



This is the 4th affidavit of David Grunder
in this case and was made on 2/Sep/2026

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 FRANCISHING INC., and THE TRUSTEES OF THE FRESHSLICE FAMILY TRUST

DEFENDANTS

AFFIDAVIT

I, David Grunder, barrister and solicitor, of 1436 - 3 Sutherland Avenue, in the City of North Vancouver in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am principal of David W. Grunder Law Corporation and am the counsel for the plaintiffs in this action, and as such have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be on information and belief, in which case I believe them to be true. I have retained Dan Parlow to deal with the receivership aspect of this claim as I have little experience with such matters.
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, I was retained by Tariq Waheed on his behalf and on behalf of his numbered company, 0923063 B.C. Ltd. to prosecute the claim for damages. I

have been acting for Mr. Waheed and his company in this matter since that time.

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, I commenced this action on behalf of the plaintiffs. 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. Attached to this Affidavit and marked as **Exhibit “A”** is a true copy of the Reasons for Judgment of Justice Winteringham dated December 1, 2023. Attached to this Affidavit and marked as **Exhibit “B”** is a true copy of the Order After Trial dated December 1, 2023, finding in favour of the plaintiffs.
6. 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.”
7. 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. Attached to this Affidavit and marked as **Exhibit “C”** is a true copy of the Order After Trial dated August 19, 2025. Justice Morishita found that the limitation period for 0923063 B.C. Ltd. “had not expired prior to its restoration on September 9, 2022.” The plaintiffs were awarded their costs of the Third Trial.
8. Attached to this Affidavit and marked as **Exhibit “D”** is a calculation of the judgments owing to the plaintiffs which I verily believe to be true and correct.
9. 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 \$197,168.59 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 on that amount was calculated to be \$599.66, which was calculated from August 19, 2025, to August 20, 2026. 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. I do not know what that amount is at this time, but my estimate is in excess of \$24,000 as the hearing was heavily contested and the matter was adjourned twice because of no availability of a judge. In addition, I expect that the costs of the receiver will be well in excess of \$50,000, rising the longer this dispute remains contested.
11. Under the receivership Order dated May 13, 2026 (the “**Receivership Order**”), the Honourable Justice Sharma appointed McEown and Associates as the receiver. John McEown is the individual I am dealing with. The receiver has retained Jeremy West as its counsel in this matter.
12. Attached to my Affidavit and marked as **Exhibit “E”** is a true copy of an email dated August 20, 2026, from Raj Wijesinghe, counsel for the defendants, to Jeremy West and Dan Parlow.
13. Attached to my Affidavit and marked as **Exhibit “F”** is a true copy of the letter dated August 20, 2026, from Rajeewa Wijesinghe referred to in the email dated August 20, 2026. In that letter Mr. Wijesinghe sets out the position of the defendants with respect to the actions taken by the receiver as authorized by the Receivership Order.
14. Attached to my Affidavit and marked as **Exhibit “G”** is a true copy of an email chain dated August 20,

2026, between Jeremy West and Raj Wijesinghe.

15. Attached to my Affidavit and marked as **Exhibit "H"** is a true copy of an email chain dated August 21, 2026, between Dan Parlow and Raj Tutt, who is Mr. Wijesinghe's legal assistant.
16. Attached to my Affidavit and marked as **Exhibit "I"** is a true copy of the letter dated August 21, 2026, from Dan Parlow to Jeremy West and Raj Wijesinghe.
17. Attached to my Affidavit and marked as **Exhibit "J"** is a true copy of an email chain dated August 21, 2026, between Dan Parlow and Raj Wijesinghe.
18. Attached to my Affidavit and marked as **Exhibit "K"** is a true copy of an email chain dated from August 21 - 24, 2026, between Raj Wijesinghe, Jeremy West, and Dan Parlow.
19. Attached to my Affidavit and marked as **Exhibit "L"** is a true copy of an email chain dated August 25 and 26, 2026, between Brad Martyniuk, Dan Parlow, and Jeremy West. In the first email Mr. Martyniuk advises that he has been retained to act on behalf of the defendants in this matter.
20. Following the First Trial, JM was ordered to provide information as to other civil litigation in which it was involved. Attached to my Affidavit and marked as **Exhibit "M"** is a true copy of a document produced by JM pursuant to that Order. It shows some litigation. I have no knowledge as to whether those listed judgments against JM have been satisfied, other than the last listed one, which is the litigation pertaining to my clients.
21. Attached to my Affidavit and marked **Exhibit "N"** is a true copy of an article published in *Business in Vancouver* on August 25, 2026, in which there is a report on a decision of the BC Human Rights Tribunal. The article sets out the finding of an award of \$85,000 against Ray Russell and Freshslice Holdings Ltd., jointly and severally, in favour of Behrooz Rabiei. After the publication of the article I spoke to Mr. Rabiei. He confirmed that he was awarded \$45,000 for lost wages and \$40,000 for injury to "dignity, feelings and self-respect." Mr. Rabiei confirmed that as far as he was aware, the contents of the article were correct, although the article drew heavily from the reported decision. Mr. Rabiei advised me, and I verily believe that the judgment has not been paid to him.

22. At trial before Justice Winteringham Ray Russell testified that he is the sole director and sole shareholder of JM Food Services Ltd., Freshslice Holdings Ltd., RFSP Equipment & Operating Inc., and RF Franchising Inc. He testified that he is the trustee of The Freshslice Family Trust. Justice Winteringham made those findings at paragraph 15 of her Reasons for Judgment. Mr. Rabiei told me, and I verily believe that when he contacted Freshslice Holdings Ltd. about recovering his award he was directed to contact the receiver, McEown and Associates.

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

21. I am extremely concerned at the repeated statements and suggestions by counsel for the defendants that it is now up to the receiver to embark on a tracing exercise.

22. Attached hereto and marked respectively as **Exhibit "O"** and **Exhibit "P"** are copies of the Defendants' Amended Application Response filed March 18, 2026 and their Written Submissions filed May 11, 2026 in advance of the Receivership Order and detailing various arguments advanced by them at that time.

23. To the best of my information and belief, the Receivership Order has not been appealed.

24. Given the findings of Justice Winteringham as set out in her Reasons for Judgment dated December 1, 2023, I am 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.

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

26. Justice Winteringham, at paras. 65 and 66 of her reasons 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..."

27. 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."

28. Based on the conduct of Mr. Russell and of his family members, including his brother Mr. Alexander who were held to have participated in the fraudulent conveyances, I am very concerned that, if any funds are released to the defendants' account without them having paid the judgments and other amounts in full, there will or may be insufficient funds remaining to cover all of the liabilities of the defendants, which are known or unknown to me, and that after all these years of litigation the plaintiffs may end up unpaid.

29. Attached to my Affidavit and marked **Exhibit "Q"** is a true copy of the Order After Trial of Justice Macintosh dated November 18, 2019.

30. Attached to my Affidavit and marked **Exhibit "R"** is a true copy of a Certificate of Costs dated October 22, 2020, in the amount of \$197,168.69 allowed to the plaintiffs.

31. Attached to my Affidavit and marked **Exhibit "S"** is a true copy of the Order of a Justice of the Court of Appeal dated December 11, 2020, dismissing the appeal of the order of Justice Macintosh.

32. Attached to my Affidavit and marked **Exhibit "T"** is a true copy of a Consent Order in the Court of Appeal dated January 25, 2021, ordering costs to Tariq Waheed and 0923063 B.C. Ltd. from the appellants in the amount of \$2,593.15.

33. Attached to my Affidavit and marked **Exhibit "U"** is a true copy of an Order of Three or More Justices dated November 18, 2024, remitting a limitation issue to Supreme Court for determination.

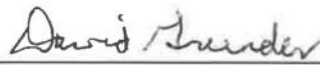
34. Attached to my Affidavit and marked **Exhibit "V"** is a true copy of a consent Certificate of Costs dated April 10, 2025, in favour of the plaintiffs in the amount of \$27,000.00.

35. Attached to my Affidavit and marked **Exhibit "W"** is a true copy of a Certificate of Costs dated July 6, 2026, in favour of the plaintiffs in the amount of \$12,907.68. The Certificate of Costs has been signed by the Registrar but not yet issued.

SWORN BEFORE ME at Vancouver, British
Columbia, on the 2ND day of September,
2026.



A commissioner for taking affidavits for
British Columbia.


DAVID GRUNDER

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Waheed v. JM Food Services Ltd.*,
2023 BCSC 2113

Date: 20231201
Docket: S2011355
Registry: Vancouver

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

Before: The Honourable Justice Winteringham

Reasons for Judgment

Counsel for the Plaintiffs:

D. Grunder

Counsel for the Defendants:

D. Kamachi

Place and Dates of Trial:

New Westminster, B.C.
September 18-21, 2023

Place and Date of Judgment:

New Westminster, B.C.
December 1, 2023

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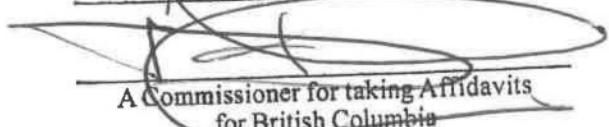
III. BACKGROUND

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This is Exhibit "A" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026


A Commissioner for taking Affidavits
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I. OVERVIEW

[1] In 2019, Justice Macintosh awarded damages and court-ordered interest totalling over \$500,000 against three of the instant defendants in reasons indexed at 0923063 *B.C. Ltd. v JM Food Services Ltd.*, 2019 BCSC 553 [*First Proceeding*]. Only \$6,000 of this award has since been paid. The plaintiffs now allege that the defendants reorganized closely held and related companies to avoid compliance with Macintosh J.'s order.

[2] The *First Proceeding* arose out of Tariq Waheed's operation of a Freshslice Pizza franchise through his numbered company, 0923023 B.C. Ltd. ("092"). Mr. Waheed and 092, the plaintiffs, alleged that three defendant companies acted to put them out of business, those being JM Food Services Ltd. ("JM Food Services"), Freshslice Properties Ltd. ("Freshslice Properties"), and RFSP

Equipment & Operating Inc. ("RFSP"). Justice Macintosh found that the defendants were liable insofar as they had breached contractual duties in addition to good faith performance obligations.

[3] In this proceeding, the plaintiffs allege that, at some point after June 21, 2013—the date the plaintiffs were "put out of business"—all of the assets of JM Food Services were transferred to other defendant companies. These transfers were organized, the plaintiffs allege, by Ray Russell who is the sole shareholder and director of JM Food Services, Freshslice Holdings Ltd. ("Freshslice Holdings"), and RFSP, and the sole trustee of the Freshslice Family Trust (the "Family Trust").

[4] The plaintiffs assert that the transfer of assets out of JM Food Services was a fraudulent conveyance within the meaning of the *Fraudulent Conveyance Act*, R.S.B.C. 1996, c. 163 [FCA], and a fraudulent preference within the meaning of the *Fraudulent Preference Act*, R.S.B.C. 1996, c. 164 [FPA]. As will be described, the plaintiffs characterize as "assets" or "property" certain streams of income once earned by JM Food Services. The plaintiffs maintain that they are entitled to the remedy granted in the *First Proceeding* from the defendants, jointly and severally.

[5] The defendants submit that any corporate reorganization was necessary to salvage and ensure the future viability of their business, which, at the material time, was losing money. In light of this reasoning, the defendants take the position that the plaintiffs have failed to establish a contravention of the *FCA* or *FPA* and that all of the plaintiffs' claims should be dismissed.

[6] Furthermore, the defendants submit that they acquired a "post dissolution legal right" when, in 2017, 092 lost its corporate status. On this basis, the defendants submit that the action by 092 is statute-barred regardless of the retroactive effect of the company's revival.

II. ISSUES

[7] The parties generally agreed on the primary issues to be determined:

- a) Did JM Food Services dispose of property within the meaning of the *FCA* to any of the other defendants named in this action?

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- b) Did JM Food Services dispose of any property which, in law, is invalid against creditors within the meaning of the *FPA* to any of the other defendants named in this action?
 - c) If JM Food Services disposed of property to one or more of the defendants in this action, to which defendant(s) was the disposition made?
 - d) Did the defendants acquire a post-dissolution legal right that limits any recovery to the personal plaintiff?

III. BACKGROUND

[8] The background in this civil claim is largely uncontested. For the most part, the defendants agreed with the facts as asserted by the plaintiffs.

A. The *First Proceeding*

[9] In the *First Proceeding*, the plaintiffs alleged that the defendants put their pizza franchise out of business. By way of a notice to admit, the defendants effectively admitted the following facts in respect of the *First Proceeding* and which are relevant to the within proceeding:

- a) On October 18, 2011, 092 signed a standard franchise agreement with JM Food Services in which Mr. Waheed was a guarantor. The business was to operate a Freshslice Pizza franchise;
- b) On April 20, 2015, the plaintiffs filed a notice of civil claim ("NOCC") naming 092 and Mr. Waheed as plaintiffs and JM Food Services, Freshslice Properties, and RFSP as defendants;
- c) On April 4, 2017, 092 was dissolved;
- d) Originally, the *First Proceeding* was scheduled to commence on December 11, 2017 but was adjourned;
- e) The trial in the *First Proceeding* commenced on December 3, 2018 before Macintosh J. who delivered reasons for judgment on April 11, 2019;

- f) On November 18, 2019, Macintosh J.'s order after trial provided as follows:
- i. 092 is awarded as against JM Food Services the sum of \$342,435.13 broken down as follows:
 - (1) Damages of \$127,485 for loss of income to May 31, 2020;
 - (2) Damages of \$83,000 for loss of good will;
 - (3) Punitive damages of \$125,000;
 - (4) Less \$11,582 for the counterclaim payable; and
 - (5) Prejudgment interest of \$18,532.13 on the damages of \$323,903;
 - ii. Mr. Waheed is awarded as against JM Food Services the sum of \$26,852.98 broken down as follows:
 - (1) Damages of \$25,000 for conversion; and
 - (2) Prejudgment interest of \$1,852.98;
- g) In addition, Macintosh J.'s order allowed for costs to be assessed under R. 8-1(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 to determine the amount recoverable by 092 under the standard franchise agreement for reasonable legal fees and expenses, as costs of the action, in accordance with the *First Proceeding* decision. On October 22, 2020, the Registrar certified "the costs of 092 and Mr. Waheed against JM Food Services in the amount of \$197,168.69;"
- h) The defendants filed a notice of appeal on May 9, 2019;
- i) On July 26, 2019, the appellants were ordered to post \$6,000 for security for costs;
- j) On December 11, 2020, the appeal was ordered dismissed as abandoned. By consent, the costs of the appeal were awarded to the

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respondents in the amount of \$2,593.15;

- k) On February 17, 2021, the Court of Appeal registry released the security for costs in the amount of \$6,000 (posted by the appellants) to the respondents. In fact, this is the only money received by the plaintiffs on account of their judgment.

B. The Within Proceeding

[10] Despite the orders in the plaintiffs' favour, the defendants failed to pay to the plaintiffs anything beyond the \$6,000 mentioned above. On November 6, 2020, Mr. Waheed and 092 commenced this action. It was scheduled for trial on September 6, 2022. At that point, however, it was found that 092 had been inadvertently dissolved and the trial could not proceed. As a result of the forced adjournment, the plaintiffs were ordered to pay \$2,000 as costs thrown-away and \$20,000 as security for costs.

[11] On September 9, 2022, 092 was restored under the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA].

[12] In this proceeding, the plaintiffs sought agreement that "JM Food Services effectively put the pizza franchise being operated by [092] and [Mr. Waheed] out of business." The defendants refused to make this admission.

[13] I agree with the plaintiffs that Macintosh J. indeed made this finding when, in the *First Proceeding*, he stated:

[94] The harm caused to Mr. Waheed was the loss of the franchise. He had paid \$160,000 for that franchise. He had little money, but he sunk further funds into developing it. He devoted a year and a half of his life to the business. During that time, he was living far from his wife and children, who were in London, with the hope of making the franchise a success. By prohibiting Wallace & Carey from delivering supplies to the franchise, the Defendants intentionally put the franchise out of business. The harm to Mr. Waheed and the Plaintiff Company was substantial and was inflicted with complete indifference.

[Emphasis added.]

See also *First Proceeding* at paras. 55, 60 and 70–71.

IV. EVIDENCE

[14] I will describe the evidence tendered by the plaintiffs in more detail. As will be seen, the plaintiffs' evidence consisted exclusively of examination for discovery read-ins, cross-examination of the defendant, Mr. Russell and admissions. I will thus commence this review by examining the evidence of Mr. Russell.

A. Ray Russell

[15] Mr. Russell founded and is the CEO of Freshslice Pizza. He is the sole director and sole shareholder of JM Food Services, Freshslice Holdings, RFSP and RF Franchising ("RF Franchising"). He is the sole trustee of the Family Trust.

[16] For context, JM Food Services was incorporated on September 17, 2008 to run franchise operations and RFSP was incorporated on January 29, 2013. The plaintiffs and JM Food Services entered into a standard franchise agreement dated October 18, 2011. JM Food Services then assigned franchise agreements after June 21, 2013 when it had started "shutting down" and was selling franchises as late as September 3, 2013. JM Food Services maintained some revenue through the fiscal year ending September 30, 2015, in which it had a net income from the sale of pizza dough of \$638,797.

[17] In respect of Mr. Russell and his companies, the plaintiffs alleged that three main business streams of JM Food Services—franchise fees, pizza dough for sale to franchisees, and the sale of equipment to franchisees—generated revenue and constituted property within the meanings of the *FCA* and *FPA*. Their contention is that JM Food Services transferred some assets to RFSP, however, they could not point to what exactly was transferred and when exactly these transfers occurred.

[18] The evidence demonstrates that JM Food Services transferred to RFSP its right to receive income from franchisees. Mr. Russell did not, however, produce any written assignments of franchise agreements from JM Food Services to RFSP. The plaintiffs submit that it is significant that the defendants have not produced any documentation regarding these transactions. Moreover, it appears that the transfers occurred without any consideration.

[19] Mr. Russell attributes the decision to transfer the rights of the franchise agreements vested in JM Food Services to RFSP to a decision made by

Freshslice Holdings, a company that he also controlled. Mr. Russell stated that RFSP operated for two or three years starting on January 29, 2013, but did not remember when the first or last assignment of franchises from JM Food Services went to RFSP.

[20] In examination for discovery and at trial, Mr. Russell testified that once RFSP stopped operating, franchise rights were transferred to Freshslice Holdings and then to RF Franchising. Rights in respect of providing operational advice to franchisees and dough production, services that JM Food Services had previously provided, were transferred to A&M Enterprise Ltd. ("A&M"), and numbered company, 1015214 B.C. Ltd. ("101"), took over the provision of equipment and small-wares.

[21] I note that, per Mr. Russell's evidence, A&M was incorporated on April 8, 2014. The first directors of A&M were Mr. Russell's nephews. Amir Sarabijamab resigned as director from A&M as of April 1, 2018. The second nephew, Mohammad Sarabijamab resigned as director of A&M as of December 26, 2018 and was replaced by Frank Alexander.

[22] At his examination for discovery, Mr. Russell testified that he did not have access to documents proving the noted transactions. However, during his testimony, and following an overnight recess, Mr. Russell brought a document to Court that was later marked as an exhibit. The document, dated March 31, 2013, was on letterhead of Freshslice Pizza/RFSP and was titled as an agreement between RFSP, JM Food Services, and Freshslice Holdings (the "March 31 Agreement"). The text of the document read as follows:

Here to agree and confirm that RFSP will purchase the inventory of JM Food Services.

Also RFSP is titled to all the loans receivable from JM Food Services and Freshslice Holding.

In return RFSP will service all the legal cases against JM Food Services and Freshslice Holdings. For greater clarity RFSP will only pay for servicing the law suits and any judgment from small claims court. RFSP will not be responsible or pay for any judgment against Freshslice Holding and JM Food Services in supreme court.

[23] The document has a signing line for RFSP, JM Food Services, and Freshslice Holdings. Mr. Russell signed on behalf of each of those named companies.

[24] During cross-examination, Mr. Russell agreed that the March 31 Agreement was intended to partially "judgment proof" JM Food Services, though he resisted the suggestion that the agreement had anything to do with the plaintiffs' claims. More broadly, at his examination for discovery, Mr. Russell testified that litigation between JM Food Services and other parties was not a demonstrable factor in the decision to transfer assets from JM Food Services.

[25] Effective December 18, 2017 or sometime in early 2018, Mr. Russell re-organized the Freshslice group of companies to move operations from JM Food Services and RFSP to Freshslice Holdings, RF Franchising, and a new holding company, referred to as "Benco" in a letter dated December 12, 2017 from Encompass Chartered Professional Accountants.

[26] Mr. Russell agreed that the effect of the re-organization of the Freshslice group of companies was to vest assets in the Family Trust that had previously been held by Freshslice Holdings and RF Franchising.

[27] Mr. Russell stated that he decided to transfer the dough selling part of the business from JM Food Services to A&M, and that RFSP was initially used as an intermediary. RFSP did not pay anything to JM Food Services for the right to sell dough to franchisees.

[28] Based on a notice of appeal filed by JM Food Services in the Tax Court of Canada, JM Food Services was paid a sum for the purchase of franchise locations in Ontario. JM Food Services (or possibly one of the other Freshslice companies) sold the right to franchise in Ontario for \$800,000. JM Food Services treated some of the amounts paid to it by the Ontario franchisees as deferred fees "to reflect services performed in future."

[29] I note that Mr. Russell has not produced any tax returns or financial documentation other than a tax return and financial statement for the year ending September 30, 2015, despite demands, court orders, and an obligation to do so under the *Rules*. As will be discussed in more detail below, the state of document disclosure in this case has supported adverse inferences against the defendants and stymied the prospect of supporting the positions they take.

B. Frank Alexander

[30] Mr. Alexander is the director of 101 and A&M. Mr. Alexander worked closely in many capacities with his brother, Mr. Russell, in the Freshslice group of companies since the beginning of the business. The plaintiffs characterized the line between 101 and A&M as "blurry."

[31] On October 1, 2014, Mr. Alexander incorporated 101 and became its sole shareholder. According to Mr. Alexander, he incorporated 101 to conduct construction business and the sale of small-wares to Freshslice franchises. Freshslice franchisees are required to purchase small-wares from 101 or approved suppliers.

[32] The evidence demonstrates that JM Food Services held the right to distribute small-wares to franchisees in 2013. That right was transferred to 101 without consideration.

