Clerk's Stamp

COURT FILE NUMBER	2001-09142
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	GURPREET LAIL-DHALIWAL and JASPREET LAIL
RESPONDENTS	MURAD TEJPAR AND MAHMOOD TEJPAR
DOCUMENT	**BRIEF OF THE RESPONDENTS FOR THE APPLICATION BEFORE THE HONOURBLE JUSTICE G.A. CAMPBELL AT 10:00 AM ON MAY 20, 2022**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY SUBMITTING THIS DOCUMENT

VERJEE LAW
Barristers & Solicitors
200, 128 – 2 Avenue SE
Calgary, Alberta T2G 5J5

Attention: **Zul Verjee, Q.C.**
Nicholas McIlhargey
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Facsimile: (403) 532-8870
E-Mail: zverjee@verjeelaw.com
nmcilhargey@verjeelaw.com
File No.: 533653-2682

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF OPPOSING COUNSEL

BENNETT JONES LLP
Barristers and Solicitors
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File No.: 90471.1

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POSITION OF THE RESPONDENTS

1. The parties are directors and shareholders of an Alberta numbered corporation, 1178929 Alberta Ltd. (the **"Corporation"**). Each party controls 25% of the voting shares of the Corporation.

2. The within action was brought by the Respondents, Murad Tejpar and Mahmood Tejpar (the **"Tejpars"**), via an Originating Application for the liquidation and dissolution of the Corporation under Section 215 of the *Business Corporations Act,* R.S.A. 2000, c. B-9.[1]

3. The Corporation was incorporated by the parties on June 27, 2005, for the purpose of purchasing land for development. In 2009, the corporation ceased operation. It has since monetized all of its assets, with the exception of a single loan receivable. The total assets of the Corporation, including the outstanding receivable, are insufficient to pay out the totality of claims made by its creditors.

4. On November 19, 2021, Justice K. M. Horner granted an Order, made effective at 12:00 pm on November 26, 2021, appointing Alvarez & Marsal Canada Inc. as referee (the **"Referee"**) to run a claim's process to determine the value of all the creditors' claims against the Corporation. A claim's process was subsequently undertaken by the Referee and a Notice to Claimants outlining the Referees initial findings provided to the creditors on March 16, 2022.

5. The application before the court today has been brought by the Referee for a final distribution of the remaining proceeds in the Corporation on a pro rata basis to the creditors as set out in the First Report of Alvarez & Marsal Canada Inc. and for the Referee's discharge. The Tejpars are in agreement with the application brought by the Referee, but wish to address the matter of costs between the parties as the court's decision may effectively conclude the underlying action.

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[1] TAB 1.

6. The Tejpars submit that the Originating Application should never have been necessary. The Tejpars made repeated attempts to address the objections of the Applicants, Gurpreet Lail-Dhaliwal and Jaspreet Lail (the **"Lails"**), regarding the calculation of the creditor loans outlined in the Corporation's ledgers. Despite the Tejpars' efforts, the Lails' refused to engage with the Tejpars or to comply with their obligations to the Corporation, resulting in the Corporation's default on its mortgage obligations and forcing the Tejpars to initiate the within action.

7. Since the underlying action commenced, the Lails have taken steps to marginalise the Tejpars' interests, conducting the affairs of the Corporation without the Tejpars' knowledge or consent, and without the requisite corporate authority to act. The Lails have further forced the assignment of a Referee at great cost to the Corporation. The Referee's findings support the Tejpars' position regarding the creditor loan amounts owed by the Corporation, making them the successful party in this litigation and it is respectfully submitted that the Tejpars are entitled to their costs.

COSTS

8. The Tejpars' submit that they are entitled to costs based on partial indemnity of the legal fees incurred in accordance with the Court of Appeal's recent decision in *McAllister v Calgary (City)*, 2021 ABCA 25 (***"McAllister"***), or in the alternative, enhanced costs as a multiple of the reasonable Schedule "C", Division 2 of the Alberta *Rules of Court,* Alta. Reg 124/2010 (the **"Rules of Court"**) fees imposed. In the further alternative, the Tejpars submit that the full cost of the Referee should be borne by the Lails.

9. The findings of the Referee are generally in agreement with the creditor loan amounts outlined in the general ledgers of the Corporation. For reference, the general ledgers set out the creditors' loans as follows:[2]

    a) $854,440.04 to the Tejpars ($831,559.22 confirmed by the Referee);

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[2] TAB 2 at paras 22 – 26 and TAB 3.

b) $223,316.33 to the Lails ($236,709.08 confirmed by the Referee);

c) $18,070.30 to Amarjit Kaur Lail and the estate of Paul Lail Sr. ($42,420.30 confirmed by the Referee);

d) $402,164.92 to Salim Lalani, Noor Noorani and Karim Kaba ($401,500.85 confirmed by the Referee); and

e) $241,428.57 to Bellagio Homes Inc. (**"BHI"**) ($241,428.57 confirmed by the Referee).

10. At all material times, the Lails had access to the general ledgers of the Corporation and the contact information of the Corporation's accountant which prepared the Corporation's financials. Further, the Lails or their representatives participated in the review of the Corporation's financial statements and provided their approval regarding same every year between 2005 and 2018.[3]

11. In October of 2018, the Lails began to dispute the amounts contained within the general ledgers, however, they failed to provide any evidence in support of their allegation that the creditor amounts outlined in the general ledgers were incorrect. The Tejpars met with the Lails on numerous occasions between October 2018 and July 2020 to come to an understanding regarding the Lails' concerns and attempt to rectify the parties dispute.[4]

12. During the parties' meetings the Tejpars made requests of the Lails to provide back up documentation to support their position on the creditor loan amounts. The Lails repeatedly ignored these requests and failed to produce any evidence or alternative theory in support of their position.[5]

13. Despite repeatedly reviewing the general ledgers of the Corporation with the Lails, and providing them with the supporting documentation that went into the general ledgers calculation, the Lails refused to accept the creditor loan amounts outlined in the general

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[3] TAB 2 at paras 4 – 6, 21 and 27.
[4] TAB 2 at paras 27 and 28.
[5] TAB 2 at paras 28 and 29.

ledgers.

14. The Lails further failed to cooperate with the Tejpars throughout this period, stymieing the Corporation's ability to function and obstructing the parties' efforts to sell the Corporation's assets. For instance, the Lails' failed to respond to requests made by the Servus Credit Union (**"Servus"**) in regards to the Corporation's mortgage obligations and Jaspreet Lail in particular, failed to contribute his agreed upon share of the payments for the Corporation's mortgage obligations for the period January and March 2018, as well as February, March and May through September 2019.[6]

15. The Lails' failure to pay their share of the Corporation's mortgage obligations, as well as their refusal to communicate with the Tejpars or Servus made it impossible for the Corporation to meet its obligations to the Servus, leading to the Tejpars filing of the underlying Originating Application for the liquidation and dissolution of the Corporation.

16. After the within action was filed, the Lails' improper conduct continued. The details regarding their bad faith actions are outlined extensively within Murad Tejpar's Affidavits, filed January 14, 2021 and June 7, 2021, and are generally summarized as follows:

    a) In October 2020, the Lails' unilaterally listed and sold the Corporation's Morgan Rise property without the Tejpars' knowledge or consent and without having the requisite corporate authority to act;[7]

    b) The initial sale of the Morgan's Rise property subsequently fell through in late October 2020. Despite having received a request from the Tejpars that they be included in all further decisions related to the sale of the Corporation's property, in early November 2020, the Lails again listed and sold the Morgan's Rise property without informing the Tejpars or having the requisite corporate authority to act;[8]

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[6] TAB 2 at paras 29 – 30.
[7] TAB 4 at para 7.
[8] TAB 4 at paras 10 – 13.

c) In mid November 2020, the Lails retained Michael Strilchuk of Strilchuk Law to represent the Corporation in the sale of the Morgan's Rise property, without the Tejpars' knowledge or consent. Mr. Strilchuk had previously acted for the Lails in their dispute with the Tejpars and was in direct conflict with the Tejpars. Once again, the Lails' lacked the requisite corporate authority to retain counsel on behalf of the Corporation;[9]

d) In early 2021, the Lails refused to consent to the sale of the Corporation's 20 Acres property unless their realtor was provided carte blanche to control the sale without need for the directors, and specifically the Tejpars' consent;[10]

e) In early February 2021, while the parties were addressing the Lails' demands in order to enter into a resolution to sell the 20 Acre property, the Lails' listed and sold the 20 Acres property to the property's current tenant without informing the Tejpars or having the requisite corporate authority to act;[11]

f) On February 9, 2021, the Tejpars' learned that the Lails were involved in discussions with Servus to address foreclosure proceedings it had filed against the Corporation. The Tejpars were neither informed of these discussions nor copied on the Lails' communications with Servus, only learning of them when Servus contacted the Tejpars' counsel directly;[12]

g) In late February 2021, the Lails unilaterally made the decision to let improvements the tenant had made on the 20 Acres property stand in place of the required deposit for the sale, without the knowledge or involvement of the Tejpars;[13]

h) In late February 2021, the Lails unilaterally made the decision to relist the 20 Acres property, without the knowledge or involvement of the Tejpars; [14]

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[9] TAB 4 at paras 23 – 27.
[10] TAB 5 at paras 4 – 9.
[11] TAB 5 at para 11.
[12] TAB 5 at para 17.
[13] TAB 5 at para 23.
[14] TAB 5 at para 23.

i) After February 2021, the closing date for sale of the 20 Acres property was amended unilaterally on two occasions by the Lails, first to April 26, 2021, and then to April 30, 2021, without the knowledge or involvement of the Tejpars;[15] and

j) Despite repeated requests by the Tejpars to be included in communications related to the sale of the properties or the affairs of the Corporation, the Lails' repeatedly failed to copy the Tejpars on any communications with third parties throughout the litigation.

17. This Honourable Court has a broad discretion in awarding costs pursuant to Rules 10.29, 10.31 and 10.33 of the Alberta *Rules of Court*.

18. Rule 10.29 provides that as a general rule, the successful party in an action is entitled to a costs award against the unsuccessful party, subject to the Court's general discretion and any specific rules, such as Rule 4.29, which sets out the costs consequences resulting from formal offers to settle.

19. In turn, the court's general discretion is governed by the factors enumerated in Rule 10.33 all of which the Court may consider in making a costs award, including "the result of the action and the degree of success of each party; the amount claimed and the amount recovered" as well as, more generally, "any other matter related to the question of reasonable and proper costs that the Court considers appropriate".

20. After considering the factors described in Rule 10.33, the Court can make a costs award under Rule 10.31 on the basis that they represent the "reasonable and proper costs" incurred by a party who was successful in litigating its claim. Rule 10.31 expressly authorizes the Court to use its discretion in implementing a reasonable and proper costs award and lists several options open to a court in awarding costs, including awarding costs on a percentage of legal costs incurred without reference to Schedule "C", Division 2 of the Alberta *Rules of Court*.

21. The Tejpars respectfully submit that the evidence demonstrates the Lails have acted in bad faith in their dealings with the Tejpars and the Corporation. The Lails have been

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[15] TAB 5 at para 27.

uncooperative and failed to communicate with the Tejpars throughout the litigation, conducting the affairs of the Corporation as they saw fit and without any regard for the Tejpars' input. Despite their efforts to explain away these acts as in the best interests of the Corporation, this alone, without more, does not excuse their decision to unilaterally make decisions on behalf of the Corporation.

22. Further, it is clear that it was the Lails' own misconduct, and refusal to cooperate with Servus, which led to the Corporation's default on its mortgage obligations. The argument that the Lails' subsequent failure to conduct the affairs of the Corporation properly, or include the Tejpars in communications, should therefore be excused because they were acting in the Corporation's best interests is disingenuous. There is nothing in evidence to support an argument that the Lails needed to act without the proper corporate authority and the Lails' improper conduct deserves sanction in the form of enhanced party and party costs, or an order requiring the Lails to bear sole responsibility for payment of the Referees' fees.

23. Moreover, the Tejpars' submit that the entire exercise of the claim's process was unnecessary given the Referee's findings and that the claim's process has resulted in the parties unnecessarily incurring costs that otherwise would not have been incurred. As previously referenced, the findings of the Referee are generally in line with the Tejpars' position; that the creditor loan amounts were as outlined in the general ledgers of the Corporation.

24. In contrast, the Lails' have refused to recognize any amount claimed by the Tejpars or the third-party creditors, Salim Lalani, Noor Noorani and Karim Kaba. This behaviour continued throughout the litigation, and was consistently outlined in without prejudice correspondence from the Lails, where they alleged that there was no evidence to support the Tejpars' claim, and that the claims of Karim Kaba, Salim Lalani, and Noor Noorani were not the Lails' concern.

25. It has always been the intention of the Tejpars to resolve the parties dispute through a pragmatic approach. The Tejpars made significant efforts to address the Lails' objections both prior to and during the litigation. As has already been highlighted, the supporting documentation that went into the general ledgers' calculation was provided to the Lails and

they, or their representatives, had an opportunity to review the Corporation's financials on an annual basis before they were finalized.

26. Practical means to resolve the conflict on a without prejudice basis were also proposed by the Tejpars throughout the litigation in an effort to save the significant time and expense necessary to fully litigate this dispute. These proposals included:

    a) The assignment of the Corporation's assets and liabilities to each shareholder in place of their outstanding shareholder loans; and

    b) To hold an arbitration to resolve matters in the fall of 2020, wherein the Tejpars agreed to pay for the participation of, and share representation with, Salim Lalani, Noor Noorani and Karim Kaba in order to secure their involvement to ensure that the arbitration could proceed.

27. Additionally, the Tejpars made a number of without prejudice offers to distribute the monetized assets of the Corporation amongst the creditors on a pro-rata basis in a similar fashion to what has been proposed by the Referee.

28. On October 5, 2021, in particular, the Tejpars proposed a division of the monetized assets of the Corporation amongst the creditors as follows:

    a) 54% to the Tejpars;

    b) 21% to the Lails, Amarjit Kaur Lail and the estate of Paul Lail Sr.; and

    c) 25% to Karim Kaba, Salim Lalani, and Noor Noorani.

    These numbers are consistent with the Referee's findings which has the Tejpars receiving 47.4%, the Lails, Amarjit Kaur Lail and the estate of Paul Lail Sr. receiving 15.9% and Karim Kaba, Salim Lalani, and Noor Noorani receiving 22.9% of the monetized assets of the Corporation.,

    The Lails rejected the Tejpars' proposal and in turn proposed that they receive an amount equating to 39% of the monetized assets, a number far in excess of the Referee's findings.

29. Given the nominal difference between the Referee's finding and the creditor loans set out in the general ledgers, it is submitted that the Tejpars have, in fact, been successful in the litigation, and are, therefore, entitled to costs on an enhanced party-to-party basis. Alternatively, the Lails' insistence on the need for the Referee is not supported by its findings and the Lails should bear sole responsibility for payment of the Referees' fees.

30. The Tejpars have incurred significant expenses in dealing with this matter in the amount of $175,417.98 and therefore seek to recover costs on a percentage of the legal fees actually incurred over two years of procedural and other litigation steps taken to address the within action.

31. The Alberta Court of Appeal in *McAllister* looked at the issue of party and party costs and opined that cost awards should approximate 40 to 50% of the successful party's incurred expenses.[16] While this is not a hard and fast rule, it is a useful reference point to establish that which is typically considered to be "*proper and reasonable costs*" in conjunction with the factors set out in Rule 10.33. The Court of Appeal further remarked that while in some cases the application of Schedule "C", Division 2 of the *Rules of Court* may yield reasonable and proper costs, Schedule "C" is not a "*standard*" or a "*starting point*".[17] Rule 10.31 is clear that Schedule "C" is one of many options the Court may use, or not use, to inform a cost award.

32. In the alternative, if this Honourable Court is unwilling to exercise its discretion to award costs as a percentage of the legal fees actually incurred, it is respectfully submitted that this is an appropriate circumstance to award costs on an enhanced scale, pursuant to a multiple of the fees set out in Schedule "C", Division 2 of the *Rules of Court*, in particular due to the improper conduct of the Lails throughout the litigation.

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[16] TAB 6 at paras 42-45.
[17] TAB 6 at para 53.

RELIEF REQUESTED

33. The Tejpars seek an order of this Honourable Court:

a) Awarding costs for the underlying application to the Tejpars in the amount of 50% of the legal expenses actually incurred by the Tejpars;

b) In the alternative, awarding enhanced costs, at a minimum, double those to which the Tejpars would be entitled pursuant to the Schedule "C" tariff fees; or

c) In the further alternative, directing that the Lails bear responsibility for payment of the Referee's fees.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Calgary, in the Province of Alberta, this 12 day of May, 2022.

VERJEE LAW

Per: _____

Zul Verjee, Q.C. / Nicholas McIlhargey
Solicitors for the Respondents, Murad Tejpar and Mahmood Tejpar

TABLE OF AUTHORITIES

Case Law

1. *McAllister v Calgary (City),* 2021 ABCA 25

Legislation

1. *Alberta Rules of Court,* Alta Reg 124/2010

Tab 1

COURT FILE NUMBER	2001-09142
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	MURAD TEJPAR and MAHMOOD TEJPAR
RESPONDENTS	GURPREET LAIL-DHALIWAL and JASPREET LAIL
DOCUMENT	**ORIGINATING APPLICATION** FORM 7 [RULE 3.8]
PARTY FILING THIS DOCUMENT	MURAD TEJPAR and MAHMOOD TEJPAR
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**VERJEE & ASSOCIATES** Barristers & Solicitors 200, 128 – 2 Avenue SE Calgary, Alberta T2G 5J5 **Attention:** **Zul Verjee, Q.C.** **Nicholas McIlhargey** Telephone: (403) 532-8881 Facsimile: (403) 532-8870 E-Mail: zul.verjee@verjee-law.com Nicholas.mcilhargey@verjee-law.com File No.: 533653-2682

NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: August 5, 2020
Time: 3:30 p.m
Where: Virtual Courtroom
Calgary Courts Centre, 10th Floor, North Tower, 601 - 5 Street SW, Calgary, Alberta
Before: Justice Kent

Go to the end of this document to see what else you can do and when you must do it.

