

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Delane Industry Co. Ltd. v. Tsawwassen  
Quay Market Corporation,*  
2024 BCSC 1441

Date: 20240809  
Docket: S103253  
Registry: Vancouver

Between:

**Delane Industry Co. Ltd.**

Plaintiff

And

**Tsawwassen Quay Market Corporation**

Defendant

Before: The Honourable Justice Edelmann

## **Reasons for Judgment**

Counsel for the Plaintiff:

K. Au Yeung

Counsel for the Defendant:

D.W. Gibbons  
F.L. Pierce

Place and Dates of Hearing:

Vancouver, B.C.  
June 17-18, 2024

Place and Date of Judgment:

Vancouver, B.C.  
August 9, 2024

**Introduction**

[1] There are two applications and one appeal before me.

[2] An application filed by Tsawwassen Quay Market Corporation (“TQMC”) on April 2, 2024 seeks confirmation of a registrar's report. Delane seeks to “appeal” the same report.

[3] TQMC’s application also seeks an order finding the plaintiff and its director Mr. Au Yeung to be vexatious litigants and an order respecting money currently held as security for costs.

[4] The seconds application before me was filed by Delane seeking document production from TQMC, and findings of contempt should TQMC not produce the documents sought.

[5] The applications and appeal are part of a lengthy history of proceedings between the parties.

[6] The dispute stretches back over a decade when TQMC, the landlord, declined to renew Delane’s sublease of a retail space located in the public market at the BC Ferry terminal in Tsawwassen. In April 2010, TQMC brought a petition seeking a declaration that Delane had failed to exercise its contractual right to renew the sublease. In May 2010, Delane commenced an action seeking a declaration that it had validly exercised its right to renew the sublease.

[7] The petition and action were heard together before Justice Griffin, as she then was, in 2011. In reasons indexed as 2011 BCSC 310, Griffin J. determined that Delane had not validly exercised its right to renew the sublease, and dismissed that portion of Delane's claim. A remaining issue, being the proper amounts to be charged to Delane for common area expenses under the sublease, had previously been referred to a registrar pursuant to the order of Justice Gerow made at a case management conference in November, 2010.

[8] The registrar's referral was ultimately heard on February 12, 2024, by Associate Judge Vos sitting as registrar. The registrar reported that no amounts with respect to common area expenses were owing by or to TQMC or Delane pursuant to the sublease, and that all amounts were properly assessed, calculated, and paid.

**Application for Production of Documents**

[9] In an application filed on December 29, 2023, Delane seeks an order that TQMC “produce the materials for calculation of regular costs, according to the list provide in Karry Au-Yeung affidavits 7 with [sic] 15 days”. There is no such list provided in the affidavit in question, although there are two letters requesting documents I was taken to in oral argument. It became clear that many of the documents set out in those letters have either already been provided or are no longer being sought. It eventually became evident that the focus of the document request is on some “10 banker’s boxes” of receipts, invoices and related documents that were related to common area expenses at the Tsawwassen Market during the period from 2005 to 2011 at issue in the underlying action and petition.

[10] In an affidavit sworn on December 6, 2021, Andrew Sam, the Chief Financial Officer for TQMC, attested to his understanding that Mr. Au Yeung did not allege that the operating expenses being claimed by TQMC were fraudulent. He further attests that the general ledgers with expenses were kept in the ordinary course of business and that the original invoices and documentation related to the expenses are kept for seven years and then destroyed.

[11] I note that Mr. Sam’s understanding is not inconsistent with the manner in which Delane’s action was framed. In an affidavit filed on May 20, 2010, Mr. Au Yeung himself attested that the issue was not with the amounts of the expenses, which he assumed had been reported truly, but with the allocation of those expenses between the tenants.

[12] In my view, the application for production of documents is not properly framed and does not clearly specify the documents being sought. I do not find a reference to an affidavit attaching correspondence requesting documents allows either the court

or the respondent to understand what is being sought, in particular when it is evident that much of what is referred to in the letters in question has already been produced.