[33] Mr. Alexander purchased A&M from Mohammed Sarabijamab around 2019 for "something like" \$1,500,000, though the purchase price was not paid all at once. When Mr. Alexander purchased A&M, its primary asset was the manufacture of pizza dough and its operations.

[34] In his evidence, Mr. Alexander maintained that the money used to buy A&M was paid by 101 and any ongoing payments for the purchase were made from 101. No documents were produced by the defendants confirming whether any payment was made.

[35] In respect of the transaction described in Mr. Russell's evidence, Mr. Alexander agreed that A&M did not provide consideration to JM Food Services for the right to handle operations of the Freshslice group of companies. He also agreed that A&M's source of income is the sale of dough. He explained that a distributor, Wallace & Carey, pays A&M "something over" \$2 per dough delivered to franchisees. Of that amount, A&M pays \$0.50 to Freshslice Holdings.

[36] Mr. Alexander's evidence also indicated that on November 24, 2017, 101 purchased Mr. Russell's residence for \$2,249,000.

V. EVIDENTIARY ISSUES

[37] This section considers three evidentiary issues that bear on the Court's analysis of the core legal issues. First, it considers the admissibility of the read-in evidence for certain purposes, second, it considers Mr. Russell's credibility, and third, it considers the impact of Mr. Russell's repeated refusals and inaction in respect of the usual documentary disclosure required in civil proceedings.

[38] As set out previously, it is part of the defendants' evidence and they agree that JM Food Services earned income by: (1) selling and distributing dough; (2) franchising and financing franchises; and, (3) selling equipment/small-wares. Further, the defendants agree that Freshslice Holdings "took the rights away from JM Food Services and gave them to RFSP (and later RF Franchising), Wallace and Carey Distribution, A&M, 101 and RBC."

[39] The evidence supports, and it is not disputed that JM Food Service's right to sell equipment was given to 101 and the dough production was given to A&M. Wallace & Carey acted as a distributor and financing was left to traditional banks. Then in early 2018, further reorganization was done to include the Family Trust.

[40] It is not disputed that not one of these entities paid to acquire the "rights." There was no consideration in these transfers.

[41] Mr. Russell claims that the reason for granting JM Food Services' rights to other entities was to improve his failing group of companies via a different corporate structure, and had nothing to do with avoiding payment to the plaintiffs. He claims that approximately \$1 million was written off as bad debts from JM Food Services' end of business.

[42] In respect of credibility, during cross-examination, Mr. Russell was challenged on assertions related to the corporate restructuring. Steadfastly denying any improprieties, Mr. Russell was defensive and confrontational in response to counsel's suggestion that he transferred his book of business from one small company (with him as the director) to another.

[43] In respect of documentary disclosure, the difficulty the Court has in this case is the failure of the defendants to disclose documents that could have corroborated their assertions. Though corroboration is not necessary, as I will

explain below, in certain circumstances, the plaintiff will satisfy its burden of proof in circumstances such as the ones presented here. In that case, the burden shifts to the defendant to provide a reasonable explanation for the disposition or transfer of property.

[44] Ultimately, I find Mr. Russell to be wanting in respect of credibility. This finding is intimately linked with the adverse inference I draw in respect of the defendants' non-disclosure of documents.

A. Admissibility of Read-In Discovery Transcripts

[45] Most of the plaintiffs' case proceeded by way of admissions of fact and examination for discovery read-ins.

[46] Having no direct knowledge in respect of the instant asset transfers, the plaintiffs seek to rely on read-ins of the discovery transcripts of Mr. Russell and his brother, Mr. Alexander. The evidence of Mr. Russell would be tendered on behalf of JM Food Services, Freshslice Holdings, RFSP, and RF Franchising and the Family Trust, and that of Mr. Alexander on behalf of A&M and 101.

[47] The plaintiffs seek to apply the read-in evidence in respect of two issues: (1) the disposition of assets of JM Food Services; and (2) the intention of the defendants to put the assets out of reach of creditors.

[48] Rule 12-5(46) of the *Rules* considers against whom discovery evidence is admissible and provides that:

- (46) If otherwise admissible, the evidence given on an examination for discovery by a party or by a person examined under Rule 7-2 (5) to (10) may be tendered in evidence at trial by any party adverse in interest, unless the court otherwise orders, but the evidence is admissible against the following persons only:
 - (a) the adverse party who was examined;
 - (b) the adverse party whose status as a party entitled the examining party to conduct the examination under Rule 7-2 (5) to (10);

[49] The plaintiffs rely on *Nazerli v. Mitchell*, 2015 BCSC 2560 in their submission that the discovery read-ins can be used as against all of the defendants. In *Nazerli* at para. 46, Justice Affleck favourably cites *Le Soleil Hotel*

& Suites Ltd. v. Le Soleil Management Inc., 2009 BCSC 1303 where Justice Dickson stated that:

[47] The *viva voce* testimony of Dato Chee, Deborah Chang and Michael Tham and the Documents are plainly admissible evidence against all of the defendants. As a general rule, however, admissions made in the course of examinations for discovery are admissible against only the party who made them: *Bower v. Cominco* (1998), 53 B.C.L.R. (3d) 322 (S.C.). Accordingly, the discovery evidence read-in by the plaintiffs would typically be admissible against only the individual defendant involved.

[48] An exception to the general rule may arise where the admitting party has a common or identical interest with other defendants. In particular, where parties have a community of joint interest in the conduct of their business affairs and associated litigation to the extent one may fairly be characterised as representing the others that party's admissions on discovery may be used as evidence against the others: *Tri-Con Concrete Finishing Co. v. Caravaggio*, [2002] O.J. No. 2771 (Q.L.) (Ont. Sup. Ct.). Such circumstances are unusual, however, and, in the absence of express agreement, should only be found where the independent evidence of commonality is abundantly clear.

[50] Subject to some limitations and relying on the exception, Affleck J. accepted in *Nazeralli* that:

[47] ... in the present instance there is a common interest among the defendants that provides for the exception to the general rule which would exclude the discovery evidence. ...

[51] Relying on this discussion and finding from *Nazeralli*, the plaintiffs submit that, given the commonality of interests amongst the defendants, the evidence obtained in the examination for discovery of Mr. Russell and Mr. Alexander can be admitted as against each of the other defendants.

[52] The defendants did not suggest otherwise.

[53] I agree with the plaintiffs. There is a commonality of interests between the brothers and their closely-held companies. In the circumstances, and in light of the defendants' position on this point, I find that the discovery read-ins and the exhibits are admissible as against each of the defendants.

B. Credibility of Ray Russell

[54] Typically, with civil disputes, there is a credibility contest between the parties. This case is different because the plaintiffs did not present *vive voce*

testimony. Nonetheless, I wish to say something about the credibility assessment of Mr. Russell and his evidence.

[55] As a starting point, I have kept in mind the well-known principles governing the court's credibility and reliability assessment.

[56] Credibility assessment involves a determination of a witness's testimony based on their veracity or sincerity, in addition to the accuracy of the evidence they provide: *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, aff'd 2012 BCCA 296.

[57] Credibility assessment involves consideration of various factors, including:

- a) the witness's ability and opportunity to observe events;
- b) the firmness of the witness's memory;
- c) the witness's ability to resist the influence of interest to modify his or her recollection;
- d) whether the witness's evidence harmonizes with independent evidence that has been accepted;
- e) whether the witness changes his or her testimony during direct and cross-examination;
- f) whether the witness's testimony seems unreasonable, impossible or unlikely;
- g) whether the witness has a motive to lie; and
- h) the demeanour of the witness generally.

See: *Bradshaw* at para. 186; *Gichuru v. Smith*, 2013 BCSC 895 at para. 129, aff'd 2014 BCCA 414.

[58] Ultimately, when assessing the truthfulness of the testimony of any interested witness, I am to be guided by the words articulated in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.):

In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

[59] The burden of proof in a civil dispute such as this is a balance of probabilities. Where there is conflicting testimony, "the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred": *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

[60] In *Wu v. Gu*, 2020 BCSC 396, Justice MacNaughton held that special emphasis is placed on the assessment of credibility in the context of the *FCA* and the *FPA* and set out the following examples:

[99] ... The cases repeatedly stress the need for extra care in scrutinizing the testimony of the parties to a *prima facie* fraudulent transaction. For example:

- (a) In *Cabaniss*, Justice Masuhara noted that, "care in scrutinizing the testimony of the parties to the transaction is required" (para. 52);
- (b) In *Jennings*, Justice Bernard, again citing *CIBC Mortgage Corp.*, emphasized that, "the testimony of the parties must be scrutinized with care and suspicion; it is seldom that such evidence can be safely acted upon without corroboration" (para. 18);
- (c) In *B. (L.A.)*, Justice Holmes cited case law affirming that, "where there is a conveyance between close relatives, under suspicious circumstances, the plaintiff has established a *prima facie* case of fraud. It is then up to the defendants to produce credible evidence to substantiate the transaction. Some corroborative evidence of the *bona fides* of the transaction should be given" (para. 18); and
- (d) In *Pacific Wagondepot*, a case involving promissory notes between related corporations, Justice Macintosh held that, "there is a need for caution, and even suspicion, in receiving the uncorroborated evidence of related defendant parties" (para. 19).

[61] With those principles in mind, I turn to the Court's determination of the material issues.

[62] I have assessed Mr. Russell's credibility in accordance with the above principles.

[63] Mr. Russell's testimony was flawed in a number of respects.

[64] First, he maintained a hostility during the cross-examination that was not warranted. The parties have now been engaged in litigation for many years. However, this proceeding was only necessary because a substantial judgment has remained unpaid.

[65] I appreciate the risks of relying on demeanour of a witness in the overall credibility assessment. However, this observation goes far beyond Mr. Russell's performance in the witness stand. His 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*. He was asked during cross-examination whether he disliked Mr. Waheed. He agreed that he disliked him very much, though he made a point of stating that his dislike grew over the years, and that he liked him very much at the beginning. 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. Mr. Russell believed that he had been overdramatic about the physical altercation, suggesting he did not need medical attention.

[66] All of that said, it was evident 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. Twice during his cross-examination, Mr. Russell suggested counsel was acting improperly. The attacks on counsel's professionalism were inappropriate and detracted from Mr. Russell's statements that he had respect for this process. It appeared to the Court that he did not. Moreover, he appeared to resent having to answer the questions about his decision-making authority.

[67] Second, as will be discussed in more detail below, he did not comply with basic document disclosure, despite orders compelling the defendants to do so. Mr. Russell was quick to blame others for his failings in this regard, whether it be a disgruntled employee, inadequate representation at the *First Proceeding*, or opposing counsel. In my view, with respect to matters generally and the document production in particular, these were all matters within Mr. Russell's control. Though a failure to disclose some documents might be explained, Mr. Russell has demonstrated over the years a refusal to comply with the document disclosure orders. His explanations for failing to do so were not persuasive.

[68] Third, despite Mr. Russell's testimony that he respected the Court's process, he seemed to suggest that he intended to revisit the judgment from the *First Proceedings*. The exchange proceeded as follows:

Q: You think the judgment against JM Foods was unfair?

A: Overall, I respect the judgment. We could not find statements. We have more resources now. Going to fight it and hopefully get it right this time.

[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.

C. Document Disclosure

[70] The plaintiffs contend, and the defendants did not disagree, that JM Food Services has not produced any tax returns or financial documentation other than the tax return and financial statement for the year ending September 30, 2015, despite demands, Court orders, and an obligation to do so under the *Rules*. Indeed, in response to an inquiry from the court, the defendants agreed that the court could draw an adverse inference against the defendants with respect to its failure to produce documents—for at least for one or two years of the nondisclosure.

[71] I touch on the orders compelling document production:

- a) On August 20, 2021, Justice McDonald ordered that the defendants prepare and serve a list of documents within 21 days;
- b) On February 9, 2022, Master Bilawich ordered:
 - i. The defendants shall amend their list of documents to include:
 - (1) Any documents of JM Food Services pertaining to any restructuring of its business since June 21, 2013, to

date, including any documents relating to the transfer of any of its assets arising from the restructuring; and

- (2) Any documents of defendants other than JM Food Services relating to the receipt of assets from JM Food Services from June 21, 2013, to date;
- ii. The defendants shall, within 21 days, serve the plaintiffs with an amended list of documents that includes all of the documents identified in para. 1 of this order;
- c) On August 5, 2022, Master Robertson ordered the defendants to amend their list of documents to include all of the documents or classes of document that are within their possession or control listed in Schedule "A."^[1]

[72] In response to Master Robertson's order compelling production of the Schedule A items, the defendants produced a second amended list of documents, dated August 31, 2022. It is clear from this document that the defendants claimed many of the documents particularized in Schedule A were "no longer in the listing party's possession or control." Despite the multiple Court orders, it seems only a handful of documents were produced by the defendants.

[73] Also relating to disclosure failures, and emanating from the *First Proceeding*, is a finding of contempt made by Macintosh J. On February 3, 2020, Macintosh J. made the following order after application:

1. [JM Food Services] and [Mr. Russell], jointly and severally, be fined \$5,000 for their contempt of court, for their willful disobedience of the order of Master Vos dated October 15, 2019, which ordered [Mr. Russell] to pay to the judgment creditors \$246.75, and ordered [JM Food Services] to provide to the judgment creditors, among other things, documents relating to the income and assets of [JM Food Services] which terms they have wilfully disobeyed in defiance and contempt of the authority and dignity of this court.
2. There is a finding of contempt against [Mr. Russell] and [JM Food Services] for nonpayment of \$246.75 and from failure to produce documents pursuant to the Order of Master Vos dated October 15, 2019.

[74] Mr. Russell was cross-examined about the contempt finding. He was flippant in his response, stating that cross-examining counsel would know more about this than he. Mr. Russell testified that his former representative (not a lawyer, the evidence indicated) missed some filing deadlines and that was why Mr. Russell was fined and found to be in contempt. Mr. Russell agreed that he paid the fine and an order for costs in compliance with the February 3, 2020 order.

[75] Mr. Russell focused on two reasons to explain the lack of document disclosure. First, Mr. Russell testified that many of the documents ordered to be produced had been stolen by a disgruntled employee. He was cross-examined about this. If there was in fact a disgruntled employee stealing documents, it may provide an excuse for certain categories of documents, such as original documents or correspondence not otherwise available from another source. However, financial documents, including bank accounts, CRA filings, financial statements, share purchase documents, and the like would have been available from another source, even if the defendants' copies had been removed. The defendants could have obtained copies of such documents from their bank, accountants or lawyers.

[76] I do not accept Mr. Russell's explanation about his failure to produce documents. If there was a disgruntled employee, other sources were available to access these basic corporate documents.

[77] Second, Mr. Russell testified repeatedly that he granted plaintiffs' counsel full access to the corporate documents. Indeed, Mr. Russell blamed opposing counsel for his failure to take advantage of the offer. Mr. Russell testified that he told counsel to speak to his accountant and obtain the documents directly.

[78] In my view, this is not an answer to a party's disclosure obligations. The *Rules* do not require lawyers to search out documents in the opposing party's possession or control by rummaging through an accountant's office. Disclosure rules are not a game. Rather, civil disputes can only be resolved fairly and efficiently if both sides engage with the *Rules* and with the rules compelling document production.

[79] The history presented above demonstrates the plaintiffs did all they could to compel production. The shortfall is the defendants' responsibility—no one else.

[80] From the history of the litigation outlined above, it is evident that the plaintiffs attempted to obtain the disclosure to which they were entitled, including attending a Court to obtain orders compelling production. Unfortunately, the defendants did not produce this basic disclosure, that is banking records from a financial institution or corporate financial statements or CRA documents.

[81] As a result, I am left with Mr. Russell's assertion and a handful of documents to support the assertions about the companies' financial viability.

[82] Mr. Russell's failure to produce documents has caused the Court to draw adverse inferences to the extent that had documents been produced, they would have supported the plaintiffs' position in respect of two primary issues before me: (1) whether there was a disposition of property; and, (2) whether the transfer of property was solely to restructure a struggling company or to hinder or delay the ability of the creditor to exercise its rights.

VI. LEGAL FRAMEWORK

[83] There is a two-part test for establishing a fraudulent conveyance under the FCA. The plaintiffs must establish: (1) a disposition of property; and, (2) an intent to delay, hinder or defraud a creditor: *A.B. v. E.F.*, 2023 BCSC 1799 at para. 19.

[84] In respect of the first element, the plaintiffs identify the relevant property as the rights to sell the pizza dough, to sell franchises, and to sell equipment/small-wares. The plaintiffs contend that JM Food Services had the right to do these things when the debt to the plaintiffs arose following the *First Proceeding*. But, they allege, JM Food Services disposed of those rights to avoid paying the plaintiffs.

[85] The FCA, in its entirety, provides:

Fraudulent conveyance to avoid debt or duty of others

1. If made to delay, hinder or defraud creditors and others of their just and lawful remedies
 - (a) a disposition of property, by writing or otherwise,
 - (b) a bond,
 - (c) a proceeding, or
 - (d) an order

is void and of no effect against a person or the person's assignee or personal representative whose rights and obligations are or might be disturbed, hindered, delayed or defrauded, despite a pretence or other matter to the contrary.

Application of Act

2. This Act does not apply to a disposition of property for good consideration and in good faith lawfully transferred to a person who, at the time of the transfer, has no notice or knowledge of collusion or fraud.

[86] The *FPA* has overlapping application with the *FCA* and provides:

Transfers which prejudice creditors

3. Subject to section 6, a disposition of property by a person at a time when the person is in insolvent circumstances, is unable to pay the person's debts in full, or knows that he or she is on the eve of insolvency, is void as against an injured creditor, if made
 - (a) with intent to defeat, hinder, delay or prejudice creditors or some of them, and ...

[87] The *FPA* also has a tracing provision:

Following proceeds of property fraudulently transferred

7. In the case of a disposition of any property which in law is invalid against creditors, if the person to whom the disposition was made has disposed of, realized or collected all or some of the property, the money or other proceeds or the value of it may be seized or recovered in an action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the disposition was made.

[88] The purpose of fraudulent conveyance legislation was described by Justice Gonthier in *Royal Bank of Canada v. North American Life Assurance Co.*, [1996] 1 S.C.R. 325 at para. 59:

... However, the other provincial statutes all refer to some sort of "conveyance" or "disposition" of "property" with the "intent to defeat" creditors' claims. All the provincial fraud provisions are clearly remedial in nature, and their purpose is to ensure that creditors may set aside a broad range of transactions involving a broad range of property interests, where such transactions were effected for the purpose of defeating the legitimate claims of creditors. Therefore, the statutes should be given the fair, large and liberal construction and interpretation that best ensures the attainment of their objects, as required by provincial statutory interpretation legislation (see, for example, *The Interpretation Act*, 1993, S.S. 1993, c. I-11.1, s. 10).

...

[89] Chief Justice McEachern adopted this purposive analysis espoused by Gonthier J. in *Sykes (Re)*, (1998), 48 B.C.L.R. (3d) 169 at para. 68. The purposive analysis is also evident in *Mawdsley v. Meshen*, 2010 BCSC 1099 [*Mawdsley BCSC*] at para. 204, aff'd 2012 BCCA 91 [*Mawdsley BCCA*], leave to appeal ref'd [2012] S.C.C.A. No. 182.

[90] In the paragraphs that follow, I address some of the specific legal concepts raised by the parties in the context of this fraudulent conveyance/preference action. These include:

- a) The meaning of creditor;
- b) The role insolvency may play in determining fraudulent conveyance;
- c) Determining the disposition of property;
- d) Whether a chose in action constitutes "property" within the meaning of the *FCA*; and
- e) Establishing intent and the role of "badges of fraud."

A. Meaning of Creditor

[91] What or who constitutes a creditor for the purposes of the *FCA* is given a fair, large, and liberal meaning. In *Mawdsley BCCA*, in assessing whether an entity constitutes a "creditor" as required by the *FCA*, Justice Ballance stated:

[75] The word "creditor" normally refers to a person to whom a debt or obligation is owed, or to someone entitled to the fulfilment of an obligation: see *Black's Law Dictionary* (9th ed.) and *Dictionary of Canadian Law* (3rd ed.). The courts have historically regarded "and others" in the *FCA* as referring to persons who do not have debts owing to them by the transferor, but who do have 'just claims' not yet brought to fruition in terms of legal process.

[92] In *0848052 B.C. Ltd. v. 0782484 B.C. Ltd.*, 2023 BCCA 95, the Court of Appeal said this of the temporal dimensions of being a creditor:

[56] Similarly, the fact 0782 and SIA were not yet creditors of Accredited or Great Pacific at the time of the transfer of title to 0848 does not, by itself, establish that the respondents' fraudulent conveyance claim is bound to fail. In *Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2009 BCCA 521, leave to appeal SCC ref'd, 33545 (24 June 2010), this Court confirmed it is not necessary for a plaintiff to show it was a creditor of the

defendant at the time of the challenged transfer. The Court also affirmed that future creditors can be protected by the Fraudulent Conveyance Act: at paras. 60, 78 and 87. See also *CIBC v. Bourkalis*, 1987 CanLII 2694 (BCCA) at paras. 10, 15 and 22; *Zhu v. Zhang*, 2021 BCSC 2524 at para. 117; *PR Mechanical Ltd. v. Schneider Construction Group Inc.*, 2021 BCSC 1261 at paras. 46–47.

B. Insolvency

[93] The plaintiffs submit that JM Food Services is insolvent because it does not have assets available to meet its obligations to creditors. Indeed, overall, it is unclear what assets are in JM Food Services' possession. What was clear from the evidence, however, is that JM Food Services had contractual rights to sell pizza dough, small-wares, and franchises, and that all of those rights or assets were transferred away—for no consideration—to related corporate entities.

[94] Insolvency of the transferor is a consideration when assessing whether a transaction occurred with an intent to delay, hinder, or defraud. In *Ashcroft Holding Ltd. v. Almas*, 1992 CanLII 845 (B.C.S.C.) at 8, 11 CBR (3d) 221, Justice Houghton said this about the insolvency of the grantor:

There is no necessity under the Fraudulent Conveyance Act to prove that the grantor was insolvent at the time of the making of the conveyance. The Act renders void a conveyance of real or personal property made with intent to defeat, hinder, delay or defraud creditors or others. If the grantor is insolvent after the conveyance, an inference of fraudulent intent must be drawn.

[95] Evidence of insolvency of the grantor may constitute circumstantial evidence to account for the reason for the disposition: *Watts v. Klaemt*, 2010 BCSC 1122 at paras. 37–40.

