

CANADA / JUDGMENT

Drope v. Dhaliwal

2025 BCSC 1391

COURT

Supreme Court of British Columbia

DECIDED

13 June 2025

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2025 BCSC 1391 Drope v. Dhaliwal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Drope v. Dhaliwal,

2025 BCSC 1391

Date: 20250613

Docket: S248505

Registry: Vancouver

Between:

Lindy Ann Drope

Plaintiff

And:

Arvin Singh Dhaliwal also known as Avi Dhaliwal

Defendant

Before: The Honourable Justice Thomas

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

P.A. Kressock

A. Carteri (A/S)

The Defendant, appearing in person:

A.S. Dhaliwal

Place and Date of Hearing:

Vancouver, B.C.

June 11, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 13, 2025

- [1] THE COURT: I have thought about this, and I am now in a position to give my reasons.
- [2] This is an application to set aside default judgment. The underlying action involves a loan or investment that the plaintiff provided to the defendant.
- [3] The Defendant met the Plaintiff in around 2018 at a fitness centre in Langley.
- [4] The Plaintiff was the Defendant's personal trainer between January 2019 and August 2022 and throughout this period they became close friends and had an on-and-off romantic relationship. From time to time, the Plaintiff sought the Defendant's advice on matters related to real estate. The Plaintiff was aware of the Defendant's professional experience and reputation within the real estate industry, including the fact that the Defendant had received multiple awards and accolades for his development projects.
- [5] On more than one occasion, the Plaintiff specifically inquired about investment opportunities into the Defendant's companies and real estate development projects. The Plaintiff had no prior experience in real estate development and stated that she had an insufficient net worth to personally guarantee a potential mortgage or loan. Further, the Plaintiff specifically requested that the Defendant advise her of opportunities where she could invest around \$250,000 or less, and on the condition that she would not have to personally guarantee the mortgage or loan.
- [6] On or about January 27, 2022, a subsidiary of Zerosa entered into a contract with a third party to buy a real estate development project in Surrey. The project consisted of the consolidation and rezoning of two (2) parcels of land and subsequent subdivision and construction of nineteen (19) individual fully serviced lots (the "Surrey Project").
- [7] Zerosa acquired the Surrey Project for \$15,725,000 plus additional costs for conveyancing and taxes. The funds used for the acquisition were comprised of proceeds from a mortgage, deposits received from the pre-sales of the proposed individual lots, personal funds contributed by the Defendant, personal funds contributed by Mr. Sandhu, and funds contributed by Zerosa.

- [8] To complete the subdivision and construction, approximately \$7,000,000 in additional funds were injected into the Surrey Project between February 2022 and April 2024. These funds were comprised of proceeds from a second mortgage, additional deposits received from the pre-sales of the individual lots, personal funds contributed by the Defendant, personal funds contributed by Mr. Sandhu, funds contributed by Zerosa, and funds invested by friends and family of the Defendant and Mr. Sandhu.
- [9] Funds invested by friends and family were on an informal basis and typically without any written agreement. In some circumstances, a promissory note was provided to the friend or family member investing the money to generally signify the terms of the investment. The promissory notes were signed by Mr. Sandhu on behalf of Zerosa for any investments received from Mr. Sandhu's friends and family, and the Defendant signed on behalf of Zerosa for any investments received from the Defendant's friends and family.
- [10] On or about April 15, 2022, the Plaintiff and the Defendant attended a dinner together at a restaurant known as Black & Blue, located in Vancouver, British Columbia. During the course of this dinner, the recent acquisition of the Surrey Project by Zerosa was discussed. The Plaintiff inquired as to the possibility of making an investment in the Surrey Project, including questions regarding potential returns on such an investment. The Defendant informed the Plaintiff that the ownership and shareholding structure for the Surrey Project was already formalized and any investment the Plaintiff chose to make would be informal and as part of the Defendant's shares in the project.
- [11] Between April 16, 2022, and April 19, 2022, the Plaintiff and the Defendant engaged in a series of telephone conversations during which the Surrey Project was discussed in further detail. During the course of these conversations, the following was discussed:
- a) That the Surrey Project was performing well and many of the proposed individual lots had been pre-sold;
 - b) That the City of Surrey had granted preliminary layout approval for the subdivision; and
 - c) That financing was in place for construction.
- [12] Upon learning this information, the Plaintiff expressed her intention to invest a sum of \$200,000 in the Surrey Project.
- [13] In April 2022, Ms. Drope loaned Mr. Dhaliwal \$200,000 (the "Loan") pursuant to a written promissory note dated April 22, 2022 (the "Promissory Note") which Mr. Dhaliwal drafted, signed, and sent to Ms. Drope by email. Ms. Drope paid Mr. Dhaliwal the \$200,000 principal by bank draft.
- [14] The Loan was to be for a term of one year. The Promissory Note provided, inter alia:
- a) Mr. Dhaliwal would repay the \$200,000 principal with fixed interest of \$40,000 on or before May 1, 2023;

