No. VLC-S-S2011355
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

TARIQ WAHEED and 0923063 B.C. LTD

PLAINTIFFS

AND:

JM FOOD SERVICES LTD., FRESHSLICE HOLDINGS LTD., RFSP EQUIPMENT & OPERATING INC., A&M ENTERPRISE LTD., 1015214 B.C. LTD., RF FRANCHISING INC., and THE TRUSTEES OF THE FRESHSLICE FAMILY TRUST

DEFENDANTS

APPLICATION RESPONSE

Application response of: The Plaintiffs (the "application respondents")

THIS IS A RESPONSE TO the notice of application of the Defendants filed September 1, 2026.

The application respondents estimates that the application will take one-half day.

Part 1: ORDER(S) CONSENTED TO

The application respondents consent to the granting of the orders set out in the following paragraphs of Part 1 of the notice of application on the following terms:

1. None.

Part 2: ORDER(S) OPPOSED

The application respondents oppose the granting of the orders set out in paragraphs ALL of Part 1 of the notice of application.

Part 3: ORDER(S) ON WHICH NO POSITION IS TAKEN

The application respondents take no position on the granting of the orders set out in paragraphs NONE of Part 1 of the notice of application.

Part 4: FACTUAL BASIS

1. The Plaintiff incorporates by reference the facts set out in the First Report of the Receiver herein filed September 2, 2026.

2. This action arises from a claim made pursuant to the Fraudulent Conveyance Act and the Fraudulent Preference Act. There had been an underlying action in which JM Food Services Ltd. ("**JM**") and Freshslice Holdings Ltd. and RFSP Equipment & Operating Inc. were the defendants.

3. As determined by the Honourable Justice Macintosh and confirmed in the reasons for judgment of the Honourable Justice Winteringham as set out below, on June 21, 2013, JM put out of business the Freshslice Pizza franchise operated by 0923063 BC Ltd. On September 27, 2013,

4. The trial in the underlying action had proceeded before Mr. Justice Macintosh in 2018 and 2019 (the "**First Trial**"). In Reasons for Judgment of Mr. Justice Macintosh dated April 11, 2019, the court found in favour of the plaintiffs as against JM. The counterclaim was set off. On November 18, 2019, the plaintiffs obtained a judgment against JM. As determined by Justice Winteringham as set out below, at some point after June 21, 2013, JM transferred away assets to closely related companies, and to a family trust.

5. On November 6, 2020, the plaintiffs commenced this action claiming fraudulent conveyance. The action eventually proceeded to trial in September of 2023 before Justice Winteringham (the "**Second Trial**"). Justice Winteringham provided reasons for judgment on December 1, 2023, in which she set out why she found that JM had carried out fraudulent conveyances and fraudulent preferences. The defendants successfully appealed a limitation period issue. The Court of Appeal remitted the matter "to the Supreme Court on the question of whether the limitation period for 0923063 B.C. Ltd. to commence its claim had expired prior to its restoration."\

6. The matter was remitted to a third trial (the "**Third Trial**") before the Honourable Justice Morishita in July of 2025. The Third Trial related to matters arising in the Second Trial concerning limitation period issues. The plaintiffs were awarded their costs of the Third Trial.

7. Schedule A to this Notice of Application is a calculation of the judgments owing to the plaintiffs.

8. The amount of $342,435.13 was awarded as damages to 0923063 B.C. Ltd. in the original trial. The post-judgment interest figure of $106,135.00 was calculated from November 18, 2019, to August 20, 2026. All of the interest calculations were made pursuant to section 7 of the Court Order Interest Act, RSBC 1996, c. 79. The award of $26,852.98 was made to Mr. Waheed in the original trial. The post-judgment interest figure of $8,322.86; was calculated from November 18, 2019, to August 20, 2026. The figure of $ 197,168.69 were the assessed costs awarded jointly to the plaintiffs following the first trial. The figure of $61,110.84 is the interest calculated from November 18, 2019, to August 20, 2026. The amount of $2,593.15 were the costs of the first appeal that were consented to. The figure of $803.73 is the amount of interest on those costs calculated from November 18, 2019, to August 20, 2026. The figure of $27,000 is the costs pertaining to this action up until the trial conducted before Justice Winteringham. Those costs were consented to. The figure of $4,231.44 is the post-judgment interest on

the $27,000 from December 1, 2023 (date of the judgment of Justice Winteringham) to August 20, 2026. The costs of the trial before Justice Morishita were assessed at $12,907.68. Post-judgment interest oil that amount was calculated to be $599.66, which was calculated from August 19, 2025, to August 20, 2026.

