Court of Appeal for Saskatchewan
Docket: CACV4303

Citation: *Karl v Dion Resources Inc.*, 2024 SKCA 103
Date: 2024-11-06

Between:

Bryce Karl

Appellant (Defendant)

And

Dion Resources Inc.

Respondent (Plaintiff)

And

102001392 Saskatchewan Ltd.

Non-Party (Defendant)

Before:	Leurer C.J.S., Kalmakoff and Bardai JJ.A.
Disposition:	Appeal allowed
Written reasons by: In concurrence:	The Honourable Justice Naheed Bardai The Honourable Chief Justice Robert W. Leurer The Honourable Justice Jeffery D. Kalmakoff
On appeal from: Appeal heard:	KBG-RG-00633-2023, Regina June 13, 2024
Counsel:	Gulu Punia for the Appellant David Tupper and Randell Trombley for the Respondent No one appearing for 102001392 Saskatchewan Ltd.

Bardai J.A.

I. INTRODUCTION

[1] This is an appeal of a decision in which a judge of the Court of King's Bench [Chambers judge] granted summary judgment in favour of the plaintiff, Dion Resources Inc. [Dion Resources], and against the defendants, Bryce Karl and 102001392 Saskatchewan Ltd. [Echo Refinery]. The Chambers judge found that the parties had entered into a settlement agreement at mediation and that Dion Resources was entitled to judgment in accordance with the terms of that agreement: *Dion Resources Inc. v 102001392 Saskatchewan Ltd.* (12 December 2023) Regina, KBG-RG-00633-2023 (Sask) [*Chambers Decision*]. Ultimately, the Chambers judge found that there was no genuine issue requiring a trial and ordered:

(a) summary judgment as against Mr. Karl and Echo Refinery for $1,650,000;

(b) all the claims of Dion Resources against Echo Refinery and Mr. Karl be released;

(c) that other separate legal proceedings be discontinued; and

(d) that Echo Refinery's contempt in one of the discontinued actions was purged.

[2] In addition to granting judgment in favour of Dion Resources, the Chambers judge dismissed an application by Mr. Karl and Echo Refinery seeking a declaration that no binding settlement had been reached at mediation.

[3] Mr. Karl appeals the *Chambers Decision* and contends there are genuine issues requiring a trial. In his factum, Mr. Karl also sought a dismissal of the claim against him, but that relief has since been abandoned.

[4] A decision by a Chambers judge as to whether there exists a genuine issue requiring a trial is a question of mixed fact and law. Accordingly, absent an extricable error in principle, the decision should not be interfered with unless the Chambers judge committed a palpable and overriding error: see *Hess v Thomas Estate*, 2019 SKCA 26 at para 29, 433 DLR (4th) 60.

[5] I agree with Mr. Karl in this case that the Chambers judge committed a palpable and overriding error in finding that there was no genuine issue requiring a trial on the question of whether a settlement had been achieved and, if it had been, its terms. I would therefore allow the appeal and set aside the *Chambers Decision* save and except for that portion of the decision dismissing the application for declaratory relief brought by Mr. Karl and Dion Resources. I therefore remit the matter to the Court of King's Bench to be determined in the ordinary course. My reasons follow.

II. BACKGROUND

A. The many matters in dispute between the parties

[6] As I have noted, this appeal exists in the context of an action commenced by Dion Resources against Echo Refinery and Mr. Karl. The putative settlement was of a much broader set of disputes between the parties. An understanding of the issues in this appeal depends on an appreciation of this broader context.

[7] Mr. Karl works in the oil and gas industry and is the president of Echo Refinery. Echo Refinery previously owned a refinery located in the Rural Municipality of Bone Creek No. 108. Dion Resources owns 10 percent of the shares of Echo Refinery. The central matter in dispute between Dion Resources, on the one hand, and Echo Refinery and Mr. Karl, on the other hand, is whether a proper account has been given to the shareholders of Echo Refinery following the sale of its assets.

[8] Although Mr. Karl is the president of Echo Refinery, there is no evidence that he has ever been a shareholder or director of that company. The amended statement of claim that lies at the heart of this appeal asserts that Mr. Karl has overall effective control of Echo Refinery because of his control of the Karl Family Trust.