C. Disposition of Property

[96] The defendants assert that the right to sell dough or small-wares does not constitute property within the meaning of the *FCA*. In support of this proposition, the defendants cite *Manrell v. Canada (C.A.)*, 2003 FCA 128 where Justice Sharlow said this about the definition of property:

[25] It is implicit in this notion of "property" that "property" must have or entail some exclusive right to make a claim against someone else. A general right to do something that anyone can do, or a right that belongs to everyone, is not the "property" of anyone. ...

[97] I note that this excerpt comes from Sharlow J.A.'s discussion of the *ordinary meaning* of the word "property." Justice Sharlow went on to discuss the meaning of the word in the applicable statutory context—the *Income Tax Act*, R.S.C., 1985 (5th Supp.), c. 1 in that case—which she found was "broader than its ordinary meaning": *Manrell* at para. 26.

[98] On the basis of *Manrell*, however, the defendants submit there has been no disposition of property because property involves exclusive rights. They argue that here, the right to make or distribute dough, for example, does not entail an exclusive right that belongs to only one party. Therefore, it cannot be said to be 'property.'

[99] In response to this submission, the plaintiff relies on *Finness Yachting Inc. v. Menzies*, 2015 BCSC 1322 [*Finness*], appeal dismissed, 2016 BCCA 360. There was no dispute that an interest under a contract is a form of property that could be the subject of a fraudulent conveyance action: *Finness* at paras. 19-20. The trial judge found, however, that the defendant sought to frustrate the plaintiffs' ability to collect on the judgment by nominating one entity to receive payment for his management and consulting services instead of another entity, which did not constitute a fraudulent conveyance under the *FCA*: *Finness* at para. 28. The finding on what may constitute property was not disrupted on appeal.

D. The Role of Intention

[100] The Court of Appeal examined the role of intent in the context of a fraudulent conveyance allegation in *Botham Holdings Ltd. (Trustee of) v. Braydon Investments Ltd.*, 2009 BCCA 521. At trial, this Court held the transfer of assets from Botham Holdings Ltd. ("Botham") to Braydon Investments Ltd. ("Braydon"), pursuant to an agreement made October 31, 2005, to be void and of no effect as against the plaintiff, Abakhan & Associates Inc. ("Abakhan"). Abakhan was the trustee in bankruptcy of Botham. On appeal, Chief Justice Finch wrote:

[2] Following a trial on affidavit evidence under Rule 18A, the learned summary trial judge held that one purpose of the asset transfer was to put BHL's assets out of reach of its creditors, and the transfer was therefore a fraudulent conveyance within the meaning of the Fraudulent Conveyance Act, 1996, R.S.B.C. c.163. The trial judge held this to be so, despite the fact that BHL's and Braydon's principal, William Botham, had no dishonest intent, or *mala fides*, and acted on professional advice to effect legitimate business purposes.

[101] At para. 60, Finch C.J. discussed what is required to constitute intent under s. 1 of the FCA by reference to the following excerpt from *Ocean Construction Supplies Ltd. v. Creative Prosperity Capital Corp.*, 34 C.B.R. (3d) 241, 1995 CanLII 740 (B.C.S.C.) [*Ocean Construction*]:

[25] In essence, a fraudulent conveyance is a transfer of an interest in property which is made with the intention, and which has the effect, of hindering or impairing the right of a creditor or other person to satisfy a claim against the transferor. It is not necessary for the person seeking relief to show that the transferor was insolvent at the time the transfer was made, and the applicant need not establish that he or she was a creditor, or an unsecured creditor, at the time the transfer was made. Re Skinner (1960), 1960 CanLII 349 (BC SC), 27 D.L.R. (2d) 74 (B.C.S.C.).

[26] All that the applicant must show is that the transferor, in making the gift or transfer, did so with intent to delay, hinder or defraud creditors or others. Canadian Imperial Bank of Commerce v. Ash, (1964), 1964 CanLII 546 (BC SC), 47 D.L.R. (2d) 620 (B.C.S.C.); C.I.B.C. v. Boukalis, (1987) 1987 CanLII 2694 (BC CA), 11 B.C.L.R. (2d) 190 (C.A.).

[102] Chief Justice Finch went on to succinctly summarize the necessity of intent:

[73] The only intent now necessary to avoid a transaction under the modern version of the Act is the intent to "put one's assets out of the reach of one's creditors" (per *RBC v. Clarke*). No further dishonest or morally blameworthy intent is required.

[103] Regarding proof of fraudulent intent in the statute, Finch C.J. referred again to *Ocean Construction*:

[27] Fraudulent intent is essentially a matter of fact to be proved in the circumstances of each particular case. Proof that the transferor intended to defeat or delay its creditors usually involves drawing inferences from the circumstances surrounding its transaction. Where some consideration has flowed from the transferee to the transferor, the court may consider the adequacy of the consideration in relation to the issue of intent, since a transfer at an undervalue raises suspicions about motive. Inadequate consideration may be considered to be a badge of fraud.

[104] Finally, on the issue of intent, in *Mawdsley BCCA*, Justice Newbury stated:

[71] I do not agree with Mr. Mawdsley's submission, then, that *Braydon* did away with the requirement of intention on the part of the transferor for the FCA to apply. In some cases, of course, that intention may be inferred from the effect of the transaction, and indeed a presumption may arise in some circumstances from that effect. If there is no credible evidence to the contrary, the FCA may be satisfied; but there is no rule of law that in every case, an intention to defeat creditors must be inferred from the effect of the impugned transaction. As Freedman J.A. stated in *Mandryk*, evidence that the effect of the impugned transfer was to

defeat or delay creditors "is not conclusive." In the result, I cannot accede to Mr. Manson's argument in the case at bar that Ms. Meshen must be taken as a matter of law to have intended to delay or hinder Mr. Mawdsley (assuming for these purposes that he qualifies as a 'creditor or other' under the FCA) in advancing a WVA claim.

[Emphasis in original.]

[105] In *Mawdsley BCSC*, Ballance J. provided some insight into the basis for the "badges of fraud" used to assess intention when examining an impugned transaction:

[211] Intention is a state of mind and is a question of fact to be ascertained based on the whole of the evidence of each particular case. Accordingly, whether a conveyance has been made with the required fraudulent intent will turn on the facts unique to each case. The precedential value of the large volume of case law is therefore limited. Authorities can be as readily found upholding transfers between a parent and children as they can setting them aside. The Court will examine the circumstances existing at the time the disposition was made as well as subsequent events that have a bearing on the question of intention at that time. At the same time, however, the law has long recognized that there may not be direct evidence of intention, and that fraud and concealment often march hand-in-hand. The courts have therefore identified certain circumstantial hallmarks, deemed suspicious, which may support an inference of fraudulent intent. In *Dexia Credit Local v. Rogan*, 2008 BCSC 1406 [Dexia], at paras. 23-24, Walker J. recites these so-called badges of fraud which the courts have traditionally resorted to in determining whether a transfer is fraudulent. The list is not closed:

[23] It is a question of fact, for the court to determine, whether the disposition was made with an intention to defeat, hinder, delay, or prejudice creditors. In *Banton v. Westcoast Landfill Diversion Corp.*, 2004 BCCA 293 Braidwood J.A., writing for the court, cited at para. 5 a number of factual *indicia* of fraudulent intention or "badges of fraud" from *Frimer v. Lurcher*, [1984] B.C.J. No. 728 (S.C.):

- (1) The state of the debtor's financial affairs at the time of the transaction, including his income, assets and debts;
- (2) The relationship between the parties to the transfer;
- (3) The effect of the disposition on the assets of the debtor, i.e. whether the transfer effectively divests the debtor of a substantial portion or all of his assets;
- (4) Evidence of haste in making the disposition;
- (5) The timing of the transfer relative to notice of the debts or claims against the debtor;

- (6) Whether the transferee gave valuable consideration for the transfer.

[24] There are other *indicia* or badges of fraud that include continuing to remain in possession following a conveyance and secrecy respecting the transactions.

[106] These badges of fraud have been referred to as well by the Court of Appeal: *Vancouver Coastal Health Authority v. Moscipan*, 2019 BCCA 17 at para 43.

[107] In their written submission, the plaintiffs provided some examples of transfers to a related person or company or trust indicating a "badge of fraud":

- a) Transfer to a sibling: *Stenson v. Stenson*, 2000 BCSC 724;
- b) Transfer to a family trust: *Idaho (Department of Finance, Securities Bureau) v. Ultimate Ventures Inc.*, 2007 BCSC 1710; and,
- c) Transfer to a related company: *Ocean Construction*.

E. Burden

[108] Where the same person is the director of the transferor and the transferee, with knowledge of the transferor's ability to service debts, "the burden of explanations falls on the related parties." In *Ocean Construction*, Baker J. explained this burden:

[28] Where a transaction renders the transferor insolvent, the circumstances may also be considered suspicious. *Freeman v. Pope* (1870), L.R. 5 Ch. App. 538. If a transferor with debts makes a transfer the effect of which is to render him unable to meet his then existing liabilities, that circumstance furnishes very strong evidence of an intent to defraud his creditors. *Manryk v. Merko* (1971), 19 D.L.R. (3d) 238, (Man. C.A.). This case is also authority for the proposition that where parties to a transaction are related to each other, and the circumstances are suspicious, the burden of explanation falls on the related parties. In such a case the testimony of the related parties must be scrutinized with care and suspicion, and a judge may reject the evidence absent corroboration. As Justice Duff said in *Koop v. Smith*, (1915) 51 S.C.R. 55, 8 W.W.R. 1203, 25 D.L.R. 355, at page 1204:

....it is very seldom that such evidence can safely be acted upon as in itself sufficient....

[109] Justice Steeves described the burden of proof when badges of fraud are found in *Kelly v. Gonzalez*, 2014 BCSC 1269:

[41] Previous decisions have established that a dishonest intent, or *mala fides*, is not necessary to void a transaction under s. 1 of the FCA. The test is whether there has been an intent to hinder or delay or defeat a creditor (*Abakhan & Associates Inc. v. Braydon Investments Ltd.*, 2009 BCCA 521 at paras. 65 and 81). As well, generally, the onus is on a plaintiff to establish fraud or lack of consideration. However, once "badges of fraud" are shown to be present a presumption of fraud exists and the burden of explaining the circumstantial evidence of fraud falls on the parties to the conveyance. That is, the persuasive burden remains with the plaintiff and the evidential burden lies with the defendant (*Conte Estate v. Alessandro*, [2002] O.J. No. 5080 (S.C.J.) at paras. 20-22, aff'd [2004] O.J. No. 3275 (C.A.)).

[110] Where there is "inadequate or nominal" consideration for a disposition the plaintiff need only show that the intent of the transferor was to delay or hinder the ability of the creditor to exercise its rights. The intention of the transferee is not involved: *Chan v. Stanwood*, 2002 BCCA 474 at para. 20.

VII. ANALYSIS

[111] The following issues require determination:

- a) Were the plaintiffs creditors?
- b) Did the defendants dispose of property?
- c) If yes, was the disposition of property made to delay, hinder or defraud creditors and others of their just and lawful remedies?

A. Were the plaintiffs creditors?

[112] I start with the evidence about Mr. Russell's knowledge about the debt owing to the plaintiffs. He was cross-examined about when it was the defendants, through Mr. Russell, became aware that there would be a claim by the plaintiffs against the defendants. For the reasons that follow and on the totality of the evidence presented and, in part, Mr. Russell's testimony on this point, I am satisfied that the defendants knew about the plaintiffs' claim against the defendants in the *First Proceeding* by June 22, 2013.

[113] The focus of the cross-examination on the point of timing was that Mr. Russell became aware of the potential claim in or about June 2013. On this point, paragraphs of Macintosh J.'s decision from the *First Proceeding* were put to Mr. Russell during his cross-examination. Justice Macintosh spent some time reviewing the various exchanges between the parties as the business relationship fell apart. During the cross-examination, Mr. Russell was taken to this part of the *First Proceeding*:

[49] I find it telling that on June 22, 2013, when the Defendants were tape recording Mr. Waheed without his knowledge, he said this about the telephone call with Wallace & Carey the day before: "I received a call from Wallace & Carey that the supplies has been stopped, which is a clear breach, clear breach, and I repeat a clear breach of my franchise agreement. Or else ... that everything, every loss in sales, everything is on Freshslice now." It was the Defendants who put the transcript of that tape recording into evidence at trial.

[50] Similarly, when Mr. Waheed wrote to the Defendants, also on June 22, 2013, he included the following in his letter:

Just yesterday i.e. on 21st June 2013, I received a phone call followed by an email from Wallace & Carey (The distributor) who advised me that the Freshslice Head Office has stopped them from selling me and supplying me with Freshslice products with immediate effect. This action is in clear breach of the Franchise agreement I signed with you therefore I will hold you responsible for any losses from daily sales, inventory, all supplier invoices, monthly rent, any breach of lease agreement with the land lord, operating costs, food costs, Labor cost and all other costs associated with the day to day running of the business.

[114] The questioning proceeded as follows:

Q: You were aware as early as June 22, 2013 that Mr. Waheed and his numbered company would be seeking compensation from JM Food Services for their business being terminated.

A: He may have a claim. That is 100% normal.

[115] I was not asked to revisit Macintosh J.'s findings on this point. In their closing submissions, the defendants did not object to the plaintiffs' suggestion that the defendants knew by June 22, 2013 that the plaintiffs would seek compensation for allegedly breaching the franchise agreement.

[116] Based on the whole of the evidence, I find that the plaintiffs have proven on a balance of probabilities that they were creditors within the meaning of the *FCA*

and that the defendants knew as much by June 22, 2013.

B. Did the defendants dispose of property?

[117] At one point, JM Food Services had agreements to provide franchisees with pizza dough and equipment. JM Food Services also earned revenue from franchise fees. The evidence demonstrates, however, that the main source of ongoing revenue to JM Food Services was the sale of pizza dough to franchisees. On the totality of the evidence and the reasons that follow, I accept that these earning streams constituted property of JM Food Services, and that this property was transferred to the defendants.

[118] JM Food Services transferred the right to sell pizza dough, equipment/small-wares, and franchise sales. The franchise rights were first transferred to RFSP, then to Freshslice Holdings, and then to RF Franchising. JM Food Services assigned the franchise rights after June 21, 2013. The right to sell equipment (including small-wares) was transferred to 101, and the dough production and operation aspects of the business were transferred to A&M.

[119] Mr. Russell described each of these dispositions by stating JM Food Services "gave" the rights. Indeed, the defendants agreed that the "giving of these rights" was done without any consideration.

[120] I accept the plaintiffs' submission that the effect of the transfers from JM Food Services was to funnel all of the assets of JM Food Services to the defendants as described. Profits from the sale of dough that had been accruing to JM Food Services were diverted through A&M to the Family Trust. I further accept the plaintiffs' submission that Mr. Russell has moved the rights from one company he controls to another company or trust he controls.

[121] I am satisfied, based on the whole of the evidence, that the right to sell pizza dough to Freshslice franchisees created an income stream once available to JM Food Services. This book of business was, before June 2013, exclusively that of JM Food Services. Applying the principles in *Finness* and *Manrell*, I am satisfied that these income streams constituted "property" within the meaning of the *FCA*. I make the same finding regarding the right to sell equipment/small-wares. Again, this was a book of business once exclusively available to JM Food Services. This book of business was transferred after June 22, 2013.

C. Did JM Food Services make the disposition to delay or hinder the ability of the plaintiffs to exercise their rights?

[122] The plaintiffs contend that the evidence as a whole supports the argument that the aforementioned dispositions were made to hinder the ability of the plaintiffs to exercise their rights. Mr. Russell disagreed with the suggestion that the "restructuring" was an attempt to avoid payment to the plaintiffs. Ultimately, I agree with the plaintiffs and make the following findings of instant "badges of fraud."

[123] First, the dates when the dispositions occurred are not clear. Based on my review of the evidence and documents tendered, it is apparent that the transactions occurred on or after June 22, 2013. The transactions may have occurred as late as 2016. The income tax return and financial statement for the fiscal year ending September 30, 2015 show that JM Food Services had income from the sale of pizza dough of \$638,797. At this time, the defendants would have had notice of the plaintiffs claim.

[124] The March 31 Agreement does not answer the issue about when the transfer occurred. This document, produced at the last minute, seems to be a partial attempt to shield the companies from small claims court judgments. The Court has not characterized this document as a document effecting the transfer of assets from one company to another.

[125] The plaintiffs invite the Court to infer that the defendants sought to adjourn the proceedings more than once in order to finalize the corporate reorganization. In my view, I am not able to draw such an inference and decline to do so.

[126] Second, based on the defendants' lack of document disclosure, the state of the debtor's financial affairs at the time of the transaction, including income, assets and debts is not known.

[127] As of June 21, 2013, JM Food Services was a solvent company with a stream of income from dough sales, continuing sales of franchises and rights to receive interest payments on loans it made to franchisees. JM Food Services had assets in terms of the "valuable rights" associated with the franchise systems.

[128] JM Food Services did not produce any tax returns or financial documents other than the tax return and financial statement for the year ending September

30, 2015. This is despite demands, Court orders and an obligation to do so under the *Rules*. Again, the defendants identified a number of documents ordered to be produced to be no longer in the possession of the "listing party."

[129] Though repeatedly uttered by Mr. Russell that the company was not viable, I do not have any financial records that would have easily supported (or refuted) this assertion. That was potential evidence in the possession and control of Mr. Russell. He chose to proceed without it.

[130] Third, the relationship between the parties to the transfers is very close. Mr. Russell is the sole director and sole shareholder of JM Food Services, Freshslice Holdings, RFSP, and RF Franchising. He is the sole trustee of the Family Trust. A&M is a company incorporated by Mr. Russell's nephews on April 8, 2014. Mr. Russell's brother, Mr. Alexander, bought A&M from the remaining nephew in 2019. Mr. Alexander incorporated 101 on October 1, 2014.

[131] These entities are all very closely related. The defendants do not suggest otherwise.

[132] Fourth, it seems uncontroverted that the disposition of the assets from JM Food Services rendered the corporation, at least currently, without any assets to pay the judgment. Though there is evidence before me that JM Food Services had revenue in the September 2015 year-end, I do not have any financial information to demonstrate current earnings.

[133] In sum, in my view the following factors can be seen as "badges of fraud" in this case:

- a) The dispositions occurred without any consideration;
- b) The entities are closely related with Mr. Russell serving as the sole director for most of the defendant companies and sole trustee of the Family Trust and his brother, someone he has worked with for many years, as the director of the remaining related companies; and
- c) The disposition occurred after the defendants became aware of the plaintiffs' claims.

[134] Moreover, the dispositions appear to have divested JM Food Services of a substantial portion of its assets.

[135] I have concluded that any evidence of insolvency in this case—if it can be considered that—is itself circumstantial and I have not found it to be a significant factor in the disposition. In other words, the insolvency factor does not play a central role on the instant facts.

[136] Though not necessary to my determination, I note the animus Mr. Russell has towards Mr. Waheed. His abhorrence for Mr. Waheed does not appear to have subsided in the years since Macintosh J. rendered his decision. If anything, Mr. Russell has vowed to “make things right” for his own companies and suggests he intends to “get it right this time.”

D. Have the defendants met the burden on them?

[137] I am satisfied that the evidence supports a finding that the dispositions were performed to hinder, delay or put out of reach assets for the plaintiffs. I look then to examine whether the defendants have established a satisfactory explanation for the impugned transactions.

[138] The defendants have not provided a credible explanation for the transfers, here occurring without any consideration. On his word only, Mr. Russell testified that the purpose was to restructure because the corporate defendants were struggling and were not viable. At one point, he referred to JM Food Services' write off of \$1 million.

[139] As the director and shareholder, Mr. Russell appears to have a strongly held belief that he is entitled to move assets from one company to another without consequence.

[140] The defendants have not provided a credible explanation for the dispositions. If corporate reorganization was the basis for the dispositions then it would not have been difficult to prove this through corporate financial statements. In light of the credibility issues plaguing Mr. Russell's testimony, his word alone is insufficient in this case.

[141] I am satisfied that the plaintiffs have established that JM Food Services transferred all of its assets to some of the other defendants, without consideration, at a time when they knew that it had creditors whose rights to be paid would be hindered or delayed as a result of the dispositions. The fact that these transfers were made without consideration is material to this analysis. The transfers were made either to companies sharing a common sole director and sole shareholder (Mr. Russell), or to close relatives of that sole director/shareholder.

[142] Mr. Russell agreed that the sale of pizza dough to franchisees was the chief asset of JM Food Services. This asset has ended up as an ongoing stream of income to the benefit of the Family Trust. Mr. Russell is the sole trustee of the Family Trust, established by him.

[143] Mr. Russell testified that he decided to transfer to 101, for no consideration, the right of JM Food Services to sell small-wares and equipment. Again, 101 was incorporated on October 1, 2014. Mr. Alexander is the sole director and shareholder of 101. 101 has not produced any income or tax documents so as to examine the profitability of the company or the value of the right to sell small-wares.

[144] What evidence is available in respect of the defendants' burden generally favours the position of the plaintiffs.

[145] There is some evidence, for example, to show that 101 was generating income. First, there is evidence that 101 purchased Mr. Russell's residence on November 24, 2017 for \$2,249,000. Second, there is evidence to show that 101 provided money for the \$1,500,000 purchase by Mr. Alexander of A&M on December 26, 2018. Though Mr. Alexander would not say how long it took for 101 to pay for the purchase of A&M, it appears that 101 has been profitable.

[146] With respect to the dough operations, Mr. Russell testified that he transferred these rights either directly to A&M or to RFSP and then to A&M, for no consideration. Mr. Russell is the sole director and shareholder of RFSP. A&M was incorporated in 2014 and Mr. Russell's nephews were the directors. They resigned when A&M was sold to Mr. Alexander for \$1,500,000, a portion of which was paid for by 101.

[147] A&M took over the manufacture and sale of pizza dough from JM Food Services. For each pizza dough A&M sold, it paid \$0.50 to Freshslice Holdings. After the reorganization of the Freshslice companies as described in the correspondence of December 12, 2017, Freshslice Holdings changed from being 100% owned by Mr. Russell to 100% owned by the Family Trust.

[148] Though the evidence was thin on this point, Mr. Russell suggested figures that would have the profit of pizza dough to be over \$1 million. Though this was a rough figure, it appears that the disposition from JM Food Services for the sale of pizza dough moved a stream of income that had been increasing, from \$658,000 in 2015 to over a million dollars in subsequent years.

[149] In sum, the defendants have not dispelled their burden in respect of the propriety of the dispositions.

E. Fraudulent Preferences Act

[150] The parties focused their submissions on whether the impugned transactions constituted a fraudulent conveyance under the *FCA*.