9. The total amount as of August 20, 2026 was $790,161.16. Post-judgment interest continues to accrue.

10. In addition, the plaintiffs were awarded the costs of the motion to appoint a receiver on a substantial indemnity basis. This is estimated in excess of $24,000 as the hearing was heavily contested and the matter was adjourned twice because of no availability of a judge.

11. It is anticipated that the costs of the Receiver will be well in excess of $50,000, rising the longer this dispute remains contested.

12. Under the Receivership Order, the Honourable Justice Sharma appointed McEown and Associates as the receiver represented by John McEown. The receiver has retained Jeremy West as its counsel in this matter.

13. The Plaintiffs' judgments against the defendants remain outstanding in their entirety.

14. The Plaintiffs are extremely concerned at the repeated statements and suggestions by counsel for the defendants herein that it is now up to the receiver to embark on a tracing exercise. These arguments were made before Justice Sharma in opposing the Order ultimately granted. The Defendants chose not to appeal that Order and are seeking to rekindle the same arguments previously made to, and rejected by, this Honourable Court. This is an abuse of the process of this Court and prohibited by the principles of res judicata and issue estoppel.

15. Given the findings of Justice Winteringham as set out in her Reasons for Judgment dated December 1, 2023, the Plaintiffs are extremely concerned any tracing exercise would be bogged down by the demonstrated inclination of the defendants to conceal documents, fail to provide evidence in a timely fashion, make up false explanations, and otherwise to avoid payment of these judgments and the receivership costs.

16. Mr. Waheed and his company remain entirely unpaid. He has incurred legal expense in excess of $350,000 in the various litigation, and is not in a financial position to fund further litigation and/or tracing exercises by the Receiver and counsel.

17. Justice Winteringham, at paras. 65 and 66 of her r easons for judgment, concluded that Mr. Russell's:

> … "hostility permeated from the substance of the answers he gave—it was apparent to the Court that he was angry and frustrated about losing to the plaintiffs, and, in particular, Mr. Waheed in the First Proceeding… Ultimately, Mr. Russell agreed that one of the final meetings with Mr. Waheed resulted in a physical altercation where Mr. Waheed had to go to the hospital… All of that said, it was evidence that Mr. Russell maintains a palpable dislike for Mr. Waheed

that he holds to this day. Mr. Russell's dislike for Mr. Waheed appeared to extend to plaintiffs' counsel..."

18. She further concluded at paragraph 69:

> "Mr. Russell seemed to believe that he and his companies would have a chance for a "do-over". This is so even though the appeal was dismissed as abandoned and in the face of a judgment that remains unpaid. Despite his repeated claims that he "respected the court", it was very clear that he did not respect the decision that the defendants were liable to the plaintiffs. He harbours a resentment to the plaintiffs, and to their lawyer that seems to drive Mr. Russell's decision-making, at least so far as it related to the within proceeding."

19. In her reasons in the Second Trial, Justice Winteringham concluded that the Defendants had repeatedly failed to produce documents contrary to the rules of court and various court orders, and did not accept their explanations for failing to produce critical financial records. The Court drew adverse inference from the failure of production.

20. The evidence sought to be relied upon by the Defendants consists largely of bald assertions of fact and inadmissible conclusory statements, unsupported by backup documents. In light of the findings to date, the Court ought not to accept any statements from the Defendants which are not unsupported by comprehensive documents and which the Plaintiffs have not been permitted to fully test by cross-examination.

21. There is no legal reason to withhold payment in full of the plaintiffs' judgments. A reasonable reserve for unquantified costs is entirely appropriate.

Part 5: LEGAL BASIS

1. Supreme Court Civil Rules 10-2 and 13-2(5);

2. s. 39 of the Law and Equity Act, R.S.B.C. 1996, c. 253;

3. The law of abuse of process: *Este v. Esteghamat-Ardakani*, 2018 BCCA 290.

4. The law of res judicata and issue estoppel: *Patrick Street Holdings Ltd. v. 11368 NL Inc.* 2926 SCC 15.

5. Inherent jurisdiction of the Court.

Part 6: MATERIAL TO BE RELIED ON

1. First Report of the Receiver herein filed September 2, 2026;

2. Affidavit #4 of David Grunder made September 2, 2026;

3. The other application materials filed in support of and in opposition to the Defendants' application dated September 1, 2026 to vary the Receivership Order;

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

☐ The application respondents [has/have] filed in this proceeding a document that contains the application respondent['s/s'] address for service

☐ The application respondent has not filed in this proceeding a document that contains an address for service. The application respondent's ADDRESS FOR SERVICE is:

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Dated: September 2, 2026

Signature of Lawyer for application respondent
Kornfeld LLP

Dan Parlow