[9] Echo Refinery's majority shareholder is Karl International Holdings Inc., which is owned by the Karl Family Trust for which Mr. Karl acts as trustee. In addition to these interests, Mr. Karl is involved in Independent Oil Corp., Karl IP Holdings Inc., Alberta Oil Recovery Inc., Rocky

Mountain Refinery Inc. [Rocky Mountain], Karl Family Holdings Inc., 1866768 Alberta Ltd. and 1934796 Alberta Ltd. [collectively, including Echo Refinery, Karl Corporations].

[10] As I have noted, Dion Resources holds a 10 percent interest in Echo Refinery. Dion Resources is in the business of providing consulting services to First Nations groups. Joseph Dion is the president and owner of Dion Resources.

[11] In April of 2021, Dion Resources commenced Alberta Court of King's Bench action 2101-05259 [Alberta Action] against Mr. Karl, Karl IP Holdings Inc., Independent Oil Corp. and Echo Refinery alleging that Echo Refinery's assets had been improperly sold to a third party, GFL Environmental Inc. and, further, that certain technology rights owned by Dion Resources had also been improperly transferred as part of the asset sale.

[12] In June of that same year, Dion Resources commenced a proceeding in Saskatchewan (QGB-RG-01148-2021) against Echo Refinery seeking production of various corporate records. That same month, Dion Resources commenced a second action in Saskatchewan (QBG-RG-01397-2021) against Echo Refinery and Mr. Karl, alleging oppression and claiming an entitlement to a portion of the proceeds from the sale of Echo Refinery's assets. The two Saskatchewan proceedings were consolidated in November of 2021 under the latter court file number [Saskatchewan Action].

[13] In addition to the issues set out in the Saskatchewan and Alberta Actions, there is a further dispute between the parties concerning certain investments made by Dion Resources and others (some of whom are investors connected with Dion Resources) in Rocky Mountain [Related Investors]. There appears to be agreement that advances were made by Dion Resources and the Related Investors to Rocky Mountain which investments were secured by way of promissory notes. Those promissory notes were later assigned to Echo Refinery but have not been repaid. The issue of the unpaid promissory notes is not the subject of any of the claims that have been brought to date in Saskatchewan or Alberta. Nevertheless, it is an issue that is germane to the questions now before this Court because of a dispute over the scope of releases contemplated by a purported settlement reached at mediation. The Related Investors are not named as parties in either the Alberta or Saskatchewan Actions. The mediation that I will later describe was attended by Mr. Karl

and one representative from each of Dion Resources and Echo Refinery. The Related Investors did not attend the mediation.

[14] In November of 2021, Dion Resources applied for an order to compel Echo Refinery to produce certain records, including audited statements. The application resulted in the issuance of a consent order dated December 14, 2021 [Consent Order]. This order required that Echo Refinery produce corporate records, prepare audited financial statements and retain an auditor within 90 days to assist in the completion of this work.

[15] When Echo Refinery failed to comply with the Consent Order, Dion Resources brought a contempt application. That application was dismissed by Krogan J. on July 28, 2022. In the context of that decision, Krogan J. found that one of the impediments to compliance by Echo Refinery was the fact that Echo Refinery had had difficulty hiring an auditor due to financial constraints facing the business. Echo Refinery was given another chance to comply.

[16] When the documents were still not provided, Dion Resources applied again for an order that Echo Refinery and Mr. Karl be found in contempt of the Consent Order. This time, Norbeck J., in a decision dated February 21, 2023, found Echo Refinery – but not Mr. Karl – guilty of contempt. The contempt application against Mr. Karl in his personal capacity was dismissed.

B. The putative settlement

[17] It was in the context of this complicated set of disputes that the parties attended a mediation mandated by s. 42 of *The Queen's Bench Act, 1998*, SS 1998, c Q-1.01, in the framework of the Saskatchewan Action.

[18] The mediation was originally scheduled for September 29, 2022. A representative from Dion Resources attended on the specified date, as did a representative of Echo Refinery, but Mr. Karl did not. The mediation was accordingly rescheduled, and a certificate of non-compliance was issued as against Mr. Karl.

[19] The mediation was rescheduled for December 20, 2022. Mr. Karl attended on this occasion. Dion Resources was represented at the mediation by its president, Mr. Dion, as well as its legal counsel. Mark Webster, the vice-president of Echo Refinery, attended the mediation as Echo

Refinery's representative. Echo Refinery and Mr. Karl were both represented by the same counsel at the mediation.

