed at 85 days times 5 units = 425 units for item 34, preparation and 85 days times 10 units = 850 units for item 35, attendance at trial.

[241] The balance of the trial days must be dealt with in the bankruptcy bill of costs, dealt with below.

[242] The claims for tariff items 36, written argument, 10 units and 40, process for setting down trial, 1 unit, were not opposed and are allowed as sought.

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[243] As to tariff items 45 and 46, these parties do not claim any units for attendance at a mediation because, as noted above the mediation did not proceed. They claim 3 units for tariff item 46, preparation for a mediation. In my view that is a typographical error, the claim for 3 units is properly under tariff item 47, preparation for a mediation if the mediation is not held for a reason other than the party's refusal to attend. As noted above, it was the position of the Trustee that any settlement would have to have approval of the Superintendent of Bankruptcy and the court. In my view that frustrated the intent of the mediation and it cannot be said that Mr. Taylor, for these parties, refused to attend – the character of the mediation had changed. No units are allowed for tariff item 46, but three units are allowed for tariff item 47.

ii. Disbursements

[244] Several objections are taken to the disbursements claimed.

[245] First, dealing with photocopies, the Trustee takes issue with the amount claimed on the same basis as for the Garchas' claim and says it is appropriate to make a 25% reduction on that basis. In addition, he argued that some of these photocopies should be attributed to the bankruptcy appeals and thus deducted from this bill of costs.

[246] There is nothing in Mr. Taylor's affidavit about photocopies. I, therefore, agree with the position of the Trustee. Firstly, the claim of $15,673.81 is reduced to $13,322.74, and the balance is attributed to the bankruptcy appeals.

[247] Of that $13,322.74, I make a general reduction to account for copies not properly recoverable against other parties. Photocopies are allowed at $10,000.00.

[248] Laser copies claimed are objected to on the same basis. There is no evidence as to these in Mr. Taylor's affidavit and thus I agree with the Trustee's position. The claim for laser copies is reduced from $17,057.04 to $14,498.48 and the balance are attributed to the bankruptcy appeals. I make a further general

reduction to account for copies not properly claimable, and allow laser copies at $11,000.00.

[249] As to other party photocopying, the invoices are attached to Mr. Taylor's affidavit, but the Trustee submits that similarly 15% of these should be attributable to the bankruptcy appeals. I agree. $6,894.00 for other party photocopying will be attributed to and is allowed in this action and the balance is attributed to the bankruptcy appeals.

[250] The Trustee takes issue with the court reporter transcripts and court and interpreter fees on the basis that some is pre-DMO order, again, that is not a basis for disallowing the disbursement.

[251] Counsel for Parmjit pointed out that some of the invoices claimed in the Taylor affidavit cannot be properly claimed in this proceeding. In particular, in Exhibit E:

- P. 52, Reportex invoice $2,819.78 – the case reference is Sangha v. 0731431 and the registry number is B150826
- P. 53 Reportex invoice $240.98 – the case reference is Sangha v. 073431 and the registry number is CA43486
- P. 54 Reportex invoice $303.98 – the case reference is Sangha v. 0731431 and the registry number is B150826
- P. 56 Appeals Unlimited invoice $1,402.80 – the case reference is Sidhu et al. v. 690174 BC Ltd. et al, Supreme Court file # S153116
- P. 57 Appeals Unlimited invoice $752.33 – the case reference is Sangha v. Crowe MacKay & Co./Sidhu v. 690174 BC Ltd. et al Supreme Court file # S153116/B150826
- P. 60 Charest Reporting invoice $3,785.78 – reference Sangha v. Crowe MacKay & Co.
- P. 61 Charest Reporting invoice $256.10 – reference Bankruptcy of Jaswant Singh Sangha, registry # B150826
- P. 62 Charest Reporting invoice $256.10 – reference Bankruptcy of Jaswant Singh Sangha, registry # B150826

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- P. 76 Dye & Durham invoice $24.10 – reference Bankruptcy re Sangha et al
- P. 77 Dye & Durham invoice $24.10 – reference B150826

[252] These invoices do not on their face refer to the civil proceedings in this action and as there is no evidence linking them to this action, they are disallowed.