[151] It is not uncommon at the commencement of the proceedings to seek relief under both the *FPA* and the *FCA*. Here, the parties agree that the plaintiffs must prove that the impugned disposition was made with the intention of defeating, hindering, delaying, prejudicing or defrauding creditors. Therefore, the parties submit, the plaintiffs must prove the same elements as a plaintiff in an action brought pursuant to the *FCA*.

[152] The *FCA* differs from the *FPA* to the extent that it applies only to transfers to creditors: *Trans Canada Insurance Marketing Inc. v. Fransen Insurance Services Ltd.*, 2019 BCSC 1250 at para. 103. As MacNaughton J. indicated in *Wu*:

[98] Section 6(a) of the *FPA* shields a transfer where it is made to a creditor: (1) in good faith, and (2) for a present actual payment. The effect of s. 3 of the *FPA* is similar to that of s. 2 of the *FCA* in that it has the effect of protecting good faith dispositions for good consideration: *Trustees of the IWA -- Forest Industry Pension Plan v. Leroy*, 2017 BCSC 158 at para. 25.

[153] In light of the discussion of intention above, I would not find that the applicable dispositions were made in good faith.

[154] Because of the parties' submissions, I have also focused these reasons on the *FCA*. Based on the findings of fact I have made above, the plaintiffs have established the dispositions also constituted a fraudulent preference as defined in the *FPA*.

F. Dissolution of 092

[155] The defendants have taken the position that 092 was dissolved and ceased to exist for any purpose on April 4, 2017. The NOCC was filed on November 6, 2020 while the company remained dissolved. The defendants assert that the declarations and injunctive relief sought by the plaintiffs should be dismissed because 092 has no legal status or capacity to bring or maintain an action against any defendant, including the defendants in the within action.

[156] The defendants assert that when a company is dissolved, it ceases to exist for any purpose and has no legal status or capacity to bring or retain an action as against a defendant. As a result, submits the defendants, a claim commenced by a dissolved company is a nullity and the claim cannot be effective until after the corporation is revived: *DeBoer v. Fletcher*, 2013 BCSC 143 at para. 4; *BCA*, s. 344(1).

[157] The defendants submit that if a dissolved company files an action and the limitation period lapses during the period between the dissolution and the revival of that company, the purported defendant acquires "a post-dissolution legal right" that it is entitled to rely upon to assert that the action is statute-barred, regardless of the retroactive effect of the company's revival. They rely on *Boake v. Blair*, 2019 BCSC 830 in taking the position that limitation periods that expire after a company is dissolved continue to run during any period of dissolution: at para. 85.

[158] Here, the defendants submit that the NOCC was filed by 092 while it was dissolved and did not exist as a legal entity. 092 was restored on September 9, 2022.

[159] In response, the plaintiffs rely on ss. 358(2) and 364(4) of the *BCA* which provide:

358(2) Subject to section 368, unless the court orders otherwise, a restoration under subsection (1) of this section is without prejudice to the rights acquired by persons before the restoration.

- 364(4) A company that is restored is deemed to have continued in existence as if it had not been dissolved, and proceedings may be taken as might have been taken if the company had not been dissolved.

[160] These provisions were interpreted by Justice Funt in *Rising Star Learning (Kingsway) Ltd. v. Kandola*, 2018 BCSC 1541. Justice Funt considered the applicable principles in relation to federal legislation as follows:

[33] In *Litemor Distributors (Ottawa) Limited v. W.C. Somers Electric Ltd.* (2004), 2004 CanLII 39026 (ON SC), 73 O.R. (3d) 228 (S. Ct. J.), Justice Panet considered the effect of a restoration under s. 209(4) of the *Canadian Business Corporations Act*, R.S.C. 1985, c. C-44 [CBCA] of a federally incorporated corporation.

[34] Section 209(4) of the CBCA read:

- 209(4) Subject to any reasonable terms that may be imposed by the Director, to the rights acquired by any person after its dissolution and to any changes to the internal affairs of the corporation after its dissolution, the revived corporation is, in the same manner and to the same extent as if it had not been dissolved,
- (a) restored to its previous position in law, including the restoration of any rights and privileges whether arising before its dissolution or after its dissolution and before its revival; and
 - (b) liable for the obligations that it would have had if it had not been dissolved whether they arise before its dissolution or after its dissolution and before its revival.

[35] Justice Panet held that the effect of s. 209(4) of the CBCA was to "cure" acts taken in the name of a corporation during its dissolution so that such acts are deemed to have been taken by the corporation. Justice Panet stated (in part):

[27] On a plain reading of the wording of the statute, it appears that Parliament intended that the effect of revival is to be retroactive, such that the revival extends back to the moment of dissolution. The dissolution is deemed not to have occurred. This would imply that, upon revival, any acts undertaken in the name of the corporation by its principals during the period of dissolution would be "cured" so that such acts are deemed to have been taken by the corporation itself even though it was dissolved at the time.

[29] This makes good sense [retroactive effect] from a policy perspective, since any other conclusion would carry

serious economic and logistical consequences for dissolved corporations and parties entering into transactions with them. Corporations are dissolved from time to time, sometimes without the knowledge of the corporation's principals. If the corporation is subsequently revived, it would create unwarranted confusion and uncertainty as to the rights and obligations of the revived corporation and third parties if courts were to hold these principals personally liable for acts undertaken in the name of the corporation during its dissolution: see the comments of Hanssen J. to this effect in *Helcor Enterprises Ltd. v. Moore & James Food Services Ltd.*, 1990 CanLII 11064 (MB KB), [1990] 5 W.W.R. 596, 66 Man. R. (2d) 221 (Q.B.).

[36] I find that, although the wording of the relevant provisions of the ECA is different than that of the CBCA considered in *Litemor*, the same principle arises. Generally, the dissolution is deemed not to have occurred and actions taken in the name of the corporation are cured. In the case at bar, I do not see prejudice to the plaintiff as a result of the restoration of Roofing.

See also *Yung v. Three Good Friends Property Holdings Inc.*, 2018 BCSC 1963 at paras. 68–69.

[161] I find that, to the extent a company is deemed to have continued in existence as though it had never been dissolved by operation of s. 364(4) of the *BCA*, it would be true (if that company had initiated an action while dissolved) so long as that action was initiated in accordance with any applicable limitation period, the limitation period should not be deemed to have elapsed just because the restoration of the company occurs after the limitation might have otherwise elapsed.

[162] On this basis, I agree with the plaintiffs' submissions that the recent authority interpreting the *BCA* and the interaction between the limitation of liability sections of the *BCA* and the restoration provisions answer the defendants' submission. The time that has elapsed since 092's dissolution and its restoration is not a bar to the plaintiffs claim because, according to the statute, 092 is deemed to have never been dissolved.

VIII. CONCLUSION/ORDERS

[163] Mr. Fussell learned on June 22, 2013 that the plaintiffs would pursue the defendants for compensation as a result of their allegations that they had been put out of business by the defendants. There then began a shifting of corporate assets

from JM Food Services to the other defendants. The assets were transferred for no consideration. The assets were transferred either to other companies controlled by Mr. Russell or to companies controlled by his relatives. Based on the compelling evidence that the transfers constituted fraudulent conveyances as defined in the *FCA*, Mr. Russell failed to provide a reasonable or credible explanation for the transfer. In light of the presence of multiple badges of fraud, I draw the inference that the transfer was made to hinder and delay the defendants' creditors, here being the plaintiffs.

[164] Based on this conclusion, the Court makes the following orders:

- a) A declaration that the transfer of the property by the defendant, JM Food Services, to each or any of the defendants was a fraudulent conveyance within the meaning of the *FCA*, and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.
- b) A declaration that the transfer of the property was a fraudulent preference within the meaning of the *FPA* and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.
- c) An order that the plaintiffs are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food Services, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property.

[165] The plaintiffs did not pursue their claim for an injunction restraining the defendants from disposing of or encumbering their interest in the property. Nor did the plaintiffs advance submissions in support of a declaration that the defendants hold the property in trust for the plaintiffs. I decline to make those orders.

[166] The plaintiffs additionally pleaded for judgment against the defendants jointly and severally for the sum of \$563,049.95, plus Court order interest, which was the quantum fraudulently conveyed by JM Food Services. The plaintiffs pleaded no basis of liability for such an order. To the extent that such basis could be found in tort, the Court of Appeal has disposed of any tort directly affiliated with

a fraudulent conveyance: *Chan* at paras. 37-39; *Stene v. White Caste Ventures Inc.*, 2022 BCCA 29 at para. 49; *Chan v. Stanwood et al.*, 2001 BCSC 378 at para. 49, aff'd 2002 BCCA 474. To the extent that a fraudulent conveyance could give rise to liability flowing from a different, established tort, the basis for that liability must be—and has not been—pleaded.

[167] As the successful party, the plaintiffs are entitled to their costs in the ordinary course. If required, counsel is granted leave to present further submissions on the issue of costs. Any request to appear on the issue of costs is to be presented to scheduling within 60 days of the date of these reasons.

“Winteringham J.”

[1] Schedule A particularized 69 documents and included such documents as share certificates, share purchase and sales agreements, directors' resolutions authorizing the transfer of shares, and corporate tax filings.



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

ORDER AFTER TRIAL

BEFORE THE HONOURABLE JUSTICE WINTERINGHAM) FRIDAY
) THE 1st DAY OF
) DECEMBER, 2023

THIS ACTION coming on for trial on September 18, 19, 20, and 21, 2023, at the Law Courts at Begbie Square, 651 Carnarvon Street, in the City of New Westminster, in the Province of British Columbia, and on hearing David Grunder, counsel for the Plaintiffs, and David Kamachi, counsel for the Defendants, AND JUDGMENT being reserved to this date:

THIS COURT ORDERS that:

1. A declaration that the transfer of the property of the defendant, JM Food Services, to each or any of the defendants was a fraudulent conveyance within the meaning of the *Fraudulent Conveyance Act*, and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.
2. A declaration that the transfer of the property was a fraudulent preference within the meaning of the *Fraudulent Preference Act* and is of no force and effect insofar as it affects the rights of the plaintiffs as judgment creditors of the defendant, JM Food Services.
3. The plaintiffs are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food Services, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property.

This is Exhibit "B" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026


A Commissioner for Taking Affidavits
for British Columbia

4. The plaintiffs are awarded their costs on Scale B.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

David Grunder
Signature of David Grunder
Lawyer for the Plaintiffs

David Kamachi
Signature of David Kamachi
Lawyer for the Defendants

BY THE COURT

[Signature]
REGISTRAR

✓ NR
CHECKED



NO. VLC-S-S-2011355
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

ORDER AFTER TRIAL

BEFORE THE HONOURABLE JUSTICE MORISHITA

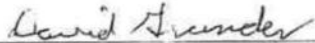
) TUESDAY
) THE 19TH DAY OF
) AUGUST, 2025

THIS ACTION coming on for trial on July 28, 29, and 30, 2025, at the Law Courts at Begbie Square, 651 Carnarvon Street, in the City of New Westminster, in the Province of British Columbia, and on hearing David Grunder, counsel for the Plaintiffs, and Vincent Li, counsel for the Defendants, AND JUDGMENT being reserved to this date:

THIS COURT ORDERS AND DECLARES that:

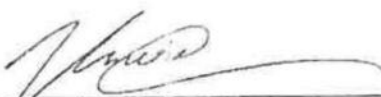
1. The limitation period for 092063 B.C. Ltd. to commence its claim had not expired prior to its restoration on September 9, 2022.
2. The plaintiffs are awarded their costs on Scale B.

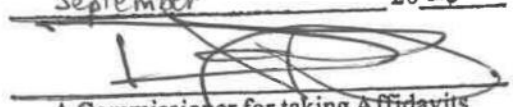
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:


Signature of David Grunder
Lawyer for the Plaintiffs

Digitally signed by
Morishita, J

BY THE COURT


Signature of Vincent Li
Lawyer for the Defendants

REGISTRAR
This is Exhibit "C" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

A Commissioner for taking Affidavits
for British Columbia

Judgment Owing to 0923063 B.C. Ltd. and Tariq Waheed by JM Food Services Ltd. and others as of August 20, 2026

Award of November 18, 2019 to 0923063 B.C. Ltd.	\$ 342,435.13
Post-judgment interest from November 18, 2019	\$ 106,135.00
Award to Tariq Waheed of November 18, 2019	\$ 26,852.98
Post-judgment interest from November 18, 2019	\$ 8,322.86
Assessed costs to both plaintiffs following first trial	\$ 197,168.69
Post-judgment interest from November 18, 2019	\$ 61,110.84
Costs consented to after dismissal of first appeal	\$ 2,593.15
Post-judgment interest from November 18, 2019	\$ 803.73
Certificate of Costs for second trial entered April 10, 2025	\$ 27,000.00
Post-judgment interest from December 1, 2023	\$ 4,231.44
Certificate of Costs for third trial assessed on July 6, 2026	\$ 12,907.68
Post-judgment interest from August 19, 2025	\$ 599.66
Total	\$ 790,161.16

Plus costs of the motion to appoint a receiver on a substantial indemnity basis, as agreed or assessed.

*This is Exhibit "D" referred to in the
affidavit of David Grunder
sworn before me at Vancouver
in the Province of British Columbia
this 2nd day of September A.D. 2026*

.....
A Commissioner for taking Affidavits
within British Columbia

From: Raj Wijesinghe <Raj@freshslice.com>
Sent: August 20, 2026 11:45 AM
To: jwest@watsongoepeL.com; Dan Parlow <dparlow@kornfeldllp.com>; Teresa Leung <tleung@kornfeldllp.com>
Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>
Subject: Re: Urgent: Receiver's Enforcement Steps — Request for Confirmation and Availability Before Justice Sharma

Some people who received this message don't often get email from raj@freshslice.com. [Learn why this is important](#)

EXTERNAL EMAIL

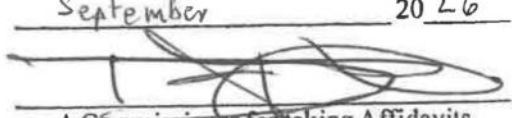
Dear Jeremy and Dan,

Please see our attached letter with our clients' position regarding the Receiver's seizure of operating funds from the Russell and Alexander entities, including funds required for payroll, franchisee operations, and ordinary-course business operations.

As discussed with Jeremy, I understand the Plaintiffs' position to be that the Receiver is acting pursuant to the terms of the Order. Our clients do not agree. I attached the Order for convenience.

Given the immediate operational impact, we require confirmation from the Receiver and the Plaintiffs that no further steps will be taken to seize, freeze, transfer, apply, or otherwise deal with operating funds pending direction from Madam Justice Sharma.

Please also provide your availability over the next three weeks for an urgent appearance before Madam Justice Sharma, who is seized of this matter.

This is Exhibit "E" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

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for British Columbia

Given the urgency, please provide the confirmations requested below and your availability **no later than 4pm today**. If we do not receive a substantive response by that time, we will proceed to contact Supreme Court Scheduling to seek the earliest available hearing date.

We trust that, given the potential disruption to payroll, franchisee operations, and ordinary-course business obligations, the Receiver and the Plaintiffs will cooperate in preserving the status quo pending the Court's direction.

Thank you.



Raj Wijesinghe

Litigation Counsel

T: +1 604-251-7444

M: 604-762-4400

E: Raj@freshslice.com

W: www.freshslice.com

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1610 Ingleton Ave, 2nd Floor, Burnaby, BC V5C 5R9



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Freshslice Holdings Ltd.

1610 Ingleton Avenue
Burnaby, British Columbia, V5C 5R9
Phone: (604) 251-7444
Fax: (604) 251-6727

August 20, 2026

Subject: Urgent Confirmation Required — Receiver's Enforcement Steps and Availability for Appearance Before Justice Sharma

Dear Mr. West and Mr. Parlow,

We write on behalf of the Russell Entities and Alexander Entities.

Further to my discussion with Mr. Lucas today, I understand the Plaintiffs' position to be that the Receiver is acting in accordance with the terms of the Order Made After Application pronounced by Madam Justice Sharma on May 13, 2026.

We do not agree with that position.

We are advised that the Receiver has now taken enforcement steps against operating accounts of the Russell and Alexander entities, including the seizure today of approximately \$2.5 million from accounts associated with A&M Enterprise Ltd. and 1015214 B.C. Ltd.

Those funds are required for ordinary-course business operations, including payroll, franchisee operations, and day-to-day corporate obligations. The seizure of those funds has already affected the ability of these companies to operate and, if not addressed immediately, will cause further prejudice to employees, franchisees, and ongoing business operations.

Our position is that these steps exceed the proper scope of the Order. Paragraph 1 of the Order defines the Property subject to the receivership but expressly excludes the part of the undertaking consisting of the provision of restaurant franchise activities and day-to-day operations. Paragraph 2(n) similarly excludes rights in connection with restaurant franchise activities and day-to-day operations from the Receiver's powers.

Further, paragraph 11 of the Order contemplates the continuation of services, including centralized banking services and payroll services, which is consistent with maintaining operational continuity rather than impairing it.

Given the Plaintiffs' and Receiver's apparent position that the Receiver's present steps are authorized by the Order, this issue requires urgent direction from Madam Justice Sharma, who is seized of this matter under paragraph 40 of the Order.

Before we contact Supreme Court Scheduling, please confirm immediately whether the Receiver will agree, pending further direction from Madam Justice Sharma, that it will not:

1. seize, transfer, or remove further funds from any operating account of the Russell Entities or Alexander Entities;
2. freeze or otherwise restrict access to funds required for payroll;
3. freeze or otherwise restrict access to funds required for franchisee operations or franchisee support;

www.freshslice.com

This is Exhibit " F " referred to in the Affidavit of David Grunder
made before me on this 2nd day of September 2026

A Commissioner for taking Affidavits
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4. interfere with centralized banking services, payroll services, or other services necessary for ordinary-course operations;
5. take any step that impairs the day-to-day operations of the Russell Entities or Alexander Entities; or
6. apply, distribute, or otherwise deal with the funds already seized pending further order or direction of the Court.

Please also confirm whether the Receiver will release sufficient funds immediately to permit payroll, franchisee operations, and ordinary-course business operations to continue without interruption.

Given the immediate operational consequences, please provide the confirmations requested above, together with your availability for an urgent appearance, **no later than 4pm today**. If we do not receive a substantive response by that deadline, we will proceed on the basis that the requested confirmations are not being provided and will contact Supreme Court Scheduling to seek the earliest available time before Madam Justice Sharma.

If the Receiver and Plaintiffs will not provide the above confirmations, then we intend to seek the earliest available appearance before Madam Justice Sharma for urgent directions and, if necessary, orders clarifying the Receiver's authority under the Order.

Please provide your availability over the next **three weeks** for an appearance before Madam Justice Sharma.

Yours Sincerely,

Per

Rajeeva Wijesinghe
General Counsel

From: Jeremy D. West <jwest@watsongoepel.com>
Sent: Thursday, 20 August 2026 16:56:15
To: Raj Wijesinghe <Raj@freshslice.com>; Dan Parlow <dparlow@kornfeldllp.com>
Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>; Beckett Reinecke <breinecke@watsongoepel.com>; John McEown <jm@mceownassociates.ca>
Subject: RE: Transfer to the Post-Receivership Account

EXTERNAL EMAIL

Afternoon Raj. Sorry for the delay in responding but I have been tied up on another matter

Further to our conversation this morning, your letter forwarded by email of 11:49 am this morning and your email below. We confirm that we are retained by the Receiver in respect to the Receivership Order made May 13, 2026.

We also confirm that you were counsel for the Defendants at the May 13, 2026 hearing and endorsed the Order approving its form on behalf of the Defendants.

The scope of the Order.

As discussed, we cannot speak to the "spirit/intention" of the Order but in our view it speaks for itself and we do not accept your characterization of the Order as set out in your letter of August 20, 2026 (attached). In particular:

1. Paragraph 1 of the Order provides that the receiver is "*appointed Receiver, without security, of the ..., bank accounts (other than trust account or escrow accounts) and such part of the undertaking of the Russell Entities and the Alexander Entities that does not consist of the provision of restaurant franchise activities and day to day operations*" (emphasis added).

This is Exhibit "G" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

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In our view, the clear wording confirms that the "carveout" at paragraph 1 of the Order (for provision of restaurant franchise activities and day to day activities) does not apply to the "bank accounts" but is restricted to "the undertaking of the Russell Entities and the Alexander Entities".

2. Paragraph 2(n) of the Order does not provide as you suggest in your letter. Rather, it confirms that the Receiver's powers include "to exercise any shareholder, partnership, joint venture or other rights which the Russell Entities and the Alexander Entities may have, but will exclude any rights in connection with restaurant franchise activities and day to day operations".
3. Paragraph 11 of the Order is wording found in the Model Receivership Order and provides that "Persons" (defined at paragraph three of the Order) that have contractual agreements with the Russell Entities and Alexander Entities for the supply of goods and/or services are restrained from terminating/discontinuing/altering or interfering with those services provided that they are paid for going forward.

In the event that the form of Order does not reflect what was intended, it does make sense to seek clarification from the court.

Availability for Hearing before Sharma J

I confirm that I am presently available:

August 25 – 28

September 3, 4, 8-11.

Cooperation proposal

I have reviewed the proposal set out below and am in the process of securing instructions. I do not have detailed familiarity with the underlying litigation but I have had the opportunity to briefly review the:

1. 2019 Reasons for Judgment; and
2. 2023 Reasons for Judgment.

As I understand it:

1. In 2019 a monetary judgment was issued against certain defendants in the existing proceedings which remains unpaid; and
2. in 2023 declarations were made to the effect that:
 - a. the transfer of certain property by JM Food Services was a fraudulent conveyance within the meaning of the *Fraudulent Conveyance Act*;
 - b. the transfer of certain property by JM Food Services was a fraudulent preference within the meaning of the *Fraudulent Preference Act*; and
 - c. the plaintiffs are entitled to pursue their remedies as judgment creditor against JM Food Services as if it were still the legal and beneficial owner of the transferred property.

As I understood our discussion earlier today, there remains an outstanding question regarding what, and to whom it was transferred, property is the subject of the 2023 declarations. As I understand your clients' proposal, the \$900,000 being offered as "security" will be coming from RF Franchising Inc. It is not clear (at least to me) whether or not those funds represent the property which is subject to the 2023 declarations. It may be that your clients have (or will) accepted that those funds are the "property" referenced in the 2023 judgment but if that issue remains to be determined, and your clients intend to argue they do not, I expect the Receiver would have concerns about releasing other funds which may in fact form part of the "property" referenced in the 2023 Judgment.