- b) Any payments from Mr. Dhaliwal to Ms. Drope would be applied first toward the interest before being applied to the \$200,000 principal;
 - c) In the event Ms. Drope were required to enforce payment of the Loan, she would be entitled to recover all of her enforcement costs against Mr. Dhaliwal, which costs would be added to the \$200,000 principal and would bear interest;
 - d) Time would be of the essence; and
 - e) No amendment, modification or waiver of any provision in the Promissory Note would be effective unless in writing and signed by Ms. Drope.
- [15] Mr. Dhaliwal did not pay anything by May 1, 2023. Ms. Drope agreed to defer repayment and subsequently agreed to a revised repayment date of May 1, 2024. In November 2023, Mr. Dhaliwal prepared, executed and delivered to Ms. Drope a revised version of the Promissory Note. The only change was the repayment date.
- [16] The defendant did not pay anything by May 1, 2024, and has paid nothing since.

Procedural History and Alleged Service

- [17] Between March 2024 (before the May 1, 2024 payment date passed) and December 2024, counsel for Ms. Drope exchanged many emails with Mr. Dhaliwal regarding payment. Both before and after the May 1, 2024 repayment date, and notwithstanding the terms of the Promissory Note, Mr. Dhaliwal indicated that he would be able to repay Ms. Drope upon completion of his Surrey Project, and made various representations that he expected completion to be imminent. This did not materialize.
- [18] On December 4, 2024, counsel for Ms. Drope sent Mr. Dhaliwal a draft Notice of Civil Claim along with a repayment proposal (which is covered by settlement privilege and should not have been tendered as evidence). Counsel advised that if the proposal were not accepted by December 6, 2024, he would file the Notice of Civil Claim. Mr. Dhaliwal did not accept the settlement proposal, and the Notice of Civil Claim was subsequently filed.
- [19] On December 9, 2024, counsel for Ms. Drope engaged a process server, Myles Stewart ("Mr. Stewart"), to serve Mr. Dhaliwal with the Notice of Civil Claim. Mr. Stewart has more than 9 years of experience as a process server and owned his own process service business, Expedited Motion Process Serving Ltd., for the past six and a half years. Counsel for Ms. Drope provided Mr. Stewart with two potential addresses for Mr. Dhaliwal: a suspected home address of 8579 171 Street in Surrey, and a suspected business address at Unit 119 -- 8337 Eastlake Drive in Burnaby. There was no urgency to the service. Mr. Stewart scheduled a due date for the service of December 20, 2024.