[20] No minutes of settlement were drafted, let alone executed, at the mediation. Nonetheless, both sides appear to have left the mediation believing that a settlement had been achieved. Subsequently, a dispute arose as to whether Mr. Karl was jointly liable with Echo Refinery to pay settlement funds of $1,650,000 and who exactly Dion Resources was required to release or obtain releases from in exchange for the payment contemplated by the parties' settlement. This dispute led Dion Resources to commence the proceeding within which the *Chambers Decision* was issued (KBG-RG-00633-2023). The statement of claim alleges a breach by Echo Refinery and Mr. Karl of the terms of the settlement agreement reached at mediation.

[21] Although there are several matters of disagreement surrounding the putative settlement, the most fundamental dispute is over whether Mr. Karl and Echo Refinery, or only Echo Refinery, was to pay the agreed-upon settlement amount. In this regard, Dion Resources' statement of claim alleges:

> 33. At the re-scheduled mediation, Dion Resources and the Defendant<u>s</u> agreed to settle the Saskatchewan Litigation (the "Settlement").
>
> 34. Pursuant to the Settlement, Dion Resources agreed to a release of claims against the Defendants in the Saskatchewan Litigation and the Alberta Litigation.
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> 35. In consideration for the release by Dion Resources, the Defendant<u>s</u> agreed to pay Dion Resources $1.65 million.
>
> (Emphasis added)

[22] The statement of defence filed on behalf of Echo Refinery and Mr. Karl by contrast asserts that "Mr. Karl was not required to make any payment" to Dion Resources and, instead, that it had "always [been] anticipated that Echo Refinery would pay" the settlement amount.

[23] It was in this context that Dion Resources brought an application for summary judgment, seeking to enforce the settlement that it says was reached between the parties. Echo Refinery and Mr. Karl brought their own application seeking an order declaring that no binding settlement had been reached.

C. The evidence

[24] Dion Resources filed an affidavit of its president, Mr. Dion, whose evidence was met by affidavits sworn by Mr. Karl and Mr. Webster. I will review some of the details of this evidence later in these reasons. Although there are many points of disagreement between the parties, the affiants concurred that a settlement payment of $1,650,000 had been agreed to at the mediation. There was also agreement, or at least an absence of dispute, on several other points. However, the affiants parted company on the crucial question as to whether Mr. Karl had given a personal commitment to pay the settlement amount.

[25] Mr. Dion asserted that "the Defendants agreed to pay Dion Resources $1.65 million" (emphasis added). However, Mr. Dion did not take issue with the evidence proffered by the defendants that the question of Mr. Karl's personal liability for paying the settlement amount had not been discussed at the mediation. In this regard, both Mr. Karl and Mr. Webster stated that "[t]hroughout the Mediation, the parties only discussed liability in respect of Echo Refinery", and that there was no discussion whatsoever of Mr. Karl's joint liability or of any requirement that he contribute personally to the settlement.

[26] Following the mediation, the parties' counsel attempted to document the agreement. The crux of the disagreement between the parties became evident when they exchanged drafts of a settlement agreement.

D. The *Chambers Decision*

[27] After providing a summary of the complicated background, the Chambers judge defined the issues before her to be (a) "Was there agreement on who would pay the settlement amount?" (b) "Did the parties agree to resolve the Third Parties' claims?" and (c) "Can this matter be resolved by summary judgment?"

[28] The Chambers judge began her consideration of the first of these issues by quoting lengthy passages from two cases that contain some of the principles concerning contract formation. Following this, she quoted equally lengthy passages from two cases that she identified as pertaining to issues of joint and several liability, *Burdick v Mills*, [1923] 1 DLR 830 (CanLII) (Sask KB) [*Burdick*], and *Budning v Vinokurov*, 2006 CanLII 16538 (Ont Sup Ct) [*Budning*]. The

Chambers judge summarized the evidence of the parties as it related to the question of Mr. Karl's personal liability to pay the settlement amount. She then answered the first question she had set out as follows:

> [34] Dion argues that no distinction was drawn between Karl and Echo Refinery at the Mediation. Both agreed to settle the litigation without qualification. Karl and Mr. Webster each deposed that the parties never discussed Karl's liability in his personal capacity. Since Karl was a party in his personal capacity, in the absence of a discussion at the Mediation limiting his liability, Karl's personal liability is presumed.