The Receiver has no desire to unduly affect the operation of businesses and is prepared to work collaboratively with the parties to try and secure a mutually satisfactory arrangement but as matters presently stand it has been ordered by the court to take possession of the funds in the bank accounts of the Russell Entities and the Alexander Entities pending further order of the court. If it is ultimately determined that the funds which are being offered as "security" are not the property referenced in the 2023 judgment, and the Receiver agrees to release other funds (without court approval) which are determined to be funds which are subject to the 2023 judgment, this could create significant issues.

I am also led to believe that there may potentially be other priority claims (for example the CRA) which might also affect the ultimate distribution. Can you confirm whether that is the case?

It may be that with greater familiarity with the underlying issues, counsel for the parties may be able to jointly propose terms that would satisfy those (or any other concerns) but at this stage I suspect that the Receiver will not be in a position to agree to the terms proposed without further information/clarification.

I would encourage counsel to discuss potential terms which would satisfy the competing interests including, whether or not there is any prospect of the monies due and owing to the plaintiffs being paid out which I assume would obviate the need for the Receiver going forward.

Regards

Jeremy



Jeremy D. West, Partner

D 604 642 5684 | F 604 688 8193

E jwest@watsongoepel.com

**1200-1075 West Georgia St., Vancouver, BC
V6E 3C9**

Vancouver | West Vancouver

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From: Raj Wijesinghe <Raj@freshslice.com>

Sent: Thursday, August 20, 2026 1:50 PM

To: Dan Parlow <dparlow@kornfeldllp.com>; jm@mceownassociates.ca; Jeremy D. West <jwest@watsongoepel.com>

Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>

Subject: Re: Transfer to the Post-Receivership Account

Importance: High

Dear John, Jeremy and Dan, Further to our recent correspondence and discussions regarding the Receiver's enforcement steps, we have now received instructions from our

clients to permit the Receiver to hold \$900,000 in a Post-Receivership Account, pending further direction or order of the Court regarding

Dear John, Jeremy and Dan,

Further to our recent correspondence and discussions regarding the Receiver's enforcement steps, we have now received instructions from our clients to permit the Receiver to hold **\$900,000** in a Post-Receivership Account, pending further direction or order of the Court regarding any disposition, application, or disbursement of those funds.

For clarity, our clients' position remains that any funds held by the Receiver are to be held in accordance with the Order Made After Application pronounced by Madam Justice Sharma on May 13, 2026, including the requirement that monies collected by the Receiver be deposited into a Post-Receivership Account and held to be paid only in accordance with the terms of the Order or any further order of the Court.

Our clients are prepared to cooperate with the Receiver to facilitate the transfer of **\$900,000** from the following account:

Account holder: RF Franchising Inc.

Bank / financial institution: TD Canada Trust

Branch: 1933 Willingdon Ave, Burnaby.

Account number: 5277010

Transit number: 96560

Institution number: 004

Authorized contact: Zaheer Awan / Megha Bhatia - Accounting (604) 251-7444 ext. 113

This agreement is strictly limited to permitting the Receiver to hold **\$900,000** in the Post-Receivership Account pending further Court direction. It is not an agreement that the Receiver may disburse, distribute, apply, or otherwise deal with those funds absent Court approval or further order.

Further, all other monies seized today from the Russell and/or Alexander Entities accounts will be returned to those particularized accounts as soon as possible.

For further certainty, our clients do not consent to any additional seizure, freezing, transfer, withdrawal, application, or disposition of funds from any other operating account of the Russell Entities or Alexander Entities. Our clients also do not consent to any step that would impair payroll, franchisee operations, centralized banking services, or ordinary-course business operations.

Please confirm:

1. the Post-Receivership Account into which the **\$900,000** will be deposited;
2. That the Receiver will return all other monies seized today from the Russell and Alexander entities;
3. that the Receiver will hold those funds pending further direction or order of the Court;
4. that the Receiver will not disburse, apply, distribute, or otherwise deal with those funds without Court approval or further order;
5. that the Receiver will not take any further steps against operating accounts of the Russell Entities or Alexander Entities pending further agreement or Court direction; and
6. whether the Plaintiffs and Receiver agree that any dispute regarding disposition of these funds should be addressed before Madam Justice Sharma, who is seized of the matter.

This correspondence and our clients' limited cooperation are without prejudice to, and do not constitute a waiver of, any of our clients' rights, remedies, objections, or positions, including their position that the Receiver's enforcement steps have exceeded the proper scope of the Order.

We would appreciate your confirmation as soon as possible so that the mechanics of the transfer can be addressed in an orderly manner and without further disruption to business operations.

Raj Wijesinghe

Litigation Counsel

T: +1 604-251-7444

M: 604-762-4400

E: Raj@freshslice.com

W: www.freshslice.com

Global Headquarters

1610 Ingleton Ave, 2nd Floor, Burnaby, BC V5C
5R9

David Grunder

From: Dan Parlow <dparlow@kornfeldllp.com>
Sent: Friday, August 21, 2026 1:16 PM
To: Raj Tutt; West, Jeremy; John McEown
Cc: Raj Wijesinghe
Subject: RE: Urgent – Availability for Hearing Before Justice Sharma
Attachments: 2026.08.21 Receiver, Freshslice.pdf

Please see attached position of the Plaintiffs.

Regards,

Dan Parlow*
Kornfeld LLP
*Law Corporation
d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: Raj Tutt <rt@freshslice.com>
Sent: August 21, 2026 11:07 AM
To: Dan Parlow <dparlow@kornfeldllp.com>
Cc: Raj Wijesinghe <Raj@freshslice.com>
Subject: RE: Urgent – Availability for Hearing Before Justice Sharma

This is Exhibit "H" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

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EXTERNAL EMAIL

Hi Dan,

Thank you for letting me know, and my condolences to Teresa and her family. I was not aware that she was away.

Thank you for confirming. I will await your response and availability by 12:30 p.m. today.

Kind regards,



Raj Tutt
Legal Assistant

M: +1 778-995-1399
E: rt@freshslice.com
W: www.freshslice.com

Global Headquarters
[1610 Ingleton Ave, 2nd Floor, Burnaby, BC V5C 5R9](#)





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From: Dan Parlow <dparlow@kornfeldllp.com>
Sent: Friday, August 21, 2026 11:03 AM
To: Raj Tutt <rt@freshslice.com>
Cc: Raj Wijesinghe <Raj@freshslice.com>; West, Jeremy <jwest@watsongoepel.com>; John McEown <jm@mceownassociates.ca>; Maryam Putris <mputris@kornfeldllp.com>
Subject: RE: Urgent – Availability for Hearing Before Justice Sharma

Raj,
 Please don't email Teresa. She is off for a couple of weeks due to a death in the family .
 I am working on a response and should get that to you by 12:30 pm today. That will include availability.

Regards,

Dan Parlow*
 Kornfeld LLP
 *Law Corporation
 d:604.331.8322 | c:778.389.0650 | f:604.683.0570

From: Raj Tutt <rt@freshslice.com>
Sent: August 21, 2026 10:41 AM
To: Dan Parlow <dparlow@kornfeldllp.com>
Cc: Teresa Leung <tleung@kornfeldllp.com>; Raj Wijesinghe <Raj@freshslice.com>
Subject: Urgent – Availability for Hearing Before Justice Sharma
Importance: High

EXTERNAL EMAIL

Hi Dan,

I am following up regarding your availability for a further application before Justice Sharma.

I have sent several emails to Teresa requesting your availability and have also called and left a voicemail, but unfortunately, we have not yet received a response.

Mr. Wijesinghe now needs to proceed with the request to have this matter scheduled before Justice Sharma. The proposed application will seek clarification and/or directions regarding the Receivership Order, and Justice Sharma is seized of this proceeding. Counsel for the Receiver has provided their availability, and **August 25–28, 2026 are presently mutually available to Mr. Wijesinghe and counsel for the Receiver.**

Could you please confirm whether you are also available on any of these dates?

Given the time-sensitive nature of the matter, we would appreciate receiving your response **by 12:00 p.m. today**. If we do not hear from you by that time, we will proceed with submitting the scheduling request based on the information presently available.

Thank you for your prompt attention to this matter.

Kind regards,



Raj Tuft
Legal Assistant

M: +1 778-995-1399
E: rt@freshslice.com
W: www.freshslice.com

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File No. DAV017WAH241

August 21, 2026

Watson Goepel Lawyers
1200-1075 West Georgia St.,
Vancouver, BC V6E 3C9
Attention: Mr. Jeremy West
jwest@watsongoepel.com

Raj Wijesinghe
Freshslice Litigation Counsel
1610 Ingleton Ave, 2nd Floor,
Burnaby, BC V5C 5R9

raj@freshslice.com

Dear Sirs/Mesdames:

Re: Tariq Waheed and 0923063 B.C. Ltd. v. JM Food Services Ltd. et al
SCBC Action no. S2011355; Vancouver Registry (the "Action")

Receivership Order made May 13, 2026 (the "Receivership Order")

We acknowledge receipt of correspondence yesterday from Mr. Wijesinghe and Mr. West.

We concur substantively with the content of Mr. West's correspondence.

Defendants' schemes

It is readily apparent from Mr. Wijesinghe's carefully worded emails that the Defendants in the Action intend to continue to evade payment of the various judgments made against them which are set out in the Schedule hereto (collectively, the "**Judgments**").

Not only will these evasive actions not be tolerated, but they are causing, and will continue to cause, additional unnecessary expense which the Defendants themselves will bear, whether directly pursuant to the Receivership Order in the form of the Receiver's and its counsel's fees and disbursements, or in the form of additional legal costs to the Plaintiffs for which we will seek additional orders for costs on a full indemnity basis.

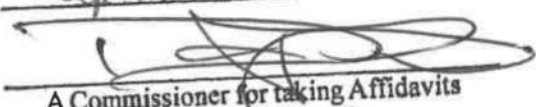
History before the court

It is readily apparent from the reasons for Judgment of the Honourable Justice Winteringham pronounced December 1, 2023 (the "**Fraudulent Conveyance Reasons**") that the Defendants have deliberately, wantonly and repeatedly failed to produce the documents required to determine the quantum of transfers made by JM Food Services to the other Defendants.

McEown and Associates Ltd.
Attention: Mr. John McEown

jm@mceownassociates.ca

This is Exhibit "1" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026


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for British Columbia

KORNFELD LLP

August 21, 2026

Page 2

The Fraudulent Conveyance Reasons include, *inter alia*, the following conclusions (we have added bolding emphasis):

[18] The evidence demonstrates that JM Food Services transferred to RFSP its right to receive income from franchisees. **Mr. Russell did not, however, produce any written assignments of franchise agreements from JM Food Services to RFSP. The plaintiffs submit that it is significant that the defendants have not produced any documentation regarding these transactions.** Moreover, it appears that the transfers occurred without any consideration.

...

[22] At his examination for discovery, Mr. Russell **testified that he did not have access to documents proving the noted transactions.**

...

[25] Effective December 18, 2017 or sometime in early 2018, Mr. Russell reorganized the Freshslice group of companies to move operations from JM Food Services and RFSP to Freshslice Holdings, RF Franchising, and a new holding company, referred to as "Benco" in a letter dated December 12, 2017 from Encompass Chartered Professional Accountants.

[26] Mr. Russell agreed that the effect of the re-organization of the Freshslice group of companies was to vest assets in the Family Trust that had previously been held by Freshslice Holdings and RF Franchising.

...

[29] I note that Mr. Russell **has not produced any tax returns or financial documentation other than a tax return and financial statement for the year ending September 30, 2015, despite demands, court orders, and an obligation to do so under the Rules.** As will be discussed in more detail below, **the state of document disclosure in this case has supported adverse inferences against the defendants and stymied the prospect of supporting the positions they take.**

...

[34] In his evidence, Mr. Alexander maintained that the money used to buy A&M was paid by 101 and any ongoing payments for the purchase were made from 101. **No documents were produced by the defendants confirming whether any payment was made.**

...

[37] This section considers three evidentiary issues that bear on the Court's analysis of the core legal issues... **third, it considers the impact of Mr. Russell's repeated refusals and inaction in respect of the usual documentary disclosure required in civil proceedings.**

...

[43] **In respect of documentary disclosure, the difficulty the Court has in this case is the failure of the defendants to disclose documents that could have corroborated their assertions.**

...

[63] Mr. Russell's testimony was flawed in a number of respects.

[64] First, he maintained a hostility during the cross-examination that was not warranted. **The parties have now been engaged in litigation for many years. However, this proceeding was only necessary because a substantial judgment has remained unpaid.**

KORNFELD LLP

August 21, 2026

Page 3

...
[66] All of that said, it was evident that Mr. Russell maintains a palpable dislike for Mr. Waheed that he holds to this day.

[67] Second, as will be discussed in more detail below, he did not comply with basic document disclosure, despite orders compelling the defendants to do so. Mr. Russell was quick to blame others for his failings in this regard, whether it be a disgruntled employee, inadequate representation at the *First Proceeding*, or opposing counsel. In my view, with respect to matters generally and the document production in particular, these were all matters within Mr. Russell's control. **Though a failure to disclose some documents might be explained, Mr. Russell has demonstrated over the years a refusal to comply with the document disclosure orders. His explanations for failing to do so were not persuasive.**

...
[73] Also relating to disclosure failures, and emanating from the *First Proceeding*, is a finding of contempt made by Macintosh J. On February 3, 2020, Macintosh J. made the following order after application:

1. [JM Food Services] and [Mr. Russell], jointly and severally, be fined \$5,000 for their contempt of court, **for their willful disobedience of the order of Master Vos dated October 15, 2019, which ordered [Mr. Russell] to pay to the judgment creditors \$246.75, and ordered [JM Food Services] to provide to the judgment creditors, among other things, documents relating to the income and assets of [JM Food Services] which terms they have wilfully disobeyed in defiance and contempt of the authority and dignity of this court.**

2. There is a **finding of contempt against [Mr. Russell] and [JM Food Services] for nonpayment of \$246.75 and from failure to produce documents pursuant to the Order of Master Vos dated October 15, 2019.**

...
[75] Mr. Russell focused on two reasons to explain the lack of document disclosure. First, Mr. Russell testified that many of the documents ordered to be produced had been stolen by a disgruntled employee... However, **financial documents, including bank accounts, CRA filings, financial statements, share purchase documents, and the like would have been available from another source, even if the defendants' copies had been removed. The defendants could have obtained copies of such documents from their bank, accountants or lawyers.**

[79] The history presented above demonstrates **the plaintiffs did all they could to compel production. The shortfall is the defendants' responsibility—no one else.**

[80] From the history of the litigation outlined above, it is evident that **the plaintiffs attempted to obtain the disclosure to which they were entitled, including attending at Court to obtain orders compelling production. Unfortunately, the defendants did not produce this basic disclosure, that is banking records from a financial institution or corporate financial statements or CRA documents.**

[81] **As a result, I am left with Mr. Russell's assertion and a handful of documents to support the assertions about the companies' financial viability.**

[82] **Mr. Russell's failure to produce documents has caused the Court to draw adverse inferences to the extent that had documents been produced, they would have supported the**

KORNFELD LLP

August 21, 2026

Page 4

plaintiffs' position in respect of two primary issues before me: (1) whether there was a disposition of property; and, (2) whether the transfer of property was solely to restructure a struggling company or to hinder or delay the ability of the creditor to exercise its rights.

Conclusion

In conclusion, there is a complete and utter lack of transparency on the part of the Defendants. As such, without additional legal proceedings it will be impossible to identify to extent to which Frozen Funds do, or do not, emanate, directly or indirectly, from the fraudulent transfers identified in the Fraudulent Conveyance Reasons.

An additional issue with the proposed release of any Frozen Funds at this time is that the Defendants are indebted to various parties including Canada Revenue Agency who may well assert claims to all or the \$900,000 which Mr. Wijesinghe has proposed be paid into trust with the balance released.

There are ongoing court proceedings with CRA of which we do not have full details. There are ongoing court proceedings with other claimants. **The Defendants' history of lies and obfuscations is a strong indicator to us that CRA and other creditors will assert claims, including claims for costs, far in excess of those to which Mr. Wijesinghe has referred in his recent email.**

Under no circumstances will our client consent to funds which have been frozen and/or paid into the Receivership Accounts pursuant to the Receivership Order (collectively, the "**Frozen Funds**") being released without:

- a. the Judgments being paid in full; and
- b. an additional sum of \$100,000 being paid into our (or the Receiver's) trust account to secure Receivership costs and the as-yet-unquantified full indemnity costs ordered by the Honourable Justice Sharma.

If necessary, we will also seek additional orders for punitive damages arising from the continuing efforts to obfuscate and evade payment of the Judgments.

It is our position that so long as the Judgments remain outstanding and the additional sum of \$100,000 remains unsecured, not a dime of Frozen Funds may be released. **The Receiver must not do so unless ordered by the Court.**

It is patently obvious that, if it were otherwise, it the Defendants will seek the right to argue later that the funds withheld are not properly applied to the Judgments, with the balance of Frozen Funds having been released. That possibility is simply intolerable.

Finally, and in any event, there is no basis in law for the Judgments to remain unpaid, even for one more day.

Availability to re-attend before Justice Sharma

Of the dates proposed, we can be available August 27 or 28 to re-attend before Justice Sharma.

KORNFELD LLP

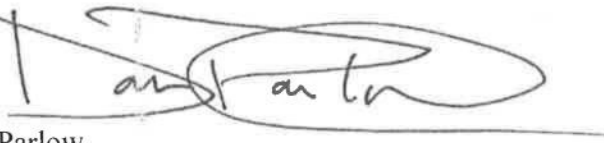
August 21, 2026

Page 5

Yours truly,

KORNFELD LLP

Per:

A handwritten signature in dark ink, appearing to read "Dan Parlow", written over a horizontal line.

Dan Parlow
Law Corporation

DSP:twl

KORNFELD LLP

August 21, 2026

Page 6

SCHEDULE OF JUDGMENTS

Judgment Owing to 0923063 B.C. Ltd. and Tariq Waheed by JM Food Services Ltd. as of August 20, 2026

Award of November 18, 2019 to 0923063 B.C. Ltd.	\$	342,435.13
Post-judgment interest	\$	87,679.44
Award to Tariq Waheed of November 18, 2019	\$	26,852.98
Post-judgment interest	\$	6,875.62
Assessed costs to both plaintiffs following first trial	\$	197,168.69
Post-judgment interest	\$	50,484.42
Costs consented to after dismissal of first appeal	\$	2,593.15
Post-judgment interest	\$	663.97
Certificate of Costs for second trial entered April 10, 2025	\$	27,000.00
Post-judgment interest	\$	2,789.80
Certificate of Costs for third trial assessed on July 6, 2026	\$	12,907.68
Post-judgment interest	\$	599.84
Post-judgment interest on \$745,143.20 (outstanding judgment as of May 13, 2026) to August 20, 2026	\$	8,994.15
Total excluding Receivership		\$ 767,644.87

Post-judgment interest rate is currently 4.45% providing a per diem of \$92.45.

Plus costs of the motion to appoint a receiver on a substantial indemnity basis, as agreed or assessed.

Plus Receiver's costs pursuant to Receivership Order

David Grunder

From: Dan Parlow <dparlow@kornfeldllp.com>
Sent: Friday, August 21, 2026 2:57 PM
To: SC Civil-Vancouver; raj@freshslice.com; jwest@watsongoepe.com
Subject: RE: The Honourable Madam Justice Sharma--VA VLC-S-S2011355--Tariq Waheed and 0923063 B.C. Ltd. v. JM Food Services Ltd., Freshslice Holdings Ltd., RFSP Equipment & Operating Inc., A&M Enterprise Ltd., 1015214 B.C. Ltd., RF Franchising Inc., and The Trustee

I wish to clarify the Plaintiffs' position which I consider to have been inaccurately set out in the Defendants' filing.

The Plaintiffs have not agreed that any "clarification or directions are required regarding the scope and interpretation of the Receivership Order".

I have simply provided my availability for this requested attendance, upon counsel's request.

Regards,

Dan Parlow*
 Kornfeld LLP
 *Law Corporation
 d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: no-reply-Requests_SCS <no-reply-Requests_SCS@bccourts.ca>
Sent: August 21, 2026 2:42 PM
To: raj@freshslice.com; jwest@watsongoepe.com; Dan Parlow <dparlow@kornfeldllp.com>
Cc: SC Civil-Vancouver <sc.civil_va@BCCourts.ca>
Subject: The Honourable Madam Justice Sharma--VA VLC-S-S2011355--Tariq Waheed and 0923063 B.C. Ltd. v. JM Food Services Ltd., Freshslice Holdings Ltd., RFSP Equipment & Operating Inc., A&M Enterprise Ltd., 1015214 B.C. Ltd., RF Franchising Inc., and The Trustee...

EXTERNAL EMAIL

The Honourable Madam Justice Sharma--VA VLC-S-S2011355--Tariq Waheed and 0923063 B.C. Ltd. v. 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

Case Type: Civil

Type of hearing: Application

Time estimate: 2 Hours

Court location of previous hearing: Vancouver

Date of the previous hearing: 2026/05/13

Available dates: August 27-28, 2026

This is Exhibit "J" referred to in the
 Affidavit of David Grunder
 made before me on this 2nd day of
September 2026

 A Commissioner for taking Affidavits
 for British Columbia

Nature of Application: Application seeking clarification and directions regarding the scope and interpretation of the Receivership Order made May 13, 2026.

Reason why this must be heard by (The Honourable Madam Justice Sharma): The Honourable Justice Sharma is seized of this proceeding and made the Receivership Order that is the subject of the proposed application.

Opponent's position regarding this application/request: Opposing counsel has indicated that it makes sense to seek clarification from the Court and has provided availability for the proposed hearing.

Applicant's name: Rajeewa Wijesinghe

Email address: raj@freshslice.com

Phone number: 604-251-7444

Opposing counsel(s)/Litigant(s):

Name: Jeremy D. West

Email address: jwest@watsongoepel.com

Phone number: 604-642-5684

Name: Dan Parlow

Email address: dparlow@kornfeldllp.com

Phone number: 604-331-8322

You are receiving this email because a party has submitted a request to appear before a specific presider. The request will be provided to the presider for review and consideration, and then a response and possible dates will be canvassed with the parties by reply-email from Supreme Court Scheduling.