Basis for this claim:

1. The Parties are directors and shareholders of 1178929 Alberta Ltd. (the **"Corporation"**) a numbered corporation which owns property in Alberta. The Parties each control 25% of the voting shares in the Corporation.

2. The Corporation was incorporated by the Parties on June 27, 2005, for the purpose of purchasing land for development. To fund the purchase of land the Corporation entered into two credit facility agreements with the Servus Credit Union Ltd. (the **"Servus Credit Union."**) The credit facilities were secured through two mortgages on property the Corporation had purchased, as well as a Joint and Several Guarantee and Postponement of Claim entered into with the Parties.

3. In 2009 the corporation ceased operation. It retained the property mortgaged to the Servus Credit Union.

4. Since 2009, the Parties have provided loans to the Corporation to make up shortfalls associated with the Servus Credit Union mortgage payments, and with regards to taxes, insurance, association fees and utilities on the properties still owned by the Corporation.

5. In or around October 2018, the Respondents began to dispute the shareholder loan amount attributable to the Applicants and the Respondents in the Corporation's financial Statements. The disagreement in relation to the shareholder loans has led to a breakdown in the Parties relationship and default on the mortgages held by the Servus Credit Union.

6. The Applicants submit that it is not possible for the Parties to resolve their dispute. The dispute has damaged and will continue to damage the Corporation and its shareholders as it is preventing the Corporation from rectifying its mortgage defaults with the Servus Credit Union.

Remedy sought:

7. The Applicants seek the following relief from this Honourable Court:

a) An Order pursuant to Section 215 of the Alberta *Business Corporations Act*, RSA 2000, c B-9, dissolving the Corporation and liquidating its assets on just and equitable grounds;

b) In the alternative, an Order pursuant to Section 242 of the Alberta *Business Corporations Act*, RSA 2000, c B-9, directing the Respondents to purchase the Applicants shares in the Corporation;

c) Costs of this application on a full indemnity basis, or as otherwise ordered by this Court; and

d) Such further and other relief as this Honourable Court deems fair and just in the circumstances.

Affidavit or other evidence to be used in support of this application:

8. Affidavit of Murad Tejpar, sworn and filed; and

9. Such further and other materials as this Honourable Court may permit.

Applicable Rules:

10. Rules 1.2 – 1.3, 3.8 – 3.14, 10.29 – 10.31 and 10.33 of the Alberta *Rules of Court*, Alta. Reg. 124/2010.

Applicable Acts and Regulations:

11. *Business Corporations Act*, R.S.A. 2000., c. B-9.

WARNING

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings against the applicant(s) and against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of this form. If you intend to rely on an affidavit or other evidence when the originating application is heard or considered, you must reply by giving reasonable notice of that material to the applicant(s).

Tab 2

COURT FILE NUMBER	2001-09142
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT(S)	MURAD TEJPAR and MAHMOOD TEJPAR
RESPONDENT(S)	GURPREET LAIL-DHALIWAL and JASPREET LAIL.

Clerk's Stamp

CLERK OF THE COURT
FILED
JUL 28 2020
JUDICIAL CENTRE OF CALGARY

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

VERJEE & ASSOCIATES
Barristers & Solicitors
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Attention: **Zul Verjee, Q.C.**
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File No.: 533653-2682

Affidavit of MURAD TEJPAR sworn on the 24 day of July, 2020

I, **Murad Tejpar**, of Calgary, Alberta, MAKE OATH AND SAY THAT:

1. I am one of the Applicants named herein and, as such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, I do verily believe same to be true.

Background

2. The co-Applicant, Mahmood Tejpar, the Respondents, Gurpreet Lail-Dhaliwal and Jaspreet Lail, and I (together the **"Parties"**) are shareholders in 1178929 Alberta Ltd. (the **"Corporation"**). We are all Directors of the Corporation, which owns property in Alberta. Each shareholder controls 25% of the voting shares. There is no unanimous shareholder agreement between the Parties and the Corporation. A true copy of a corporate registry search result for 1178929 Alberta Ltd. is hereto attached as **Exhibit "A"**.

3. The Corporation was incorporated by the Parties on June 27, 2005, for the purpose of purchasing land for development. Another entity, Bellagio Homes Inc. (**"BHI"**), was subsequently incorporated by Mahmood Tejpar, and a relation of the Respondents, Pawan Dhaliwal, on July 12, 2007, to carry out the construction of housing developments on the acquired land. Although the Corporation and BHI are separate entities, it was the Parties' intention that these corporations would work in concert with one another. A true copy of a corporate registry search result for Bellagio Homes Inc. is hereto attached as **Exhibit "B"**.

4. Decisions related to the operation of the Corporation and BHI were made jointly by the Parties and their relations. The Applicants and their father, Mumtazali Tejpar, made up the **"Tejpar Group"** and the Respondents and their relations, Paul Lail Sr., Pawan Dhaliwal, and Amarjit Kaur Lail, made up the **"Lail-Dhaliwal Group"**. While the Parties relations are not, and have never been, shareholders or directors of the Corporation, the reality is that they played a central role in the manner in which the Corporation and BHI were operated.

5. In particular, Paul Lail Sr. and Mumtazali Tejpar, the patriarchs of the two groups, were heavily involved in the formation of the Corporation and in choosing the land it purchased. The Parties primarily acted on the direction of Paul Lail Sr. and Mumtazali Tejpar when making decisions with respect to the purchase, development and sale of land.

6. Paul Lail Sr. also actively involved himself in overseeing the Corporation's financials, including annually reviewing the corporate trial balance between 2005 and 2013 and meeting with the Corporation's accountant on behalf of the Lail-Dhaliwal Group to have the financials approved. The other members of the Lail-Dhaliwal Group, including the Respondents, relied upon Paul Lail Sr. to represent their interests during the operative years of the Corporation and did not choose to take an active part in the corporate decision making until late 2017.

7. The Corporation carried on the business of purchasing and selling land between 2005 and 2009. This included a number of properties in the community of Aspen Woods in southwest Calgary, as well as 20 acres of land in Springbank (the **"20 Acres"**) and a property located at 204 Morgan Rise SW (**"Morgans Rise"**). The majority of land purchased by the Corporation was developed by BHI before it was sold. Paul Lail Sr. acted as realtor for the Corporation and made a commission on each sale.

8. Funding for the purchase of land and its development was provided through the Tejpar Group, the Lail-Dhaliwal Group, several outside investors and through credit facilities provided by Servus Credit Union Ltd. (**"Servus Credit Union"**). The loans or investments made to the Corporation were recorded in the Corporation's general ledgers, which for the period of 2005 through 2009 were prepared by the accounting firm, Ruhal, Warren and Chugh (**"RWC"**), which had been retained by Paul Lail Sr. on behalf of the Corporation. Attached hereto and marked as **Exhibit "C"** is a copy of the Corporation's general ledgers for the period 2005 to 2009.

9. During this period, members of the Tejpar Group and the Lail-Dhaliwal Group would meet with RWC at the end of each fiscal year to review and approve the Corporation's financial statements before they were finalized. Mahmood Tejpar, as well as Paul Lail Sr. and Pawan Dhaliwal of the Lail-Dhaliwal Group, attended at each review of the Corporation's financial statements which took place between 2005 and 2009. Each shareholder was provided an opportunity to review and raise concerns with respect to the financial statements ahead of the meeting.

10. In May 2007, the Corporation loaned $80,000.00 to myself and Mahmood Tejpar and $80,000.00 to the Respondents to fund the purchase of land in Saskatchewan (the **"Aberdeen Land"**) by a numbered corporation, 101103086 Saskatchewan Ltd. The Parties are shareholders of 101103086 Saskatchewan Ltd., each controlling 12.5% of the voting shares.

The numbered corporation, 101103086 Saskatchewan Ltd., currently retains ownership of the Aberdeen Land.

11. On October 29, 2007, the Corporation entered into a General Security Agreement with Servus Credit Union which guaranteed the mortgage debt on 20 Acres. I no longer have a copy of the General Security Agreement, with all available copies residing in the Respondents' possession, but they are mentioned in the Credit Facility Letter attached as **Exhibit "E"** to my Affidavit.

12. Similarly, on March 11, 2009, the Corporation entered into a Specific Security Agreement with Servus Credit Union which guaranteed the mortgage debt on the Morgans Rise. I no longer have a copy of Specific Security Agreement, with all available copies residing in the Respondents' possession, but they are mentioned in the Credit Facility Letter attached as **Exhibit "E"** to my Affidavit.

13. In August 2009, the Parties decided to refrain from purchasing or developing further land through the Corporation or BHI due to the state of the economy. The Corporation retained the 20 Acres and Morgans Rise, however, which remained subject to the mortgages held by Servus Credit Union.

14. After 2009, the Parties sought an alternative accounting firm for the Corporation to reduce costs. Myself and Paul Lail Sr. retained Rahim Samji Euphoria Management (**"RSE Management"**) on behalf of the Corporation in 2010. RSE Management provided accounting for the 2010 fiscal year, after which it was replaced by Paul Lail Sr. and myself with the accountant Aruna Lalani.

15. In or around early 2011, myself, Mahmood Tejpar, Pawan Dhaliwal and Aruna Lalaini met with Paul Lail Sr. at his request. During the meeting, Paul Lail Sr. recommended that the shareholder loans in BHI be transferred to the Corporation now that neither company was operating. It was my understanding that this was done to concentrate the shareholder loans of the Tejpar Group and the Lail-Dhaliwal Group within a single Corporation for tax purposes. The transfers were documented in the Corporation's 2011 general ledger. Attached hereto and marked as **Exhibit "D"** is a copy of the Corporation's general ledger for 2011.

16. Subsequently, the Parties entered into an Unlimited Joint and Several Guarantee and Postponement of Claim with Servus Credit Union, guaranteeing the mortgage debt on Morgans Rise and the 20 Acres, respectively. Further, myself, Mahmood Tejpar, and Gurpreet Lail-Dhaliwal all entered into a separate Formal Assignment and Postponement of Shareholder's Loans with Servus Credit Union on or around April 26, 2012. I no longer have a copy of these documents, with all available copies residing in the Respondents' possession, but they are mentioned in the Credit Facility Letter attached as **Exhibit "E"** to my Affidavit.

17. In 2013, Paul Lail Sr. passed away. Mahmood and I continued to meet with Aruna Lalani to review the financial statements on an annual basis. The remaining members of the Lail-Dhaliwal Group continued to receive and approve of the Corporation's financial statements, but chose not to attend the review of these statements with the accountant.

18. Subsequently, in late 2017, two separate offers were made for the purchase of Morgans Rise in the amount of $1,250,000.00 and $1,290,000.00. The Parties discussed the offers and made a decision to reject them.

19. On March 14, 2018, the Corporation received a Credit Facility Letter from Servus Credit Union approving refinancing of the Morgans Rise and 20 Acre mortgages. Attached hereto and marked as **Exhibits "E"** to this my Affidavit is a true copy of the Credit Facility Letter, dated March 14, 2018.

20. The Corporation still owns Morgans Rise and the 20 Acres, both of which remain subject to the mortgages held by Servus Credit Union. As of June 11, 2020, $912,773.02 was outstanding on the mortgage for Morgans Rise and carried a monthly mortgage payment of $8,622.00. In turn, the amount owing in relation to the mortgage on the 20 Acres was in the amount of $759,529.25 and carried a monthly mortgage payment of $7,211.00.

Shareholder Loans and Default on Mortgages

21. Between 2009 and 2020, the Tejpar Group and the Lail-Dhaliwal Group provided loans to the Corporation to make up shortfalls associated with Servus Credit Union mortgage payments, and with regards to taxes, insurance, association fess and utilities on the 20 Acres and Morgans Rise properties. The loans were recorded in the Corporation's financial statements and approved by the Parties on an annual basis prior to being finalized by the accountant.

22. I have reviewed the general ledgers of the Corporation (as of April 30 of the respective years) prepared by RWC, RSE Management and Aruna Lalani and do verily believe the same to be true that in 2018, the shareholder loan balance of the Parties was set out as follows:

    a. $475,247.14 to Mahmood Tejpar;

    b. $342,400.10 to Murad Tejpar;

    c. $130,732.03 to Gurpreet Lail-Dhaliwal; and

    d. $57,509.86 to Jasprit Lail.

    Attached hereto and marked as **Exhibit "F"** is a copy of the Corporation's general ledgers for the years 2010 to 2018.

23. I have further reviewed the financial records of the Corporation for the period of May 2018 to May 2019, and verily believe to be true that the following additional shareholder loans have been made to the Corporation since the 2018 fiscal year ended:

    a. $18,470.15 has been provided by Gurpreet Lail-Dhaliwal;

    b. $18,795.42 has been provided by Jaspreet Lail; and

    c. $44,022.40 has been provided by myself and Mahmood Tejpar from a joint account.

24. Accounting has not been completed for the 2019 fiscal year.

25. Given the foregoing, the shareholder loans of the Corporation currently stand as follows:

    a. $497,258.34 to Mahmood Tejpar;

    b. $364,411.30 at Murad Tejpar;

    c. $149,202.18 to Gurpreet Lail-Dhaliwal; and

    d. $76,305.28 to Jaspreet Lail.

26. In addition to the foregoing shareholder loan amounts, I do verily believe that the general ledgers and financial records of the Corporation set out the following loan amounts as owing to other members of the Lail-Dhaliwal Group, several third-party investors and BHI:

    a. $7,042.58 to the estate of Paul Lail Sr.;

    b. $11,027.72 to Amarjit Kaur Lail;

    c. $100,536.58 to Karim Kaba;

    d. $100,536.69 to Salim Lalani;

    e. $201,091.65 to Noor Noorani; and

    f. $241,428.57 to BHI.

27. Despite having had an opportunity to review, and having approved the financial statements between 2005 and 2018, the Respondents began to dispute the shareholder loan amount attributable to the Parties in the Corporation's financial Statements in or around October 2018.

28. Mahmood Tejpar and I subsequently met with the Lail-Dhaliwal Group on a number of occasions to attempt a resolution of the dispute related to the shareholder loan amounts. The most recent meetings have taken place on April 3, 2020, April 19, 2020 and May 3, 2020. Despite these meetings, the Respondents continue to dispute the shareholder loan amounts set out in the Corporation's financial statements. The disagreement in relation to the shareholder loans has led to an ongoing deadlock of the Parties' relationship, which is negatively affecting the Corporation.

29. Further, the members of the Lail-Dhaliwal Group have repeatedly failed to cooperate with Mahmood Tejpar and I or to respond to our requests for information or those requests made by third party investors or Servus Credit Union. This conduct on the part of the Respondents has stymied the Corporation's ability to function and obstructed the Parties' efforts to sell the 20 Acres, Morgans Rise and Aberdeen Lands. Examples of such requests include:

    a. On June 14, 2019, the Parties agreed that myself and Pawan Dhaliwal would obtain separate Market Assessment Valuations for the 20 Acres so that the Parties could agree to a listing price. I obtained a Market Assessment Valuation, but Pawan Dhaliwal failed to do so;

b. On July 16, 2019, Gurpreet Lail-Dhaliwal asked the Parties to provide the Corporation with supporting documentation outlining the shareholder loans made. Mahmood Tejpar and I provided our supporting documentation to the Corporation, but the Respondents' supporting documentation was never produced;

c. Also, on July 16, 2019, Gurpreet Lail-Dhaliwal advised myself, Mahmood Tejpar and an outside investor, Salim Lalani, that the Respondents had retained Ernst and Young to review the Corporation's financials. We were told that Ernst and Young's report would be shared and reviewed with the Parties. To date the report has not been provided;

d. On October 2, 2019, a representative from Servus Credit Union requested that the Parties provide personal net worth statements to assist with obtaining a lower rate for the renewal of the Corporation's mortgages. The Respondents never responded; and

e. Repeated requests by myself and Mahmood in the summer/fall of 2019 and spring of 2020 for back up documentation to demonstrate the Respondents' position on the shareholders loans have been ignored.

30. Furthermore, Jaspreet Lail failed to contribute his agreed upon share of the 20 Acres and Morgans Rise mortgage payments for the months of January and March 2018 as well as February, March and May through September of 2019, resulting in their default.

31. The Lail-Dhaliwal Group's failure to pay their share of the Corporation's mortgage obligations on time, as well as their refusal to communicate has made it impossible for the Corporation to meet its obligations to Servus Credit Union. Mahmood and I have lost confidence in the Respondents' abilities as Directors and no longer trust that they are acting in the best interests of the Corporation.

32. On May 13, 2020, the Corporation received a letter of default from Servus Credit Union. The letter set out that the Corporation had defaulted on its payment, reporting and conditional obligations under the 20 Acres and Morgans Rise mortgages and the Credit Facility Letter, dated March 14, 2018. A period of 15 days was provided to remedy the defaults. Attached hereto and marked as **Exhibit "G"** is a copy of the letter of default received from Servus Credit Union, dated May 13, 2020.

33. The Applicants subsequently retained Zul Verjee, Q.C., Barrister and Solicitor with Verjee & Associates (**"Counsel"**) on May 25, 2020 to assist in resolving their dispute with the Respondents and in responding to Servus Credit Union's letter of default.

34. I have been advised by Counsel and verily believe to be true that Verjee and Associates communicated with counsel for the Respondents, Michael Strilchuk of Strilchuk Law, on a number of occasions in May, June and July 2020, proposing several scenarios to resolve the Parties' dispute. I have further been advised that Verjee and Associates proposed that the parties attend a mediation/arbitration to resolve their dispute in the event an agreement could not be reached.