[253] Both the Trustee and Parmjit took issue with the claim for Westlaw legal research. That has been removed from this Second Revised Bill of Costs, and hence is not an issue.

b) The bankruptcy appeals

[254] In keeping with the position approved regarding the Garchas, it is my view that Rajpreet and the Mattu parties are entitled to advance a separate complete bill of costs in the bankruptcy appeals. I expect it would be similar to that advanced by the Garchas as the same principles apply.

[255] Again, as the Grewal Parties were unsuccessful, their one-third portion of the bankruptcy bill of costs will be deducted and the Rajpreet and Mattu parties will be entitled to recover two-thirds of their full bill of costs for the bankruptcy appeals.

[256] As noted above, from *MFSJ862*, I have no jurisdiction to assess costs that are not attached to the appointment. It is not for me to create a proper bill of costs for the bankruptcy appeals, but leave is granted for the Rajpreet and Mattu parties to do so.

[257] If consent cannot be obtained on those bills of costs, a further assessment will be required. I will hear that assessment if I am available, but I will not seize myself of it in case I am not readily available to hear it.

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VII. THE DEFENDANTS

A. Entitlement

[258] In the Garcha Action, entitlement of the successful defendant, Raveen, was dealt with by Sewell J. ordering that her costs be paid by Parmjit. The assessment of Raveen's costs was not before me.

[259] The Grewal Parties were successful in their defence of the Garchas' claim and were awarded costs against the Garchas. In the Trial Reasons, Sewell J. held:

> [318] I have also concluded that Grewal Management did not have the required knowledge of the 2007 JVA to be liable for knowing assistance of 690174's breaches fiduciary duty, some of which occurred before Grewal Management became a joint venturer. Grewal Management did not become an investor in the Project until 2011. There is no evidence that Mr. Grewal had actual knowledge of the terms of the 2007 JVA at any material time.

[260] As noted, the Grewell parties presented one unified bill of costs across all actions and that has been assessed above.

[261] The Grewal parties' proportion of that bill of costs was one-third. Counsel submitted that he should not have to prepare yet another bill of costs and I agree. The bill of costs adequately captures the costs of the entire civil trial for the Grewal parties.

[262] Part of that bill of costs, however, must have been attributable to the Grewal parties' unsuccessful claim in the Grewal action, as opposed to their successful defence in the Garcha action. As noted, I do not agree that it is appropriate to parse these matters according to what trial time was taken by each facet of the case, even if that were possible. I conclude, therefore, that it is appropriate to apportion one-half of the Grewal parties' bill of costs to the Garcha action.

[263] I believe that it is appropriate therefore for the Grewal parties to recover half of their one-third portion of the bill of costs against the Garchas.

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[264] The defendants, Parmjit, Ranjit, Svender, Wills and Dale, and the Trustee were awarded their costs against the Grewal parties. It was argued that each group should be entitled to recover 100% of their trial costs against the Grewal parties.

[265] The inequity of that approach is clear from the argument of counsel for Ranjeet, Svender, Wills and Dale, set out above.

[266] Counsel for the Grewal Parties argued that such an award was inconceivable in the context of these actions. That it would deprive the Grewal Parties of all of their costs and a substantial portion of their trial award.

[267] Justice Sewell, in the Trial Reasons, as well noted the following regarding these defendants:

> [500] In this case, Jaspreet and Mr. Mattu have clearly been deprived of a benefit: the right to share in the profits of the Project. The 2011 Joint Venturers have collectively received a corresponding benefit.
>
> [501] However, Rajpreet, Parmjit, and Wills and Dale submit that they are *bona fide* purchasers for value of their interests in the November 2010 and 2011 Joint Ventures without notice of the claims of Mr. Mattu and Rajpreet, and that this is a juristic reason for their enrichment.
>
> [502] I have concluded that this defence is not available to the defendants. I have already found that Parmjit was content to let Jaswant act on her behalf in the Project. In my view the finding that Parmjit and Jaswant were engaged in a joint enterprise makes Parmjit responsible for Jaswant's wrongful acts with respect to Rajpreet and Mr. Mattu.
>
> [503] I also am satisfied that Ranjit was aware of Mr. Mattu's involvement in the Project from an early point in its development and that Ranjit was, at the very least, in possession of sufficient facts to put him on inquiry with respect to Mr. Mattu's involvement. It follows from the concession made by counsel that Svender is also to be taken to have had notice of Mr. Mattu's interest in the Project.
>
> [504] I have already concluded that Wills and Dale hold their interest in the Project as nominees for Jaswant. Given this fact, they are not *bona fide* purchasers for value with respect to that interest. As neither the Trustee nor any of the other members of the 2011 Joint Venture, other than Grewal Management, have sought any remedy against Wills and Dale, they continue to be entitled to share in the profits of the 2011 Joint Venture, subject to the established claims of Rajpreet and Mr. Mattu.
>
> [505] In addition, as I have already indicated, I am satisfied that Jaswant had the actual authority to do what was necessary to finance the Project. The fact that the 2011 Joint Venturers are parties to a contract pursuant to which they are entitled to certain rights does not insulate them from a claim based