[13] Moreover, the production of the materials set out in the letters was already sought in two previous applications. The request for production of the documents at issue was abandoned at a hearing and costs thrown away were ordered against Delane in the order of Justice Mayer of August 9, 2022.

[14] It is clear that Mr. Au Yeung, on behalf of Delane, has become very focused on the “10 banker’s boxes” of receipts and invoices. Having reviewed the transcript of the hearing in which the documents in question were referred to in 2010, it is evident to me that “10 banker’s boxes” was simply an estimate of the volume of material at issue, not a representation that the documents were contained in actual banker’s boxes. In any event, I do not find it unreasonable for TQMC to have disposed of the documents. There was no indication prior to 2021 that the documents were required. I accept that the disposal of such documents would have occurred in the ordinary course of business after seven years, as attested to by Mr. Sam. Delane has provided no evidence that the documents in question actually exist and they have been told, in sworn evidence, that they do not.

[15] In my view, the application for production of documents was an abuse of process. The form of the application was improper, not only insofar as it did not clearly identify the documents sought, but also in seeking an anticipatory contempt finding if the unspecified documents were not produced within 15 days. The documents at issue had already been sought in a previous application that was abandoned with costs thrown away. Finally, the sworn evidence before the court made it clear the documents no longer exist. The application is dismissed.

**Registrar’s Report**

[16] A referral to the registrar was made by Gerow J. on November 16, 2010 on the following terms:

A reference be made to the registrar of this court to determine, report on and recommend the proper amounts to be charged pursuant to the sublease

between the plaintiff and the defendant for common area expenses; the defendant [TQMC] having liberty to apply prior to December 14, 2010 to this court concerning the terms of this reference to the registrar.

[17] On February 25, 2021 Justice Davies made the following order:

Further to the Order of Justice Gerow made November 16, 2010, a reference be made to the Registrar of this court to determine, report on and recommend the proper amounts to be charged pursuant to the sub-lease between the Plaintiff and the Defendant for common area expenses, and judgment for the sums found to have been overpaid by the plaintiff on such an accounting.

[18] This Court addressed the approach to be taken in a confirmation hearing in *Narwal v. Narwal*, 2018 BCSC 1561:

[23] At confirmation hearings such as this, the court may confirm, vary or disregard the recommendations of the registrar; alternatively, the court may remit the matter, or a portion of it, back to the registrar for further inquiry or determination. A judge reviewing the report and recommendation of a registrar is not exercising an appellate function; the court cannot assume that a registrar's report must be accepted unless an error of law or principle is shown: *Ciarniello v. Ciarniello*, 1981 CanLII 390 (BC CA), [1981] 3 W.W.R. 146 (B.C.C.A.); *Kozma v. Kozma* (1985), 1985 CanLII 517 (BC CA), 64 B.C.L.R. 355 (C.A.); *Wallberg v. Wallberg* (1994), 1994 CanLII 1246 (BC CA), 99 B.C.L.R. (2d) 16 (C.A.). Rather, in considering the findings of a registrar, the court is free to assess the findings in question and make its own findings.

[24] In this context, and in the usual course, the court is reluctant to disturb "findings of primary fact" made by a registrar, including those relating to credibility: see *Larson v. Larson* (1993), 1993 CanLII 1064 (BC SC), 80 B.C.L.R. (2d) 303 (S.C.); *Morgan v. Edwards* (2001), 86 B.C.L.R. (3d) 19, 2001 BCCA 29, explaining *Larson v. Larson*. That is, confirmation hearings such as these are not to be used as a "second kick at the can": *Larson v. Larson*, supra at p. 330; see also *Lowe Estate (Re)*, 2002 BCSC 813 at para. 17.

[19] Although Delane has framed one of its applications as an "appeal" of the registrar's report, the scope of my role on a confirmation hearing is broader than it would be on appeal. I will therefore approach the report as suggested in *Narwal*.