- [20] Mr. Stewart made a service attempt at 8579 171 Street in Surrey on December 12, 2024 at around 8:00 p.m. A woman answered the door who identified herself as Mr. Dhaliwal's mother. She advised that Mr. Dhaliwal did not live there. She was asked to provide a forwarding address for Mr. Dhaliwal, but declined. Mr. Stewart left a delivery card with her, and asked her to provide the delivery card to Mr. Dhaliwal.
- [21] Mr. Stewart made a second attempt at Unit 119-8337 Eastlake Drive in Burnaby the following afternoon. This is the office for Sea to Sky Construction, a company of which Mr. Dhaliwal is a principal. Mr. Stewart knocked on the door to Unit 119 and rang the doorbell, but the door was locked. He saw two males seated in Unit 119, got their attention, and one of them came to the door. Mr. Stewart told the man who came to the door that he had a delivery for Arvin Singh Dhaliwal, and the man advised that it was him. Mr. Stewart asked: "You are Arvin Singh Dhaliwal?", and the man answered "Yes." He then provided the man with counsel's service letter and the Notice of Civil Claim (which were not in an envelope), and the man looked at the documents. Mr. Stewart then thanked the man and left, walked to his vehicle, got in, and drove away. The man who was served did not say anything after being handed the documents to indicate that the wrong person had been served.
- [22] Mr. Stewart's contemporaneous notes of the service confirm that the service occurred at Unit 119-8337 Eastlake Drive in Burnaby (confirmed by GPS co-ordinates) on December 13, 2024 at 2:29 p.m., and that the subject was an "Indo-Canadian" male in his 30s estimated to be 6'2" and 190 lbs. Mr. Stewart subsequently affirmed an affidavit of service to the effect that he served Mr. Dhaliwal with the Notice of Civil Claim on December 13, 2024.
- [23] The 21-day deadline for filing and service of Mr. Dhaliwal's Response to Civil Claim was January 3, 2025. No Response to Civil Claim was filed.
- [24] Counsel for Ms. Drope originally applied for default judgment against Mr. Dhaliwal by desk order, but owing to the terms sought respecting interest and costs, the application was ultimately brought in chambers. On March 14, 2025, Associate Judge Vos granted default judgment against Mr. Dhaliwal and ordered that he pay Ms. Drope:
- a) \$240,000, plus pre-judgment interest of \$ 17,387.98 and post-judgment interest on the sum of \$200,000 at the rate of 10% per year (in accordance with the Promissory Note); and
 - b) costs assessed as solicitor-client costs together with interest on costs at the rate of 10% per year (in accordance with the Promissory Note)
- (the "Default Judgment").
- [25] On April 22, 2025, Mr. Stewart was asked to serve Mr. Dhaliwal with a letter from counsel for Ms. Drope enclosing the Default Judgment, an Appointment for Examination in Aid of Execution and a cheque for witness fees. Again, there was no urgency to the service, and Mr. Stewart scheduled a due date for service of May 6, 2025.

- [26] Mr. Stewart made two unsuccessful attempts at Unit 119 - 8337 Eastlake Drive in Burnaby where he had previously served Mr. Dhaliwal:
- a) On April 25, 2025, Mr. Stewart spoke with a man on the premises and asked when Mr. Dhaliwal would be back. The man made a phone call (presumably to Mr. Dhaliwal), and then declined to tell Mr. Stewart when Mr. Dhaliwal would be back. The man would not provide Mr. Stewart with Mr. Dhaliwal's phone number, only his own phone number. He asked to take a photo of the documents to be delivered to Mr. Dhaliwal, but Mr. Stewart declined;
 - b) On April 30, 2025, Mr. Stewart found the premises locked and called the man he spoke with on April 25, 2025 to ask for Mr. Dhaliwal. The man advised that he would call Mr. Stewart back the following day. When Mr. Stewart said that he needed to speak with Mr. Dhaliwal, not him, the man said "okay" and ended the call.
- [27] Ultimately, counsel provided Mr. Stewart with a phone number believed to belong to Mr. Dhaliwal. Mr. Stewart arranged to meet Mr. Dhaliwal at Unit 119-8337 Eastlake Drive on May 1, 2025. Mr. Stewart obtained verbal identification from Mr. Dhaliwal in the same manner as before, served Mr. Dhaliwal, and affirmed an affidavit of service.
- [28] Mr. Stewart's evidence is that his services on December 13, 2024 and May 1, 2025 were effected at the same address on a person with the same physical description who verbally confirmed his identity as Arvin Singh Dhaliwal, and that he firmly believes that he served the same person both times.
- [29] I am also relying upon as part of the facts in my reasons the defendant's affidavit #1 at paras. 36-39:
36. I was not served with the Notice of Civil Claim as alleged or at all. In fact, it was impossible for me to have been served on that date at that address because I was attending a construction inspection for another real estate development project of mine in Kamloops (the "Kamloops Site").
 37. Following a review of my schedule, I confirm that on December 13, 2024: I departed from my parents' residence located at 8579 171 Street, Surrey, at approximately 5:30 am. En route to the Kamloops Site, I stopped at a Chevron gas station in Hope. I subsequently continued my travel and arrived at the Kamloops Site at approximately 9:00 a.m., where I conducted a field review of the ongoing construction activities. I remained on-site until approximately 4:00 p.m. At some time between 10:00 a.m. and 2:00 p.m. I went to a Petro Canada gas station in Kamloops to purchase gas for the generator that was in use at the Kamloops Site. Attached hereto and marked as Exhibit "K" is a true copy of my CIBC credit card statement showing my purchases on December 13, 2024.
 38. I am advised by my office staff: and verily believe: that none of them received the Notice of Civil Claim on December 13, 2024, at 2:29 p.m.