> on unjust enrichment. None of them contributed their proportionate share of the expenses incurred to complete the Project. Many of those expenses were paid from funds provided by Rajpreet and Mr. Mattu. There is therefore a direct link between their enrichment and Mr. Mattu's deprivation.
>
> [506] I therefore find that the defence of being *bona fide* purchasers for value has not been made out by the 2011 Joint Venturers.
>
> [507] With respect to the Trustee, as I have outlined elsewhere in these reasons, the funds that the Trustee says should be distributed to the creditors of the bankrupt estates would not have been available without the funds invested by Mr. Mattu and Rajpreet. Therefore, the analysis of Justice Morawetz in [*Re*] *Redstone* [*Investment Corp.,* 2015 ONSC 533] applies to the bankrupt estates.

[268] As in *M.A. Concrete*, I conclude here that the success of these defendants, and, hence, their costs, must be limited to the part of the action to which their success was attributable. Counsel attempted to distinguish this case based on the fact that in *M.A. Concrete* the court was dealing with a counterclaim. I do not agree. I see no reason why I cannot apportion the costs of these defendants in light of their positions in the trial and the findings of Sewell J. regarding their actions.

[269] The defendants are not entitled to costs for the successful Garcha action, nor are they entitled to costs for the portion of the action attributable to the successful claim of the Rajpreet and Mattu parties. Justice Sewell dealt with costs of those by awarding costs to the successful plaintiffs. I do not consider it appropriate in all of the circumstances to award these parties the full costs of the actions.

[270] The unsuccessful Grewal action against these defendants was one-third of the overall action. That action was half of the overall civil trial.

[271] Thus, I find that these defendants start from the position that they are entitled to recover half of one-third of their bills of costs against the Grewal parties.

[272] The position of the Trustee was quite different from the other defendants, however.

[273] As noted above, Sewell J. held that the Trustee had acted unreasonably in this litigation.

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[274] I note the following from *Tomas:*

> [19] Further, the safeguard for both the plaintiff and the defendants are the provisions of Supreme Court Civil Rule 14-1, which provides that costs, to be recoverable, must be "proper or reasonably necessary to conduct the proceeding"; and for disbursements to be recoverable, they must have been "necessarily or properly incurred in the conduct of the proceeding".
>
> [20] This approach was approved in *Wlasitz v. Kronbauer*, [1996] B.C.J. No. 2564 [(S.C.)], wherein the Court stated:
>
>> […]
>>
>> 9 Given the plain and unambiguous terms of Rule 37(22), I am to assess in accordance with the subrule. The argument of the plaintiff with respect to the defendant leaving preparation and disbursements until after an offer to settle has been delivered is met by the general principles with respect to assessing costs. Pursuant to Rule 57(2) of the Rules of Court, I must consider whether the work for which fees are claimed under the tariff was proper or reasonably necessary to conduct the proceeding and in addition I am obligated to allow a reasonable amount for expenses and disbursements that were necessary or properly incurred in the conduct of the proceeding (Rule 57(4)).
>>
>> 10 By the same token, pursuant to Rule 57(14), I may order that costs for anything done or omitted improperly or unnecessarily done may not be allowed. The discretion in the Registrar to allow for reasonable and proper fees and disbursements, and to disallow unnecessary or improper items, thus will safeguard the plaintiff in such a case as this.
>>
>> […]

[275] Given the findings of Sewell J. as to the excessive and unreasonable positions taken by the Trustee, and the finding that the Trustee took unreasonable positions in the litigation that unnecessarily increased the complexity and expense—it cannot be said that all of its actions were "proper or reasonably necessary". Justice Sewell specifically criticized the actions of the Trustee in its defence against the claims in the Grewal action—for which the Trustee was awarded costs.