[20] The registrar began his decision by assessing the evidence of Mr. Sam relating to the expenses of TQMC. He found the evidence to be clear and the calculations thorough. Having reviewed the materials myself, I see no reason to depart from the assessment of the registrar. The registrar went on to reject Mr. Au Yeung's speculation that BC Ferries had in fact paid a portion of the expenses. I

agree that the suggestion was not only based on mere speculation, but was contrary to the sworn evidence of Mr Sam. There was no evidence to support Mr. Au Yeung's speculation on behalf of Delane. The registrar concluded as follows:

[17] TQMC has provided evidence to support its calculation of the common area expenses. That evidence has been properly presented and clearly applies on the matter in issue on this hearing. The evidence shows that no funds are owing to or by Delane for common area or operating expenses in relation to the sublease between TQMC and Delane that commenced for a five-year term starting on May 20, 2005. That must be, and will be, the conclusion of this reference to the registrar.

[18] The reference to the registrar ordered by Justice Davies on February 25, 2021 will result in the following report: No funds are owed by Delane Industry Co. Ltd. ("Delane") to Tsawwassen Quay Market Corporation ("TQMC"), or by TQMC to Delane, with respect to common area expenses in relation to the sublease between Delane and TQMC dated March 14, 2005 and the Addendum and Modification dated March 31, 2006. The amounts paid for common area expenses in relation to the sublease were properly calculated, assessed and paid.

[21] Having reviewed the materials and despite the lengthy submissions I heard from Mr. Au Yeung, I concur with the conclusion reached by the registrar. I find that the terms of the lease are clear and that the amounts set for common area expenses were justified in the evidence that was before the registrar. I will therefore confirm the registrar's report.

### **Vexatious Litigant**

[22] TQMC seeks an order declaring Delane and Mr. Au Yeung to be vexatious litigants. Section 18 of the *Supreme Court Act* provides the following:

If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[23] The Court of Appeal in *Dawson v. Dawson*, 2014 BCCA 44 summarized some of the criteria to be considered in making such an order:

[16] This Court has regularly adverted to and endorsed the following non-exhaustive factors that should be considered in an application to declare a

person a vexatious litigant enumerated in *Re Lang Michener and Fabian* (1987), 1987 CanLII 172 (ON SC), 37 D.L.R. (4th) 685 (Ont. H.C.J., per Henry J. at para. 19):

- a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings. [citations omitted]

[24] In order to understand the context of conduct by TQMC and Mr. Au Yeung, it will be necessary to provide a rather detailed history of the litigation in this matter over the past fifteen years.

### **History of Proceedings**

[25] The initial history of the proceedings in this and related matters was set out by the Court of Appeal in *Delane Industry Co. Ltd. v. Atkinson*, 2017 BCCA 79:

[7] There has been a series of actions between these parties related to these proceedings which I will briefly summarize.

1. 2010 Small Claims Trial in B.C. Provincial Court (the "2010 Small Claims proceeding")

[8] In the first action between these parties, TBC sought damages against Delane for using the "Taste of BC" business name after the expiry of the six-

month licence period specified in the original purchase and sale agreement entered 4 August 2008. After offering to extend the licence period in January 2009, TBC issued an invoice to Delane for \$15,000 in February 2009 which was not paid. Delane filed a counterclaim for damages based on allegations of misconduct by TBC. Delane claimed \$1,219,865, which was reduced to \$25,000 to comply with the small claims jurisdictional limits.

[9] Provincial Court Judge Chen found in favour of TBC and awarded damages of \$1,000. He concluded that there was a “contradiction” between the original agreement and subsequent closing documents, but both parties acted in reliance on the original agreement and its terms were enforceable. He found that Delane had agreed that it would only use the business name for a limited period of time, and awarded damages for use of the name after that period. The judge granted Delane’s application to withdraw its counterclaim “with liberty to pursue it in Supreme Court”.