35. I have been advised by Counsel and verily believe to be true that despite the substantial communications between Verjee and Associates and Mr. Strilchuk, a resolution of the

Parties' dispute was not reached and the Respondents were, and remain, unwilling to attend mediation/arbitration.

36. On June 22, 2020, the Corporation received a further letter from counsel for Servus Credit Union, Tom Gusa, Barrister and Solicitor with Dentons Canada LLP, demanding payment of its indebtedness to Servus Credit Union, totaling $1,672,302.27. A 10-day deadline was provided. Attached hereto and marked as **Exhibit "H"** is a copy of the demand letter received from Mr. Gusa, dated June 22, 2020.

37. I have been advised by Counsel and verily believe to be true that Verjee and Associates subsequently wrote Mr. Gusa on July 3, 2020, requesting that Servus Credit Union forebear on taking further action in relation to the debt until the end of August 2020, to allow the Parties an opportunity to resolve their dispute and rectify the Corporation's defaults. Attached hereto and marked as **Exhibit "I"** is a copy of the letter sent to Mr. Gusa by Verjee and Associates, dated July 3, 2020.

38. I have been advised by Counsel, and verily believe to be true that Nicholas McIlhargey of Verjee and Associates received a telephone call from Mr. Gusa on July 15, 2020. During the call Mr. Gusa advised Mr. McIlhargey that Servus Credit Union was no longer interested in maintaining a relationship with the Corporation and required full payout. Furthermore, he advised that any forbearance period agreed to by Servus Credit Union would require payment of a substantial penalty fee and a consent redemption order for use in the event the extended deadline was not met.

39. Based on the foregoing, I do verily believe that it is not possible for the Parties to resolve their dispute. The dispute has damaged and will continue to damage the Corporation and its shareholders and it is preventing the Corporation from rectifying its mortgage defaults with Servus Credit Union.

40. This Affidavit is made in support of an application for an Order directing the Respondents to purchase the Applicants' shares in the Corporation pursuant to 242 of the *Alberta Business Corporations Act,* RSA 2000, c B-9, or, in the alternative, to have the Court wind-up and dissolve the Corporation pursuant to Section 215 or 242 of the *Alberta Business Corporations Act,* RSA 2000, c B-9.

SWORN (OR AFFIRMED) BEFORE ME)
at City of Calgary, Alberta, this 24 day of)
July, 2020.)
)
)
)
)

Commissioner for Oaths in and for the Province of Alberta

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

MURAD TEJPAR

Tab 3

VOGEL VERJEE

Nicholas McIlhargey
Direct Line: 403.384.0308
e-mail: nmcilhargey@vogelverjee.com

Legal Assistant: Cheryl Abbey
Direct Line: 403.384.0319
e-mail: cabbey@vogelverjee.com

Paralegal: Fabi Pangilinan
Direct Line: 403.384.0305
e-mail: fpangilinan@vogelverjee.com

February 24, 2021

VIA EMAIL
REPLY TO: DOWNTOWN OFFICE

Bennett Jones LLP
2500 Bankers Hall East
855 - 2nd Street SW
Calgary, AB T2P 4K7

Attention: Justin Lambert

Dear Sir:

Subject: ***Murad Tejpar and Mahmood Tejpar v. Gurpreet Lail-Dhaliwal and Jaspreet Lail***
Court File: 2001-09142
Our File: 533653-2682

Further to the Questioning of our client, Murad Tejpar, held on November 24, 2020, please find attached the following responses to the undertakings given at that time:

U/T #1 **Q** Referring to the correction to paragraph 22 of Mr. Murad Tejpar's affidavit, to provide a current breakdown of the various shareholder loan balances.

R **Mr. Tejpar advised that taking into account the correction to paragraph 22 the current shareholder loan balances are as follows:**

- **$498,729.00 to Mahmood Tejpar;**
- **$355,711.04 to Murad Tejpar;**
- **$151,061.35 to Gurpreet Lail-Dhaliwal; and**
- **$72,254.98 to Jaspreet Lail.**

U/T #2	**Q**	To provide any paperwork that supports Mr. Murad Tejpar's evidence that there is a debt owed to the tenant at 20 acres for $90,000.
	R	**The debt owed to the tenant is set out at article 11 of the Residential Tenancy Agreement & Right of First Refusal to Purchase between 1178929 Alberta Ltd. and Mr. Kimball Lacey. A copy of the Residential Tenancy Agreement & Right of First Refusal is attached.**
U/T #3	**Q**	To produce the original MNP email with the archived electronic general ledgers attached.
	R	**A copy of the original email from Mr. Khemani in which the archived electronic general ledgers were provided is attached.**
U/T #4	**Q**	To provide the general ledgers maintained by Ms. Lalani in the format she stored them; to provide in electronic format if they are available in that format.
	R	**Ms. Lalani has advised that the general ledgers are stored in paper format. A copy of Ms. Lalani's correspondence related to same is attached.**
U/T #5	**Q**	To enquire of Ms. Lalani whether she recalls there being any formal assignment documentation put in place with respect to the loan transfer deposed to in paragraph 15 of Mr. Murad Tejpar's affidavit; if so, to produce any such paper she has a copy of.
	R	**Ms. Lalani has provided the attached documentation, with signatures, setting out the loan assignment outlined in paragraph 15 of Murad Tejpars Affidavit.**
U/T #6	**Q**	To make enquiries of Mahmood Tejpar as to why First Calgary Account 1708205 appeared to be registered to both Bellagio Homes and 117.
	R	**Mr. Mahmood Tejpar advised that when 1178929 Alberta Ltd. was first incorporated it operated under the trade name Bellagio Homes. The reference to Bellagio Homes on the First Calgary Account is to the trade name. Accounts for the corporate entity Bellagio Homes Inc. were opened separately, and can be distinguished by use of the full corporate name, Bellagio Homes Inc. The incorporation of Bellagio Homes Inc. was done for tax purposes.**
U/T #8	**Q**	To provide a copy of the market assessment valuation for the 20 acre land.

	R	**A copy of the market assessment valuation by Mr. Jobbagy, dated November 20, 2018, is attached.**
U/T #9	Q	To provide whatever contact information Mr. Murad Tejpar has for Karim Kaba, Salim Lalani, and Noor Noorani including mailing addresses, email addresses, and phone numbers. (TAKEN UNDER ADVISEMENT)
	R	**The contact information Mr. Tejpar has is as follows:** • **Salim Lalani – 403-830-0534** **1144 Falconridge Dr. NE** **salimlala@gmail.com** • **Karim Kaba – 403-826-5529** **karimkaba@gmail.com** • **Noor Noorani – 403-608-6115** **772 East Lakeview Rd** **sulnoor@hotmail.com**
U/T #10	Q	Referring to Exhibit 1 and the balance sheet, to enquire of Ms. Lalani what balances comprised the loan payable line item in the amount of $376,833. (UNDERTAKING DISCHARED AT PAGE 42)
	R	**The loan payable is a breakdown of the loans made by the private investors, as set out in Aruna Lalani's email dated November 9, 2017, which can be seen at Tab 31 of the Applicants' production.**
U/T #12	Q	To provide copies of the T-2s that are available for both Bellagio Homes and 117.
	R	**Copies of the T-2's for Bellagio Homes and 1178929 Alberta Ltd., provided by the accountant Aruna Lalani for the period 2010 – 2018 are attached.**
U/T #13	Q	To produce a copy of the 2018 financial statement for the corporation if that is the last available statement.
	R	**A copy of the 2018 financial statement for 1178928 Alberta Ltd. is attached.**
U/T #14	Q	To produce any Bellagio Homes financial statements produced for any years post 2015.
	R	**Mr. Tejpar inquired with Ms. Lalani, who confirmed that there were no financial statements prepared for Bellagio Homes Inc. after 2015.**

The responses to the remaining outstanding undertakings will be provided to you in due course.

Yours truly,

VOGEL VERJEE

Nicholas McIlhargey
NM/fp
Attachment

Tab 4

INV # 107659

CERTIFICATE

I, Nicholas McIlhargey, Barrister and Solicitor and a Commissioner for Oaths in and for the Province of Alberta, am hereby satisfied that a remote commissioning process was necessary to commission the Affidavit of Murad Tejpar on January 12, 2021. In light of the COVID-19 pandemic, and the public health emergency declared for the Province of Alberta, it was unsafe for medical reasons for the deponent and the commissioner to be physically present together.

Dated the 12 of January, 2021.

Nicholas McIlhargey
Commissioner for Oaths in and for the Province of Alberta
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

COURT FILE NUMBER	2001-09142
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT(S)	MURAD TEJPAR and MAHMOOD TEJPAR
RESPONDENT(S)	GURPREET LAIL-DHALIWAL and JASPREET LAIL
DOCUMENT	SUPPLEMENTAL AFFIDAVIT

INV # 107659

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

VOGEL VERJEE
Barristers & Solicitors
200, 128 – 2 Avenue SE
Calgary, Alberta T2G 5J5

Attention: **Zul Verjee, Q.C.**
Nicholas McIlhargey
Telephone: (403) 532-8881
Facsimile: (403) 532-8870
E-Mail: zverjee@vogelverjee.com
nmcilhargey@vogelverjee.com
File No.: 533653-2682

Affidavit of MURAD TEJPAR sworn on the 12 day of January, 2021

I, Murad Tejpar, of Calgary, Alberta, MAKE OATH AND SAY THAT:

1. I am one of the Applicants named herein and, as such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, I do verily believe same to be true.

2. This Affidavit is supplemental to the Affidavit I swore on July 24, 2020. Any and all capitalized terms used herein and not otherwise defined shall have the same meaning as ascribed to such terms in the initial Affidavit.

3. Since my Affidavit, sworn July 24 2020, was filed, the Parties have continued to work towards a resolution of their dispute. It was the Parties intention to proceed with arbitration, however, the Parties were not able to agree to the terms of arbitration and based on the events outlined below, I now no longer believe that resolution through arbitration is possible.

4. I have been advised by my counsel, Zul Verjee, Q.C. of Vogel Verjee ("**Counsel**"), that on July 29, 2020, Justin Lambert of Bennett Jones LLP contacted the Vogel Verjee office to advise that he had been retained by the Respondents and would be replacing Mr. Strilchuk as their counsel.

5. I have been advised by Counsel and verily believe to be true that on September 2, 2020, a Statement of Claim bearing Action No. 2003-13227 (the "**Servus Action**") was served on myself and Mahmood Tejpar ("**Mahmood**") through the Vogel Verjee office. The Statement of Claim named the Corporation and the Parties to the within Action as Defendants and sought judgment for the Corporation's indebtedness with the Servus Credit Union ("**Servus**"). Attached hereto and marked as Exhibit "A" is a true copy of the Statement of Claim bearing Action No. 2003-13227, which I have reviewed.

6. I have been advised by Counsel and verily believe to be true that on September 22, 2020 a Statement of Defence was filed in the Servus Action on behalf of myself and Mahmood. Attached hereto and marked as Exhibit "B" is a true copy of the Statement of Defence filed on September 22, 2020, which I have reviewed.

7. I have been advised by Counsel and verily believe to be true that on October 30, 2020, Mr. Lambert wrote Mr. Nicholas McIlhargey of Vogel Verjee and advised that his clients had accepted an unconditional offer from a third party to purchase Morgan's Rise for $2.18 million. The Respondents' listing of Morgan's Rise had not been raised with, or approved by, myself and Mahmood or our Counsel at any point prior to this date. Attached hereto and marked as Exhibit "C" is a true copy of the e-mail correspondence between Mr. Lambert and Mr. McIlhargey, dated October 30, 2020, which I have reviewed.

8. I have been advised by Counsel and verily believe to be true that Mr. Lambert subsequently discussed the sale of Morgan's Rise, including the purchase price of $2.18 million, in a phone call with Mr. McIlhargey on November 2, 2020.

9. During the evening of November 2, 2020, I was reviewing the Morgan's Rise listing on the website www.rew.ca. The website said that Morgan's Rise had sold for $1.3 million, approximately $900,000.00 less than advised by Mr. Lambert. I advised my Counsel of the discrepancy immediately.

10. I have been advised by Counsel and verily believe to be true that when Mr. McIlhargey raised the discrepancy in the sale price with Mr. Lambert through email on November 3, 2020, Mr. Lambert replied that the purchase price was $1,218 million and the discrepancy had been a mistake. He further added that the purchase had fallen through and that Morgan's Rise had been relisted by the Respondents. Attached hereto and marked as Exhibit "D" is a true copy of the e-mail correspondence between Mr. McIlhargey and Mr. Lambert, dated November 3, 2020, which I have reviewed.

11. The relisting of Morgan's Rise again took place without the involvement or approval of the myself and Mahmood. Further, I am advised by Counsel and verily believe to be true that the relisting took place without their involvement or awareness.

12. I have been advised by Counsel and verily believe to be true that Counsel wrote Mr. Lambert on November 4, 2020 to, amongst other things, request a copy of the purchase and sale contract for the Morgan's Rise purchase that had fallen through, as well as the name of counsel representing the Corporation for the purpose of the sale. Counsel further demanded that the Respondents include the Vogel Verjee office on any future correspondence related to the sale of Morgan's Rise. Attached hereto and marked as Exhibit "E" is a true copy of the correspondence from Counsel, dated November 4, 2020, which I have reviewed.

13. I have been advised by Counsel and verily believe to be true that Mr. Lambert replied to Counsel on November 5, 2020. In his reply, he advised, amongst other things, that his clients had accepted a conditional offer from a third party to purchase Morgan's Rise. This once again occurred without the involvement of myself, Mahmood, or our Counsel. A purchase agreement accompanying the letter set out that an offer of $1.265 million was accepted by the Respondents on November 3, 2020.

14. I have been advised by Counsel and verily believe to be true that Mr. Lambert's letter further represented that the Respondents would attempt to engage the Vogel Verjee office in future communication related to the sale of Morgan's Rise, however, the name of counsel acting for the Corporation in the sale was not provided. Mr. Lambert also served an unfiled Notice of Appointment to cross-examine me on my Affidavit, sworn July 24, 2020, and raised allegations that the Applicants had not been responsive to past inquires by his office relating to the 20 Acres. Attached hereto and marked as Exhibit **"F"** is a true copy of the correspondence from Mr. Lambert, dated November 5, 2020, along with a copy of the purchase agreement and unfiled Notice of Appointment, which I have reviewed.

15. I have been advised by Counsel and verily believe to be true that the Vogel Verjee office was not copied on any correspondence relating to the sale of Morgan's Rise until November 23, 2020. Further, I have been advised by Counsel and verily believe to be true that as of the date of this Affidavit, Vogel Verjee has never been copied on correspondence with the listing agent or counsel for the purchaser involved in the sale.

16. I have been advised by Counsel and verily believe to be true, that the Respondents' Notice of Appointment was subsequently adjourned by agreement to November 24, 2020 to allow for the production of financial records under the control of myself or Mahmood. I have been advised by Counsel and verily believe to be true that the financial records under the control of myself and Mahmood were provided to Mr. Lambert on November 20, 2020.

17. I have been advised by Counsel and verily believe to be true that on November 9, 2020, Counsel wrote a letter to Mr. Lambert to, amongst other things, request confirmation that the deposit outlined in the most recent purchase agreement for Morgan's Rise (the **"Deposit"**) had been received. Counsel further reiterated the request to be included on all future communication concerning the Morgan's Rise sale and highlighted prior correspondence sent to Mr. Lambert in relation to the 20 Acres property; most recently in an email dated November 3, 2020, attached to this Affidavit as Exhibit **"D"**. Attached hereto and marked as Exhibit **"G"** is a true copy of the correspondence from Counsel, dated November 9, 2020, which I have reviewed.

18. I have been advised by Counsel and verily believe to be true that confirmation of the Deposit and the name of counsel representing the Corporation in the sale was not provided.

19. I have been advised by Counsel and verily believe to be true that on November 16, 2020, Mr. Mellhargey sent a letter to Mr. Lambert to, amongst other things, reiterate his request for confirmation that the Deposit had been received. Mr. Mellhargey further requested that Mr. Lambert produce copies of the financial records under his clients' control to assist with resolution of the Parties dispute. Attached hereto and marked as Exhibit **"H"** is a true copy of the correspondence from Mr. Mellhargey, dated November 16, 2020, which I have reviewed.

20. I have been advised by Counsel and verily believe to be true that Mr. Lambert wrote to Mr. McIlhargey on November 17, 2020, to, amongst other things, confirm the realtor's receipt of the Deposit and provide details related to the sale of Morgan's Rise, including that conditions to the sale were waived on November 14, 2020. I have been advised by Counsel that the Vogel Verjee office was not privy to the Respondents communication with the realtor.

21. I have further been advised by Counsel and verily believe to be true that Mr. Lambert wrote that the financial records under his clients' control would be produced as soon possible, but not prior to my cross-examination. Attached hereto and marked as Exhibit "I" is a true copy of the correspondence from Mr. Lambert, dated November 17, 2020, which I have reviewed.

22. I have been advised by Counsel and verily believe to be true that although the financial records under the control of myself and Mahmood were provided to Mr. Lambert on November 20, 2020, the financial records under the Respondents' control have not been disclosed or produced as of the date of this Affidavit.

23. I have been advised by Counsel and verily believe to be true that later on November 17, 2020, Mr. Lambert sent an email advising that Michael Strilchuk, of Strilchuk Law, who had previously been acting as counsel for the Respondents in this matter, was representing the Corporation in the sale of Morgan's Rise. Attached hereto and marked as Exhibit "J" is a true copy of the correspondence from Mr. Lambert, dated November 17, 2020, which I have reviewed.

24. I have been advised by Counsel and verily believe to be true that on November 18, 2020, Mr. McIlhargey wrote Mr. Strilchuk to highlight the conflict between his office and myself and Mahmood. I have been advised that Mr. Strilchuk replied the same day to advise that he had not received instructions from the Respondents on the sale of Morgan's Rise. Attached hereto and marked as Exhibit "K" is a true copy of the correspondence from Mr. McIlhargey, dated November 18, 2020, which I have reviewed.