39. At no time was I served with any of the Notice of Civil Claim, nor did Ms. Drope or Mr Kressock notify me of the Notice of Civil Claim by email or any other means.
- [30] The defendant relies on *Arbutus Capital Leasing Ltd. v. 1265644 B.C. Ltd.*, 2024 BCSC 1846, at paras. 6-8 [Arbutus Capital] for the test to be applied in this application.
- [6] The legal test for setting aside a default judgment is set out in *Miracle Feeds v. D. & H. Enterprises Ltd.*, (1979), 10 B.C.L.R. 58 (Co. Ct.) [Miracle Feeds], and has been repeatedly affirmed by the British Columbia Court of Appeal: *BCI Bulkhaul Carriers Inc. v. Aujla Trucking Inc.*, 2015 BCCA 411 at para. 2. In order for a defendant to succeed on an application to set aside a default judgment, Miracle Feeds set out the following requirements:
1. That he did not wilfully or deliberately fail to enter an appearance or file a defence to the plaintiff's claim;
 2. That he made application to set aside the default judgment as soon as reasonably possible after obtaining knowledge of the default judgment, or give an explanation for any delay in the application being brought;
 3. That he has a meritorious defence or at least a defence worthy of investigation; and
 4. That the foregoing requirements will be established to the satisfaction of the court through affidavit material filed by or on behalf of the defendant.
- [7] The Court of Appeal in *Nichol v. Nichol*, 2015 BCCA 278 at para. 37 explained that the factors meant to guide the court's discretion under R. 3-8(11) are not intended to be applied as a rigid test:
- [37] The factors set out in the Miracle Feeds decision are not meant to be applied inflexibly, nor are they immutable: see *H.M.T.Q. In Right of the Province of British Columbia v. Ismail*, 2007 BCCA 55 at para. 11. The discussion by Mr. Justice Voith in *Director of Civil Forfeiture v. Doe*, 2010 BCSC 940 at para. 15 in the context of the R. 17(12) of the previous Supreme Court Rules is apt:
- [15] [I]t does not follow as a matter of necessity that the failure of the defendants to expressly address each of the various requirements set out in Miracle Feeds precludes them from being successful on an application under Rule 17(12) [the rule in the previous Supreme Court Rules that permitted a party to apply to set aside default judgment]. These requirements are not immutable. The failure or inability of a defendant to address a particular factor in Miracle Feeds is not necessarily fatal. Conversely, there may well be additional factors identified by a defendant which are relevant to its application and to the court's discretion.

- [8] The courts have stated that the Miracle Feeds test is not to be applied rigidly and the failure of a defendant to address each of the factors does not preclude them from being successful. Further, in applying the Miracle Feeds requirements, courts may consider a balancing of interests and prejudice as between the parties. Ultimately, any relief "must be consistent with the overarching aim of the court to do justice between the parties": *Al Boom Wooden Pallets Factory v. Jazz Forest Products (2004) Ltd.*, 2012 BCSC 487 at paras. 52.
- [31] In my view, this accurately sets out the law based on the Miracle Feeds test, with the exception that I view the service of the notice of civil claim on the defendant as a preliminary issue that needs to be resolved prior to the application of the Miracle Feeds test instead of being subsumed within the actual test.

Procedural Issue

Was the defendant served with the notice of civil claim on December 13, 2024?

- [32] The defendant argues that the plaintiff has not demonstrated that he was served, as oral identification is less reliable than confirmation with photographic identification. He relies on para. 12 of *Arbutus Capital* for this proposition, which originates from the case of *Dhaliwal v. Dhaliwal*, 2022 BCSC 1902, at para.16:

In my view, I find the evidence falls short of proving that Mr. Zhao was served with the NOCC on October 19, 2023. The evidence of the process server does not prove that it was Mr. Zhao who was served; the evidence only goes so far as to prove someone who responded to the name Zhao Shanyi was served at the residence. Mr. Zhao has deposed that it was not him who answered the door, and it might have been a friend staying with him at the time. The process server did not ask to see photo identification and did not verify the person's identity. Self identification is not as reliable a method of ascertaining identity as other means of identity verification: *Dhaliwal v. Dhaliwal*, 2022 BCSC 1902 at para. 16.