From: Jeremy D. West <jwest@watsongoepel.com>

Sent: Monday, 24 August 2026 11:35:20

To: Dan Parlow <dparlow@kornfelddlp.com>; Raj Wijesinghe <Raj@freshslice.com>; John McEown <jm@mceownassociates.ca>

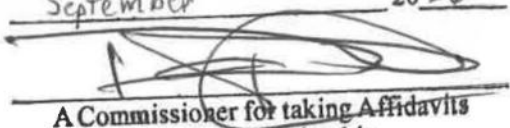
Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>; Beckett Reinecke <breinecke@watsongoepel.com>

Subject: RE: Urgent – Waheed Receivership Order - Renewed Interim Proposal

EXTERNAL EMAIL

Raj.

This is Exhibit "K" referred to in the Affidavit of David Grunsky made before me on this 2nd day of September 2026



A Commissioner for taking Affidavits for British Columbia

Further to your email this morning, Dan's email below and our telephone discussion. As you know, I called you to discuss point 5 which is also referenced in Dan's email. I also wish to set out my present understanding of things including the previous judgements rendered and the Receivership Order made by Justice Sharma.

Receivership Order

I have already previously written to you regarding the Order and in particular, paragraphs 1 and 2(a) pursuant to which, the Receiver is authorized and directed to take possession and control of the Property, and any and all receipts and disbursements arising out of or from the Property, which includes the bank accounts.

During our discussion you indicated that your clients understanding was that the Receiver was ordered to undertake some form of tracing exercise to identified funds that may have been transferred from the original judgment debtor (JM Food Services Ltd.) to the other defendants. I have been unable to locate that clause in the Order but if it in fact does exist, I would appreciate you identifying it.

Property subject to the Fraudulent Conveyance/Fraudulent Preference decision

As also discussed, I have reviewed the December 1, 2023 Reasons for Judgment of Justice Winteringham. The judgment (which makes declarations under the FCA and FPA) includes the following findings:

1. as of June 21, 2013 JM Food Services was a solvent company with a stream of income from dough sales, continuing sales of franchises, rights to receive interest payments on loans made to franchisees and "valuable rights" associated with the franchise systems (paragraph 127);
2. JM Food Services transferred the right to sell pizza dough, equipment/small-wares, and franchise sales to other defendants without consideration (paragraphs 118 and 119);
3. the "earnings streams" which JM Food Services transferred constituted "property" for the purposes of the FCA and FPA (paragraphs 117 and 121); and
4. the profit from the pizza dough earning stream (as an example), based on figures provided by Mr. Russell at trial, may have increased from \$658,000 in 2015 to over \$1 million in subsequent years (paragraph 148).

Although it is not strictly necessary to consider this issue at this time given the form of the existing Order, as I read the December 2023 Reasons, any funds derived from the "earnings streams" which were transferred by JM Food Services contrary to the provisions of the FCA and FPA are available for satisfaction of the judgment.

\$900,000 interim security.

In light of those comments, perhaps you could clarify whether your clients are in agreement that the \$900,000 is, or they are prepared to accept that it can be treated as, funds derived from the "earnings streams" and "property" which was transferred by JM Food Services in breach of the provisions of the FCA and FPA and is available to satisfy the outstanding judgment and the costs of the receivership.

Thank you

Jeremy



Jeremy D. West, Partner

D 604 642 5684 | F 604 688 8193

E jwest@watsongoepel.com

**1200-1075 West Georgia St., Vancouver, BC
V6E 3C9**

Vancouver | West Vancouver

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From: Dan Parlow <dparlow@kornfeldllp.com>

Sent: Monday, August 24, 2026 10:41 AM

To: Raj Wijesinghe <Raj@freshslice.com>; Jeremy D. West <jwest@watsongoepel.com>; John McEown <jm@mceownassociates.ca>

Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>; Beckett Reinecke <breinecke@watsongoepel.com>

Subject: RE: Urgent – Waheed Receivership Order - Renewed Interim Proposal

Raj, In this response, I focus only on this comment: 5. The \$900,000 interim security remains the appropriate mechanism. It is precisely for the foregoing reasons that our clients proposed to put up \$900,000 as interim security in order to mitigate operational disruption while protecting the position

Raj,

In this response, I focus only on this comment:

5. The \$900,000 interim security remains the appropriate mechanism.

It is precisely for the foregoing reasons that our clients proposed to put up \$900,000 as interim security in order to mitigate operational disruption while protecting the position of the Receiver. As previously stated, and without any concession to the contrary, our clients do not accept that this \$900,000 constitutes the specific property referenced in the 2023 declarations. That said, funds are inherently fungible, and should any specific property ultimately be traced, this security can be drawn upon to satisfy the order subject to appropriate and mutually agreed-upon terms and conditions.

I do not understand what you are driving at.

Nor do I agree that it is either the Receiver's or the Plaintiffs' duty to embark upon a tracing exercise. We are far beyond that point in the litigation. I will never accept any such proposition.

The answer to all your questions is simple: pay the judgments immediately and post \$100,000 additional security as I have proposed, and all the issues go away.

Regards,

Dan Parlow*
Kornfeld LLP
*Law Corporation
d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: Raj Wijesinghe <Raj@freshslice.com>
Sent: August 24, 2026 9:56 AM
To: Jeremy D. West <jwest@watsongoepel.com>; Dan Parlow <dparlow@kornfeldllp.com>;
John McEown <jm@mceownassociates.ca>
Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>; Beckett
Reinecke <breinecke@watsongoepel.com>
Subject: Re: Urgent – Waheed Receivership Order - Renewed Interim Proposal

EXTERNAL EMAIL

Dear Jeremy,

Thank you for your email of August 21, 2026. For the record, and consistent with your own designation, this response is sent **with prejudice**.

We have now had the opportunity to consult with our clients' accounting team regarding the Receiver's preliminary cash-flow observations and the discussion-stage arrangement you have proposed (i.e., leaving the seized funds with the Receiver and permitting the Defendants to access only incoming funds for "reasonable business expenses").

Following that consultation, our position on your proposal is as follows.

1. The cash-flow figures reviewed by the Receiver are a point-in-time snapshot, not an accrual picture.

The revenue and expense figures reviewed by the Receiver do not correspond entirely to the same period from an accrual accounting perspective. The figures previously provided represent only a snapshot of cash flows at a particular point in time and the ratio of cash inflows to cash outflows is not constant.

At any given time, incoming funds may be required to satisfy obligations linked to previously realized revenues, as well as expenditures required to generate future revenues. A comparison of cash inflows and outflows at a particular point in time therefore does not provide a complete picture of the ongoing financial and operational requirements of the businesses.

Therefore, the premise underlying your proposal namely that that receipts of ~\$625,000 will comfortably cover ~\$490,000 of outgoings over any given cycle, is not one accounting is able to endorse.

2. The proposed arrangement is not, with respect, a practical solution to the current disruption.

There are multiple operations being carried on across the four entities, each continuously generating transactions that rely directly on the seized accounts. Those include, without limitation:

- payroll for over 200 employees;
- payments to vendors that allow our clients to produce and supply dough to approximately 175 franchise stores; and
- equipment and materials required by new franchise locations currently waiting on our clients to fund their store buildouts.

The funds in the seized accounts are not idle investment reserves or surplus capital; they are working capital, utilized throughout the weeks, months and year in the ordinary course

of business. While some expenses are regular and predictable, a substantial volume of expenses are ad hoc and time-sensitive.

3. Case-by-case release, filtered through a "reasonable business expenses" test, is functionally unworkable.

Relying on repeated back-and-forth correspondence whenever funds are required is functionally unworkable and will guarantee that operations continue to remain at a standstill. Subjectively limiting releases to "reasonable business expenses" also creates an unmanageable bottleneck.

From a process standpoint, we would also need to understand whether the same back-and-forth (and attendant uncertainty) is contemplated for the compliance outflows already in the pipeline including GST, PST and corporate income tax (which will undoubtedly be sizeable). Given the transaction volume across the four entities, that framework is not operationally feasible.

4. There must be a workable system with clarity on process.

Any interim regime must provide a workable system with clarity on the process. That is imperative given that (i) we do not know the length of this Receivership process, and (ii) the amount currently seized is, unreasonably, many multiples of the judgment amount.

5. The \$900,000 interim security remains the appropriate mechanism.

It is precisely for the foregoing reasons that our clients proposed to put up \$900,000 as interim security in order to mitigate operational disruption while protecting the position of the Receiver. As previously stated, and without any concession to the contrary, our clients do not accept that this \$900,000 constitutes the specific property referenced in the 2023 declarations. That said, funds are inherently fungible, and should any specific property

ultimately be traced, this security can be drawn upon to satisfy the order subject to appropriate and mutually agreed-upon terms and conditions.

6. Application to vary the May 13, 2026 Order.

As you are aware, we have already submitted the request for a hearing before Madam Justice Sharma on August 27/28, 2026 to vary the May 13, 2026 Order. The Defendants intend to proceed with that application and to seek the interim relief substantively described in our earlier correspondence, including the release of operating funds against the proposed \$900,000 interim security and appropriate operating protocols going forward.

We remain open to narrowing the issues before the hearing and, in that spirit, invite the Receiver and the Plaintiffs to confirm whether the interim framework outlined above (or a workable variant of it) can be agreed to on consent, in which event a short consent variation order could be presented to the Court in place of a contested hearing.

Failing agreement, we will address the matter fully in our application materials and reserve all of our clients' rights.

We look forward to hearing from you.

Regards,

Raj Wijesinghe

Litigation Counsel

T: +1 604-251-7444

M: 604-762-4400

E: Raj@freshslice.com

W: www.freshslice.com

Global Headquarters

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5R9



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hard copy.

From: Jeremy D. West <jwest@watsongoepel.com>

Sent: August 21, 2026 4:10 PM

To: Raj Wijesinghe <Raj@freshslice.com>; Dan Parlow <dparlow@kornfeldllp.com>; John McEown <jm@mceownassociates.ca>

Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>; Beckett Reinecke <breinecke@watsongoepel.com>

Subject: RE: Urgent – Waheed Receivership Order - Renewed Interim Proposal

Raj.

First off, I note that your correspondence is marked without prejudice. I assume that is because your clients do not wish to be bound to their proposal to deposit \$900,000 security.

That said, please note that this (and my previous) correspondence is expressly with prejudice and in the event that a hearing is required before Sharma J, I expect that the Receiver will wish to rely on it.

Cash flow

The Receiver has reviewed the preliminary cash flow figures what you provided which appear to indicate:

1. outgoing liability obligations of something in the order of \$490,000; and
2. anticipated receipts of approximately \$625,000.

I assume those figures are for the matching time period. Assuming that is the case, it appears as though there will be more than sufficient revenue coming in to pay the anticipated expenses. If that is the case, one option may be for the existing funds to remain with the Receiver (as presently provided for in the Order) with a variation to the Order which would allow your clients to access incoming funds for their reasonable business expenses.

All of this would obviously be subject to comment from the Plaintiffs and more importantly, a variation to the Order from that which presently exists.

I will leave it to Dan to provide his clients' comments on that form of arrangement which I confirm is circulated for discussion purposes and would ultimately require an amendment to the existing Order.

Jeremy



Jeremy D. West, Partner

D 604 642 5684 | F 604 688 8193

E jwest@watsongoepel.com

**1200-1075 West Georgia St., Vancouver, BC
V6E 3C9**

Vancouver | West Vancouver

[View my bio](#)

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From: Raj Wijesinghe <Raj@freshslice.com>

Sent: Friday, August 21, 2026 2:40 PM

To: Dan Parlow <dparlow@kornfeldllp.com>; Jeremy D. West <jwest@watsongoepel.com>; John McEown <jm@mceownassociates.ca>

Cc: Raj Tutt <rt@freshslice.com>; Zaheer Awan <zaheer@freshslice.com>

Subject: Re: Urgent – Waheed Receivership Order - Renewed Interim Proposal

Importance: High

W/O Prejudice Dear Jeremy and Dan, Please see attached correspondence regarding the Defendants' renewed interim proposal. In short, our clients remain prepared to post \$900,000 as interim security while the Receiver continues any tracing exercise and while the parties seek directions from Madam Just

W/O Prejudice

Dear Jeremy and Dan,

Please see attached correspondence regarding the Defendants' renewed interim proposal.

In short, our clients remain prepared to post **\$900,000 as interim security** while the Receiver continues any tracing exercise and while the parties seek directions from Madam Justice Sharma. The purpose of the proposal is to preserve the Plaintiffs' position without continuing to freeze operating accounts required for payroll, vendor payments, franchisee operations, and ordinary-course business activity.

As set out in the attached letter, the operating disruption is now concrete and ongoing. The Plaintiffs' position does not appear to offer any practical solution to allow the businesses to continue operating while the disputed tracing, characterization, and priority issues are addressed.

Jeremy, given the Receiver's stated intention not to unduly disrupt operations, we respectfully ask that the Receiver work with the parties toward interim terms that will allow operations to resume pending the Court's direction.

Please confirm by **5 PM today** whether the interim proposal is acceptable. If not, we will seek to secure August 27/28 for an urgent appearance before Madam Justice Sharma.

Raj Wijesinghe

Litigation Counsel

T: +1 604-251-7444

M: 604-762-4400

E: Raj@freshslice.com

W: www.freshslice.com

Global Headquarters

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5R9**



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From: Dan Parlow <dparlow@kornfeldllp.com>

Sent: August 21, 2026 1:15 PM

To: Raj Tutt <rt@freshslice.com>; West, Jeremy <jwest@watsongoepe.com>; John
McEown <jm@mcceownassociates.ca>

Cc: Raj Wijesinghe <Raj@freshslice.com>

Subject: RE: Urgent – Availability for Hearing Before Justice Sharma

Please see attached position of the Plaintiffs.

Regards,

Dan Parlow*

Kornfeld LLP

*Law Corporation

d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: Raj Tutt <rt@freshslice.com>

Sent: August 21, 2026 11:07 AM

To: Dan Parlow <dparlow@kornfeldllp.com>

Cc: Raj Wijesinghe <Raj@freshslice.com>

Subject: RE: Urgent – Availability for Hearing Before Justice Sharma

You don't often get email from rt@freshslice.com. [Learn why this is important](#)

EXTERNAL EMAIL

Hi Dan,

Thank you for letting me know, and my condolences to Teresa and her family. I was not aware that she was away.

Thank you for confirming. I will await your response and availability by 12:30 p.m. today.

Kind regards,

Raj Tutt

Legal Assistant

M: [+1 778-995-1399](tel:+17789951399)

E: rt@freshslice.com

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Global Headquarters

1610 Ingleton Ave, 2nd Floor, Burnaby, BC V5C
5R9



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From: Dan Parlow <dparlow@kornfeldllp.com>

Sent: Friday, August 21, 2026 11:03 AM

To: Raj Tutt <rt@freshslice.com>

Cc: Raj Wijesinghe <Raj@freshslice.com>; West, Jeremy <jwest@watsongoepe.com>;

John McEown <jm@mceownassociates.ca>; Maryam Putris <mputris@kornfeldllp.com>

Subject: RE: Urgent – Availability for Hearing Before Justice Sharma

Raj,

Please don't email Teresa. She is off for a couple of weeks due to a death in the family .

I am working on a response and should get that to you by 12:30 pm today. That will include availability.

Regards,

Dan Parlow*

Kornfeld LLP

*Law Corporation

d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: Raj Tutt <rt@freshslice.com>

Sent: August 21, 2026 10:41 AM

To: Dan Parlow <dparlow@kornfeldllp.com>

Cc: Teresa Leung <tleung@kornfeldllp.com>; Raj Wijesinghe <Raj@freshslice.com>

Subject: Urgent – Availability for Hearing Before Justice Sharma

Importance: High

EXTERNAL EMAIL

Hi Dan,

I am following up regarding your availability for a further application before Justice Sharma.

I have sent several emails to Teresa requesting your availability and have also called and left a voicemail, but unfortunately, we have not yet received a response.

Mr. Wijesinghe now needs to proceed with the request to have this matter scheduled before Justice Sharma. The proposed application will seek clarification and/or directions regarding the Receivership Order, and Justice Sharma is seized of this proceeding. Counsel for the Receiver has provided their availability, and **August 25–28, 2026 are presently mutually available to Mr. Wijesinghe and counsel for the Receiver.**

Could you please confirm whether you are also available on any of these dates?

Given the time-sensitive nature of the matter, we would appreciate receiving your response **by 12:00 p.m. today.** If we do not hear from you by that time, we will proceed with submitting the scheduling request based on the information presently available.

Thank you for your prompt attention to this matter.

Kind regards,

Raj Tutt

Legal Assistant

M: [+1 778-995-1399](tel:+17789951399)

E: rt@freshslice.com

W: www.freshslice.com

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this e-mail message, ask yourself whether you really need a hard copy.

From: Brad Martyniuk <BMartyniuk@lklaw.ca>
Sent: Wednesday, August 26, 2026 7:22 PM
To: Jwest@watsongoepel.com <Jwest@watsongoepel.com>
Cc: Haoyu Nie <hnie@lklaw.ca>; Dan Parlow <dparlow@kornfeldllp.com>
Subject: RE: [EXTERNAL] BCSC action no. S2011355 - Waheed et al v. JM Food Services Ltd.

You don't often get email from bmartyniuk@lklaw.ca. [Learn why this is important](#)

EXTERNAL EMAIL

Jeremy,

We are advised that the defendants' operations are being significantly prejudiced given that all access to operating bank accounts is being refused by the receiver. We understand that the receiver refuses to release any funds from these bank accounts to the defendants for the day-to-day operations and that the defendants' various bank accounts hold funds in excess of approximately \$3.5 million.

We are instructed to seek short leave tomorrow if possible to get a date early next week to apply to vary the receivership order. Our understanding is that the order was not intended to interfere with the day-to-day operations of the defendants' business operations but that has been the effect given the receiver's steps to secure bank accounts of the defendants.

We would seek a return date for the hearing of the application early next week, subject to the availability of Madame Justice Sharma.

We understand that the receiver is not opposed to this matter being heard, subject to the dates proposed and your availability.

I can get on a phone call tomorrow before court (ie. 8:30 a.m.) if you would like to discuss this further.

Sincerely,



BRAD MARTYNIUK Professional Law Corporation
 Partner, Lindsay Kenney LLP
 1500, 401 West Georgia Street, Vancouver, BC V6B 5A1, Canada
 D 604.484.3068 | T 604.687.1323 | F 604.687.2347

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From: Dan Parlow <dparlow@kornfeldllp.com>
Sent: Tuesday, August 25, 2026 5:35 PM
To: Brad Martyniuk <BMartyniuk@lklaw.ca>; Jwest@watsongoepel.com

This is Exhibit "1" referred to in the Affidavit of David Grunder

made before me on this 2nd day of September 2026


 A Commissioner for taking Affidavits
 for British Columbia

Cc: Haoyu Nie <hnie@klaw.ca>

Subject: [EXTERNAL] RE: BCSC action no. S2011355 - Waheed et al v. JM Food Services Ltd.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Brad and thanks for reaching out.

As I have previously advised Mr. Wijesinghe, this whole process seems a great waste of resources.

I have dealt many times with Receivers and receiverships in the past. With no disrespect intended to Jeremy or John, the costs involved will add up quickly if there are yet further legal proceedings, and they have already been ordered to be paid from the funds recovered. My costs will also add up and inevitably once again be ordered paid from the receivership.

I hope you will impress on your clients that further deferrals and delays in paying the judgments and the related costs will do nothing but create additional costs to themselves. Furthermore, any perceived hardship that they may feel arising from having such large amounts frozen is a problem entirely of their own making.

There is a very simple cure and you know what that is.

Regards,

Dan Parlow*
Kornfeld LLP
*Law Corporation
d:604.331.8322 | c:778.389.0050 | f:604.683.0570

From: Brad Martyniuk <BMartyniuk@klaw.ca>
Sent: August 25, 2026 3:26 PM
To: Jwest@watsongoepel.com; Dan Parlow <dparlow@kornfeldllp.com>
Cc: Haoyu Nie <hnie@klaw.ca>
Subject: BCSC action no. S2011355 - Waheed et al v. JM Food Services Ltd.

You don't often get email from bmartyniuk@klaw.ca. [Learn why this is important](#)

EXTERNAL EMAIL

Jeremy / Dan,

We write to advise we have been retained by the Defendants in the above-noted matter.

We are reviewing the materials regarding the litigation to date and will provide you with an update regarding any further steps being taken in these proceedings on behalf of the Defendants. We understand you have already had communications with Mr. Wijesinghe regarding a possible variation of the receivership order. We understand that the plaintiffs and the receiver are opposed to a variation at this time.

If a discussion by phone would assist, I can get on a call at your convenience.

Sincerely,



BRAD MARTYNIUK Professional Law Corporation

Partner, Lindsay Kenney LLP

1500, 401 West Georgia Street, Vancouver, BC V6B 5A1, Canada

D 604.484.3068 | T 604.687.1323 | F 604.687.2347

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Affidavit of David Grunder
made before me on this 2nd day of
September 2026

CIVIL LITIGATION

A Commissioner for taking Affidavits
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J.M. FOOD SERVICES

Exhibit: <u>18</u>
Exam of: <u>Ray Russell</u>
Date: <u>July 26, 2022</u>
Alexis Hill - Official Reporter

Anthony Mihindukulasooriya v. JM Food Services Ltd. - Provincial Court of British Columbia (Small Claims Court) No. 1240405

The franchisee executed a franchise agreement on July 22, 2010 and paid an initial franchise fee in connection with a franchise location in British Columbia to be determined at a future date. The franchise agreement provided that the initial franchise fee, except for an amount to be withheld by JM for administrative costs, was refundable in the event that the franchisee elected not to proceed with opening a franchise. The franchisee elected not to proceed with opening a franchise and JM offered to return the refundable portion of the franchise fee. On June 21, 2012, the franchisee commenced legal proceedings against JM claiming for the refund of the entire initial franchise fee. JM relied upon the governing clause of the franchise agreement governing and, therefore, did not recognize the franchisee's right to the return of the full initial franchise fee. On December 16, 2013 an order was made by the Court for the full payment by JM Food Services of the amount claimed.

JM Food Services Ltd. v. Sharam Shamloo - B.C.S.C. SS151645, New Westminster Registry

JM Food Services Ltd. commenced action against Mr. Shamloo on May 23, 2013, a former contractor of IT services to the company, for the conversion of its administrative rights to advertising space acquired from Facebook, Inc. and Twitter, Inc. Judgment against Mr. Shamloo for a similar transgression involving conversion of a domain name was recently obtained. On August 14, 2013 an order was granted against the defendant in this matter, and the court declared that JM Food Services Ltd. is the rightful administrator of both the Freshslice Facebook and Twitter pages.