25. I have been advised by Counsel and verily believe to be true that Mr. Lambert subsequently sent an email to the Vogel Verjee office alleging that the letter to Mr. Strilchuk was an attempt to halt the sale of the Morgan's Rise property. Attached hereto and marked as Exhibit "L" is a true copy of the correspondence from Mr. Lambert, dated November 18, 2020, which I have reviewed.

26. I have been advised by Counsel and verily believe to be true that on November 19, 2020, Mr. McIlhargey sent a letter to Mr. Lambert to, amongst other things, again request the name of counsel representing the Corporation in the Morgan's Rise sale and highlight the concerns of myself and Mahmood regarding the use of Mr. Strilchuk. Attached hereto and marked as Exhibit "M" is a true copy of the correspondence from Mr. McIlhargey, dated November 19, 2020, which I have reviewed.

27. I have been advised by Counsel and verily believe to be true that Mr. Lambert subsequently sent correspondence to Mr. McIlhargey later that day to request that myself and Mahmood consent to the use of Mr. Strilchuk for the sale of Morgan's Rise, despite his conflict. I am advised that Mr. McIlhargey replied to again highlight the conflict and refuse. Attached hereto and marked as Exhibit "N" is the correspondence between Mr. Lambert and

Mr. McIlhargey, dated November 19, 2020, which I have reviewed.

28. I have been advised by Counsel and verily believe to be true that the parties subsequently agreed to retain Geoff Horne of Cameron Horne to act for the Corporation in the sale of Morgan's Rise. Attached hereto as Exhibit "O" is the correspondence between Mr. Lambert and Mr. McIlhargey relating to the retainer of Mr. Horne, dated November 20 and 23, 2020, which I have reviewed.

29. I have been advised by Counsel and verily believe to be true that despite Mr. Strilchuk's assertion that he was not acting for the Corporation, an email forwarded by Mr. Tom Gusa, counsel for Servus, on November 27, 2020, reveals that Mr. Strilchuk subsequently discussed the sale of the Morgan's Rise property with Mr. Gusa on November 23, 2020. The email further reveals that Mr. Gusa forwarded a payout statement on the Morgan's Rise property to Mr. Strilchuk on November 24, 2020 in response to his request. Attached hereto and marked as Exhibit "P" is a true copy of the correspondence from Mr. Gusa, dated November 27, 2020, which I have reviewed.

30. I have been advised by Counsel and verily believe to be true that the Morgan's Rise sale closed on December 4, 2020, and excess proceeds from the sale, amounting to $239,925.90 remain in trust with Cameron Horne pending a resolution of the Parties dispute. Attached hereto and marked as Exhibit "Q" is a true copy of the Sale Reporting Package forwarded to Vogel Verjee to the parties' counsel by Cameron Horne, which I have reviewed.

31. Based on the foregoing, I do verily believe that the Respondents have been unresponsive and uncooperative in our efforts to deal with them. I no longer believe it is possible to resolve the Parties dispute without the Court's involvement and an Order from the Court to wind-up the Corporation and dissolve its remaining assets is necessary.

32. This Affidavit is made in support of an application for an Order directing the wind-up and dissolution of the Corporation pursuant to Section 215 or 242 of the *Alberta Business Corporations Act*, RSA 2000, c B-9.

The deponent, Murad Tejpar, was not physically present before the Commissioner of Oaths (the "**Commissioner**"); however, he was linked with the Commissioner using video technology and the process described in the March 20, 2020, Notice to the Profession & Public: Remote Commissioning of Affidavits for use in Civil and Family Proceedings During the COVID-19 pandemic was utilized.

SWORN (OR AFFIRMED) BEFORE ME at City of Calgary, Alberta, this 12 day of January, 2021.

Commissioner for Oaths in and for the Province of Alberta

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

MURAD TEJPAR

Exhibit "A"

Exhibit "C"

This is **Exhibit "C"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Nicholas McIlhargey
Sent: Friday, October 30, 2020 4:09 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: RE: any word from the holdout "investor"?; File: 2682;

Hello Justin,

It was our understanding that the assignment of the properties hadn't taken place yet, so this comes as a bit of a surprise. However, we recognize that the offer is higher than what the parties were going to value the property at for the arbitration. We can chat Monday.

Yours truly,

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Friday, October 30, 2020 1:35 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: RE: any word from the holdout "investor"?

OK. My clients have also advised me that they are accepting an unconditional offer on Morgan's Rise from an arm's length third party for $2.18 million. Funds will be used to payout Servus. We will be holding on to the residual amount after Servus, commissions, expenses and taxes, etc. are paid.

Justin Lambert
Partner*, Bennett Jones LLP
*Denotes Professional Corporation
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

Exhibit "D"

This is **Exhibit "D"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Tuesday, November 3, 2020 11:50 AM
To: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee, Q.C. <zverjee@vogelverJee.com>
Subject: RE: Lall / Tejpar Dispute; Sale of property; file: 2682

Nicholas,

A few things:

- Sorry – there was a mix up on the number ordering. The offer was for $1.218 million, not $2.18 million. In any event, the prospective purchaser failed to post the required deposit, and the house is being re-listed.
- We are willing to entertain an assignment of the lands along the lines contemplated in the draft arbitration agreement. However, we need some form of assurance that your clients have the ability to pay out the Servus mortgage on the 20 acre lands before that land is assigned out. We also will still have the same issues with the third parties potentially alleging a wrongful transfer of assets out of the company, and wish to know how you propose to address that.
- We do not think that a mediation is likely to be worthwhile. If your clients have an offer to make, they should make it in writing for us to consider.
- We still have not seen any source documents to support the quantum of the shareholder loans alleged to be owed to your clients. We have seen no source documents whatsoever to substantiate the alleged loans advanced by the third parties. To the extent you have any such source documents, you should produce them now. The amounts your clients allege to be owed, and the amounts your clients allege are owed to the third parties, are simply not substantiated by the bank statements. Production of source documents, if they exist, would likely help bring a quicker end to the accounting disputes.

Justin

Justin Lambert
Partner*, Bennett Jones LLP
***Denotes Professional Corporation**
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Sent: Tuesday, November 3, 2020 9:11 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: Re: Lall / Tejpar Dispute; Sale of property; file: 2682

Justin,

We received some troubling news this morning from our clients that may or may not be true.

Setting aside the issue of the Lails' sale of Morgan's Rise without corporate authority to do so, which may be the subject matter of an emergency application, our clients have advised that Morgan's Rise was sold for $1.3 Million. This is significantly less than the $2.18 million that you told us Morgan's Rise had been sold for. Please provide us with details on the sale, including the name of the purchaser, the closing date and the name of counsel acting for 1178929 Alberta Ltd. in the sale. We also want a copy of the final purchase and sale agreement for the property, which we understand has been executed by your clients.

Our clients are entitled to this information as directors and shareholders of 1178929 Alberta Ltd. and its production should clear up any confusion regarding details of the sale. We look forward to its receipt as soon as possible.

Yours truly,

Nicholas McIlhargey | LAWYER

T 403.384.0308
F 403.532.8870
E nmcilhargey@vogelverjee.com

VOGEL VERJEE

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Exhibit "E"

This is **Exhibit "E"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

VOGEL VERJEE

Zul Verjee, Q.C.
Direct Line: 403.384.0300
e-mail: zverjee@vogelverjee.com

Legal Assistant: Amy Mitchell
Direct Line: 403.384.0304
e-mail: amitchell@vogelverjee.com

November 4, 2020

VIA EMAIL
REPLY TO: DOWNTOWN OFFICE

Bennett Jones LLP
#2500 Bankers Hall East
855 2nd Street SW
Calgary, AB T2P 4K7

Attention: Justin Lambert

Dear Sir:

Subject: ***Servus Credit Union Ltd. v 1178929 Alberta Ltd., Murad Tejpar, Mahmood Tejpar, Jasprit Lail, and Gurpreet Lail-Dhaliwal***
Our File: 533653-2682

We write in response to your email dated November 3, 2020.

We have serious concerns regarding your clients' actions and the information that is being provided to us. We discussed the purchase price with you yesterday during our phone call and the mix up in price, which amounts to a $1 million dollar error, was not raised. We still require production of a copy of the unsuccessful purchase and sale agreement executed by your clients for reference, as well as the name of the counsel and listing agent the Lails have retained to represent 1178929 Alberta Ltd. (the "**Corporation**") in the sale.

As noted in our earlier correspondence, the Lails' do not have the authority to list or accept an offer for sale of Morgan's Rise on behalf of the Corporation without the Tejpars' involvement. Their efforts to do so unilaterally amounts to an act of oppression under the *Business Corporations Act*, RSA 2000, c B-9. Our office must be involved in any effort to sell the properties. We await confirmation of the name of the listing agent and counsel for the Corporation before the end of the day today.

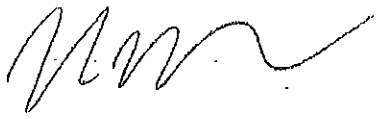
With respect to the shareholders loan dispute, we have made the general ledgers of the Corporation available to you through the Affidavit of Murad Tejpar. The general ledgers were prepared by professional accounting firms retained by the

Corporation. We have yet to see anything from the Lails' to suggest that the accounting was not completed correctly or any evidence to suggest that errors were made. The Lails' demand that every source document be produced for review is unnecessary under the circumstances.

Our clients would prefer to resolve this matter outside of Court, but are prepared to proceed with their application if necessary. We ask that you forward the requested information related to the sale and confirm in writing that no further action will be taken to sell the property without our clients' involvement before the end of November 4, 2020.

Yours truly,

VOGEL VERJEE



For **Zul Verjee, Q.C.**
ZV/NM/caa

Exhibit "J"

This is **Exhibit "** J **"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Tuesday, November 17, 2020 5:05 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Cheryl Abbey <cabbey@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al. File: 2682

I understand that Michael Strilchuk is handling the sale of Morgan's Rise.

Justin

Justin Lambert
Partner,* **Bennett Jones LLP**
***Denotes Professional Corporation**
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Tuesday, November 17, 2020 3:04 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Cheryl Abbey <cabbey@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al. File: 2682

Hello Justin,

Thank you for your letter.

Could you please advise who is acting as counsel for 1179828 Alberta Ltd.? Your letter does not identify them and the Petchatnikov purchase and sale agreement provided only identifies Gary Basra, who I understand is a realtor.

Yours truly,

Nicholas McIlhargey | LAWYER

T 403.384.0308
F 403.532.8870
E nmcilhargey@vogelverjee.com

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Exhibit "K"

This is **Exhibit "K"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

VOGEL VERJEE

Nicholas McIlhargey
Direct Line: 403.384.0308
e-mail: nmcilhargey@vogelverjee.com

Legal Assistant: Cheryl Abbey
Direct Line: 403.384.0319
e-mail: cabbey@vogelverjee.com

November 18, 2020

VIA EMAIL
REPLY TO: DOWNTOWN OFFICE

Strilchuk Law
505 – 21 Avenue SW
Calgary, AB T2S 0G9

Attention: Michael J. Strilchuk

Dear Sir:

Subject: **Sale of 204 Morgans Way SW**
Our File: 533653-2682

We have been advised by counsel for Gurpreet Lail and Jasprit Lail (the **"Lails"**) that you are purporting to act for 1178929 Alberta Ltd. (the **"Corporation"**) in the sale of 204 Morgans Way SW, in Calgary, Alberta (the **"Property"**). We have concerns regarding this information as our clients, Murad Tejpar and Mahmood Tejpar, who are directors and 50% shareholders in the Corporation were not made aware of your involvement or contacted by your firm at any point during the process. Further, the Tejpars have not provided their consent for you to act on behalf of the Corporation or authorized the sale of the Property.

In the event your office is involved in the sale of the Property, it would appear that you have been acting at the sole direction of the Lails, who not only do not have authority of the Corporation to consent to the transfer of the Property, but were also your clients in their shareholder dispute with the Tejpars. If true, this would be a significant conflict of interest.

Given the serious implications of the foregoing, we ask that you confirm whether your office is involved with the sale of the Property. In the event it is, please note that we will be raising these issues in our upcoming application before the Court.

Yours truly,
VOGEL VERJEE

Nicholas McIlhargey
NM/caa

Exhibit "L"

This is **Exhibit "L"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Wednesday, November 18, 2020 3:08 PM
To: Zul Verjee, Q.C. <zverjee@vogelverjee.com>; Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Jo Brar <BrarJ@bennettjones.com>
Subject: Morgan's Rise

I understand that Mr. Strilchuk received a letter from your office which took issue with his ability to act on the sale of Morgan's Rise. The only way to take this letter is that your clients intend to try to prevent or otherwise set aside the sale.

The sale is at or above fair market value, to a third party who is arm's length from any of our clients. It is in the best interests of the corporation. The proceeds of sale are being used for corporate purposes.

I understand your clients may have concerns that no formal resolution was passed respecting the sale. Nonetheless, in the circumstances any efforts by your clients to stop the sale will be contrary to the best interests of the corporation. Your clients do not appear to be concerned about the best interests of the corporation. Rather, they appear to be attempting to stop the sale in an effort to gain leverage with respect to their desire to improperly assign the 20 acres lands out of the corporation for less than fair market value.

If your clients act to stop the sale of Morgan's Rise from closing, we will sue for damages.

I trust your clients will take the required steps to cooperate in the closing of the sale, including agreeing to the appointment of Mr. Strilchuk or other mutually acceptable counsel to conclude the transaction.

Justin

Justin Lambert
Partner,* **Bennett Jones LLP**
***Denotes Professional Corporation**
4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 3046 | F. 403 265 7219
E. lambertj@bennettjones.com

Exhibit "M"

This is **Exhibit "M"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

M

VOGEL VERJEE

Nicholas McIlhargey
Direct Line: 403.384.0308
e-mail: nmcilhargey@vogelverjee.com

Legal Assistant: Cheryl Abbey
Direct Line: 403.384.0319
e-mail: cabbey@vogelverjee.com

November 19, 2020

VIA EMAIL
REPLY TO: DOWNTOWN OFFICE

Bennett Jones LLP
#2500 Bankers Hall East
855 - 2nd Street SW
Calgary, AB T2P 4K7

Attention: Justin Lambert

Dear Sir:

Subject: ***Servus Credit Union Ltd. v 1178929 Alberta Ltd., Murad Tejpar, Mahmood Tejpar, Jasprit Lail, and Gurpreet Lail-Dhaliwal***
Our File: 533653-2682

In your email dated November 17, 2020, you advised our office that Mr. Strilchuk was handling the sale of Morgans Rise (the **"Property"**) for 1178929 Alberta Ltd. (the **"Corporation"**). We now understand that this is not correct. Mr. Strilchuk has written us to advise that he has not received instructions related to the sale of the Property. It is unclear to us why the incorrect firm was identified, but we note that this is the second time that we have received incorrect information from your clients in relation to this Property; the first being the incorrect sale price on the transaction that never closed.

Again, we inquire as to who is acting as counsel for the Corporation in relation to the sale transaction and, more specifically, which firm is going to hold the proceeds in trust after the transaction has closed. Our clients have effectively been kept in the dark on every aspect of this sale and, despite their standing as directors and 50% shareholders in the Corporation, only appear to be provided information begrudgingly after numerous demands have been made by our office. We reiterate, that our office must be involved in the sale of the Property, including being copied on correspondence with counsel acting on behalf of the Corporation. To that end, we require the name of that counsel so that we may contact them and ensure that they are aware of our clients' interests.

With respect to the comments in your emails of November 18, 2020, our clients have no intention of halting the sale now that the Property has been sold. Nevertheless,

we will be addressing the Lails' transfer of the Property without Corporate authorization during our application. While you may disagree on whether this amounts to a fraudulent conveyance, it is evidently clear that the transfer of property without authorization is improper and, given that the Lails' are holding themselves out as having authority that they lack, amounts to fraud.

To that end, our letter to Mr. Strilchuk was intended to put him on notice regarding the above issues and to note that in the event he was purporting to act for the Corporation when he previously acted as counsel for the Lails he would be in conflict. Seeing as Mr. Strilchuk is not acting for the Corporation and dealing with the sale, the letter appears to have been unnecessary, however, whoever is representing the Corporation in the sale will need to be made aware of the foregoing issues so that they are fully informed moving forward.

We trust that you will provide us with the contact information of counsel representing the Corporation in the sale prior to the end of the day.

Yours truly,

VOGEL VERJEE

Nicholas McIlhargey
NM/caa

Exhibit "N"

This is **Exhibit "N"** referred to in the Affidavit of MURAD TEJPAR sworn before me this 12 day of JANUARY, 2021.

A COMMISSIONER FOR OATHS IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Thursday, November 19, 2020 11:19 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>; Cheryl Abbey <cabbey@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al.; (Our File: 533653-2682)

Hello Justin,

To be clear, your email of November 17 said that Mr. Strilchuk is handling the sale of Morgan's Rise.

We will not consent to Mr. Strilchuk acting for the Corporation on the sale. He was previously acting for the Lalls in the dispute between our clients. That is very clearly a conflict.

As explained in our letter sent earlier today, we intend to contact whoever is retained to act for the Corporation to advise them of the events that have transpired so that they are fully informed. Our clients do not intend to halt the sale of Morgan's Rise, but given the Lalls' lack of corporate authority it is not surprising that anyone retained to act for the Corporation will have issues closing the transaction without the Tejpars' consent. Further, and given the dispute between our clients, it would appear inappropriate not to advise counsel retained to act for the Corporation of both parties positions; keeping counsel for the Corporation in the dark of the Tejpars position in particular would be highly inappropriate given what has occurred.

We will seek instructions on consenting to having counsel act in the sale and provide a response shortly. We remind your clients that had they involved the Tejpars in efforts to list and sell the property from the beginning this would not be an issue. Their decision to unilaterally do so, without any consultation with our clients, has resulted in the current situation, whereby the Lalls' are having difficulty in finding anyone willing to act for the Corporation in the closing of the transaction.

