



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

NOTICE OF APPLICATION

Names of applicants: Tariq Waheed and 0923063 B.C. Ltd (collectively, the
"Applicants")

To: The Defendants

And to: Lindsay Kenney LLP, attention: Brad Martyniuk, counsel for the Defendants.

And to: Freshslice 1610 Ingleton Ave, 2nd Floor, Burnaby, BC V5C 5R9 Attn: Raj Wijesinghe,
counsel for the Defendants

And to: McEown and Associates Ltd. (the "Receiver")

And to: Watson Goepel LLP, attention: Jeremy West, counsel for the Receiver

And to: Behrooz Rabiei, behrooz.rabiei@gmail.com

TAKE NOTICE that an application will be made by the applicant(s) to the presiding judge at the
courthouse at 800 Smithe Street, Vancouver, BC V6Z 2E1 on September 9 2026 at 9:45 a.m.
for the order(s) set out in Part 1 below.

The applicants estimate that the application will take ^{two hours} ~~one-half day~~, together with the Defendants'
related application to vary the Order of Justice Sharma.

[Check the correct box]

☐ This matter is within the jurisdiction of an associate judge.

☒ This matter is not within the jurisdiction of an associate judge

Part 1: ORDER(S) SOUGHT

1. An Order varying or amending the Receivership Order of Justice Sharma pronounced May 13, 2026 (the “**Receivership Order**”) pursuant to paras. 34 and 39 thereof, *Supreme Court Civil Rules* 10-2 and 13-2(5), s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, R.S.B.C. 1996, c. 359, and the inherent jurisdiction of the Court requiring:
 - (a) that the Receiver forthwith pay the sum of \$790,161.16 to David W. Grunder Law Corporation in trust for the plaintiffs on account of the judgments and costs orders set out in Schedule “A”;
 - (b) that the Receiver retain in trust the sum of \$50,000.00 on account of the substantial indemnity costs Order pursuant to para. 39 of the Receivership Order;
 - (c) that the Receiver retain in trust the sum of \$100,000.00 to defray costs of the receivership;
 - (d) that the Receiver retain in trust the further sum of \$25,000.00 on account of the Plaintiffs’ substantial indemnity costs relating to execution of the Receivership Order and the present applications.
2. Costs on a special indemnity basis or, alternatively, costs; and
3. Such further and other relief as this Honourable Court deems just.

Part 2: FACTUAL BASIS

1. The Plaintiff incorporates by reference the facts set out in the First Report of the Receiver herein filed September 2, 2026.
2. This action arises from a claim made pursuant to the *Fraudulent Conveyance Act* and the *Fraudulent Preference Act*. There had been an underlying action in which JM Food Services Ltd. (“**JM**”) and Freshslice Holdings Ltd. and RFSP Equipment & Operating Inc. were the defendants.
3. As determined by the Honourable Justice Macintosh and confirmed in the reasons for judgment of the Honourable Justice Winteringham as set out below, on June 21, 2013,

JM put out of business the Freshslice Pizza franchise operated by 0923063 BC Ltd. On September 27, 2013,

4. The trial in the underlying action had proceeded before Mr. Justice Macintosh in 2018 and 2019 (the “**First Trial**”). In Reasons for Judgment of Mr. Justice Macintosh dated April 11, 2019, the court found in favour of the plaintiffs as against JM. The counterclaim was set off. On November 18, 2019, the plaintiffs obtained a judgment against JM. As determined by Justice Winteringham as set out below, at some point after June 21, 2013, JM transferred away assets to closely related companies, and to a family trust.
5. On November 6, 2020, the plaintiffs commenced this action claiming fraudulent conveyance. The action eventually proceeded to trial in September of 2023 before Justice Winteringham (the “**Second Trial**”). Justice Winteringham provided reasons for judgment on December 1, 2023, in which she set out why she found that JM had carried out fraudulent conveyances and fraudulent preferences. The defendants successfully appealed a limitation period issue. The Court of Appeal remitted the matter “to the Supreme Court on the question of whether the limitation period for 0923063 B.C. Ltd. to commence its claim had expired prior to its restoration.”\
6. The matter was remitted to a third trial (the “**Third Trial**”) before the Honourable Justice Morishita in July of 2025. The Third Trial related to matters arising in the Second Trial concerning limitation period issues. The plaintiffs were awarded their costs of the Third Trial.
7. **Schedule A** to this Notice of Application is a calculation of the judgments owing to the plaintiffs.
8. The amount of \$342,435.13 was awarded as damages to 0923063 B.C. Ltd. in the original trial. The post-judgment interest figure of \$106,135.00 was calculated from November 18, 2019, to August 20, 2026. All of the interest calculations were made pursuant to section 7 of the Court Order Interest Act, RSBC 1996, c. 79. The award of \$26,852.98 was made to Mr. Waheed in the original trial. The post-judgment interest figure of \$8,322.86 was calculated from November 18, 2019, to August 20, 2026. The