- [33] *Dhaliwal* is not quite as simple as the defendant suggests. I note from *Dhaliwal* in addition to para. 16, that paras. 17-18 are equally appropriate and necessary to understand the circumstances that arose in those cases. They read as follows:
- [17] Ms. Aujla expressly denied in her affidavit that she was ever served by a process server on October 10, 2018 or any other time. To the contrary, Ms. Aujla deposed that she could not possibly have been present at the 125B Property that day because she was working 35 hours per week from 8 a.m. to 4 p.m. at an office in downtown Vancouver, which entailed a significant commute. In support of this assertion, she attached a pay statement from her employer which demonstrated that she had worked a full 70 hours in the 2-week pay period covering October 10, 2018, in addition to a letter from her employer confirming her full-time employment.

- [18] I find the foregoing to be compelling evidence that Ms. Aujla was never properly served as alleged, either by personal service or substituted service. However, there is one additional persuasive factor. When Ms. Aujla discovered in 2022 that the Default Judgment was registered against title to the 85th Avenue Property, she took immediate steps to attempt to remove it, including corresponding with the LTO directly and retaining legal counsel within a matter of weeks once her request to the LTO was denied.
- [34] The facts set out in the evidence that I have referred to in the notice of application, response to application, and affidavit evidence set out the steps taken by the process server, including his confirmation that he believes he served the same person in May that he served in December. This is not a case of mistaken identity; this is an issue of credibility. I say this because in these circumstances, the process server did more than identify the defendant by name. He attended at the right location, the office; he had the personal orally identify himself; and then returned and served the person whom he believes to be the same person again. I cannot accept that someone at the plaintiff's office would falsely identify themselves in the manner described by the process server.
- [35] Furthermore, the defendant denies that anyone at the office would have done so and asserts that no documents were left for him there. This is a situation more akin to *James v. 627210 B.C. Ltd.*, 2010 BCSC 470 [James]; and *Hightime Investment Property Ltd. v. Bromley*, 2008 BCSC 1353. Justice Willcock, as he then was in *James*, made what I think are particularly pertinent comments at paras. 7-9, which in my view apply to the situation. They read as follows:
- [7] In *Hightime Investments Pty. Ltd. v. Stuart Bromley*, 2008 BCSC 1353, [2008] B.C.J. No. 1924, Sigurdson J. considered, at para. 60, whether on affidavit evidence a defendant could prove that he had not been served: "Whether Mr. Bromley was served is a question of credibility. The issue is difficult because of the sharply conflicting affidavits." The court continued, at para. 61:

I am entitled to consider the surrounding circumstances when assessing credibility to determine which version is more likely to be true. The well-known case of *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 at 357, [1952] 4 W.W.R. 171 (B.C.C.A.) stated:

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. ...

- [8] Mr. Justice Sigurdson noted that the case before the court in that instance did not involve a question of possible mistake on the part of the process server, it was a question that had to be resolved on evidence that had not been subject to cross-examination. The applicant himself had to discharge the onus of establishing that he did not wilfully or deliberately fail to enter an appearance.

- [9] In that case, as in the case at bar, the affidavit of the process server provided details as to how he identified the person served. His affidavit was supported by the evidence of a third party. The applicant in that case, as here, denied that he was served and explained that he was elsewhere at the time of the alleged service and could not have been served.
- [36] In this case, the defendant has only general evidence and some credit card receipts that suggest he was in Kamloops for part of December 13th for payment at two gas stations. There is no other corroborating evidence.
- [37] Furthermore, this is no explanation for the discrepancy in the evidence regarding what occurred in his office that afternoon. Although identification evidence was not used, the process server believed that he served the same person in May who had been served in December. In addition there was confirming evidence that he was at the right location and his story was verified by contemporaneous notes.
- [38] In my view, the evidence of service in this situation is generally more compelling than the defendant's general denial of service. Considering the evidence as a whole and the probabilities that a practical and informed person would recognize as reasonable, I find that the defendant was served on December 13, 2024. I find it compelling that the service occurred at the defendant's office, as described by the process server, and that he believed it was the same person he subsequently served, especially when compared to the defendant's denial, which lacked meaningful corroborating evidence or third-party verification.
- [39] Furthermore, there is no explanation regarding who would have been in the defendant's boardroom, accepted the documents, and identified themselves as the defendant. Therefore, I find there is no procedural basis for setting aside the default judgment, and I turn to the test in *Miracle Feeds*.