Alr Control Inc., Heating Air Conditioning & Refrigeration and Nisar Ghamman v. JM Food Services Ltd. and Ray Russell, SC-12-008922-0, Ontario Superior Court of Justice

The plaintiff commenced suit for claim of non-payment for services rendered in the construction of a location. Ray Russell defended the claim on the basis that he personally has no contractual obligation or connection with the claim. JM Food Services Ltd. defended the claim on the basis that the plaintiff charged more than the sum agreed for the job and has paid the amount of the contract it alleges due into court.

ET-NTReno's Corp. v. JM Food Services Ltd. - Freshslice Pizza, aka JM Food Services & Ray Russell, SC-12-00010643-0000

The plaintiff commenced suit for claim of non-payment for services rendered in the construction of a location. Ray Russell is defending on the basis that he personally has no contractual obligation or connection with the claim. JM Food Services Ltd. is defending on the basis that the plaintiff charged more than the sum agreed for the job and delivered sub-standard quality.

0923063 BC LTD and Tariq Waheed v. J.M Foods, Freshslice Properties Ltd., and RFSP Equipment and Operating Inc., In the Supreme Court of British Columbia, Vancouver Registry No. VLC-S-S153190

On April 11, 2019 Justice Macintosh found for the plaintiffs in this action and awarded \$83,000 for loss of goodwill, \$125,000 for punitive damages and an amount to be calculate for damages for loss of income to May 31, 2020. Justice Macintosh awarded J.M. Foods \$11,582 under the counterclaim. The affiliates of the Franchisor disagree with the lower court judgement and are taking steps to appeal the judgement to the Court of Appeal.

JOIN OUR NEWSLETTER

Freshslice CEO ordered to pay \$85K for anti-Muslim, anti-Iranian comments



Glen Korstrom

Aug 25, 2026 2:00 PM



Signage outside a Freshslice Pizza store on Robson Street shows the company's CEO Ray Russell. | Chung Chow, BIV

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The BC Human Rights Tribunal (BCHRT) has ordered the CEO of a major Canadian pizza chain to pay a former employee \$85,000 plus interest for creating a "toxic work environment" through "derogatory comments about Muslim and Iranian people."

Tribunal evidence against Ray Russell, CEO of Vancouver-founded Freshslice Pizza, included an audio recording of Russell using a profanity while telling an employee they have "third ... world mentalities" that "have no place in Canada."

The tribunal's decision, issued Aug. 12 and released publicly this week, included an award against both Russell personally and against Freshslice Holdings Ltd.

The payment includes \$45,000 in lost wages to complainant Behrooz Rabiei. He resigned as a marketing manager in January 2021, after Russell reassigned much of Rabiei's work to others, leaving Rabiei with what the tribunal said was little meaningful work.

The BCHRT calculated the award amount by starting with Rabiei's \$60,000 base salary and the nine months of income he lost before obtaining new full-time employment.

The remaining \$40,000 is compensation for Russell injuring Rabiei's "dignity, feelings and self-respect."

The tribunal said Rabiei "proved that Mr. Russell's conduct toward him adversely affected his employment to the point of constructive dismissal, and was connected, both directly and by inference, to his race, colour and religion."

Rabiei is a Muslim originally from Iran.

Tribunal member Shannon Beckett, who issued the decision, based some of her findings on an audio recording that Rabiei made on or about Jan. 19, 2021, when Rabiei met Russell to discuss what Rabiei thought was an unfair performance review.

He had been marked poorly for not donating to the company's charity, for not playing poker with co-workers and not putting a Freshslice logo on his personal vehicle, according to the decision.

Rabiei did not alert Russell that he was making the recording.

At a different point in that recorded meeting, Russell called Rabiei an "idiot" for challenging his performance evaluation, and "dumb" for challenging the effectiveness of the grading criteria, the decision noted.

Russell had argued that any claim of race- and colour-based discrimination could not succeed because Russell shares the same ethnic background, heritage, national origin, first language and culture as Rabiei.

Beckett dismissed those arguments, saying that the test for whether Russell discriminated, based on protected attributes under the BC Human Rights Code, is the same regardless of his own characteristics.

Russell first denied that he made negative comments about Iranian people or people who follow Islam, and he said the comments that Rabiei highlighted as discriminatory were taken out of context.

"After he had a chance to listen to the audio recording where he can be heard making the statement to Mr. Rabiei, Mr. Russell suggested the audio tape had been edited and was not authentic," Beckett wrote.

"However, eventually, Mr. Russell acknowledged he had made the statement."

She later added that she found Russell's testimony "self-serving and lacked credibility."

The tribunal did not find that Rabiei's performance evaluation itself was discriminatory.

A hearing for the case took place in October 2025 and included testimony from another former Freshslice employee, Amanpreet Singh Makkar.

Makkar gave specific examples of when he said he heard Russell making fun of Persian people, the decision noted.

This helped Beckett find that Russell's discrimination against Rabiei was "persistent" and "prolonged," and that he had made discriminatory statements about Muslims for "a period of years."

She wrote: "Mr. Russell's repeated derogatory comments about Iranian and Muslim people were not isolated remarks. Rather, they reflected an underlying bias that informed his treatment of Mr. Rabiei."

Beckett also noted evidence following Rabiei's resignation. Freshslice circulated a memorandum to staff and franchisees saying Rabiei had received a low performance rating and "was expected to improve on his weaknesses immediately and going forward. He could not improve on those weaknesses and has moved on by resigning his position."

Beckett said that this post-resignation conduct did not form part of the adverse treatment that Rabiei alleged in his complaint, but "it provides some additional context."

Russell called the decision that he discriminated against Iranian and Muslim people "unfounded," based on how his workforce includes a much higher percentage of Iranians and Muslims than the general population.

He told *Business in Vancouver*, as he said in the hearing, that his ethnic background is Iranian.

"The fact speaks for itself," Russell said.

He said that he planned to appeal the decision.

The [BCHRT website](#) notes the process people can follow if they do not agree with a decision.

Those unhappy with a result can ask the tribunal to reconsider its decision within 14 days if they think "the process was unfair," such as the tribunal not receiving a submission.

People who disagree with a decision may also ask the B.C. Supreme Court within 60 days to review the decision based on three specific grounds:

- the tribunal applied the wrong law;
- the tribunal's decision is "patently unreasonable"; or
- the tribunal's process was unfair.

Rabiei and Freshslice have also appeared before a separate tribunal.

The Employment Standards Tribunal in 2023 ruled that Freshslice did not fully compensate Rabiei for overtime wages and statutory holiday pay, and found it owed him \$10,283.04.

He confirmed to *BIV* that he received that amount.

The BC Restaurant and Foodservices Association (BCRFA) identified Russell this summer as [one of its inductees](#) into its British Columbia Restaurant Hall of Fame at its Oct. 19 gala.

Ian Tostenson, CEO of the BCRFA, told *BIV* in a text that there has been no "status change" for Russell's induction at this point.

gkorstrom@biv.com

x.com/GlenKorstrom

Bluesky.com/glenkorstrom.bsky.social

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Original filed March 9, 2026

Amended March 17, 2026 pursuant to Rule 6 -1(1)



Court File No. S-2011355
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 BC LTD., RF FRANCHISING INC., and THE
TRUSTEES OF THE FRESHSLICE FAMILY TRUST

DEFENDANTS

AMENDED APPLICATION RESPONSE

Application response of: JM Food Services Ltd., Freshslice Holdings Ltd., RFSP Equipment & Operating Inc., RF Franchising Inc., the Trustees of the Freshslice Family Trust, A&M Enterprise Ltd., and 1015214 B.C. Ltd. (the "Application Respondent(s)" or "Respondent(s)")

THIS IS A RESPONSE TO the amended notice of application of Tariq Waheed and 0923063 B.C. Ltd. filed ~~September 12, 2025~~ February 19, 2026.

The Application Respondent(s) estimate(s) that the application will take 90 minutes.

PART 1: ORDERS CONSENTED TO

None.

PART 2: ORDERS OPPOSED

The Application Respondent(s) oppose(s) the granting of the orders set out in paragraphs 1 and 2 of Part 1 of the Notice of Application.

PART 3: ORDERS ON WHICH NO POSITION IS TAKEN

None.

[1]

*This is Exhibit "O" referred to in the
affidavit of David Grunder
sworn before me at Vancouver
in the Province of British Columbia
this 2nd day of September A.D. 2026*

A Commissioner for taking Affidavits
within British Columbia

PART 4: FACTUAL BASIS

1. The Defendants take no issue with the Plaintiffs' characterization of the procedural history of this action (and the action before the British Columbia Court of Appeal) at paragraphs 2, 6-9, 14, and 15 of Part 2 of the Notice of Application.
2. However, the Plaintiffs have omitted remarkable considerations and, in one case, committed to a false statement in their review of the facts.

The Judgments

3. The Macintosh Order is against JM Food Services only. This is made clear in the supplemental Oral Reasons for Judgment of Justice Macintosh on November 18, 2019.
4. While the recitation of the Winteringham Order in the Notice of Application is sound, the Plaintiffs failed to note that they sought judgment against the Defendants jointly and severally for the sum of the judgment in the previous action before Justice Macintosh. Justice Winteringham did not grant this remedy.

Examinations in Aid of Execution

5. With respect to the examinations in aid of execution, the Defendants did not agree such examinations were appropriate in the circumstances. The Defendants brought this discussion to the Plaintiffs shortly after receiving the appointments to examination. Specifically, the Defendants suggested the Plaintiffs' request may have been premature, especially in that no endeavours had been made to ascertain the nature, scope, and value of the assets described in the Winteringham Order.
6. Further, the Defendants disagreed with the scope of documents sought by the Plaintiffs in advance of the examination in aid of execution. This position was similarly presented to the Plaintiffs.
7. The Defendants were consistently in communication with the Plaintiffs on this debate, despite resolution of the matter eventually requiring judicial intervention.
8. At paragraph 16, the Plaintiffs allege that the Defendants failed to produce documents at all. This is manifestly untrue.
9. On February 10, 2025, the Defendants shared a substantial number of documents with the Plaintiffs, which were those the Defendants had in its possession.
10. On February 26, 2025, the Plaintiffs claimed that there remained outstanding documents. In response, the Defendants sought clarity as to the documents falling within the Plaintiffs' claim.

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B.

11. On February 28, 2025, the Defendants received a letter outlining the Plaintiffs' position on the alleged outstanding documents, after which the Defendants came into possession of six additional documents and shared same with the Plaintiffs promptly.

PART 5: LEGAL BASIS

Application Preliminary

12. Justice Winteringham ordered that the Plaintiffs "are entitled to pursue their just and lawful remedies as judgment creditors against the defendant, JM Food Services, as if it were still the legal and beneficial owner of the transferred property to the same extent as it was before the transfer of the property".

Waheed v. JM Food Services Ltd., 2023 BCSC 2113 (para 164)
[*Waheed*]

13. Justice Winteringham held the "property" to be the income streams flowing from the books of business previously owned by JM Food Services related to the sale of pizza dough and equipment/supplies.

Waheed (para 121)

14. Following the dispositions, the books of business were ultimately serviced by the Defendants, A&M Enterprise Ltd. and 1015214 B.C. Ltd. The foregoing businesses were then solely owned and directed by Frank Alexander (unlike JM Food Services, which was solely owned and directed by Ray Russell).

Waheed (paras 130, 146, and 147)
Affidavit #1 of Frank Alexander, made September 4, 2024 (paras 1 and 2)

15. No assessment has been made as to the nature, scope, or value of the "property". No investigation has been made as to whether the aforementioned books of business were maintained following their transfer or, instead, were replaced by fresh books of business not captured by the Winteringham Order. Valuation has been undertaken to determine the value of the "property" neither with Mr. Alexander as owner and director instead of Mr. Russell nor if JM Food Services retained its ownership.

16. Despite the Defendants having raised the issue in June 2024, the Plaintiffs have failed to conduct the due diligence necessary to ascertain the nature, scope, and value of the assets against which the Plaintiffs may enforce their judgment.

Appointment of Receiver

1. Prior to this action, JM was unrepresented.

2. ~~Since the commencement of this action, the Defendants have been cooperative and collaborative in working with both Mr. David Grunder and Mr. Devin Lucas.~~
3. ~~The Defendants have not impeded collection efforts, though any activities that may be seen as easing the enthusiasm towards collection were made in good faith.~~
4. ~~Representatives of the Defendants, Mr. Russell and Mr. Alexander, were forthright and obliging at their respective examinations in aid of execution.~~

Affidavit #1 of Kristin Apan at Exhibits "F" and "G"

5. ~~They have similarly been working with the many necessary teams to complete their responses to the requests made by the Plaintiffs at their examinations.~~
6. ~~In response to paragraph 7 of Part 4, the Plaintiffs' assertion that the Defendants have refused to comply with the Rules and a court order is not true. The Defendants disagreed with the Plaintiffs' requests. The Defendants shared documents with the Plaintiffs as ordered by the Honourable Court.~~
7. ~~Further, the Plaintiffs have not sufficiently attempted the ordinary procedures to determine that equitable execution through a receiver would be more convenient. In particular, the Plaintiffs have not addressed the issue raised by the Defendants regarding the nature, scope, and value of the assets.~~
8. ~~The appointment of an equitable receiver is not just and equitable in the circumstances and asks that the Honourable Court refuse appointment of such as is generally the case.~~
9. ~~Such further and other legal bases as counsel may advise and as this Honourable Court may permit.~~
17. The present application moves from a preserved right to pursue transferred property to a proposed receivership over a much broader universe of current and future assets of six companies and a trust.
18. The Plaintiffs have not shown what current receivables, accounts, revenues, leasehold interests, or other assets are the transferred property preserved by Winteringham J.'s order, or direct proceeds of that property.
19. The Plaintiff may have shown some difficulty in collection, but not the tracing work needed to justify the proposed breadth of relief.

Appointment of Receiver

20. Prior to this action, JM was unrepresented.
21. Since the commencement of this action, the Defendants have been cooperative and collaborative in working with both Mr. David Grunder and Mr. Devin Lucas.

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22. The Defendants have not impeded collection efforts, though any activities that may be seen as easing the enthusiasm towards collection were made in good faith.

23. Representatives of the Defendants, Mr. Russell and Mr. Alexander, were forthright and obliging at their respective examinations in aid of execution.

Affidavit #1 of Kristin Apan at Exhibits "F" and "G"

24. They have similarly been working with the many necessary teams to complete their responses to the requests made by the Plaintiffs at their examinations.

25. In response to paragraph 7 of Part 4, the Plaintiffs' assertion that the Defendants have refused to comply with the *Rules* and a court order is not true. The Defendants disagreed with the Plaintiffs' requests. The Defendants shared documents with the Plaintiffs as ordered by the Honourable Court.

26. Further, the Plaintiffs have not sufficiently attempted the ordinary procedures to determine that equitable execution through a receiver would be more convenient. In particular, the Plaintiffs have not addressed the issue raised by the Defendants regarding the nature, scope, and value of the assets.

27. The appointment of an equitable receiver is not just and equitable in the circumstances and asks that the Honourable Court refuse appointment of such as is generally the case.

28. In the alternative, if an equitable receiver is appointed, then the Defendants seek the powers and scope of the receiver is limited to the transferred assets that are specific, identified, exigible property that forms part of the Winteringham Order.

29. In *Scala Development Consultant Ltd. v. Spirit Bay Developments Limited Partnership*, 2024 BCSC 1755, even after deciding that a receiver should be appointed, Fleming J. still declines to grant the power to assign headleases because receivership is extraordinary relief and the record did not justify the full scope sought.

Scala Development Consultant Ltd. v. Spirit Bay Developments Limited Partnership,
2024 BCSC 1755 at paras. 339 to 340

[Scala]

30. Further in *Down* the Court says it cannot appoint a receiver in a vacuum and vest them with the power to seek and find some asset of the debtor over which to exercise receivership. *Down* goes further holding that even with special circumstances, the applicant must provide at least some particulars of the assets over which receivership is sought.

Down (paras. 19 to 20)

31. Further, Schedule A is drafted as a model insolvency style receivership order, not a restrained equitable execution order tied to identified transferred property. The most

overbroad provisions are para. 1, paras. 2(a) to 2(o), especially 2(g), 2(h), 2(i), 2(l), 2(m), 2(n), and 2(o), paras. 7 to 14, and paras. 20 to 27.

32. If the Court is inclined to grant any relief, we seek that the order is limited in the following ways:

1. The overbroad provisions in Schedule A (at para. 29) be dismissed outright or in the alternate substantially narrowed or in the further alternative be made subject to a further order after a first report identifying the specific assets within the scope of Winteringham J.'s order.

2. The property covered by any receivership should be confined to specifically identified transferred property, and direct traceable proceeds, preserved by Winteringham J.'s order. Paragraph 1 of Schedule A is too broad because it defines the "Property" to include sweeping categories such as accounts receivable, restaurant franchise fees, leasehold interests, bank accounts, tangible personal property, and other intangible property of all Russell and Alexander entities. On the present record, the order should not extend to all present and future assets, all business revenues, all bank accounts, all leasehold interests, or the general undertaking of all Respondents. That limitation flows from the distinction between the Macintosh judgment and Winteringham J.'s preservation of remedies and is consistent with the caselaw cited earlier.

3. Any order should be investigatory and preservative in the first instance only. The receiver should be directed to identify what current receivables or payment streams, if any, are in fact the transferred property or its proceeds, and to report back within a short period. Any broader realization power should require a further order after that report. In that regard, paras. 2(a) to 2(f) of Schedule A are too broad to the extent they immediately confer possession, control, collection, compromise, document execution, and general administrative authority over the entirety of the Property as presently defined. Those powers should either be limited to specifically identified transferred property or deferred pending a first report.

Down (paras.19 to 20)

4. The Defendants oppose the immediate grant of sale and disposition powers. Paragraphs 2(g), 2(h), and 2(i) of Schedule A authorize the receiver to market the Property, solicit offers, sell, convey, transfer, lease or assign the Property, and seek vesting orders. On this wording, the Defendants submit that those powers are too broad. The Plaintiffs have not yet shown what specific assets are in fact the transferred property preserved by Winteringham J., or direct proceeds of that property. Even in *Scala*, where a receiver was justified, the Court still withheld a requested disposition power because the record did not justify the full scope sought. If any such powers are granted, they should be deferred until after a first report and then limited to identified assets only.

Scala (paras. 339 to 340)

5. The Defendants oppose any provisions that effectively allow the receiver to run the businesses. Paragraphs 2(l), 2(m), and 2(o), together with paras. 11 to 14, are too broad because they authorize the receiver to apply for permits and licences, enter agreements with trustees in bankruptcy or occupants, take any step incidental to the exercise of its powers or performance of statutory obligations, control the continuation of services, administer post receivership accounts, deal with employees, and manage information disclosure in aid of sales. Those are features of a going concern commercial receivership. These provisions are inconsistent with the Plaintiffs' own characterization of the proposed order as a limited appointment intended simply to access funds paid to the entities during the course of operations.

6. The Defendants oppose any provision purporting to transfer or permit the exercise of shareholder, partnership, trust, governance, directorial, or similar relational power on the grounds that it is too broad. Paragraph 2(n) of Schedule A authorizes the receiver "to exercise any shareholder, partnership, joint venture or other rights" that the entities may have. This is contrary to *Quest Capital Corp. v. Longpre*, 2012 BCCA 49 which draws a firm distinction between property and powers attached to an office or relational status. *Pacific West Systems Supply Ltd. v. Fehr Dri-Wall Ltd.*, 2001 BCSC 354 also reinforces that the Court must consider carefully whether and how litigation and enforcement powers are to be exercised, rather than simply importing broad model order language.

Quest Capital Corp. v. Longpre, 2012 BCCA 49 (paras. 27, 29 to 32, and 38 to 39)

Pacific West Systems Supply Ltd. v. Fehr Dri-Wall Ltd., 2001 BCSC 354 (paras. 14 to 24)

[*Pacific West*]

7. The Defendants oppose board stay powers. Paragraphs 7 to 10 of Schedule A go much further than is necessary on this record. They stay proceedings against the receiver, stay proceedings against the entities and the Property, suspend rights and remedies against the entities and the Property, and prevent contractual counterparties from terminating or amending agreements.

In the alternative, if the Court grants any stay, it should be limited to what is strictly necessary to preserve specifically identified transferred property pending the receiver's report. There is no justification on this record for a sweeping stay affecting all proceedings and all assets of all Respondents.

Pacific West (paras. 9 to 13)

Down (paras. 8 to 9)

8. The Defendants oppose borrowing powers, receiver's certificates, and a broad receiver's charge at this stage. Paragraphs 20 to 27 of Schedule A are classic full commercial receivership provisions. Paragraph 20 grants a first ranking Receiver's Charge over the Property. Paragraph 21 permits interim payment of fees and

disbursements from the Property. Paragraph 23 authorizes borrowing and a Receiver's Borrowings Charge. Paragraphs 24 to 26 authorize receiver's certificates. On the present application, the Defendants submit those provisions are disproportionate.

If the Court grants a narrow equitable execution order, then any administrative charge should be confined to monies collected from specifically identified property and remain subject to later approval.

Scala (paras. 339 to 340)

Warren v. Warren, 2008 BCSC 731 (paras. 23 to 25)

Weiq v. Weiq 2012 ONSC 7262 (para. 19)

PART 6: MATERIALS TO BE RELIED ON

33. 26- Affidavit #1 of Armin Safari, made September 19, 2025.

34. 27- Affidavit #1 of Frank Alexander, made September 4, 2024.

35. 28- Affidavit #1 of Ray Russell, made August 21, 2024.

36. 29- Such further and other materials as counsel may advise and as this Honourable Court may permit.

[X] The Application Respondent(s) has/have filed in this proceeding a document that contains the Application Respondent's(s') address(es) for service.

Date: March 17, 2026

Date: ~~September 19, 2025~~



Signature of Vincent Li-R. Wijesinghe
Lawyer for the application respondent(s)



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This is Exhibit "P" referred to in the
affidavit of David Grunder
sworn before me at Vancouver
In the Province of British Columbia
this 2nd day of September A.D. 2026

A Commissioner for taking Affidavits
within British Columbia

Court File No.S-2011355
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 BC LTD., RF FRANCHISING INC., and THE
TRUSTEES OF THE FRESHSLICE FAMILY TRUST

DEFENDANTS

RESPONDENTS' WRITTEN SUBMISSIONS

I. OVERVIEW AND RESPONDENTS' POSITION

1. The Applicants seek the appointment of McEown and Associates Ltd. as an equitable receiver over the assets of six corporations and a trust, pursuant to Rules 10-2 and 13-2(5), s. 39 of the *Law and Equity Act*, and the inherent jurisdiction of the Court.
2. Properly characterized, this is an application for equitable execution, not insolvency relief. As such, it is governed by a settled and restrictive body of law that requires the Court to identify specific exigible property and to ensure that the relief granted is proportionate, property-based, and just and convenient.