#### 2. 2011 Petition in B.C. Supreme Court

[10] TQMC sought a declaration that Delane had not renewed its option to sub-lease space at the Tsawwassen Quay Market. The dispute turned primarily on whether Delane had given TQMC the requisite six months written notice before the expiry of the sub-lease. After a five-day hearing, Madam Justice Griffin concluded that Delane and Mr. Au-Yeng had not given the requisite notice and thus had not validly exercised the option to renew. She granted TQMC’s petition and awarded special costs to TQMC. Delane filed an appeal from Griffin J.’s order in March 2011. Delane’s appeal was dismissed as abandoned in February 2014.

#### 3. 2012 Defamation Claim in B.C. Supreme Court

[11] In August 2012, TQMC and its CEO (Gary Mathiesen) and CFO (Andrew Sam) filed a defamation claim against Mr. Au-Yeung and Delane in relation to statements made in a June 2012 letter addressed to Premier Christy Clark, the CEO of B.C. Ferries, the director of Ethics at the Institute of Chartered Accountants of B.C., and the Certified Management Accountant of B.C. The plaintiffs sought damages and an injunction restraining the defendants from making further similar statements. The matter was settled.

#### 4. 2013 Trade-Mark Opposition Board Decision

[12] Mr. Au-Yeung filed a trade-mark application for “Taste of B.C.” on 22 April 2009, the same day TBC commenced the 2010 Small Claims proceeding. In November 2013, Member Carrière refused Mr. Au-Yeung’s application to register the trademark “Taste of B.C.” on the basis that TBC, who opposed the application, had provided sufficient evidence supporting its opposition.

[13] Member Carrière concluded that: (1) any use of the mark “Taste of B.C.” starting on 16 August 2008 was under licence to TBC and thus accrued to TBC; (2) any use of the mark beginning on that date was by Delane, not the trade-mark applicant Mr. Au-Yeung; and (3) Mr. Au-Yeung and Delane could not have been reasonably satisfied of their entitlement to use the mark in Canada given TBC’s January 2009 offer to renew the licensing agreement for the mark and the subsequent small claims proceedings.

5. 2014 Small Claims Trial in B.C. Provincial Court

[14] TBC filed a claim against Mr. Au-Yeung for damages for wrongful trade-mark applications in July 2011. On the trial date, Delane and Mr. Au-Yeung brought a no evidence motion alleging that the court lacked jurisdiction to grant the relief sought and that the matters were *res judicata* (as related to the damages and the claim against Mr. Au-Yeung personally). Provincial Court Judge Yee granted the no evidence motion and dismissed the action.

6. 2015 Trade-Mark Opposition Board Decision

[15] Mr. Au-Yeung filed a second application to register the trade-mark "Taste of B.C." in January 2012. The application stated proposed uses that were broader than those in the prior application that was refused by Member Carrière. In September 2015, Member Flewelling refused the application for the same reasons that Member Carrière had in the prior trade-mark application.

7. Current Proceeding – 2014 Damages Claim

[16] In November 2014, Delane filed a damages claim against TQMC, TBC, and Mr. Atkinson for breach of contract and unlawful interference with contractual relations. TQMC, TBC, and Mr. Atkinson filed responses in January 2015. In March 2016, the parties filed various applications. Delane applied for orders relating to discovery and production of documents. TQMC applied to have Delane post security for costs in the amount of \$14,000. TBC and Mr. Atkinson applied to have Delane's claim against them summarily dismissed, or alternatively, to have Delane post security for costs and for certain procedural orders relating to discovery and document production. These applications were heard in March 2016.

[26] On March 22, 2016, Justice Adair dismissed Delane's claim against the defendants Steve Atkinson and Taste of BC, on the basis that the actions alleged on their part to be unlawful had previously been found lawful in proceedings in provincial court.

[27] On January 31, 2017, Delane filed a notice of partial settlement or abandonment in the appeal with respect to TQMC. On February 8, 2017, the Court dismissed the balance of Delane's appeal.