Application to Set Aside Default Judgment as Soon as Reasonably Practical

- [40] The defendant was somewhat dilatory in bringing the application to set aside the default judgment when he was provided with the default judgment in May, but in my view he meets the threshold "as soon as reasonably practical." However, as I note, he took no steps to deal with the action when served in December.

Meritorious Defence

- [41] The defendant contends that the promissory notes which he drafted do not capture the entire agreement. In fact, the written agreements he drafted are false to the extent that the loan payment dates are incompatible with the discussions that took place both before and after the agreement was made. I agree with the plaintiff that the terms of the written agreement are clear and that statements that contradict the repayment date and interest set out in the promissory notes run afoul of the parole evidence rule. In my view, paras. 24, 25(a) to (e), and 26 of the plaintiff's response in his argument appropriately set out the law in this case.

24. The parol evidence rule precludes admission of evidence outside the words of the written contract that would add to, subtract from, vary, or contradict a contract that has been reduced to writing. It precludes, *inter alia*, evidence of the subjective intentions of the parties. The parol evidence rule presumes that a written instrument is intended to embody all terms. The very purpose of the rule is to prevent the use of fabricated or unreliable extrinsic negotiations or communications to attack or derogate from written contracts. Where a provision of a written contract is clear and unambiguous, extrinsic evidence to the effect that the parties agreed otherwise must not be admitted.
25. As to the Promissory Note and Mr. Dhaliwal's evidence intended to contradict it:
- (a) The Promissory Note makes abundantly clear that the \$200,000 advanced by Ms. Drope was a personal loan to Mr. Dhaliwal. A promissory note is, by definition, a debt instrument. The parties are defined as the "Creditor" and "Borrower". The amount owing on the "Maturity Date" is referred to as the "Principal", the "Interest" and (together) the "indebtedness". Ms. Drope is entitled to recover her enforcement costs in "collecting any amount due". Mr. Dhaliwal drafted the instrument himself. It is obvious that the \$200,000 is a loan;
 - (b) There is no mention in the Promissory Note of: (i) "Zerosa Development Corp." or any other companies; (ii) the Surrey Project; (iii) the term "investment"; or (iv) any provisions suggesting that the Loan was repayable only upon completion of the Surrey Project, the sale of units, or Mr. Dhaliwal's receipt of sale proceeds;
 - (c) Consistent with the Promissory Note, and concurrently with its execution by Mr. Dhaliwal, Ms. Drope paid the \$200,000 to Ms. Dhaliwal personally by bank draft;
 - (d) Mr. Dhaliwal deposes that on or about April 22, 2022, concurrently with the receipt of \$200,000 from Ms. Drope he "executed a promissory note reflecting the agreed- upon investment terms and transmitted it to Ms. Drope via email";
 - (e) Mr. Dhaliwal deposes that on or about November 16, 2023, further to a telephone discussion with Ms. Drope, he "sent an email to Ms. Drope containing a revised version of the Promissory Note in which the maturity date had been changed";
26. Mr. Dhaliwal confirms at para. 15(b) of his Affidavit No. 1 that the parties reduced their agreement to writing in the Promissory Note, a written instrument executed by Mr. Dhaliwal and delivered to Ms. Drope concurrently with the advance of funds. The Promissory Note provides for repayment of the Principal and Interest by May 1, 2024. It provides that time is of the essence, and no amendment, modification or waiver of the terms of the instrument is effective unless it is in writing and signed by Ms. Drope.
- [42] The primary source of reference for this is the well-known case of *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53.

Disposition

[43] The evidence before me leads me to conclude that the notice of civil claim was disregarded by the defendant after service. Although the application to set aside default judgment was expeditiously made after the May service, in my view, there is no meritorious defence to the action. In considering these factors and balancing the interests and prejudice between the parties, granting the defendant's application would be inconsistent with the over-arching aim of the court to do justice between the parties.

[44] Therefore, the application to set aside the default judgment is dismissed with costs to the plaintiff.

"Thomas J."

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