Additionally, we remind you again that we expect to be included on any further communication with third parties related to the sale. This includes communication to the realtors involved, opposing counsel acting for the purchaser, and counsel for the Corporation, potential or otherwise, whether the communication originates from your office or directly from the Lalls.

Yours truly,

Nicholas McIlhargey | LAWYER

T 403.384.0308
F 403.532.8870
E nmcilhargey@vogelverjee.com

VOGEL VERJEE

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From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Thursday, November 19, 2020 10:01 AM
To: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al.; (Our File: 533653-2682)

I think it should be obvious to you – as it will be to the court – that if you plan to write to every lawyer we select to close the transaction to advise them that they lack corporate authority to act on behalf of the corporation, the practical effect is that you're acting to thwart the sale from closing.

So, will your clients give consent to any lawyer to act to close the sale, or not?

Justin Lambert
***Partner*, Bennett Jones LLP**
*Denotes Professional Corporation
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Justin Lambert
Sent: Thursday, November 19, 2020 9:58 AM
To: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al.; (Our File: 533653-2682)

Nicholas,

My understanding is that Mr. Strilchuk was going to be handling the sale, until your letter. Will you consent to him acting? If not, and we appoint different counsel to handle the sale, should we expect a similar letter to go that counsel?

Justin Lambert
***Partner*, Bennett Jones LLP**
*Denotes Professional Corporation
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Cheryl Abbey <cabbey@vogelverjee.com>
Sent: Thursday, November 19, 2020 9:54 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Marjorie Villar <VillarM@bennettjones.com>; Nicholas McIlhargey <nmcllhargey@vogelverjee.com>; Zul Verjee, Q.C. <zverjee@vogelverjee.com>
Subject: RE: Service Credit Union v 1178929 Alberta Ltd. et al.; (Our File: 533653-2682)

Message sent on behalf of Nicholas McIlhargey

Good morning,

Regarding the above matter, please find attached correspondence directed to you and dated today's date.

Regards,

Cheryl Abbey | LEGAL ASSISTANT

403.384.0319
403.532.8870
cabbey@vogelverjee.com

VOGEL VERJEE

Downtown Office: Suite 200, 128 - 2nd Avenue SE | Calgary, Alberta T2G 5J5
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vogelverjee.com

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If you no longer wish to receive commercial messages, you can unsubscribe by accessing this link: http://www.bennettjones.com/unsubscribe

Tab 5

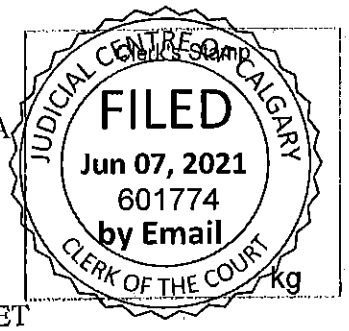
CERTIFICATE

I, Nicholas McIlhargey, Barrister and Solicitor and a Commissioner for Oaths in and for the Province of Alberta, am hereby satisfied that a remote commissioning process was necessary to commission the Affidavit of Murad Tejpar on May 21, 2021. In light of the Covid-19 pandemic, and the public health emergency declared for the Province of Alberta, it was unsafe for medical reasons for the deponent and the commissioner to be physically present together.

DATED the 21st day of May, 2021.

Nicholas McIlhargey
Commissioner for Oaths in and for the Province of Alberta

COURT FILE NUMBER	2001-09142
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANT(S)	MURAD TEJPAR and MAHMOOD TEJPAR
RESPONDENT(S)	GURPREET LAIL-DHALIWAL and JASPREET LAIL
DOCUMENT	SUPPLEMENTAL AFFIDAVIT



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

VERJEE LAW
Barristers & Solicitors
200, 128 – 2 Avenue SE
Calgary, Alberta T2G 5J5

Attention: **Zul Verjee, Q.C.**
Nicholas McIlhargey
Telephone: (403) 532-8881
Facsimile: (403) 532-8870
E-Mail: zverjee@verjeelaw.com
nmcilhargey@verjeelaw.com
File No.: 533653-2682

Affidavit of MURAD TEJPAR sworn on the 21 day of May, 2021

I, Murad Tejpar, of Calgary, Alberta, MAKE OATH AND SAY THAT:

1. I am one of the Applicants named herein and, as such, I have personal knowledge of the matters hereinafter deposed to except where stated to be based on information and belief and, where so stated, I do verily believe same to be true.

2. This Affidavit is supplemental to the Affidavits I swore on July 24, 2020 and January 12, 2021. Any and all capitalized terms used herein and not otherwise defined shall have the same meaning as ascribed to such terms in the initial and supplemental Affidavit.

3. Since my Affidavit, sworn January 12, 2021, was filed, the Parties have taken steps to have the 20 Acres property controlled by the Corporation sold.

4. I have been advised by my counsel, Zul Verjee, Q.C. of Verjee Law (**"Counsel"**), that on January 5, 2021, Nicholas McIlhargey of Verjee Law, sent an email to Justin Lambert of Bennett Jones LLP providing a directors' resolution to approve the listing of the 20 Acres. Attached hereto and marked as **Exhibit "A"** is a true copy of the correspondence sent by Mr. McIlhargey, dated January 5, 2021, which I have reviewed.

5. I have been advised by Counsel and verily believe to be true that the Respondents did not agree with the proposed directors' resolution, taking issue with the list price and the realtor

to be used. I have been advised that the Respondents, through Mr. Lambert, insisted that the Corporation retain Aly Rumtella to list the 20 Acres for $1,200,000.00

6. I have been advised by Counsel and verily believe to be true that on January 22, 2021, Mr. McIlhargey sent Mr. Lambert a letter accepting the Respondents' request that the Corporation list the 20 Acres with Mr. Rumtella for $1,200,000.00. I have further been advised and verily believe to be true that a revised version of the directors' resolution addressing same was provided to Mr. Lambert for the Respondents' signature. Attached hereto and marked as **Exhibit "B"** is a true copy of the correspondence sent by Mr. McIlhargey, dated January 22, 2021, which I have reviewed.

7. I been advised by Counsel and verily believe to be true that on January 29, 2021, Mr. Lambert sent an email to Mr. McIlhargey indicating that the Respondents were prepared to list and sell the land, but required an amendment to the directors' resolution so as to allow the price to be adjusted as and when recommended by the Mr. Rumtella. Attached hereto and marked as **Exhibit "C"** is a true copy of the correspondence sent by Mr. Lambert, dated January 29, 2021, which I have reviewed.

8. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey replied to Mr. Lambert on February 1, 2021, and provided a revised form of directors' resolution that allowed an adjustment of the list price on written consent of the directors, without the need of a further resolution. Mr. McIlhargey highlighted that the Applicants were not prepared to allow Mr. Rumtella to make decisions for the Corporation without the directors' input. Attached hereto and marked as **Exhibit "D"** is a copy of the correspondence sent by Mr. McIlhargey, dated February 1, 2021, which I have reviewed.

9. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey followed up with Mr. Lambert on February 3, 2021, after receiving no response. In reply the same day, Mr. Lambert wrote that he had already provided feedback. When Mr. McIlhargey requested clarification, Mr. Lambert referenced his email dated January 29, 2021, and subsequently wrote that the revised resolution that had been provided did not address his comments and that the Respondents would not sign it. I have been advised and verily believe to be true that Mr. Lambert's correspondence did not provide any explanation as to how his comments from January 29, 2021 had not been addressed. Attached hereto and marked as **Exhibit "E"** is a true copy of the correspondence between Mr. McIlhargey and Mr. Lambert, dated February 3, 2021, which I have reviewed.

10. I have been advised by Counsel and verily believe to be true that at the time the foregoing correspondence was being exchanged it was known to both Parties and their counsel that Servus had a foreclosure Application on the 20 Acres scheduled for February 11, 2021.

11. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey once again followed up with Mr. Lambert regarding the directors' resolution on February 8, 2021. By way of reply, Mr. Lambert advised that the 20 Acres had already been listed with Mr. Rumtella and that his clients would not be signing a directors' resolution approving the sale of the 20 Acres due to the restrictions imposed by the resolution. I have been advised by Counsel that these "restrictions" were not identified or explained in Mr. Lambert's communication. Attached hereto and marked as **Exhibit "F"** is a true copy of the

correspondence between Mr. McIlhargey and Mr. Lambert, dated February 8, 2021, which I have reviewed.

12. I have been advised by Counsel and verily believe to be true that in Mr. Lambert's correspondence dated February 8, 2021, he also advised that the Respondents had obtained an appraisal valuing the 20 Acres at $1,200,000.00. I have been advised and verily believe to be true that Mr. Lambert refused to provide a copy of the appraisal to Verjee Law unless myself and Mahmood preemptively approved the Corporation reimbursing the Respondents for its cost. Attached hereto and marked as **Exhibit "G"** is a true copy of the correspondence between Mr. McIlhargey and Mr. Lambert relating to the appraisal, dated February 8, 2021, which I have reviewed.

13. I have been advised by Counsel and verily believe to be true that Mr. Lambert subsequently wrote Mr. McIlhargey on February 8, 2021, to advise that the Respondents had accepted an offer from the tenant to purchase the 20 Acres for $1,200,000.00. I have further been advised by Counsel and verily believe to be true that a copy of the purchase agreement between the Corporation and the tenant was attached to Mr. Lambert's correspondence (the **"Purchase Agreement"**). Attached hereto and marked as **Exhibit "H"** is a true copy of the correspondence from Mr. Lambert, dated February 8, 2021, which I have reviewed.

14. A review of the Purchase Agreement reveals that it was entered into on February 5, 2021, in the midst of the Parties' negotiations regarding the proper procedure for the sale of the 20 Acres. The Respondents' decision to have the Corporation enter into the Purchase Agreement was undertaken without informing Mahmood, myself or our Counsel.

15. On February 9, 2021, the Corporation was served with a caveat registered against title to the 20 Acres. The caveat states that it was registered against title on January 21, 2021.

16. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey forwarded the caveat on to Mr. Lambert later the same day. I have further been advised that Mr. Lambert replied to this email and insinuated that the office of Verjee Law was somehow involved in its registration. Attached hereto and marked as **Exhibit "I** is a true copy of the correspondence between Mr. McIlhargey and Mr. Lambert, dated February 9, 2021, which I have reviewed.

17. I have been advised by Counsel and verily believe to be true that on February 9, 2021, Mr. McIlhargey received a voicemail from Jo Brar at Bennet Jones LLP advising that Servus was prepared to agree to a redemption period in the Servus Action to April 14, 2021. In the voicemail it was explained that Bennett Jones LLP had discussed the sale of the 20 Acres with Servus and provided Servus with a copy of the Purchase Agreement. I have been advised and believe to be true that Counsel was not copied on any correspondence between Bennett Jones LLP and Mr. Gusa in regards to discussions related to the Servus application scheduled for February 11, 2021, prior to this date.

18. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey subsequently sent a letter to Mr. Lambert on February 9, 2021, reminding him to copy the office of Verjee Law on any further correspondence with Mr. Gusa dealing with the Corporation. Attached hereto and marked as **Exhibit "J"** is a true copy of the correspondence from Mr. McIlhargey dated February 9, 2021, which I have reviewed.

19. I have been advised by Counsel and verily believe to be true that although Verjee Law was copied on further correspondence between Bennet Jones LLP and Servus, the Respondents continued to neglect to update Verjee Law on developments, and include it in correspondence, pertaining to the sale of the 20 Acres.

20. I have been advised by Counsel and verily believe to be true that on February 22, 2021, the deposit condition under the Purchase Agreement expired. I have been advised by Counsel and verily believe to be true that Mr. McIlhargey sent Mr. Lambert an email on February 23, 2021 to inquire whether this condition had been met. No response to this email was received. Attached hereto and marked as **Exhibit "K"** is a true copy of the correspondence from Mr. McIlhargey, dated February 23, 2021, which I have reviewed.

21. On February 24, 2021, I was reviewing the website realtor.ca. The website said that the 20 Acres had been listed for sale for $1,299,000.00, despite their being an agreement for its purchase. I advised my Counsel of the listing immediately.

22. I have been advised by Counsel and verily believe to be true that on February 25, 2021, Mr. McIlhargey followed up with Mr. Lambert regarding the deposit condition and inquired whether the 20 Acres had been relisted. Attached hereto and marked as **Exhibit "L"** is a true copy of the correspondence from Mr. McIlhargey dated February 25, 2021, without attachments, which I have reviewed.

23. I have been advised by Counsel and verily believe to be true that Mr. Lambert sent a reply to Mr. McIlhargey by email on February 26, 2021 and wrote that the Respondents had decided to allow improvements the tenant had made on the property to stand in place of the deposit. I have further been advised and verily believe to be true that Mr. Lambert also confirmed that the Respondents had unilaterally decided to have the Corporation relist the property on advice of Mr. Rumtella. Attached hereto and marked as **Exhibit "M"** is a true copy of the correspondence from Mr. Lambert dated February 26, 2021, which I have reviewed.

24. The relisting of the 20 Acres and the decision to treat the tenants' improvements as a substitute for the deposit took place without the involvement or approval of myself and Mahmood. Further, I am advised by Counsel and verily believe to be true that the relisting and substitution of the deposit took place without their involvement or awareness.

25. I have been advised by Counsel and verily believe to be true that Mr. Lambert wrote two emails to Verjee Law on March 16 and 17, 2021, respectively, raising concerns that Verjee Law had offered to represent the third-party investors in the arbitration that had been proposed.

26. I have been advised by Counsel and verily believe to be true that Verjee Law sent replies to Mr. Lambert on March 18 and 19, 2021, respectively, highlighting that the proposal was made in October 2020, when the Parties were expected to proceed to arbitration, so that the third-parties evidence and participation was ensured. I have further been advised by Counsel that the third-parties never agreed to participate and I can confirm that neither myself nor Mahmood have paid for the third-parties' legal representation at any point. Attached hereto and marked as **Exhibit "N"** is a copy of the email chain between Mr. Lambert and the office of Verjee Law, dated March 16 to 19, 2021.

27. I have been advised by Counsel and verily believe to be true that after February 2021, the closing date for the sale was amended unilaterally on two occasions by the Respondents, first to April 26, 2021, and then to April 30, 2021, without the knowledge or involvement of my Counsel. I have further been advised by Counsel and verily believe to be true that Counsel was only advised of these extensions after they had been put in place by the Respondents.

28. I have been advised by Counsel and verily believe to be true that the 20 Acres sale closed on April 30, 2021, and excess proceeds from the sale, amounting to **$267,865.88** remain in trust with Cameron Horne pending a resolution of the Parties dispute. Attached hereto and marked as **Exhibit "O"** is a true copy of the Sale Reporting Package forwarded to Verjee Law by Mr. Lambert on May 5, 2021, which I have reviewed.

29. I have been advised by Counsel and verily believe to be true that despite the Parties' agreement to retain Geoff Horne of Cameron Horne to act for the Corporation in the sale of 20 Acres, Verjee Law was not copied on any of the correspondence between Cameron Horne and the Respondents or their counsel throughout the process of the 20 Acres sale.

30. Based on the foregoing, I do verily believe that the Respondents have continued to be unresponsive and uncooperative in our efforts to deal with them. I no longer believe it is possible to resolve the Parties dispute without the Court's involvement and an Order from the Court to wind-up the Corporation and dissolve its remaining assets is necessary.

31. This Affidavit is made in support of an application for an Order directing the wind-up and dissolution of the Corporation pursuant to Section 215 or 242 of the *Alberta Business Corporations Act*, RSA 2000, c B-9.

The deponent, Murad Tejpar, was not physically present before the Commissioner of Oaths (the "**Commissioner**"); however, he was linked with the Commissioner using video technology and the process described in the March 25, 2020, Notice to the Profession & Public: Remote Commissioning of Affidavits for use in Civil and Family Proceedings During the COVID-19 pandemic was utilized.

SWORN (OR AFFIRMED) BEFORE ME)
at City of Calgary, Alberta, this 21 day of)
May, 2021.)

Commissioner for Oaths in and for the
Province of Alberta
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

MURAD TEJPAR

THIS IS EXHIBIT "A" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Sent: Tuesday, January 5, 2021 8:12 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>
Subject: Re: Servus Credit Union Ltd. v 1178929 Alberta Ltd. et al; QB Action No. 2003-13227; (Our File: 533653-2682)

Good morning Justin,

Further to our communication prior to Christmas, please find a directors resolution to affirm the sale of the 20 Acres attached for your clients review and execution.

The sale price is based on the recommendations of Mr. Jobbagy and I understand it should be more than sufficient to cover the outstanding amount that remains owing under the mortgage. Please advise if you have any comments.

Once an executed copy of the resolution has been returned to us our clients will engage with Mr. Jobbagy to sell the property.

Yours truly,

Nicholas McIlhargey | LAWYER

403.384.0308
403.532.8870
nmcllhargey@vogelverjee.com

VOGEL VERJEE

Downtown Office: Suite 200, 128 - 2nd Avenue SE | Calgary, Alberta T2G 5J5
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vogelverjee.com

1178929 ALBERTA LTD.

Resolution of the Directors
of 1178929 Alberta Ltd.
(the "**Corporation**")

LISTING OF PROPERTY FOR SALE

BE IT RESOLVED THAT:

1. The Corporation is authorized to retain the services of Real Estate Agent Ron Jobbagy to list the property located at 34165 Township Road 240A, Rocky View County (the **"Property"**) for sale.