[276] That, of course, has no bearing on the costs to be awarded to the other successful parties. It was both reasonable and necessary for them to deal with the positions advanced by the Trustee regardless that those positions were themselves unreasonable.

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[277] Given the conclusion of Sewell J. that two-thirds of the Trustee's fees were appropriate, subject to final assessment, I conclude that it is reasonable to assume that one-third of the Trustee's actions in these proceedings were not proper or reasonably necessary.

[278] Thus, the bill of costs of the Trustee in the civil action will be reduced by one-third to account for the actions taken that were not reasonable or necessary.

[279] As was the case for the other defendants, the Trustee is then entitled to recover payment of half of one-third of that reduced bill of costs against the Grewal Parties.

[280] Similarly, the bills of costs of the Trustee on the bankruptcy appeals will be reduced by one-third to account for the unreasonable and unnecessary actions taken. In addition, the Trustee is not entitled to costs for its unsuccessful defence of the bankruptcy appeals of the Rajpreet and Mattu parties. The Trustee's entitlement is therefore only for one-third of the bankruptcy appeals.

[281] The Trustee is, therefore, entitled to collect one-third of two-thirds of its bills of costs for the bankruptcy appeals against the Grewal parties.

B. The Bill of Costs of Parmjit

[282] There was very little critique of the bill of costs presented by Parmjit. An affidavit of justification of a paralegal is advanced in support.

[283] Rather than dealing with the tariff items allowed, I will deal with reductions.

[284] Tariff item 5, process for obtaining a case plan order, was reduced by counsel for Parmjit in submissions from 10 units to 5. It is allowed at 5 units.

[285] Tariff item 10 was reduced by counsel in submissions from 25 units to 10. This item is allowed at 10 units.

[286] Tariff item 18, process for interviewing and issuing subpoenas to all witnesses, is claimed at the maximum of 10 units. There is no evidence as to the

extent of the work required in this regard. From my review of the proceedings, most witnesses were the parties themselves and most had been discovered. Without more I cannot allow anything for this tariff item and it is disallowed.

[287] Trial preparation and attendance, tariff items 34 and 35, are allowed at 85 days times 5 units and 10 units respectively.

[288] Turning to the disbursements, they seem unobjectionable and are supported by the affidavit of Ms. Murphy. While I would normally consider a reduction in the amount claimed for photocopies, it is clear that a substantial reduction has already been made. Thus, the photocopies and other disbursements are allowed as claimed.

C. The Bill of Costs of Ranjeet and Svender

[289] The bill of costs I am referencing is the revised bill of costs of Ranjeet and Svender, which is undated, but my recollection is that it was provided electronically after the commencement of this hearing. The appointment is accordingly amended to include this revised bill of costs.

[290] In the hearing record, there is a very brief affidavit of justification of Mr. Ronald Argue, counsel for these parties, although that affidavit references the bill of costs of Wills and Dale. I gather, from a review of the electronic record in this action, that Mr. Argue filed another affidavit at the same time in support of the original bill of costs of Ranjeet and Svender. I do not have that affidavit.

[291] In addition, because an issue arose at the hearing as to the involvement of counsel and Ranjeet and Svender at the trial, leave was given for a further affidavit of Mr. Argue, directed solely to that point, which was filed on September 27, 2024.

[292] No formal objections appear to have been taken to these parties' bill of costs.

[293] Although it was acknowledged by their counsel at the hearing of this matter that Ranjeet and Svender (who are throughout considered as essentially one entity), had a very limited involvement in these civil actions, they, nonetheless, claim the maximum tariff amounts for many items. Mr. Argue defends that in his affidavit for

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the bill of costs of Wills and Dale, based on the length of the proceeding and the number of matters that had to be attended to. I assume that his comments would refer also to the bill of costs of Ranjeet and Svender.

[294] Counsel for Ranjeet and Svender did not spend much, if any, time at this hearing on the bill of costs itself, preferring to direct his arguments to the apportionment issue.