[29] On the second question, that is whether the claims of other persons had been settled, the Chambers judge found that only Dion Resources' promissory note claim was released by the settlement. She further concluded that, to the extent Mr. Karl thought otherwise – namely, that the claims of the Related Investors had been assigned to Dion Resources and were to be released as well – he was mistaken. The Chambers judge found Mr. Karl made an assumption that was never communicated at the mediation. She set out her conclusions on this point as follows:

> [40] I am satisfied that only Dion's [Rocky Mountain] claim was part of the Draft Settlement Agreement. Karl may have had it in his mind that he would like to settle the [Related Investors'] claims, but there is no evidence that these claims were part of the settlement.
>
> [41] Had Karl voiced his understanding, he would be in a different position. However, not even his lawyer at the Mediation knew of his belief. Clearly, if he intended to settle only on the basis that the claims by the [Related Investors] were included, no reasonable person would have understood that was his intention because it was not "manifested".

[30] In effect, the Chambers judge found that absent communication of his understanding to Dion Resources, Mr. Karl was not permitted to assume the release would apply to the claims of the Related Investors and that, by virtue of the application of a legal presumption, Dion Resources was allowed to presume a joint commitment had been made even if one was not communicated.

[31] Lastly, the Chambers judge turned to consider if the matter could be resolved by summary judgment. On this, she first referred to this Court's decision in *McCorriston v Hunter*, 2019 SKCA 106, 33 RFL (8th) 310, and several other cases. After she had done so, the Chambers judge reasoned as follows:

> [45] In this dispute, the central question is whether the court can make the necessary findings of fact to resolve the "material issues at stake" (*McCorriston* at para 26). The material issues here were, as asserted by the defendants, who must pay the settlement amount and which claims would be released by the settlement.
>
> [46] Dion asserts that its claims, advanced in the Saskatchewan and Alberta litigation, against Bryce Karl, Karl IP Holdings Inc, Independent Oil Corp., 102001392

> Saskatchewan Ltd, and the Karl Corporations were settled for $1,650,000 at the Mediation. Dion' s assertion is consistent with the defendants' counsel's recollection of the settlement on December 23, 2020 and I find that no material facts, in relation to who must pay the settlement amount and which claims would be released by the settlement, are in dispute.
>
> [47] I find the parties reached an agreement at Mediation to resolve all issues in the Saskatchewan and Alberta litigation, by the payment of the defendants to Dion of $1.65 million. Consequently, summary judgment is appropriate.

[32] Based on the answers the Chambers judge gave to the three questions she had identified, she granted judgment in favour of Dion Resources in the terms as I have summarized them earlier.

III. ISSUE

[33] In his factum, Mr. Karl asked this Court not only to set aside the judgment against him, but also for an order dismissing the action against him. However, at the hearing of the appeal, he conceded that the only relief he was seeking was that a trial be held. Considering this position, the only issue this Court needs to examine is whether the Chambers judge erred in her conclusion that, in the absence of a discussion at the mediation about limiting his personal liability, Mr. Karl's personal liability is to be presumed.

IV. ANALYSIS

[34] The Chambers judge rested her decision on the proposition that in the absence of any discussion at the mediation about *limiting* Mr. Karl's personal liability, that liability was to be presumed. This is evident from paragraph 34 of the *Chambers Decision*. I would reproduce that passage again to make this point clearly:

> [34] Dion argues that no distinction was drawn between Karl and Echo Refinery at the Mediation. Both agreed to settle the litigation without qualification. Karl and Mr. Webster each deposed that the parties never discussed Karl's liability *in his personal capacity*. Since Karl was a party in his personal capacity, *in the absence of a discussion at the Mediation limiting his liability, Karl's personal liability is presumed*.
>
> (Emphasis added)

[35] In substance, the Chambers judge invoked a legal presumption to find the basis for an agreement regarding Mr. Karl's personal liability. In my respectful view, the Chambers judge erred in law by basing her conclusion that an agreement had been reached in this case on the application of a legal presumption.