[28] In the fall of 2020, Delane filed an appointment for a registrar's hearing which was heard by Registrar Nielsen (as he then was). TQMC did not attend the application. Registrar Nielsen dismissed Delane's application.

[29] On October 30, 2020, Delane filed a notice of application seeking the following orders:

1. To set aside the Order Made at case Management conference on Nov 16, 2010 and seal on Dec 15, 2010
2. To send this case back to court to examine whether Tsawwassen Quay Market Corporation had breached the sublease.
3. To examine whether Mr. Gary Mathiesen had entered into the sublease with Delane Industry Co. Ltd. in bad faith.
4. To examine whether Mr. Gary Mathiesen and TQMC had planed to lie, cheat and trick Karry Au Yeung and Delane Industry Co.Ltd. While entering and negotiating the sublease.
5. To examine whether Mr. Mathiesen and/or TQMC staffs had given untrue or lying evidence under oath.
6. To give permission for Plaintiff to amend the pleading in this action.
7. To order TQMC to produce list of information to calculate Cam Expenses.

[30] After TQMC filed a response, Delane filed a second application seeking the same relief set out in the previous application, with additional orders sought:

1. To state that in the application response Mr. Gary Mathiesen had filed untrue/fraud evidence to court in order to mislead or cheat the Plaintiff, the court and judges.
2. To order all subtenants in Tsawwassen Ferry Terminals Market to provide all expenses invoices from TQMC in order to match up total common areas expenses (CAM).
3. To order BC Ferries Corp. To produce detail of the BC Ferries areas inside and outside the Quay Market Building which are servicing by TQMC. Also, give detail how they pay or offset payment by their services with TQMC.

[31] December 3, 2020, Justice Milman dismissed Delane's applications, saying the following:

[3] I have not been shown any basis to grant any of the relief sought, much of which appears to be an abuse of the process of the court in the sense that it appears to be advanced with a view to re-litigating matters that were adjudicated and resolved long ago or at least should have been. The rest is relief that is otherwise improper and not contemplated by the Supreme Court Civil Rules. [...]

[5] I find that the applications that are before me are entirely without merit. I am therefore dismissing them with costs to the defendant.

[32] Delane appealed the decision of Milman J. The Court of Appeal dismissed the appeal finding the issues raised either moot or premature, and went on to make the following comments:

[14] Although this is sufficient to dismiss the appeal, I would note that, in any event, I would find no error in the judge's conclusion that Delane had not shown any basis on which to grant the relief sought. Delane's submissions before the chambers judge were a re-hashing of alleged wrongdoing by the respondent, devoid of any specific legal or factual support. For example, Mr. Au-Yeung asserted that the respondent had failed to produce documents without identifying precisely what was sought. In contrast, the respondent described its extensive disclosure and repeated invitations to Mr. Au-Yeung to attend at their offices to review documents. Similarly, there was no specific amendment to the notice of civil claim proposed and only generalized statements that "the management [of the respondent] have intentionally [arranged] everything to cheat us from the beginning".

[15] In conclusion, this is an ill-conceived appeal and it must be dismissed.

[33] On February 9, 2021, Delane filed an application for production of documents and to have the reference to the registrar ordered by Gerow J. in 2010 sent back to trial. Justice Davies made an order essentially confirming the referral to the registrar but not addressing production of documents. In a pre-hearing conference before Registrar Nielsen, production of documents relevant to amounts owing under the lease were ordered.

[34] The parties had settled the 2012 defamation action shortly before trial. On March 17, 2017, Justice Harris, by consent, declared that the parties had reached a binding and enforceable contract to settle all issues in the action and ordered that the defendants, Delane and Mr. Au Yeung, were restrained and prohibited from defaming TQMC and its officers. On September 27, 2021, TQMC filed an application for Mr. Au Yeung and Delane to be found in contempt for sending further defamatory emails and breaching an implied undertaking. It also sought security for costs.