figure of \$ 197,168359 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.

9. The total amount as of August 20, 2026 was \$790,161.16. Post-judgment interest continues to accrue.
10. In addition, the plaintiffs were awarded the costs of the motion to appoint a receiver on a substantial indemnity basis. This is estimated in excess of \$24,000 as the hearing was heavily contested and the matter was adjourned twice because of no availability of a judge.
11. It is anticipated that the costs of the Receiver will be well in excess of \$50,000, rising the longer this dispute remains contested.
12. Under the Receivership Order, the Honourable Justice Sharma appointed McEown and Associates as the receiver represented by John McEown. The receiver has retained Jeremy West as its counsel in this matter.
13. The Plaintiffs' judgments against the defendants remain outstanding in their entirety.
14. The Plaintiffs are extremely concerned at the repeated statements and suggestions by counsel for the defendants herein that it is now up to the receiver to embark on a tracing exercise. These arguments were made before Justice Sharma in opposing the Order ultimately granted. The Defendants chose not to appeal that Order and are seeking to rekindle the same arguments previously made to, and rejected by, this Honourable Court.

This is an abuse of the process of this Court and prohibited by the principles of *res judicata* and issue estoppel.

15. Given the findings of Justice Winteringham as set out in her Reasons for Judgment dated December 1, 2023, the Plaintiffs are extremely concerned any tracing exercise would be bogged down by the demonstrated inclination of the defendants to conceal documents, fail to provide evidence in a timely fashion, make up false explanations, and otherwise to avoid payment of these judgments and the receivership costs.
16. Mr. Waheed and his company remain entirely unpaid. He has incurred legal expense in excess of \$350,000 in the various litigation, and is not in a financial position to fund further litigation and/or tracing exercises by the Receiver and counsel.
17. Justice Winteringham, at paras. 65 and 66 of her 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..."

18. She further concluded at paragraph 69:

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

19. There is no legal reason to withhold payment in full of the plaintiffs' judgments.

Part 3: LEGAL BASIS

1. Paragraphs 34 and 39 of the Receivership Order;
2. Supreme Court Civil Rules 10-2 and 13-2(5);

3. s. 39 of the Law and Equity Act, R.S.B.C. 1996, c. 253;
4. The law of abuse of process: *Este v. Esteghamat-Ardakani*, 2018 BCCA 290.
5. The law of res judicata and issue estoppel: *Patrick Street Holdings Ltd. v. 11368 NL Inc.* 2926 SCC 15.
6. Inherent jurisdiction of the Court.

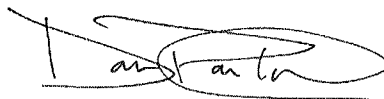
Part 4: MATERIAL TO BE RELIED ON

1. First Report of the Receiver herein filed September 2, 2026;
2. Affidavit #4 of David Grunder made September 2, 2026;
3. The other application materials filed in support of and in opposition to the Defendants' application dated August 31, 2026 to vary the Receivership Order;
4. Such further and other materials as this Honourable Court may permit.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9–7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9–7, any notice that you are required to give under Rule 9–7(9).

Date: September 2, 2026



Signature of Lawyer for Applicants
Kornfeld LLP

[Dan Parlow]

SCHEDULE "A"

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.

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs _____ of Part 1 of this notice of application

☐ with the following variations and additional terms:

Date _____

Signature of ☐ Judge ☐ Associate
Judge

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ other matters concerning document discovery

- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ none of the above