[36] I begin my explanation for this conclusion by being precise about what the evidence disclosed and what findings of fact the Chambers judge made concerning the evidence. In this regard, as the Chambers judge pointed out in paragraph 34 of the *Chambers Decision*, the evidence of both Mr. Karl and Mr. Webster was that Mr. Karl's personal liability was not the subject of discussion of any sort at the mediation. Prior to expressing her conclusion about the operation of the legal presumption, the Chambers judge set out further details from the evidence of Mr. Karl and Mr. Webster that formed the foundation for why they would have seen no need to discuss Mr. Karl's personal liability. The Chambers judge summarized this evidence as follows:

> [30] Karl acknowledged that he was a party in his personal capacity in the litigation, saying he "always maintained the view that the allegations made against me in my personal capacity in both the Saskatchewan Litigation and the Alberta Litigation are baseless and without merit" (Affidavit of Bryce Karl, sworn May 6, 2023, para. 15).
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> [31] Further, Karl deposed:
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> > 25. Throughout the Mediation, the parties only discussed liability in respect of Echo Refinery. This is [*sic*], the parties never discussed my liability in my personal capacity or any requirement for me to personally contribute to the Settlement Amount. As noted earlier, I am not, any [*sic*] have never been, a director or shareholder or directing mind of Echo Refinery. I firmly maintain the position that the allegations against me in my personal capacity in the Saskatchewan Litigation and the Alberta Litigation are baseless and without merit.
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> > (Affidavit of Bryce Karl, sworn May 6, 2023, para. 25)
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> [32] A second witness for the defendants was Mark Webster, a vice-president at Echo Refinery. He deposed as follows:
>
> > 13. Throughout the Mediation, the parties only discussed liability in respect of Echo Refinery. That is, the parties never discussed Mr. Karl's liability in his personal capacity or any requirement for Mr. Karl to personally contribute to the Settlement Amount. There was no discussion during the mediation that Mr. Karl, Karl IP Holdings Inc or Independent Oil Corp would be jointly and severally liable. The terms "jointly and severally liable" were never discussed.
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> > (Affidavit of Mark Webster, sworn May 9, 2023, para. 13)

[37] The Chambers judge also summarized the evidence of Mr. Dion that might have provided a motivation to Mr. Karl to contribute personally to the settlement:

> [33] In his affidavit, sworn April 11, 2023, Joseph Dion asserted that Dion [Resources] sought judgment in the Alberta litigation against Karl as a result of his involvement in the improper sale of the technology rights of GFL Environmental Inc.

[38] Importantly, there was nothing in the evidence to indicate that it was ever suggested at the mediation that Mr. Karl would contribute to the settlement payment. Accordingly, while it is true that there was no discussion about *limiting* Mr. Karl's personal liability, it is equally true that there was no discussion about *imposing* that liability. The simple fact is that the issue of Mr. Karl's personal liability for paying the settlement amount was not discussed at all at the mediation.

[39] The distinction I have drawn between the absence of *any* discussion about limiting Mr. Karl's personal liability and the absence of any discussion *imposing* that liability is important because of the case law that the Chambers judge relied upon as the basis for the legal presumption she applied.

[40] As I earlier noted, the Chambers judge identified two decisions, *Burdick* and *Budning*, as pertaining to issues of joint and several liability. However, neither decision supports the operation of a presumption in the circumstances of this case.

[41] *Burdick* concerned an action to enforce a written agreement by which the plaintiff and another person sold land to the defendant and three others. Under the terms of the agreement, covenants were given by the purchasers, and the question arose whether those covenants gave rise to joint and several liability for each purchaser. In this case, at paragraph 27 of the *Chambers Decision*, the Chambers judge quoted lengthy passages from *Burdick*, including the following portion that she emphasized:

> [19] A concise statement of the manner in which persons may become liable or may make themselves liable as joint and several promisors or covenantors is given in *Jenks' Digest of English Civil Law*, 2nd ed., vol. II., 153 and 154, with illustrations as follows:
>
> > 356. Persons contract as joint promisors when they unite in making one and the same promise.
> >
> > …

[42] As is apparent, *Burdick* was about the proper interpretation of a covenant that was acknowledged to exist. There was no controversy in that case as to whether the defendant had given a covenant. The only question was its scope. In short, *Burdick* does not speak to a presumption that might operate to determine if an agreement was reached or a covenant was given but rather to how a joint promise ought to be interpreted.

[43] *Budning* is similarly distinguishable. In that case, a settlement agreement contained a covenant that stated that "the defendants are to pay the plaintiffs" a specific sum of money, followed by an itemization of the amount each of the defendants would pay (at para 9). The court rejected an argument that the settlement agreement should be interpreted in a way that imposed an obligation on each defendant to pay the full amount of the settlement. However, as part of a much longer quotation from that case, the Chambers judge, at paragraph 28 of the *Chambers Decision*, emphasized the following passage:

> [10] Had the settlement agreement provided that the defendants would pay a total of $340,000 with no further or specific allocation, I would have agreed with counsel for the plaintiffs that joint liability should be presumed: *Robert Porter & Sons v. Armstrong*, [1926] SCR 328.