[35] In response, Delane filed an application on November 10, 2021 to have TQMC as well as its officers personally found in contempt for failure to comply with a document production order. On February 3, 2022 and April 13, 2022, Delane filed two further applications seeking further contempt findings, document disclosure, repayment of legal fees and various other relief.

[36] Justice Mayer heard all four applications together in July 2022. He found Delane and Mr. Au Yeung in contempt, ordered each of them to pay a fine of \$5,000 and ordered special costs against them. He dismissed Delane's application for findings of contempt but declined to order special costs for bringing the application, finding that it did not constitute reprehensible conduct.

[37] Delane abandoned the other two applications it had filed. Justice Mayer ordered costs thrown away against Delane, but declined to order special costs saying the following:

[91] TQMC seeks costs thrown away on a special costs basis in respect of the applications brought by Delane dated February 3, 2022 and April 13, 2022, which were abandoned at the hearing before me on July 11, 2022. In addition to costs thrown away, TQMC, in my understanding, also seeks costs in respect of the hearing before Justice Walker on May 16, 2022, at which he ordered that the applications be heard at the same time as the parties' dueling contempt applications.

[92] With respect to whether special costs are justified, TQMC submits that the February 3 and April 13, 2022 applications include unfounded allegations of fraud or other illegal conduct. Given that these applications were prepared and filed by Mr. Au Yeung without the assistance of counsel I do not consider that it would be appropriate to award special costs. TQMC is entitled to its costs thrown away, including costs in respect of the application heard by Justice Walker.

[38] One year later, counsel for TQMC was copied on a letter dated August 15, 2023, from the Vancouver Law Courts Accounting Department to Delane, informing Delane that its payment of \$10,000, made June 13, 2023, in connection with the contempt penalty, had been dishonoured. There is no evidence before me that Delane or Mr. Au Yeung have paid the fines. Notably, June 13, 2023 was the date that Delane's appeal of the contempt decision was heard. Delane's appeal of the order of Mayer J. was dismissed on July 21, 2023 (*Delane Industry Co. Ltd. v. Tsawwassen Quay Market Corporation*, 2023 BCCA 298). Delane applied for leave to appeal to the Supreme Court of Canada, which was dismissed with costs on March 14, 2024.

[39] December 14, 2023, Registrar Gaily ordered that Delane file and serve all supporting evidence it intended to rely on at the registrar's hearing on or before

January 15, 2024, and TQMC file and serve its responding evidence on or before February 5, 2024. Both parties were to inform the other which witnesses they planned to cross examine on their affidavits by February 7, 2024.

[40] On December 27, 2024, Delane filed an appeal of Registrar Gaily's order, setting it for a two-hour hearing in chambers on January 11, 2024. Delane's listed grounds of appeal are as follows:

1. Registrar Nielsen order on July 15, 2021 has not been complied.
2. Direction of BC Appeal court Madame Justice Fenlon that the Plaintiff is entitled document production and subpoena witness in front of registrar.
3. Direction of Appeal Court Justice Skolrood that the Plaintiff can enforce document products with application.
4. The lawyer of the Defendant Mr. David Gibbons had intentionally told untrue to registrar that the Plaintiff was a vexatious litigant when the Plaintiff followed 8 orders and judgements to go in front of the registrar
5. The Plaintiff was not served with requisition.

[41] January 11, 2024, Justice Wilkinson dismissed Delane's appeal and ordered that Delane pay TQMC costs, assessed in the lump sum of \$1,000, and payable forthwith. I am told these costs have not been paid.

[42] December 29, 2024, Delane filed its current application for document production, setting it to be heard on January 10, 2024. Prior to the hearing of the application, but after TQMC filed its response, Delane requested an adjournment. Counsel for TQMC did not consent, informing Mr. Au Yeung that he was prepared for the application and would be going away on vacation, and would be unable to respond at a later date. Accordingly, if the application was to be heard prior to the registrar's hearing, it would need to be heard on January 10. Delane then filed a requisition adjourning the December application "by consent", despite having expressly sought, and been denied, consent to do so.