[295] As a result, I am forced to consider this bill of costs largely based on my understanding of the involvement of these parties and the history of these actions.

[296] I will deal only with those items that concern me.

[297] Tariff item 10 and 11 deal with document discovery. These parties claim 10 for obtaining discovery, which is justifiable given the number of parties and documents involved. They also claim 10 for giving discovery of documents in tariff item 11. I have no evidence of the number of documents they disclosed, only that it is claimed to be between 1 and 999. Given the dearth of evidence I will allow this item at 5 units.

[298] The balance of the bill echoes that of the other parties and is unobjectionable. The parties claim approximately $2,500 in disbursements, none of which appear to be out of line.

[299] Thus, other than the reduction in tariff item 11, the balance of the bill of costs is allowed as presented.

D. The Bill of Costs of Wills and Dale

[300] These parties were represented for a time by Parhar Law Corporation, but terminated that retainer on May 12, 2015 and were self-represented thereafter.

[301] The bill of costs I am referring to is the revised bill of costs provided electronically at the hearing. The appointment is amended to include this bill of costs.

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[302] This revision deals with objections raised at the hearing about the GST and PST claimed—which was improperly claimed for the period these parties were self-represented—and an issue about the number of units claimed for items 30 and 31, which is rectified.

[303] As noted above, I have a brief affidavit of justification from Mr. Argue. No objections appear to have been taken with this bill of costs.

[304] Similarly to the bill of costs of Ranjeet and Svender, these parties claim 10 units for tariff item 11, for providing document discovery. There is no evidence in support and this item is reduced to 5 units.

[305] The disbursements are minimal and appear unobjectionable. They are allowed as sought.

E. The Bill of Costs of the Trustee in the Grewal Action

[306] The bill of costs of the Trustee is supported by a minimal affidavit of justification from a legal administrative assistant, attaching spreadsheet summaries of the disbursements incurred by the Trustee in this matter. There do not appear to be any letters of objection to the Trustee's bill, nor was much, if any, argument directed at this bill, other than regarding apportionment.

[307] The general reduction of 1/3 of its costs to account for its unreasonable actions, as noted above, will apply to this bill of costs.

[308] Other than that reduction, the tariff items claimed are unremarkable and are allowed as sought, other than tariff items 34 and 35, preparation for and attendance at trial. Based on the Trustee's theory of apportionment, these are only claimed at 71 and 143 units. As I have not accepted the theory of the Trustee, these should be based on the full 85 days of trial. Thus, tariff item 34 is allowed at 85 days times 5 units = 425 and tariff item 35 is allowed at 85 days times 10 units = 850.

[309] The disbursements claimed are minimal and appear satisfactory, other than photocopies in the amount of $3,077.75, for which there is no justification. I will

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reduce them by the same proportion as for other parties. Photocopies are allowed at $2,300.

F. The Bill of Costs of the Trustee in the Bankruptcy Appeals

[310] As noted above, the Trustee chose to present one bill for each appeal and apportion the costs across the bills. I will deal with all three bills in this section.

[311] The Trustee has appropriately allocated the allowable maximum tariff units between the three actions. For example, for tariff items 34 and 35, trial preparation and attendance, the Trustee has allocated 25 and 50 units respectively in each of the three bills.

[312] The tariff items on all three bills of costs are allowed as sought. No disbursements are claimed and so the bills of costs are all allowed as presented, subject to the one-third reduction for its unreasonable actions.

VIII. CONCLUSION AND NEXT STEPS

[313] The parties will each have to amend their bills of costs and provide certificates of costs accordingly.

[314] The Rajpreet and Mattu parties will need to prepare a bill of costs in the bankruptcy appeals.

[315] The parties who did not claim costs of the assessment itself, have leave to do so and present a further bill of costs accordingly.

[316] Then the parties will have to consider the dividing line between the pre- and post-DMO periods and how that impacts the liability of the relevant parties on each bill of costs. Where necessary, the parties will have to calculate what portion of their bill of costs is recoverable from whom. That will require an order with specific amounts, such that enforcement is possible.

[317] If all of the above is consented to, these documents can be submitted to me for signature through the registry.

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[318] If there are issues, the parties have leave to set a further hearing before me, I will not, however, seize myself of these issues in case I cannot be made available within a reasonable time.

"Muir A.J."

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