3. The Respondents submit that the application, as framed, seeks relief well beyond what the authorities permit. While the Applicants have demonstrated difficulty in enforcement, they have not established that the extraordinary receivership relief sought is tethered to identified property preserved by Winteringham J.'s order.

II. LEGAL FRAMEWORK GOVERNING EQUITABLE RECEIVERSHIP

A. Nature and Purpose of Equitable Receivership

4. The appointment of an equitable receiver arises from the law of equitable execution. As Metzger J. explained in *Warren v. Warren*, 2008 BCSC 731:

"The appointment of a receiver by way of equitable execution has its origins in the law of equity. Historically it was available where a creditor could not seize the debtor's property through the ordinary legal processes of execution, attachment or garnishment. In those cases equity intervened to permit a receiver to be appointed to intercept specific property or income to which the debtor was entitled."

(*Warren v. Warren*, 2008 BCSC 731 at para. 11)

5. The Court's jurisdiction to appoint a receiver is discretionary and is not available as of right: *K.(C.M.) v. Young*, (1996), 26 B.C.L.R. (3d) 92 (C.A.). The discretion must be exercised judicially and in accordance with established principles.
6. The modern framework was summarized by the Court of Appeal in *Quest Capital Corp. v. Longpre*, 2012 BCCA 49. At para. 15, the Court stated:

"Equitable receivers are appointed pursuant to legislation, rules of court, or the inherent jurisdiction of the court. They are appointed over property."

(*Quest Capital Corp. v. Longpre*, 2012 BCCA 49 at para. 15)

7. The Court adopted Professor Edinger's formulation of the governing principles at para. 16:

"First, the asset must be of a kind that is exigible by a common law or legal process; second, there must be some impediment to employment of a legal process; third, there must be some benefit to be obtained by the appointing of an equitable receiver and the appointment must be just and convenient; but fourth, special circumstances established by the judgment creditor may permit the court to disregard the second rule."

(*Quest*, at para. 16, citing E.R. Edinger)

B. Requirement of Identified, Exigible Property

8. A recurring and decisive principle in the authorities is that a receiver cannot be appointed “in a vacuum”.

9. In *China Software Corporation v. Leimbigler*, (1990), 45 C.P.C. (2d) 41 (BCSC), Master Halbert rejected an application that sought to appoint a receiver without identifying the assets said to justify the relief:

“The court cannot appoint a receiver in a vacuum, and vest him with the power to seek and find some asset of the debtor over which to exercise the receivership. A receiver will not be appointed to take in the debtor’s assets generally, but only to reach a specific one.”

(*China Software*, at p. 45)

10. This passage was expressly adopted and relied upon in *Re Down*, 2002 BCSC 1023. Brenner C.J. stated at para. 19:

“The court cannot appoint a receiver ‘in a vacuum’ and vest him with the power to seek and find some asset of the debtor over which to exercise the receivership.”

(*Re Down*, 2002 BCSC 1023 at para. 19)

11. At para. 20, the Court continued:

“Even if there were special circumstances that justified the appointment as being ‘just and convenient’, I am of the view that the applicant is nonetheless required to provide at least some particulars of the assets which are intended to be brought into the receivership. No such particulars have been provided to the court in this case.”

(*Re Down*, at para. 20)

12. These authorities make clear that difficulty in enforcement does not relieve the applicant of the burden of identifying the property said to justify receivership relief.

C. Property Versus Powers: The Limits of Receiver Authority

13. *Quest Capital Corp. v. Longpre* is the leading authority on the distinction between property and powers.

14. At para. 27, the Court of Appeal held:

“The issue is not what the debtor might be able to do, but whether it is proper to grant to the receiver whatever ‘powers’ the debtor has under the definition of property.”

(*Quest*, at para. 27)

15. At paras. 29–32, the Court warned against conflating receivership over property with the authority of the receiver:

“Property subject to the authority of an equitable receiver may include interests in property, both tangible and intangible, and receivers may be given the authority to exercise rights and powers that attach to that property. ... In the absence of agreement by the debtor, a creditor cannot simply make non-property subject to an equitable receivership through the definition of property in a court order.”

(*Quest*, at paras. 29–32)

16. The Court concluded at paras. 38–39:

“Property over which an equitable receiver may be appointed does not include ‘powers’. ... Rights and powers vested in a debtor as a result of an office held by the debtor generally are not the debtor’s property and generally are not property over which an equitable receiver may be appointed.”

(*Quest*, at paras. 38–39)

III. SPECIAL CIRCUMSTANCES AND RELATIVE CONVENIENCE

A. Necessary but not Sufficient

17. The classic formulation of "special circumstances" derives from *Goldschmidt v. Oberrheinische Metallwerke*, [1906] 1 K.B. 373 (C.A.), adopted in *NEC Corp. v. Steintron International Electronics Ltd.* (1985), 67 B.C.L.R. 191 (S.C.).(NEC)

18. Southin J. stated in *NEC*:

"The plaintiff must show that the circumstances are such as to render it practically very difficult, if not impossible, to obtain any fruit of his judgment unless equitable execution is granted."

(*NEC Corp. v. Steintron*, at p. 194)

19. These principles were summarized by Master Joyce in *Pacific West Systems Supply Ltd. v. Fehr Dri-Wall Ltd.*, 2001 BCSC 354 at para. 9:

"Special circumstances exist where it is practically very difficult, if not impossible, to obtain any fruit of the judgment, where the assets are exigible, and where the appointment of a receiver will permit realization upon assets that would otherwise remain sheltered."

20. However, as Metzger J. emphasized in *Warren*:

"Special circumstances alone are not sufficient. The creditor must also show some benefit to be gained by appointment, and that benefit must be sufficient to justify the expense of a receiver."

(*Warren*, at para. 25)

B. The Application Is Premature and Unsupported by Necessary Due Diligence

21. Even where special circumstances are alleged, equitable receivership remains an exceptional and residual remedy. The Applicants bear the burden of demonstrating that ordinary enforcement mechanisms have been exhausted or are practically unavailing, and that a receiver will realize otherwise inaccessible value.

22. The record demonstrates the opposite. Justice Winteringham expressly preserved the Applicants' right to pursue remedies only as against the transferred property, as if JM

Food Services Ltd. remained the owner. The Applicants have undertaken no assessment of the nature, scope, continuity, or present value of that property.

23. No valuation evidence has been adduced. No investigation has been conducted to determine whether the historic "books of business" identified by Justice Winteringham continue to exist, were replaced, or generate any current income. Nor is there evidence tracing present revenues to preserved property rather than to post-judgment business activity of non-judgment debtors.
24. Courts have repeatedly emphasized that equitable execution is not a substitute for investigation. Difficulty in collection does not justify appointing a receiver to determine whether exigible property exists. To do so reverses the proper sequence and impermissibly converts receivership into an exploratory tool.
25. On this record, the Applicants seek extraordinary relief before establishing what assets, if any, are available for execution, rendering the application premature and unjust.

IV. APPLICATION TO THE PRESENT RECORD

A. Scope of Winteringham J.'s Order

26. The underlying liability judgment of Macintosh J. is against JM Food Services Ltd. only.
27. Winteringham J.'s December 1, 2023 order declared certain transfers fraudulent and preserved the Applicants' remedies as against transferred property, "as if [JM Food Services] were still the legal and beneficial owner of the transferred property."
28. Winteringham J. did not:
 - grant joint or several judgment against the other Respondents;
 - identify present-day assets; or
 - authorize receivership over the general undertakings of the non-JM entities.

B. The Application Seeks a Receiver in a Vacuum

29. The proposed Schedule "A" defines "Property" to include sweeping categories such as:
 - all accounts receivable;
 - all franchise revenues;
 - all bank accounts;
 - all tangible and intangible personal property;

- all leasehold interests; and
 - all associated rights and powers.
30. On the present record, the Applicants have not shown which of these assets are, in fact, the transferred property preserved by Winteringham J., or direct traceable proceeds thereof.
31. This is precisely the type of “general asset-taking” receivership rejected in *China Software and Re Down*.
32. The evidence shows cooperation, document production, and forthright examinations in aid of execution. Where ordinary tools have not been exhausted—and where respondents have not impeded them—equitable receivership cannot be justified as a matter of convenience or fairness.

C. Improper Expansion of Judgment Remedies

33. The underlying judgment is against JM Food Services Ltd. only. Justice Winteringham declined to grant joint or several judgment against the remaining Respondents and did not authorize enforcement against their general assets or businesses.
34. The relief sought would effectively achieve what was previously refused—subjecting non-judgment debtors to insolvency-style control without findings of liability, tracing, or valuation. This is not equitable execution; it is an impermissible expansion of the judgment through procedural means.
35. Receivership cannot be used to collapse corporate distinctions or to impose collective liability under the guise of enforcement. Any such result must follow findings of substantive entitlement, not assumptions embedded in a proposed order.

D. The Order Seeks Impermissible Powers

36. Paragraph 2(n) of Schedule “A” authorizes the receiver to exercise “any shareholder, partnership, joint venture or other rights”.
37. As held in *Quest*, such rights arise from office or relational status and are not property capable of being placed into receivership.
38. The inclusion of such powers renders the order legally overbroad.

E. Sale, Stay, and Charge Provisions Are Disproportionate

39. Paragraphs 2(g)–(i), 7–14, and 20–27 of Schedule “A” authorize immediate realization, sweeping stays, borrowing, and receiver’s certificates.

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40. In *Scala Development Consultants Ltd. v. Spirit Bay Developments LP*, 2024 BCSC 1755, Fleming J., even after finding that a receiver was justified, declined to grant overbroad realization powers where the record did not support them (paras. 339–340).

41. The same proportionality concern arises here.

F. Non-Cooperation Does Not Cure Overbreadth

42. The Respondents acknowledge disputes over disclosure and compliance. However, disputes about cooperation do not relieve the Applicants of the obligation to identify the property said to justify receivership relief.

Exhibit E, Affidavit of Kristin Apan

43. Difficulty in enforcement cannot be used to expand the Court's equitable jurisdiction beyond its established limits.

V. CONCLUSION

44. The Respondents submit that the application, as framed, should be dismissed.

45. In the alternative, any receivership relief must be narrowly confined to specifically identified transferred property, be investigatory in the first instance, and exclude governance, sale, borrowing, and insolvency-style powers absent further order.

46. In the further alternative, any relief should be strictly limited to:

- specifically identified transferred property (if any); or
- traceable proceeds demonstrably connected to that property; and investigatory authority only, without sale, governance, borrowing, or stay provisions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

May 6, 2026



R. Wijesinghe
Counsel for the Respondents
RAJEEWA WIJESINGHE
Barrister & Solicitor
Province of British Columbia

SEAL
06-Mar-20

Vancouver
REGISTRY

107
NO. VLC-S-S153190
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

0923063 B.C. LTD. and TARIQ WAHEED

PLAINTIFFS

AND:

JM FOOD SERVICES LTD., FRESHSLICE PROPERTIES LTD.,
and RFSP EQUIPMENT & OPERATING INC.

DEFENDANTS

AND:

0923063 B.C. LTD.

DEFENDANT BY COUNTERCLAIM

ORDER AFTER TRIAL

BEFORE THE HONOURABLE JUSTICE MACINTOSH

) Monday,
) the 18th day of
) November, 2019

THIS ACTION coming on for trial at the Law Courts at 800 Smithe Street in the City of Vancouver, in the Province of British Columbia, on December 3 - 7, 2018; March 25 - 29, 2019; and on hearing David Grunder, counsel for the Plaintiffs and Defendant by Counterclaim, and Tom Horler, appearing as representative for the Defendants, AND JUDGMENT being reserved to April 11, 2019, and with Supplementary Reasons for Judgment released this day.

THIS COURT ORDERS that:

1. The Plaintiff, 0923063 B.C. Ltd., is awarded as against JM Food Services Ltd. the sum of \$342,435.13 consisting of: \$127,485 for damages for loss of income to May 31, 2020; \$83,000 for loss of good will; \$125,000 for punitive damages; less \$11,582 for the counterclaim payable; \$18,532.13 for pre-judgment interest on the damages of \$323,903.
2. The Plaintiff, Tariq Waheed, is awarded as against JM Food Services Ltd. the sum of \$26,852.98 consisting of: \$25,000 in damages for conversion and \$1,852.98 for the pre-judgment interest.

This is Exhibit "Q" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 20 26

A Commissioner for taking Affidavits
for British Columbia

3. The Plaintiffs are awarded costs as assessed as against JM Food Services Ltd..

FURTHER, THIS COURT DIRECTS that:

4. The Registrar of the Supreme Court conduct an assessment under Rule 18-1(1) of the *Supreme Court Civil Rules* to determine the amounts recoverable by the Plaintiff, 0923063 B.C. Ltd. under the Standard Franchise Agreement for reasonable legal fees and expenses, as costs of the action, in accordance with the Reasons for Judgment.
5. The Registrar certify the result of the assessment pursuant to Rule 18-1(2).

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND
CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE
AS BEING BY CONSENT:

David W. Grunder
David W. Grunder
Solicitor for the Plaintiffs and Defendant by Counterclaim

Tom Horler
Tom Horler
Representative for the Defendants

Mam Toch J By the Court

Registrar

Digitally signed by
Wei Rong Hu

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

OCT 22 2020

1194
NO. VLC-S-S153190
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

0923063 B.C. LTD. and TARIQ WAHEED

PLAINTIFFS

AND:

JM FOOD SERVICES LTD., FRESHSLICE PROPERTIES LTD.,
and RFSP EQUIPMENT & OPERATING INC.

DEFENDANTS

AND:

0923063 B.C. LTD.

DEFENDANT BY COUNTERCLAIM

CERTIFICATE OF COSTS

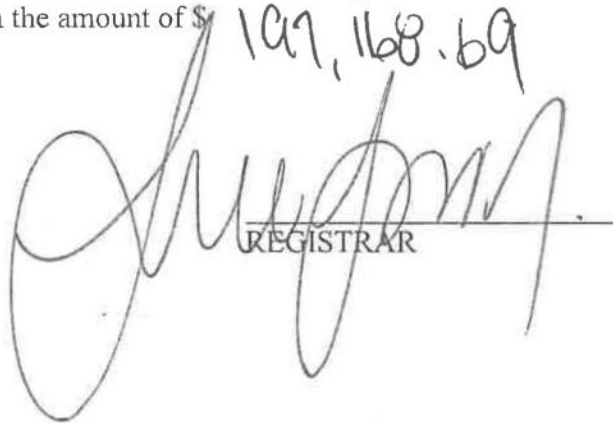
I CERTIFY

[x] following assessment

that on 22/Oct/2020, the costs of 0923063 B.C. Ltd. and Tariq Waheed have been allowed
against JM Food Services Ltd. in the amount of \$

197,168.69

Date: 22/Oct/2020


REGISTRAR

This is Exhibit "R" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026


A Commissioner for taking Affidavits
for British Columbia



Court of Appeal File No. CA46076

COURT OF APPEAL

0923063 B.C. LTD. and TARIQ WAHEED

Respondents
(Plaintiffs)

AND:

JM FOOD SERVICES LTD., FRESHSLICE PROPERTIES LTD.,
and RFSP EQUIPMENT & OPERATING LTD.

Appellants
(Defendants)

ORDER OF A JUSTICE

BEFORE THE HONOURABLE MR. JUSTICE HARRIS IN CHAMBERS

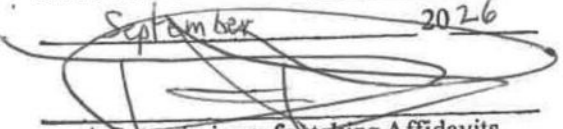
Vancouver, British Columbia December 11, 2020

THE APPLICATION OF the respondents for a stay of this appeal pending payment of security for costs and dismissal of this appeal pending payment of security of costs as ordered, coming on for hearing by teleconference on December 11, 2020 at Vancouver, British Columbia; AND ON HEARING David Kamachi appearing as counsel on behalf of the appellant, JM Food Services Ltd., and David W. Grunder counsel for the respondents; AND ON READING the materials filed herein; AND ON JUDGMENT BEING PRONOUNCED ON THIS DATE;

IT IS ORDERED that this appeal is dismissed as abandoned.

IT IS ORDERED that Registrar shall pay out all funds and interest standing to the credit of the appellant, JM Food Services Ltd., under Vancouver court file No. CA46076 to David W. Grunder Law Corp. in trust for the respondents, 0923063 B.C. Ltd. and Tariq Waheed.

This is Exhibit "AS" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2020

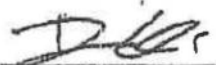

A Commissioner for Taking Affidavits
for British Columbia

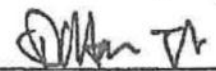
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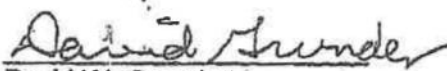
IT IS FURTHER ORDERED that the costs of this appeal are to the respondents.

BY THE COURT

APPROVED AS TO FORM:


David M. Kamachi
Counsel for the Appellant,
JM Food Services Ltd.




David W. Grunder
Counsel for the Respondents

ENTERED

JAN 29 2021

VANCOUVER REGISTRY
VOL 363 FOL 60



1006
122

Court of Appeal File No. CA46076

COURT OF APPEAL

BETWEEN:

0923063 B.C. LTD. and TARIQ WAHEED

Respondents
(Plaintiffs)

AND:

JM FOOD SERVICES LTD., FRESHSLICE PROPERTIES LTD.
and RFSP EQUIPMENT & OPERATING LTD.

Appellants
(Defendants)

CONSENT ORDER

BEFORE THE HONOURABLE MR. JUSTICE HARRIS

January 25, 2021

IN CHAMBERS

ON application of Tariq Waheed and 0923063 B.C. Ltd., respondents herein;
AND BY CONSENT;

IT IS ORDERED that the costs of this appeal are to the respondents in the
amount of \$2,593.15.

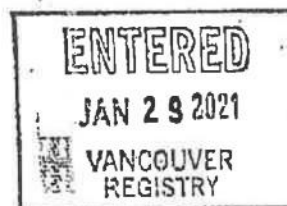
APPROVED AS TO FORM:

D. K.

David M. Kamachi
Counsel for the Appellant,
JM Food Services Ltd.

David W. Grunder

David W. Grunder
Counsel for the Respondents



DCA/TK
This is Exhibit *3* referred to in the
Affidavit of *David Grunder*
made before me on this *2nd* day of
September 20 *26*
[Signature]
A Commissioner for taking Affidavits
for British Columbia

COURT OF APPEAL FOR BRITISH COLUMBIA

BETWEEN

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

Appellants
(Debtors)

AND

Tong Wahco and 092063 B.C. Ltd.

Respondents
(Plaintiffs)

ORDER OF THREE OR MORE JUSTICES

BEFORE

The Honourable Mr. Justice Abrioux

The Honourable Madam Justice Horsman

The Honourable Justice Iyer

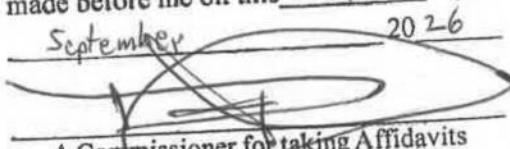
Vancouver, British Columbia, reserved judgment released November 18, 2024

THE APPEAL from the order of Justice Winteringham of the Supreme Court of British Columbia at New Westminster dated December 1, 2023, coming on for hearing on September 5, 2024, AND ON HEARING Vincent Li for the appellants and David Grunder for the respondents, AND ON READING the materials filed herein, AND ON JUDGMENT BEING PRONOUNCED ON THIS DATE,

THIS COURT ORDERS that the appeal is allowed.

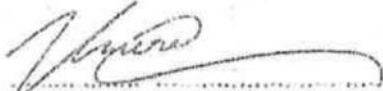
AND THIS COURT FURTHER ORDERS that the orders of the trial judge as they relate to the claim of 092063 B.C. Ltd. are set aside

THIS COURT FURTHER ORDERS that the matter is remitted to the Supreme Court for trial on the question of whether the limitation period for 092063 B.C. Ltd. to commence its claim had expired prior to its restoration.

This is Exhibit "A" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

A Commissioner for taking Affidavits
for British Columbia

AND THIS COURT FURTHER ORDERS that the appellants do recover the costs of the appeal from 092063 B.C. Ltd. promptly after assessment

APPROVED AS TO FORM:



Signature of Appellants' Lawyer
Vincent Li

BY THE COURT

Deputy Registrar



Signature of Respondents' Lawyer
David Grunder





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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

CERTIFICATE OF COSTS

I CERTIFY

[x] by consent of the parties

that on 7/Nov/2024, the costs of Tariq Waheed and 0923063 B.C. Ltd. have been allowed against the defendants, 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, jointly and severally in the amount of \$27,000.00 in respect of the Order After Trial of the Honourable Justice Winteringham, filed January 24, 2024.

Consented to:

David Grunder
David Grunder, Lawyer for both Plaintiffs

Vincent Li
Vincent Li, Lawyer for all Defendants

Date: April 10, 2025

Digitally signed by
Naidu, Sanjeev

REGISTRAR

This is Exhibit "V" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026

[Signature]
A Commissioner for taking Affidavits
for British Columbia

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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 FRANCISING INC., and THE TRUSTEES OF THE FRESHSLICE FAMILY TRUST

DEFENDANTS

CERTIFICATE OF COSTS

I CERTIFY

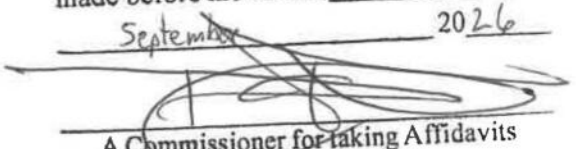
[x] following assessment

that on 06/July/2026, the costs of 0923063 B.C. Ltd. have been allowed against JM Food
Services Ltd. in the amount of \$ 12,907.68.

Date: 06/July/2026


REGISTRAR

This is Exhibit "W" referred to in the
Affidavit of David Grunder
made before me on this 2nd day of
September 2026


A Commissioner for taking Affidavits
for British Columbia