[43] On January 17, 2024, Delane issued a subpoena of current BC Ferries CEO, Nicholas Jiminez, requiring his attendance at the February 12, 2024, Registrar's Reference. On February 9, 2024, BC Ferries, which is not a party to this proceeding,

brought an application to set aside the subpoena. The subpoena was set aside by Loo J. Delane has appealed the order setting aside the subpoena.

[44] On January 23, 2024, Delane filed a requisition resetting the December 29 application to be heard on January 25, 2024, a date when Delane was aware that TQMC's counsel of record was on vacation. On January 25, 2024, Justice Loo made an order adjourning Delane's application and precluding Delane from filing any further applications prior to February 12, 2024, absent leave of the court, with costs to TQMC in the lump sum of \$500.

[45] February 27, 2024, Delane filed the purported appeal which is before me, on the basis that documentary disclosure was not complete; Associate Judge Vos was wrong in law by failing to consider or ignored important evidence; and that A.J. Vos had no jurisdiction to hear the case. In its statement of argument, Delane seeks a new reference, and that the matter be remitted back to the registrar for further inquiry or determination.

[46] March 12, 2024, the parties attended at a Court of Appeal chambers hearing. Delane's former counsel in the contempt appeals had security for costs of those appeals in its trust account, and, after being unable to obtain instructions from Delane regarding costs, had withdrawn as counsel. In the application, Delane's former appeal counsel sought to pay the money into court. The application was granted.

[47] Delane set its appeal of the Registrar's report for hearing on March 26, 2024. Delane subsequently reset its document production for hearing on the same date and sought to adjourn the appeal. TQMC did not consent to the adjournment. The appeal and application were set to be heard in chambers on March 26, 2024. Justice Groves adjourned both to April 19, 2024, the date originally set for TQMC's confirmation application, and ordered costs to TQMC in the lump sum of \$750.

[48] Delane subsequently obtained short leave for an adjournment application of the April 19, 2024, applications. That application was heard by Justice Blake on April

16, 2024. Justice Blake granted the adjournment on the terms sought by TQMC, ordering that Delane not file any further applications until after the hearing of these applications and that an application for a pleading amendment not be set until after June 19, 2024.

[49] Delane sought leave to appeal the orders made by Groves J. and Blake J., and a stay of TQMC's confirmation application. At the application for leave, heard May 21, 2024, the parties agreed that the hearing before me should go ahead, and that the application for leave could be dismissed, without prejudice to Delane's ability to bring an appeal of the Groves order regarding lump sum costs of \$750, should it appeal the orders made as a result of the applications.

[50] On June 6, 2024, Delane filed a second application response to which it has added its own "Part 6: Order Sought:" section to the court form for application responses. In this section, Delane seeks orders as follows:

38. TQMC should not be allowed to bring new application in this case without leave from court.
39. Costs for the Plaintiff from getting legal advice and time the Plaintiff and Au Yeung spend on these extra proceedings.
40. Re-instate Justice Griffin order made on Feb 15, 2011 the rent payable by the plaintiff from May 20, 2010 until they moved out to be refunded to the plaintiff by the defendant.
41. Pronounce the defendant and their counsel or counsels who had intentionally told untrue or lie to the court to mislead judges.

[51] I agree with TQMC that this is a rather transparent attempt to circumvent Blake J.'s order precluding Delane from filing any further applications prior to the hearing.

[52] In the course of the hearing before me, it became clear that Delane now seeks to amend its Statement of Claim to be able to pursue a number of additional allegations related to fraud or misrepresentations by TQMC and its officers.

[53] Considering the history of this matter as a whole, I find Delane has demonstrated a pattern of conduct that is abusive of the court's processes, in

particular in recent months. It has filed numerous duplicative applications, seeking the same relief on multiple occasions including the one before me which seeks production of documents that has been sought multiple times before. Aside from appealing almost every adverse decision, Delane has also demonstrated a pattern of seeking to have past decisions revisited, or reframing them in another guise.