2. The Directors Murad Tejpar and Mahmood Tejpar are authorized to act on behalf of the Corporation for the purpose of the sale of the Property;

3. The Corporation shall list the Property for sale in the amount of $999,000.00 (the **"List Price"**);

4. The Corporation shall accept any bona fide offer for purchase of the Property (with typical or reasonable conditions) in the amount of the List Price or greater (the **"Sale"**);

5. The Corporation shall apply the proceeds of the Sale, after typical transaction fees, to any indebtedness secured via encumbrances registered against the Property by third parties. The remaining proceeds shall be held in trust with counsel retained by the Corporation to close the Sale until such time as the directors agree in writing to its release or until so ordered by the Court of Queen's Bench of Alberta;

6. This Resolution may be executed in counterparts; each of which when so signed will be deemed to be an original and together will constitute one and the same document. The Corporation will be entitled to rely on delivery by facsimile transmission or other electronic transmission of a scanned copy of the executed Resolution and such facsimile or scanned copy shall be legally effective to create a valid and binding resolution.

The undersigned, being all of the directors of the Corporation, hereby consent to and adopt the aforesaid resolutions, pursuant to section 117 of the *Business Corporations Act* (Alberta).

DATED effective as of January ___, 2021.

_____
Director – Jasprit Lail

7

Director – Gurpreet Lail-Dhaliwal

Director – Mahmood Tejpar

Director – Murad Tejpar

THIS IS EXHIBIT "B" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Kony Lecerf <klecerf@vogelverjee.com>
Sent: Friday, January 22, 2021 2:20 PM
To: lambertj@bennetjones.com
Cc: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>; Cheryl Abbey <cabbey@vogelverjee.com>
Subject: Servus Credit Union Ltd. v. 1178929 Alberta Ltd. et al. (Your file no.: 90471.1); (Our file no.: 2682-Z)

Good afternoon Mr. Lambert,

Please find enclosed correspondence from Mr. McIlhargey for your attention.

Thank you,

Kony Lecerf | LEGAL ASSISTANT

403.384.0312
403.532.8870
klecerf@vogelverjee.com

VOGEL VERJEE

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vogelverjee.com >>VIEW OUR DISCLAIMER

Best Lawyers

VOGEL VERJEE

Nicholas McIlhargey
Direct Line: 403.384.0308
e-mail: nmcilhargey@vogelverjee.com

Legal Assistant: Cheryl Abbey
Direct Line: 403.384.0319
e-mail: cabbey@vogelverjee.com

January 22, 2021

VIA EMAIL
REPLY TO: DOWNTOWN OFFICE

Bennett Jones LLP
#2500 Bankers Hall East
855 - 2nd Street SW
Calgary, AB T2P 4K7

Attention: Justin Lambert

Dear Sir:

Subject: ***Servus Credit Union Ltd. v 1178929 Alberta Ltd., Murad Tejpar, Mahmood Tejpar, Jasprit Lail, and Gurpreet Lail-Dhaliwal***
Our File: 533653-2682

Further to your email of January 21, 2021, we have instructions to reject your clients' proposal and proceed with the sale.

The Tejpars are prepared to proceed with the Lails' request that 1178929 Alberta Ltd. (the **"Corporation"**) retain Mr. Rumtella as realtor and list the 20 Acres for $1.2 million, but have no interest in playing a role in the sale. Given that it is your clients that insist on using Mr. Rumtella and listing the property at a higher price point, it is only logical that they take the necessary steps needed to proceed. We note that in the event you made an application to Court, as threatened, and were successful in obtaining an Order for sale, your client would also be required to take on this role.

With the foregoing in mind, we have attached a revised Resolution setting out the new parameters for sale. Please advise if you have any comments. In the event you have no concerns, please have your clients execute the attached Resolution and return same to our office for the Tejpars' execution.

With respect to your comments regarding the outstanding undertakings, we are prepared to set a deadline in February on the condition that a deadline is also set for the Lails' outstanding production. You advised us on November 17, 2020, that the Lails' would produce the financial records under their control as soon as possible, however, two months later these remain outstanding. To be clear, our clients are

entitled to these records and the Lalls ongoing failure to provide them is not only prejudicial given the dispute that exists between our clients, but also in breach of the Tejpars entitlements under the *Business Corporations Act*, RSA 2000, c B-9. To the extent that your clients continue to withhold this information, we will be forced to bring an application for an Order to compel its production and an award of costs for the necessity of same.

We trust a deadline in February to exchange documentation and undertakings is appropriate. The Court has made it clear on a number of occasions that a reasonable period of time to respond to undertakings is 90 days and we are still well within this period.

Yours truly,

VOGEL VERJEE

Nicholas McIlhargey
NM/caa

1178929 ALBERTA LTD.

Resolution of the Directors
of 1178929 Alberta Ltd.
(the "**Corporation**")

LISTING OF PROPERTY FOR SALE

BE IT RESOLVED THAT:

1. The Corporation is authorized to retain the services of Real Estate Agent Aly Remtulla to list the property located at 34165 Township Road 240A, Rocky View County (the "**Property**") for sale;

2. The Director Jasprit Lail is authorized to act on behalf of the Corporation for the purpose of the sale of the Property;

3. The Corporation shall list the Property for sale in the amount of $1,200,000.00 (the "**List Price**");

4. The Corporation shall accept any bona fide offer for purchase of the Property (with typical or reasonable conditions) in the amount of the List Price or greater (the "**Sale**");

5. The Corporation shall apply the proceeds of the Sale, after typical transaction fees, to any indebtedness secured via encumbrances registered against the Property by third parties. The remaining proceeds shall be held in trust with counsel retained by the Corporation to close the Sale until such time as the directors agree in writing to its release or until so ordered by the Court of Queen's Bench of Alberta;

6. This Resolution may be executed in counterparts; each of which when so signed will be deemed to be an original and together will constitute one and the same document. The Corporation will be entitled to rely on delivery by facsimile transmission or other electronic transmission of a scanned copy of the executed Resolution and such facsimile or scanned copy shall be legally effective to create a valid and binding resolution.

The undersigned, being all of the directors of the Corporation, hereby consent to and adopt the aforesaid resolutions, pursuant to section 117 of the *Business Corporations Act* (Alberta).

DATED effective as of January ___, 2021.

_____
Director – Jasprit Lail

Director – Gurpreet Lail-Dhaliwal

Director – Mahmood Tejpar

Director – Murad Tejpar

THIS IS EXHIBIT "C" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Friday, January 29, 2021 2:44 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Subject: 20 Acre Lands

I think my clients may be willing to list and sell the land. But, the resolution needs re-working. I think it should read so as to allow us to initially list at $1.2 million, but to adjust the price as and when recommended by the realtor in writing.

If your clients want to approve any sale, you may add that into the resolution.

Justin Lambert
Partner, Bennett Jones LLP***
***Denotes Professional Corporation**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 3046 | F. 403 265 7219
E. lambertj@bennettjones.com

7

THIS IS EXHIBIT "D" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

7

Nicholas McIlhargey

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Monday, February 1, 2021 9:40 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682;

Hello Justin,

My clients' are not prepared to allow the realtor to make decisions for the Corporation without the Directors' input and given the dispute between our clients, Jasprit alone is incapable of making that decision. Any adjustment in list price will require the further written consent of the parties.

I've revised the resolution to reflect that the written consent of the Directors is sufficient to adjust the list price, rather than a further resolution. This way confirmation between our offices will suffice to provide the Corporate authority necessary.

With regards to the sale, my clients are fine with any bona fide offer at the List Price or greater. The resolution is drafted to remove any approval by either of our clients. In the event a bona fide offer is received for an amount of $1.2 million or above, the Corporation shall accept it.

I have added further language in the event that an offer is received for an amount below List Price to allow acceptance upon further written approval by both parties.

I have attached the revised resolution as a pdf and word doc. Given the timing of Servus' application, please get back to me with any additional comments you might have a soon as practicable.

Yours truly,

Nicholas McIlhargey | LAWYER

403.384.0308
403.532.8870
nmcilhargey@vogelverjee.com

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vogelverjee.com

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Friday, January 29, 2021 2:44 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Subject: 20 Acre Lands

I think my clients may be willing to list and sell the land. But, the resolution needs re-working. I think it should read so as to allow us to initially list at $1.2 million, but to adjust the price as and when recommended by the realtor in writing.

4

If your clients want to approve any sale, you may add that into the resolution.

Justin Lambert
Partner**, Bennett Jones LLP
***Denotes Professional Corporation**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 3046 | F. 403 265 7219
E. lambertj@bennettjones.com

1178929 ALBERTA LTD.

Resolution of the Directors
of 1178929 Alberta Ltd.
(the "**Corporation**")

LISTING OF PROPERTY FOR SALE

BE IT RESOLVED THAT:

1. The Corporation is authorized to retain the services of Real Estate Agent Aly Remtulla to list the property located at 34165 Township Road 240A, Rocky View County (the **"Property"**) for sale;

2. The Director Jasprit Lail is authorized to act on behalf of the Corporation for the purpose of the sale of the Property;

3. The Corporation shall list the Property for sale in the amount of $1,200,000.00 (the **"List Price"**);

4. The List Price may be adjusted from time to time at the recommendation of Mr. Remtulla, and as is necessary, upon the written consent of the Corporation's Directors, without further resolution;

5. The Corporation shall accept any bona fide offer for purchase of the Property (with typical or reasonable conditions) in the amount of the List Price or greater (the **"Sale"**);

6. The Corporation may accept any bona fide offer for purchase of the Property (with typical or reasonable conditions) below the List Price upon the written consent of the Corporation's Directors, without further resolution;

7. The Corporation shall apply the proceeds of the Sale, after typical transaction fees, to any indebtedness secured via encumbrances registered against the Property by third parties. The remaining proceeds shall be held in trust with counsel retained by the Corporation to close the Sale until such time as the directors agree in writing to its release or until so ordered by the Court of Queen's Bench of Alberta;

8. This Resolution may be executed in counterparts; each of which when so signed will be deemed to be an original and together will constitute one and the same document. The Corporation will be entitled to rely on delivery by facsimile transmission or other electronic transmission of a scanned copy of the executed Resolution and such facsimile or scanned copy shall be legally effective to create a valid and binding resolution.

The undersigned, being all of the directors of the Corporation, hereby consent to and adopt the aforesaid resolutions, pursuant to section 117 of the *Business Corporations Act* (Alberta).

DATED effective as of February ___, 2021.

_____
Director – Jasprit Lail

_____
Director – Gurpreet Lail-Dhaliwal

_____
Director – Mahmood Tejpar

_____
Director – Murad Tejpar

THIS IS EXHIBIT "E" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

7

Nicholas McIlhargey

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Wednesday, February 3, 2021 2:12 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

Justin,

You asked for the resolution to include language to initially list the property for $1.2 million, and to allow for the price to be adjusted when recommended by the realtor in writing.

The revised resolution does this, but requires the parties to consent to the recommendation. See provisions 3 and 4.

As explained, my clients are not prepared to allow the realtor to make decisions vis a vis the list price without the Directors' input. This is hardly an unreasonable requirement and can be dealt with easily through correspondence between our offices. I also don't see future consent being an issue given that both our clients have an interest in selling the property and my clients' initially proposed that the 20 Acres be listed for a lower price.

If you would like to propose revised language for the resolution please forward a draft for our consideration. I included a word version of the resolution in my earlier email for this purpose.

Yours truly,

Nicholas McIlhargey | LAWYER

403.384.0308
403.532.8870
nmcilhargey@vogelverjee.com

VOGEL VERJEE

Downtown Office: Suite 200, 128 - 2nd Avenue SE | Calgary, Alberta T2G 5J5
Vogel Verjee is an association of Vogel LLP and Verjee & Associates for the purpose of the practice of law.
vogelverjee.com

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Wednesday, February 3, 2021 1:45 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

I know. The revised draft doesn't fully address my comments. Once it does, we'll sign it. I look forward to receiving a further revised draft.

Justin Lambert

Partner*, Bennett Jones LLP
*Denotes Professional Corporation
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Wednesday, February 3, 2021 1:43 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

Justin,

I provided a response to your comments along with a revised resolution on February 1st. The email is outlined below and copies of the revised resolution are attached.

I am following up on the revised resolution, not the original.

Yours truly,

Nicholas McIlhargey | LAWYER

403.384.0308
403.532.8870
nmcilhargey@vogelverjee.com

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Best Lawyers

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Wednesday, February 3, 2021 1:25 PM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

They're at the bottom of this email chain.

Justin Lambert
Partner*, Bennett Jones LLP
*Denotes Professional Corporation
T. 403 298 3046 | F. 403 265 7219
BennettJones.com

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Wednesday, February 3, 2021 1:19 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

Hi Justin,

I'm not sure I do. I can't locate a copy in my inbox. Can you please re-send your comments on the revised resolution.

Thanks,

Nicholas McIlhargey | LAWYER

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403.532.8870
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From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Wednesday, February 3, 2021 1:08 PM
To: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

You have my comments on your draft resolution.

Justin

Justin Lambert
***Partner**, Bennett Jones LLP*
*Denotes Professional Corporation
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From: Nicholas McIlhargey <nmcllhargey@vogelverjee.com>
Sent: Wednesday, February 3, 2021 1:04 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: FW: 20 Acre Lands; File: 2682

Hello Justin,

I am following up on the revised Director's Resolution provided February 1, 2021. As you are aware, Servus' application is scheduled for February 11, 2021 and time is of the essence. We have concerns that the corporation and our clients' position will be prejudiced if the 20 Acres remains unlisted by the time of the application next week.

Yours truly,

Nicholas McIlhargey | LAWYER

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THIS IS EXHIBIT "F" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA

NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Monday, February 8, 2021 8:47 AM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

If needed, we have obtained an appraisal and will appear in court on the 11th to ask for a longer redemption period. The lands were listed some time ago at $1.2 million, with Aly as realtor. We will be seeking to recover the costs of the appraisal from the company.

We won't be signing the resolution as you have drafted it because we don't agree with the restrictions you purport to impose in it, but we will present any offer received to you for your clients' approval.

Justin

Justin Lambert
***Partner*, Bennett Jones LLP**
*Denotes Professional Corporation
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BennettJones.com

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Monday, February 8, 2021 8:44 AM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: FW: 20 Acre Lands; File: 2682

Hello Justin,

I am following up on my correspondence below.

It would be in everybody's interest if we had a resolution together by the Servus application on February 11.

As previously highlighted, without the resolution we have concerns that both parties and the Corporation will be prejudiced.

Yours truly,

Nicholas McIlhargey | LAWYER
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Best Lawyers

From: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Sent: Wednesday, February 3, 2021 2:12 PM
To: Justin Lambert <LambertJ@bennettjones.com>
Cc: Cheryl Abbey <cabbey@vogelverjee.com>; Zul Verjee Q.C. <zverjee@vogelverjee.com>
Subject: RE: 20 Acre Lands; File: 2682

Justin,

You asked for the resolution to include language to initially list the property for $1.2 million, and to allow for the price to be adjusted when recommended by the realtor in writing.

The revised resolution does this, but requires the parties to consent to the recommendation. See provisions 3 and 4.

As explained, my clients are not prepared to allow the realtor to make decisions vis a vis the list price without the Directors' input. This is hardly an unreasonable requirement and can be dealt with easily through correspondence between our offices. I also don't see future consent being an issue given that both our clients have an interest in selling the property and my clients' initially proposed that the 20 Acres be listed for a lower price.

If you would like to propose revised language for the resolution please forward a draft for our consideration. I included a word version of the resolution in my earlier email for this purpose.

Yours truly,

Nicholas McIlhargey | LAWYER

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Best Lawyers

7

THIS IS EXHIBIT "M" referred to in the Affidavit of MURAD TEJPAR sworn before me this 21 day of MAY, 2021.

A COMMISSIONER FOR OATHS
IN AND FOR THE PROVINCE OF ALBERTA
NICHOLAS MCILHARGEY
BARRISTER & SOLICITOR

7

Nicholas McIlhargey

From: Justin Lambert <LambertJ@bennettjones.com>
Sent: Friday, February 26, 2021 10:29 AM
To: Nicholas McIlhargey <nmcilhargey@vogelverjee.com>
Cc: Jo Brar <BrarJ@bennettjones.com>
Subject: 20 Acre Update

Nicholas,

Apologies on the delay. With the input of the realtor, it was determined that as the tenant's improvements were already being used as part of the purchase price, it would make sense to have the improvements stand as a deposit. This will also help the tenant close his financing, which we understand is very close to happening.

However, on the realtor's advice, the property has been re-listed in case the tenant cannot close financing. The realtor advised (and I'm sure you've seen in the news) that the market is rapidly improving. As a result, the realtor said it would be foolish to list at $1.2 million. The Lalls have taken his advice. Since listing at the higher price, there have already been showings.

As we all know, obtaining the most possible cash from a sale is in everyone's interests. We are not inclined to disregard the realtor's advice and lower the listing price, particularly given that the higher listing price is still generating interest.

We are still hopeful that the transaction will close at $1.2 million. We will let you know if there are any further developments.

Justin

Justin Lambert
Partner, **Bennett Jones LLP***
***Denotes Professional Corporation**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
T. 403 298 3046 | F. 403 265 7219
E. lambertj@bennettjones.com

Tab 6

In the Court of Appeal of Alberta

Citation: McAllister v Calgary (City), 2021 ABCA 25

Date: 20210127
Docket: 1901-0003-AC
Registry: Calgary

Between:

Kyle Lyndon McAllister

Appellant
(Plaintiff)

- and -

The City of Calgary

Respondent
(Defendant)

The Court:

The Honourable Mr. Justice Brian O'Ferrall
The Honourable Madam Justice Elizabeth Hughes
The Honourable Madam Justice Jolaine Antonio

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Madam Justice J.C. Kubik
Dated the 10th day of December, 2018
Filed on the 23rd day of January, 2019
(2018 ABQB 999, Docket: 0701-07017)

Memorandum of Judgment

The Court:

I. Introduction

[1] This is an appeal of a costs award by the party to whom the costs were awarded. The appellant argues that the costs award is not reasonable because it does not provide him with a sufficient level of indemnification for the costs he actually incurred.