[44] Apart from this comment being *obiter*, it is apparent that it is speaking about a context in which it is acknowledged that a party has given a promise. In short, the concern of the Court in *Budning* was its scope.

[45] In its factum, Dion Resources referred to *Burdick* and *Budning*, as well as a case that the Chambers judge did not refer to, as support for the proposition that when "two parties promise to pay a sum of money without indicating who will pay, courts have presumed that they intended to be jointly bound by their promise". However, this Court was provided with no case law which suggests that the presumption should operate when the very question in dispute is whether two parties have *made* the promise at all.

[46] Here, the question that confronted the Chambers judge was whether there was an agreement on an essential term of the contract, namely who would pay the settlement amount the parties had discussed. The cases given to us may be relevant where there is a question as to the proper *interpretation of a contract*. However, they say nothing about whether a contract was *made* or what to do where there is a dispute over what covenants were given.

[47] Courts have found that a presumption, like that invoked by the Chambers judge, may operate to assist in the interpretation of a covenant given by two persons. For example, in *Agricore Cooperative Ltd. v Lefley*, 2000 ABQB 169 at para 8, 262 AR 156, authority was cited for the proposition that the "presumption is that a contract made by two or more persons is joint, express words being necessary to make it joint and several". See also *Budning* at paras 10–11; *E.A. Towns*

Ltd. v Harvey et al., [1945] 2 DLR 782; *Strata Plan VR 2000 v Shaw* (1999), 70 BCLR (3d) 333 (SC) at paras 22–24; and *Kary Investment Corporation v Tremblay*, 2005 ABCA 273 at para 36, 371 AR 339. In such cases, the court is called upon to interpret the terms of the joint promise given. In doing so, the court will examine the language used by the parties to express their agreement. Where there is a dispute as to how such language ought to be interpreted, the court may consider extrinsic evidence of the circumstances surrounding the formation of the contract. The purpose of looking at extrinsic evidence in such cases is to better understand the objective intentions of the parties, recognizing that the surrounding circumstances or factual matrix must never be used to overwhelm the words chosen by the parties to express their agreement: see *Sattva Capital Corp. v Creston Moly Corp.*, 2014 SCC 53 at para 57, [2014] 2 SCR 633; and *Mosten Investments Ltd. v The Manufacturers Life Insurance Company*, 2021 SKCA 36 at paras 82–84, [2021] 9 WWR 1.

[48] In this case, the question is not how a common promise made by two or more persons should be interpreted. Rather, the issue is whether a promise was made at all by Mr. Karl. In short, the answer to the question of whether the parties had reached an agreement, and if Mr. Karl had given a covenant under it, depended on the evidence of what the parties said and did in the context of the relevant surrounding circumstances. The Chambers judge erred in law when she found that Mr. Karl's "personal liability is presumed" because the matter of his liability was not discussed at the mediation (*Chambers Decision* at para 34). It was only because of her reliance on a legal presumption that the Chambers judge was able to conclude that there were no material facts in dispute in relation to who must pay the settlement amount (see para 46). In the result, the basis for the grant of summary judgment depended on the Chambers judge's legal error. The Chambers judge ultimately presumed at paragraph 24 of her decision that a joint promise was made because Mr. Karl was named personally in the action and said nothing at the mediation about his personal liability. A "joint promise" cannot simply be presumed in such circumstances.

V. CONCLUSION

[49] For the reasons I have given, I would set aside the entirety of the *Chambers Decision*, save and except the dismissal of the application by Mr. Karl and Echo Refinery seeking a declaration. In my view, both applications brought before the Chambers judge raised genuine issues requiring a trial. Given my conclusion, there will be no order as to costs in connection with the proceedings

before the Court of King's Bench. Mr. Karl has achieved substantial success in his appeal before this Court and so, I would grant to him his costs of this appeal, to be assessed in the usual way.

"Bardai J.A."

Bardai J.A.

I concur. "Leurer C.J.S."

Leurer C.J.S.

I concur. "Kalmakoff J.A."

Kalmakoff J.A.