[54] The language used by Delane continues to be vexatious, despite clear comments from the courts about the problematic nature of this conduct. In *Au-Yeung v. Taste of BC Fine Foods Ltd*, 2017 FC 299, Justice Phelan of the Federal Court wrote in his reasons as follows:

[27] The Respondent also seeks to have the Court strike portions of the Au-Yeung Affidavit which contain gratuitous and vexatious allegations and hearsay. The vexatious allegations include describing Atkinson as a "very bad person", claiming that the Applicant's previous solicitor had not conducted the trial as the Applicant wished, describing Atkinson as a liar and a cheater, and claiming that Atkinson had misled judges with "untrue evidence".

[55] The above accords with Griffin J.'s reasons following the 2011 trial, in which she made clear findings about Mr. Au Yeung's feelings about TQMC and its principals:

[44] Unfortunately, Mr. Au Yeung left me with the impression that he has such little respect for TQMC and its president, Mr. Mathiesen, and such little self-control, that he could be capable of fabricating evidence about the September 1, 2009 renewal notice. It seems far too easy for him to accuse others of being dishonest, particularly TQMC employees. It would be very easy for Mr. Au Yeung to convince himself that the "end justifies the means" - that he is dealing with such rotten scoundrels who have so cheated him over such a long time that what difference could it make if he fabricates a story about giving written notice on time. I conclude that Mr. Au Yeung had a strong motive to fabricate the evidence regarding the September 1, 2009 letter.

[56] I do not propose to go through the numerous examples of ongoing conduct by Mr. Au Yeung in his affidavits, correspondence and application materials. He freely makes allegations of misconduct, untruth and fraud on behalf of TQMC and various counsel. He describes judges of this Court as being misled and "brainwashed".

[57] Both Delane and Mr. Au Yeung have been found in contempt of court for continuing to defame the officers of TQMC despite a court order prohibiting them to do so. They have demonstrated a willingness and ability to abuse this Court's process to circumvent orders. Notably, when precluded from filing applications between January 25, 2024, and February 12, 2024, Delane sought reconsideration of the same decision using the court scheduling portal. When precluded from filing applications between April 16, 2024, and June 19, 2024, Delane sought relief by way of a reformatted application response.

[58] The common area costs at issue in the underlying referral to the registrar were incurred and paid beginning in 2005. The referral to the registrar has been outstanding since first being made on November 16, 2010, and newly ordered to proceed on February 25, 2021. All of the issues in the initial litigation have now been decided and I agree with TQMC that it is long past time for these proceedings to come to their conclusion.

[59] Unfortunately, it was clear from the submissions and conduct of Mr. Au Yeung before me that he is both willing and motivated to initiate a barrage of additional proceedings. He is highly unlikely to treat any adverse decision in this or any other court with finality. He has demonstrated his willingness and ability to abuse this Court's process, and I find it likely he will do so in pursuing further litigation against TQMC and its officers. In my view, the order sought by TQMC is appropriate in the circumstances.

### **Orders**

[60] For the reasons above, I therefore make the following orders:

1. An order confirming the registrar's report, made February 12, 2024.
2. A declaration that the Delane Industry Co. Ltd. and Mr. Au Yeung are vexatious litigants, pursuant to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c.443.

3. An order pursuant to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443, that Delane Industry Co. Ltd. and Karry Au Yeung be restrained from filing any materials with the Supreme Court of British Columbia in connection with Tsawwassen Quay Market Corporation or any of its directors and officers without first obtaining leave of the court.
4. An order that the Tsawwassen Quay Market Corporation may pay extant lump sum costs awards out of money held in trust as security for costs.
5. The notice of appeal filed by Delane Industry Co. Ltd. on February 27, 2024, is dismissed.
6. The relief sought in the notice of application of Delane Industry Co. Ltd. filed December 29, 2023, is dismissed in its entirety.
7. Costs of the applications to the defendants.

“Edelmann J.”