[2] At the outset, we wish to note that the costs award being appealed is what we will refer to as Rule 10.31(1)(a) costs. That is, they were awarded on the basis that they represented the "reasonable and proper costs" incurred by a party who was successful in litigating his claim to near completion (that is, to a determination of liability). The costs award was not an exceptional, discretionary costs award permitted by Rule 10.31(b).[1] This is not a case where it was necessary to employ the costs award as an instrument of policy or to accomplish any purpose other than that of partially indemnifying the successful party. The trial judge was wholly satisfied that counsel acted reasonably in their pursuit of the claim. There was no need to discourage unnecessary steps taken in the litigation or to sanction obstructive behaviour or to encourage settlement.

[3] The final point to be made by way of introduction is that the costs being awarded in this case were the costs of prosecuting a claim from Statement of Claim to judgment in a protracted piece of litigation involving arguably novel liability.

II. Overview

[4] This appeal involves a consideration of the level of indemnification a successful party to protracted litigation should receive in costs from the losing party, and in so doing it addresses the role of Schedule C in making such costs awards, as well as other types of costs awards.

---

[1] 10.31(1) After considering the matters described in rule 10.33 [Court considerations in making a costs award], the Court may order one party to pay to another party, as a costs award, one or a combination of the following:

> (a) the reasonable and proper costs that a party incurred to file an application, to take proceedings or to carry on an action, or that a party incurred to participate in an application, proceeding or action, or
>
> (b) any amount that the Court considers to be appropriate in the circumstances, including, without limitation,
>
> > (i) an indemnity to a party for that party's lawyer's charges, or
> >
> > (ii) a lump sum instead of or in addition to assessed costs.

[5] The trial judge's costs decision (*McAllister v Calgary (City)*, 2018 ABQB 999 [*Reasons*]) followed a trial in which the appellant plaintiff was successful in establishing liability against the City of Calgary for injuries he sustained from an assault on a Plus-15 outside a C-Train station.

[6] In her costs decision, the trial judge suggested that absent out-of-the-ordinary circumstances, costs should normally be awarded pursuant to the Tariff of Recoverable Fees or Schedule C of the Rules of Court without regard to the actual legal costs incurred by the plaintiff in the litigation. She simply awarded the plaintiff Schedule C costs, adjusted for inflation. The appellant says the costs awarded represented only 17% of total legal fees incurred by him.

[7] The appellant argues that the costs award failed to properly indemnify him for the costs he incurred. In making this argument, the appellant concedes that he was only entitled to be partially indemnified for his actual out-of-pocket costs. The appellant incurred legal fees in the amount of $389,711.78. He was awarded $70,294.70 in legal costs. He seeks to be indemnified in the amount of $175,711.78, or 45% of the legal costs he incurred.

[8] For the reasons that follow, we conclude that the trial judge did not adequately consider indemnification in her costs award. She applied the Tariff of Recoverable Fees in Schedule C in a manner which may not have adequately indemnified the appellant who was the successful plaintiff in a protracted lawsuit involving the determination of a municipality's liability for the safety of its citizens on public transit platforms. We remit the matter of costs back to the trial judge to reconsider her costs award in accordance with these reasons.

III. Decision Below

[9] As a preliminary issue, the trial judge considered whether it was premature to determine the plaintiff's costs entitlement given that damages had yet to be determined (only the defendant's liability had been decided at trial). This was a bifurcated trial and the trial judge was of the view that there is no hard and fast rule with respect to the timing of costs awards. The trial judge observed that some courts award costs following liability trials while others defer costs decisions until damages have been determined. While the trial judge was of the view that quantification of damages should not be a determinative factor in addressing reasonable costs, costs awards should be proportional to the interests involved. Rule 10.33(1)(b) provides that "the amount claimed and the amount recovered" are to be considered in awarding costs. However, the trial judge's decision on the timing of her determination, though questioned by the respondent, has not been appealed and we decline to say anything further about it.

[10] Turning to the issue of quantum of costs, the trial judge was of the view that the proper approach to awarding costs was pursuant to the Tariff of Recoverable Fees or Schedule C of the Rules of Court. Schedule C itemizes steps in a litigation action and assigns a fee value for each step taken depending upon the amount in issue in the litigation (Consultation Memorandum No. 12.17 "Costs and Sanctions" from Alberta Rules of Court Project (February 2005) at 7, online (pdf): www.alri.ualberta.ca [Rules Project 2005]). The trial judge's view was that Schedule C was

preferable to basing costs awards on a percentage of the legal fees actually incurred by a successful party. She stated at paragraph 15:

> [W]hen measuring appropriate costs, a principled approach which considers the purpose of costs, in terms of Court process, should be applied. The use of Schedule C imports certainty in cases where the parties have conducted themselves reasonably and advanced meritorious claims and defences

[11] The trial judge stated that Schedule C of the Rules serves many useful purposes in litigation: it compensates the successful plaintiff for significant steps taken in litigation, it allows parties to measure the risk of incurring and not recovering costs associated with litigation, and it encourages resolution of disputes in a practical and efficient manner in line with the foundational Rules (for example, see Rule 1.2).

[12] However, the trial judge was of the view that these purposes are not promoted by what she characterized as a "rule of thumb" practice of awarding costs in the lump sum amount of 40-50% of the legal fees actually incurred by the successful party. The trial judge stated at paragraph 15:

> Relying on a rule of thumb practice that a proper costs award should approximate between 40%-50% of the incurred solicitor client fees does not, in my view, achieve these purposes. First, it compensates not for the significant steps in the court process, but for all legal expenses incurred without a safeguard for reasonableness. Second, it does not allow the parties to effectively analyze the risk of costs in litigation as it is impossible to know hourly rates charged or the amount of time spent on various steps until the conclusion of the litigation. Finally, an award of partial indemnity costs measured on the basis of solicitor client fees charged, could undermine the spirit of the foundational rules.

[13] Referring to *Weatherford Canada Partnership v Addie*, 2018 ABQB 571 [*Weatherford QB*], the trial judge suggested that costs based on an indemnity percentage are better suited to cases where there is misconduct, significant complexity, or damages claimed in excess of Column 5 of the Rules (*Reasons* at paras 16-17).

[14] Here, the trial judge was "wholly satisfied" that counsel for the plaintiff had acted reasonably in pursuing the plaintiff's claim. She also was of the view that, although novel, this case was not one in which misconduct, complexity, or some other factor might justify departing from the basic application of Schedule C. The trial judge also commended the parties for providing an Agreed Statement of Facts and an Agreed Exhibit Book, which she said significantly reduced the necessary trial time.

[15] In the result, the trial judge ordered costs pursuant to Column 3 of Schedule C (claims over $150,000 up to and including $500,000), which she increased for inflation to approximate reasonable costs in 2018 for the steps taken to bring the matter to trial. (The last time Schedule C

had been updated was in 1998.) Apart from a modest inflationary gross-up, no other adjustment or multiplier was applied. The total costs award to the plaintiff of $70,294.70 was said to represent 17% of the legal fees the plaintiff actually incurred.

IV. Ground of Appeal

[16] The plaintiff argues that he was not properly indemnified by the trial judge's costs award. He seeks indemnification for 45% of the amount of legal fees he incurred.

V. Standard of Review

[17] It is well established that costs awards are awarded on a discretionary basis (*Quebec (Director of Criminal and Penal Prosecutions) v Jodoin*, 2017 SCC 26 at para 52; *Goldstick Estates (Re)*, 2019 ABCA 508 at para 22); and we agree with the respondent that trial courts have wide discretion to award costs under Rules 10.29(1), 10.30(1), 10.31, and 10.33.

[18] Having said that, a trial judge's discretion is subject both to the Rules and to the need to act judicially on the facts of the case (*British Columbia (Minister of Forests) v Okanagan Indian Band*, 2003 SCC 71 at para 42). Costs awards, though discretionary, are not completely insulated from appellate review. An appellate court "may and should intervene where it finds a misdirection as to the applicable law, a palpable error in the assessment of the facts, or an unreasonable exercise of the discretion" (*Goldstick Estates* at para 22, citing *Okanagan Indian Band* at para 43; *Jodoin* at para 52; and *Nazarewycz v Dool*, 2009 ABCA 70 at para 53).

VI. Discussion

[19] In order to address whether the appellant was properly indemnified by the trial judge's costs award, we first consider the costs provisions of the Rules, after which we look to established levels of indemnification. Finally, we consider the role of Schedule C in the awarding of costs.

A. Costs: Rules of Court

[20] Apart from her assessment of the merits of applying Schedule C, the trial judge's reasons did not expressly refer to all of the costs provisions of the Rules relating to the quantification of costs.

[21] The Rules confer a qualified "entitlement" to costs to the successful party. Rule 10.29(1) states that a successful party is "entitled to a costs award against the unsuccessful party" and that the "unsuccessful party must pay the costs forthwith". An award of costs is therefore the *prima facie* entitlement of the successful party, but that entitlement may not always obtain.

[22] The Supreme Court of Canada, in *B(R) v Children's Aid Society of Metropolitan Toronto*, [1995] 1 SCR 315 articulated a rationale for awarding costs to the successful party to be paid by the unsuccessful party at 404-405:

> The long-standing rule regarding costs is that they are generally awarded to a successful party, absent misconduct on his or her part. A successful litigant has a reasonable expectation that his or her costs will be paid by the unsuccessful party. The rationale for this rule is based on the fact that, had the unsuccessful party initially agreed to the position of the successful one, no costs would have been incurred by the successful party. Accordingly, it is only logical that the party who has been found to be wrong must be ready to support the costs of a litigation that could have been avoided. [emphasis in original]

[23] In Alberta, the considerations which go into the determination of the amount of a costs award are set forth in Rule 10.33:

> 10.33(1) In making a costs award, the Court may consider all or any of the following:
>
> (a) the result of the action and the degree of success of each party;
>
> (b) the amount claimed and the amount recovered;
>
> (c) the importance of the issues;
>
> (d) the complexity of the action;
>
> (e) the apportionment of liability;
>
> (f) the conduct of a party that tended to shorten the action;
>
> (g) any other matter related to the question of reasonable and proper costs that the Court considers appropriate.
>
> (2) In deciding whether to impose, deny or vary an amount in a costs award, the Court may consider all or any of the following:
>
> (a) the conduct of a party that was unnecessary or that unnecessarily lengthened or delayed the action or any stage or step of the action;
>
> (b) a party's denial of or refusal to admit anything that should have been admitted;

> (c) whether a party started separate actions for claims that should have been filed in one action or whether a party unnecessarily separated that party's defence from that of another party;
>
> (d) whether any application, proceeding or step in an action was unnecessary, improper or a mistake;
>
> (e) an irregularity in a commencement document, pleading, affidavit, notice, prescribed form or document;
>
> (f) a contravention of or non-compliance with these rules or an order;
>
> (g) whether a party has engaged in misconduct;
>
> (h) any offer of settlement made, regardless of whether or not the offer of settlement complies with Part 4 [Managing Litigation], Division 5 [Settlement Using Court Process].

[24] After the court has considered the factors described in Rule 10.33 with respect to quantum, the court is directed by the Rules to go to Rule 10.31 which provides options for making costs awards:

> 10.31(1) After considering the matters described in rule 10.33, the Court may order one party to pay to another party, as a costs award, one or a combination of the following:
>
> > (a) the reasonable and proper costs that a party incurred to file an application, to take proceedings or to carry on an action, or that a party incurred to participate in an application, proceeding or action, or
> >
> > (b) any amount that the Court considers to be appropriate in the circumstances, including, without limitation,
> >
> > > (i) an indemnity to a party for that party's lawyer's charges, or
> > >
> > > (ii) a lump sum instead of or in addition to assessed costs.
>
> ...
>
> (3) In making a costs award under subrule (1)(a), the Court may order any one or more of the following:
>
> > (a) one party to pay to another all or part of the reasonable and proper costs with or without reference to Schedule C;

> (b) one party to pay to another an amount equal to a multiple, proportion or fraction of an amount set out in any column of the tariff in Division 2 of Schedule C or an amount based on one column of the tariff, and to pay to another party or parties an amount based on amounts set out in the same or another column;
>
> (c) one party to pay to another party all or part of the reasonable and proper costs with respect to a particular issue, application or proceeding or part of an action;
>
> (d) one party to pay to another a percentage of assessed costs, or assessed costs up to or from a particular point in an action.

[25] Thus, in making a costs award under 10.31(1)(a), as in this case, the court is provided with a menu of orders it may make with respect to costs. Rule 10.31(3)(a) expressly provides that "all or part of reasonable and proper costs" may be ordered, "with or without reference to Schedule C." This suggests significant discretion on the part of a trial judge in implementing a reasonable and proper costs award and would appear to clearly permit an order for a lump sum percentage of legal costs. Rule 10.31(3)(d) expressly permits such a costs award. Rule 10.31(3)(b) permits the court to make an order directing the unsuccessful party to pay the successful party an amount equal to a multiple, a proportion or a fraction of an amount set out in any column of the Tariff of Recoverable Fees in Schedule C.

[26] It is important to note that the options set forth in Rule 10.31(3) are expressly linked to Rule 10.31(1)(a), which permits the court to award "the reasonable and proper costs that a party incurred".

[27] What comes out of this analysis of the Rules is that a costs award made with reference to Schedule C is only one of several options open to a court in awarding costs to a successful party and that awarding a percentage of assessed costs is expressly authorized.

[28] The trial judge attempted to apply "a principled approach which considers the purpose of costs", but she appeared to perceive Schedule C to be the default rule, absent misconduct or complexity, for making cost awards. The Rules of Court do not support that characterization. Costs awards may or may not be based on Schedule C. A variety of means are countenanced by the Rules to arrive at a reasonable costs award (see Renke, J. in *GO Community Centre v Clark Builders and Stantec Consulting Ltd*, 2020 ABQB 203 at para 82).

[29] To summarize, Schedule C is merely one of a number of options or tools that may be used to achieve the outcome of reasonable and proper costs under Rule 10.31(1)(a). Other options include *not* making any reference to Schedule C (Rule 10.31(3)(a)); or awarding costs pursuant to "a multiple, proportion or fraction of an amount set out in ... Schedule C" (Rule 10.31(3)(b); or awarding a percentage of assessed costs (Rule 10.31(3)(d)).

[30] A successful party is entitled either to reasonable and proper costs, as set out in Rule 10.31(1)(a), or to any other amount the court considers appropriate in the circumstances, as set out in Rule 10.31(1)(b). However, if the costs award is to be "the reasonable and proper costs that a party incurred" as provided for in Rule 10.31(1)(a), then the options with respect to making such costs award are set forth in Rule 10.31(3).

B. A Standard Level of Costs Indemnification?

[31] While Rules 10.31(1) and 10.33 lay out a framework for assessing costs and making cost awards, they provide little guidance as to what quantum of costs indemnification constitutes "reasonable and proper costs". For example, the Rules do not specify a level of indemnification required to constitute reasonable and proper costs.

[32] In the court below, the trial judge was not persuaded that a rule of thumb approach of awarding 40-50% of the successful party's incurred legal fees was desirable. She rejected this approach in part because of her view that it would lack a safeguard for reasonableness, it would not sufficiently promote efficiency, and it would not allow parties to effectively assess risk. We must respectfully disagree that such an approach necessarily suffers from any of these assumed deficiencies.

[33] A "reasonable and proper costs" award involves a payment by the unsuccessful party to the successful party to indemnify the successful party for expenses incurred as a result of the conduct of the unsuccessful party. The primary purpose of a costs award is to indemnify the successful party in respect of the expenses sustained either defending a claim that in the end proved unfounded (if the successful party was the defendant), or in pursuing a valid legal right (if the plaintiff prevailed) (*Okanagan Indian Band* at para 21). The indemnification is not intended to be complete. Nevertheless, a reasonable level of indemnification of costs incurred is the primary purpose of costs awards. Other considerations may come into play, but only when appropriate. For example, encouraging efficiency only comes into play where there is a specific opportunity to encourage it or where there has been a demonstrated inefficiency in the conduct of the litigation.

[34] The Supreme Court in *Okanagan Indian Band* indicated that the traditional principles supporting costs awards continue to govern the law of costs in cases where there are no special factors that would warrant a departure from them (para 22). See also MM Orkin, *The Law of Costs*, 2nd ed (Aurora, ON: Canada Law Book, 2019) (loose-leaf updated 2020, release 89), ch 2 at 2-8, where the author indicates that indemnification is the "essence" of an award of party-and-party costs. Orkin cites *Bell Canada v Consumers' Assoc of Canada*, [1986] 1 SCR 190 at 207 for this proposition, where LeDain J stated: "I am of the opinion that the word 'costs' must carry the general connotation of being for the purpose of indemnification or compensation."

[35] However, the Supreme Court in *Okanagan Indian Band* also said that "courts have recognized that indemnity to the successful party is not the sole purpose, and in some cases not even the primary purpose of a costs award" (para 22). When costs awards are employed as

instruments of policy, as was the case in *Okanagan Indian Band*, other considerations may apply. As an instrument of policy, the so-called "modern" approach to costs awards "accomplish[es] various purposes in addition to the traditional objective of indemnification" (para 25). For instance, it may be designed to discourage unnecessary steps in litigation, to sanction bad or frivolous behavior, and to encourage settlement (see paras 22-25). See too *1465778 Ontario Inc v 1122077 Ontario Ltd* (2006), 82 OR (3d) 757 at para 26 (CA); and *Catalyst Paper Corp v Companhia de Navegação Norsul*, 2009 BCCA 16 at para 16. *Okanagan Indian Band* also discusses the importance of promoting access to justice through costs awards (see paras 23, 26, 27-30).

[36] However, where, as in this case, the plaintiff advanced what was found to be a meritorious claim which the defendant defended vigorously, *Okanagan Indian Band* suggests that indemnification should be the principal consideration.

[37] It is accepted that indemnification of the successful party should not normally provide full indemnity for all legal fees and disbursements. Instead, a typical costs award (i.e. party and party costs) is intended to be "a partial indemnity for the expenses to which the recipient has been put as a result of the litigation" (Orkin at 1-3). Cost awards in all Canadian jurisdictions typically constitute only partial indemnification of the litigant's legal costs (*Okanagan* at para 53).

[38] This Court in *Weatherford Canada Partnership v Artemis Kautschuk und Kunstoff-Technik GmbH*, 2019 ABCA 92 [*Weatherford CA*] noted that the intention of costs awards is to balance the unfairness of requiring a successful party whose conduct is not blameworthy to bear any costs and the chilling effect on parties bringing or defending claims if the unsuccessful party is required to bear all the costs (para 12). An apt description of this balancing act was provided by the late Justice D.C. McDonald in *Reese et al v Alberta (Minister of Forestry, Lands and Wildlife) et al* (1992), 133 AR 127, [1993] 1 WWR 450 (which was quoted by this Court in *Sidorsky v CFCN Communications Ltd*, 1997 ABCA 280 at para 31):

> The Canadian practice [of awarding party and party costs] reflects an attempt to balance two conflicting interests. On the one hand, it is argued that if a party is successful and there are no circumstances constituting blameworthiness in the conduct of the litigation by that party, it is unfair to require the successful party to bear any costs incurred by his counsel in prosecuting or defending the action. On the other hand, it is argued that if the unsuccessful party is required to bear all the costs of the successful party, citizens will be unduly hesitant to sue to assert their rights (even valid ones) or to defend their rights when sued. The partial indemnity practice as it exists in Canada is a compromise intended to give some scope in practice for each of the conflicting policy considerations.

[39] If costs awards are only to partially indemnify the successful party, what then is the appropriate level of such partial indemnification? Orkin speaks to this question at 2-10.1-2-11:

> Canadian Courts have not tried to define with any precision the degree of indemnification intended by an award of party-and-party costs on the tariff scale. ... Traditionally, the degree of indemnification represented by partial indemnity costs has varied between 50% and 75% of solicitor-client or substantial indemnity costs.

[40] This level of indemnification represents a balance between what has traditionally been a high degree of indemnification in England versus no indemnification (i.e. no costs are payable to the successful party) in many jurisdictions of the United States.

[41] In Alberta, the weight of authority is that party and party costs should normally represent partial indemnification of the successful party at a level approximating 40-50% of actual costs (see *Weatherford CA* at para 11; *Hill v Hill*, 2013 ABCA 313 at para 11; *Young v Alberta (Assessors' Association Practice Review Committee/Executive Committee)*, 2020 ABQB 493 at para 17; *Styles v Caravan Trailer Lodges of Alberta Ltd*, 2019 ABQB 558 at para 47; *Remington v Crystal Creek Homes Inc*, 2018 ABQB 644 at para 36; *Weatherford QB* at para 54; *Athabasca Minerals Inc v Syncrude Canada Ltd*, 2018 ABQB 551 at para 59; *Strategic Acquisition Corp v Multus Investment Corp*, 2017 ABQB 297 at para 18; rev'd in part on other grounds 2018 ABCA 63; *Blaze Energy Ltd v Imperial Oil Resources*, 2014 ABQB 509 at para 68; *Calgary (City) v Alberta (Minister of Municipal Affairs)*, 2008 ABQB 433 at para 42; *Marathon Canada Ltd v Enron Canada Corp*, 2008 ABQB 770 at para 30; *LSI Logic Corp of Canada, Inc v Logani*, 2001 ABQB 968 at para 8; *Trizec Equities Ltd v Ellis-Don Management Services Ltd*, 1999 ABQB 801 at para 20-21, aff'd as to liability only in 1999 ABCA 306).

[42] In *Weatherford CA*, this Court expressly endorsed this 40-50% level of indemnification at paragraph 11:

> The general rule is that costs are awarded on a party and party basis, and that this should represent partial indemnification of the successful party – approximately 40-50% of actual costs [citations omitted].

And before that, in *Hill v Hill* at paragraph 11:

> But party-party costs are not plucked out of the ether; they are designed to be somewhere around half a reasonable legal bill, or a little under. And Schedule C does not bind a judge in any respect, and is not even presumed correct

[43] The 40-50% level of partial indemnity was also the objective of the Schedule C Committee formed in the late 1990s to develop amendments to Schedule C of then Rules (implemented in 1998). The Committee's Report to the Benchers (2 September 1997) [Report] stated the following at pages 2-3:

> Solicitor and client costs are the benchmark against which party and party costs are measured because the objective of any schedule is to provide a consistent level of indemnity measured as a proportion of the actual cost of conducting the action in a reasonable manner (the definition of solicitor and client costs).
>
> In formulating the revised schedule, the Committee aimed at providing 40% to 50% indemnity in a typical case. In circumstances where the revised schedule meets that target there will generally be no need for the Court to exercise its discretion. When the Court does exercise its discretion, reference to a proportion of solicitor and client costs can provide valuable guidance for the Court and other litigants.

[44] The Schedule C Committee indicated that the "target" level of indemnity of 40% to 50% provided a clear reference point for other cases and thus guidance to litigants at least with respect to an appropriate level of indemnification (Report at 3).[2]

[45] There was then (in 1997), and perhaps there may always be, debate about what the proper level of indemnification in costs to a successful party should be. Suffice it to say that the 40-50% partial indemnification guideline, which has been utilized for a number of years as providing a reasonable level of indemnification, is intended to accomplish the balance discussed in the case law between fully compensating successful parties who through no fault of their own had to engage in legal proceedings (on the one hand) and the chilling effect on parties bringing or defending claims if the unsuccessful party has to bear too heavy a costs burden (on the other). This level of indemnification assumes no misconduct by either party in the conduct of the litigation.

[46] If the option of awarding costs as a percentage of assessed costs is chosen, the assessment of the costs may require a consideration of what is a reasonable amount which ought to have been charged for the services the successful party's lawyer rendered and that may require reference to the considerations set forth in Rule 10.2(1) which go into the determination of what constitutes a reasonable charge (the Rule is reproduced at paragraph 47 herein). If a trial judge chooses to award a percentage of the assessed costs pursuant to Rule 10.31(3)(d) to the successful party, then what is being considered are the "reasonable and proper costs that a party incurred" under Rule 10.31(1)(a). In order to determine whether the costs incurred are reasonable and proper, they must be assessed, either by the party opposite, or by the judge or by an assessment officer. If it is the trial judge, then he or she should consider the reasonableness of both the legal services performed

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[2] Despite the intentions of the Schedule C Committee in this respect (or the Legislature's intention for that matter), it is unclear whether Schedule C has ever provided indemnification of 40-50% of actual solicitor-client fees. Even the recent, May 2020, updates to Schedule C (enabled in *Alberta Rules of Court Amendment Regulation*, AR 36/2020), which have increased the tariff amounts in Schedule C by approximately 35% over those in the 1998 version of the Schedule, still appear to fall well short of that range. For instance, applying the current Schedule C fees in place of what the trial judge awarded the appellant in this case would have resulted in less than the 17% indemnification he was actually awarded.

and the amounts charged for those services. Reasonable costs reasonably incurred is what the percentage must be based on. The incurring of the cost must be reasonable and the amount of the cost incurred must also be reasonable. As indicated above, the assessment may also be undertaken by the party opposite or, if the parties cannot reach an agreement on costs, the trial judge may direct an assessment of the legal costs by an assessment officer, pursuant to Rule 10.34. Rule 10.31(3)(d) contemplates such an assessment when it speaks of one party being ordered to pay the other "a percentage of assessed costs" (emphasis added).

[47] Among other considerations, an assessment of the reasonableness of the legal costs incurred must take into account the factors set forth in Rule 10.2(1) regarding whether or not a lawyer's fees are reasonable as between the lawyer and his or her client:

> 10.2(1) Except to the extent that a retainer agreement otherwise provides, a lawyer is entitled to be paid a reasonable amount for the services the lawyer performs for a client considering
>
> (a) the nature, importance and urgency of the matter,
>
> (b) the client's circumstances,
>
> (c) the trust, estate or fund, if any, out of which the lawyer's charges are to be paid,
>
> (d) the manner in which the services are performed,
>
> (e) the skill, work and responsibility involved, and
>
> (f) any other factor that is appropriate to consider in the circumstances.

[48] That the lawyer's charges are reasonable as between solicitor and client is not the end of the assessment. Consideration must also be given in assessing the reasonableness of requiring the unsuccessful party to indemnify the successful party for a percentage of them.

[49] Resorting to Schedule C simply to avoid these assessments may not be appropriate if Schedule C does not yield an appropriate level or scale of indemnification; that is, a reasonable or meaningful level of indemnification.

[50] In our view, the trial judge may have misinterpreted Justice Shelley's conclusions in *Weatherford QB* when she suggested that overwhelmingly courts use percentage indemnity when there has been misconduct, significant complexity, or damages claimed in excess of Column 5 of Schedule C (see *Reasons* at para 16). Justice Shelley's conclusions about the common approach to costs are found in *Weatherford QB* at paragraphs 54-57, which confirm that the amount of costs awards, absent misconduct, should approximate 40-50% indemnity of the successful party's

incurred costs. Justice Shelley made the point that Schedule C fees may be inadequate but that in any event the ultimate question was whether the final costs award was reasonable, citing *Caterpillar Tractor Co v Ed Miller Sales & Rentals Ltd*, 1998 ABCA 118 at para 4.

[51] As a general principle, we see no reason to depart from the 40-50% level of indemnification approved by this Court in *Weatherford CA* and *Hill v Hill*. It provides a reasonable guideline upon which the level of indemnification implied by the phrase "reasonable and proper costs" may be measured under the Rules. However, we refrain from defining with any precision the level of indemnification required in any given case. All we say is that the level of indemnification must be both meaningful and reasonable. The court's discretion to move up or down from that level having regard to the factors set forth in Rule 10.33 or in Rule 10.2(1) remains intact. Also, the level of indemnification may be higher or lower than the 40-50% depending on how the litigation was conducted and other factors not necessarily having anything to do with the conduct of the litigation.

C. Schedule C

[52] The trial judge's view was that awarding costs pursuant to Schedule C was preferable to relying on a percentage of solicitor-client fees incurred because Schedule C: (1) compensates litigants for significant steps in litigation, (2) allows parties to effectively measure costs associated with litigation, and (3) encourages parties to abide by the foundational rules to promote resolution of issues in a practical and efficient manner.

[53] As discussed earlier, Schedule C provides little guidance as to what constitutes an appropriate level of indemnification. Rather, it is one of a number of tools that a trial judge may use in order to make a cost award which provides appropriate indemnification. The Rules make it clear that Schedule C may not always constitute "reasonable and proper costs" under Rule 10.31. Indeed, Rule 10.31(3)(a) expressly states that the court may order one party to pay another all or part of its reasonable and proper costs (i.e. the Rule 10.31(1)(a) costs) without reference to Schedule C. Application of Schedule C may yield reasonable and proper costs. It may not. As the majority in *Boyd v JBS Foods Canada Inc*, 2015 ABCA 191 stated at paragraph 4: "Schedule C is not a standard or starting point. A judge or master need not use it at all"; or as was noted by this Court in *Hill*: "[w]e must keep in mind that Schedule C is a purely-optional rubber stamp for a judge, who may use it or not, or amend it as he or she sees fit" (para 38).

[54] Schedule C has been referred to as a "very crude method by which to assess costs" (*Trizec* at para 23), and it can be a poor approximator of financial consequences related to undertakings or steps in litigation (*Athabasca* at para 64). It has also been argued that the level of indemnification in Schedule C does not discourage unnecessary steps in litigation, which is one of the policy goals of awarding or refraining from awarding costs (see background paper by ET Spink, QC, "Party and Party Costs" (October 1995) [unpublished, archived at Alberta Law Reform Institute] prepared for Schedule C Committee). A similar concern was raised recently in *Intact Insurance Co v Clauson Cold & Cooler Ltd*, 2019 ABQB 225 by Dilts, J., who indicated that the further Schedule C strays from the real and reasonable costs a party pays for legal fees, the less likely the risk of

paying Schedule C costs will act as a tool to promote settlement or that it will affect the conduct of litigation (para 15).

[55] One of the reasons the trial judge gave for preferring Schedule C to the percentage of assessed costs approach was that, unlike the percentage of assessed costs approach, Schedule C compensates for steps taken in the litigation. But, as noted in *Caterpillar Tractor Co* at para 6, Schedule C arbitrarily selects certain steps in a lawsuit and compensates parties for taking them, but it omits other steps which can be just as significant to advancing the litigation, and often just as costly. For example, an agreed statement of facts may be a significant step in advancing an action, as was the case here. An agreed statement of facts can be an important tool to ensure trial time is used effectively. However, it is not included as a compensable step in Schedule C. There are many other examples of steps taken to narrow issues, expedite matters, etc. which are not compensable items described in Schedule C such as taking views, conducting inspections and examinations, document organization, etc.

[56] The trial judge in this case was of the view that awarding a percentage of assessed costs would not achieve the purpose of allowing parties to measure the risk of costs, thereby encouraging the parties to resolve disputes in a practical and efficient manner. We disagree. Measuring the cost risk is similar whether the costs are awarded on the basis of Schedule C or on the basis of a percentage of assessed costs. In both cases, they must be reasonable and proper.

[57] If certainty is the goal, neither form of cost award is necessarily better than the other in achieving it. It has been said that parties should know in advance what costs they may be entitled to if successful, or liable to pay if unsuccessful. The reality is that the parties rarely know in advance what costs they may be entitled to receive or liable to pay. That is not necessarily a bad thing. Costs uncertainty is one of the risks of litigation and those risks tend to discipline parties to be reasonable, both procedurally and in the substantive positions they adopt. Also, ordering a percentage of assessed costs may result in increased scrutiny of legal costs.

[58] That said, we should not be taken as questioning the utility of Schedule C, which is provided for in the Rules of Court and which is used day in and day out by judges in a great variety of situations.

[59] Schedule C is expressly available under Rules 10.31(3)(a) and (b) as a mechanism or method by which a reasonable and proper costs award may be arrived at (i.e. a costs award pursuant to Schedule C or "a multiple, proportion or fraction of an amount set out in any column...of Schedule C). The Schedule provides a convenient and transparent foundation for judicial determination of costs (*GO Community Centre* at para 89) and may be appropriate in the "common stream of litigation" (*Trizec Equities* at para 27) and particularly useful and efficient in high-volume interlocutory matters such as chambers applications (see *GO Community Centre* at para 89). Schedule C assists judges in making expeditious costs decisions (Rules Project 2005) and may, with or without the use of multipliers, provide a reasonable level of indemnity when such indemnity is called for.

[60] Schedule C can also be a useful default to which parties may defer, or which trial judges may adopt in a variety of circumstances. For example, in cases in which there is a significant imbalance in the power and means of the parties, Schedule C, notwithstanding its limitations vis-à-vis indemnity, may be preferable (*Styles* at para 59). See too *Blaze Energy* at para 75, *Monco Holdings Ltd v BAT Development Ltd*, 2005 ABQB 851 at para 31, and *Geophysical Service Incorporated v Falkland Oil and Gas Limited*, 2019 ABQB 314 at para 23, which express concerns over a percentage-based indemnity approach to costs awards because such an approach may impede access to justice. These concerns may and should be addressed by trial judges on a case-by-case basis, where a Schedule C approach to costs may provide a more equitable result.

[61] Finally, we note that Schedule C may be useful simply as a tool of reference for trial judges to make a "reality check" when fashioning an appropriate costs award (see *Athabasca* at para 61).

[62] At the end of the day, the real question faced by trial judges is how to achieve a reasonable and proper costs award, not the steps taken to achieve that result (see *Caterpillar Tractor Co* at para 4 and *Bell Mobility Inc v Anderson*, 2015 NWTCA 3 at para 99). Schedule C, while not properly considered a guideline or standard when assessing what constitutes an appropriate level of indemnification, is nevertheless a valuable tool that may effectively be used by trial judges in a variety of situations to make a reasonable and proper costs award.

[63] The problem with the use of Schedule C in this case was that it appeared to be used as a proxy for reasonable and proper costs without considering whether or not Schedule C yielded an appropriate level of indemnification in a case where the trial judge was "wholly satisfied" that counsel had acted reasonably in pursuing the plaintiff's claim. The trial judge focused on factors such as efficiency and certainty in circumstances where neither efficiency or the need for certainty were engaged.

[64] However, we emphasize, once again, that this was a case involving an almost completed piece of protracted litigation, which included a trial and the many steps required to bring the matter to trial. The issue of indemnification becomes a more important consideration in assessing costs at the end of a lawsuit than it does at each and every step of the way. At the interlocutory stage, it is often not clear who will ultimately be entitled to some level of indemnification.

VII. Conclusion

[65] To summarize, we conclude that the trial judge misdirected herself as to the applicable law in failing to consider whether costs determined in accordance with Schedule C provided an appropriate level of indemnification to the successful plaintiff. In short, she did not consider whether, and we cannot be satisfied that, the costs awarded represent the reasonable and proper costs that the plaintiff incurred in prosecuting his claim to a successful conclusion.

[66] The trial judge identified no special factors which would warrant not considering what might constitute a reasonable level of indemnification. The trial judge was satisfied that counsel

had acted reasonably in pursuing the appellant's claim and that this was not a case in which other factors would justify a departure from an appropriate level of indemnification. We would therefore allow the appeal and direct the trial judge to determine a reasonable level of indemnification. That determination may involve an assessment of whether the costs the appellant incurred were reasonable costs, reasonably incurred. The assessment of the reasonableness of the appellant's costs may be undertaken by the trial judge or it may be delegated to an assessment officer pursuant to Rule 10.34. The parties, of course, remain free to craft their own solution.

Appeal heard on May 8, 2020

Memorandum filed at Calgary, Alberta
this 27th day of January, 2021

O'Ferrall J.A.

Authorized to sign for: Hughes J.A.

Authorized to sign for: Antonio J.A.

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