

CANADA / JUDGMENT

Ibrahim v. Allibhai

2024 BCSC 955

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 955 Ibrahim v. Allibhai

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ibrahim v. Allibhai,

2024 BCSC 955

Date: 20240531

Docket: S2013505

Registry: Vancouver

Between:

Ali Ibrahim

Plaintiff

And

Karim Allibhai

Defendant

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Plaintiff:

A. Grewal

Counsel for the Defendant:

A. Shee

Place and Date of Trial:

Vancouver, B.C.

April 3-6, June 26,

November 3, 6, 7 and 14, 2023

Place and Date of Judgment:

Vancouver, B.C.

May 31, 2024

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INTRODUCTION

- [1] Mr. Ibrahim seeks general, special, aggravated and punitive damages against Mr. Allibhai for the following torts:
- 1) Breach of an agreement;
 - 2) Breach of fiduciary duty;
 - 3) Intentional infliction of emotional harm by swearing a false affidavit (perjury); and
 - 4) Interference with a business relationship.
- [2] Put in the most general of terms, Mr. Ibrahim alleges that his former friend Mr. Allibhai breached both an agreement and a power of attorney ("POA"), as well as spread falsehoods which caused him harm financially, emotionally and reputationally.
- [3] By way of counterclaim, the defendant, Mr. Allibhai seeks damages for abuse of process. He argues that Mr. Ibrahim's claims and in particular his filing of a Certificate of Pending Litigation ("CPL") on his property are an abuse of process as the claims are false and the lawsuit is entirely without merit.
- [4] By way of brief background, Mr. Ibrahim and Mr. Allibhai met in 2010 and became friends. Whether they were close or very close is a matter of dispute between them. The degree of closeness is of no matter in this litigation. Suffice it to say that the two were friends at the relevant times and no longer are.
- [5] On June 6, 2012, Mr. Ibrahim was arrested and detained in custody in British Columbia pending extradition to the USA on what could colloquially be referred to as several counts of tax and immigration fraud. He claimed to be unable to deal with his financial affairs from jail and he asked Mr. Allibhai to help him. Mr. Allibhai agreed.
- [6] On or about September 28, 2013, the parties executed a POA giving Mr. Allibhai authority to deal with Mr. Ibrahim's financial affairs while he was incarcerated. Mr. Ibrahim says that he asked Mr. Allibhai to collect rents from his property and manage his bank accounts. Around the same time, Mr. Ibrahim also made Mr. Allibhai a director of his numbered company (BC0928234) along with Mr. Ibrahim's brother, Iqbal Ibrahim and his mother. For clarity sake, I will refer to Iqbal Ibrahim by his first name. I mean no disrespect in doing so.
- [7] On October 23, 2013, while Mr. Ibrahim was incarcerated in British Columbia, a Notice of Civil Claim ("NOCC") was filed against him. The plaintiffs were Mr. Allibhai and Iqbal. In the NOCC, Mr. Allibhai and Iqbal claim to have lent money, \$90,000 and \$120,000 respectively, to Mr. Ibrahim that he never repaid. When lawyer Mr. Sikhander Visram attended the correctional centre to serve Mr. Ibrahim with the NOCC, Mr. Ibrahim advised him that he would consent to the judgment. Mr. Visram returned within days with a consent order which Mr. Ibrahim signed in his presence. The judgments were then registered against property that Mr. Ibrahim owned with his estranged wife Ms. Bilkis Momin. Mr. Ibrahim claims that

he did not understand what he was signing; he thought it was an order for foreclosure.

- [8] Mr. Ibrahim was eventually extradited to the USA in December 2013, and was convicted of immigration fraud. When he was released from prison in April 2014, he returned to the Vancouver area.
- [9] Upon his return, Mr. Ibrahim continued to seek Mr. Allibhai's assistance in managing his affairs as he claimed to be too unwell to do so. He suffered a myriad of health difficulties including cancer and a heart attack.
- [10] The friendship ended in May 2020, when Mr. Allibhai confronted Mr. Ibrahim about multiple lawsuits he had brought against his (Mr. Ibrahim's) former girlfriends.
- [11] Mr. Ibrahim filed this action on December 18, 2020. He registered a CPL against Mr. Allibhai's property on the same date.

Soomi Lee - The Perjury Claim

- [12] On December 3, 2015, Mr. Ibrahim filed a Notice of Family Claim ("NOFC") against Ms. Soomi Lee. As the basis for his claim Mr. Ibrahim alleged that he and Ms. Lee had been involved in a common-law relationship. On that same date, Mr. Ibrahim filed CPLs on two properties owned by Ms. Lee.
- [13] On December 17, 2015, Mr. Allibhai swore an Affidavit of Service attesting that he had personally served Ms. Lee with the NOFC on December 9, 2015. Ms. Lee says that she was never served and did not find out about the family claim until April or May 2020, when she was contacted by Mr. Allibhai, who was then a former friend of Mr. Ibrahim's. On September 8, 2020, Mr. Allibhai swore a second affidavit in the Ibrahim and Lee action in which he states that he did not serve Ms. Lee with the NOFC.

Mr. Ibrahim's Business Relationship with Naghmeh Mansouri

- [14] In or about June 2016, Mr. Ibrahim met Ms. Naghmeh Mansouri. Ms. Mansouri, a single mother of two, was just starting out as a financial advisor at a financial marketing company whose mission was to provide financial solutions to their clients. Through this organization Ms. Mansouri sold life insurance, mutual funds and other financial products on a commission sales basis. Mr. Ibrahim told Ms. Mansouri that he was in finance too. Mr. Ibrahim portrayed himself as a wealthy business man who could help her in her career. He said that he had lots of contacts and was "famous in the Mosque". Ms. Mansouri and Mr. Ibrahim formed a personal relationship then soon thereafter Mr. Ibrahim involved himself in her business. He promised that he would invest a million dollars with her and would introduce her to his wealthy contacts in return for a cut (half) of her commission. She believed him.

[15] On September 22, 2017, Mr. Ibrahim emailed Ms. Mansouri promising millions of dollars in investment funds:

Dearest Naghmeh,

I have enjoyed our personal relationship and feel blessed that you have come into my life.

Based on your financial advise (sic) and of course our personal relationship, I have already consolidated CAD 1 Million of family funds. My family has liquidated the portfolio to invest this (sic) funds with you and me.

In addition to the above I have already received commitments from friends and family members for CAD 5 Millions (sic) to be invested in the next 30 days.

Once we achieve the above target of CAD 6 Million in the next 30 days, I can tap into my close network to raise another \$10 to \$15 Millions (sic) in 60 days.

This is most urgent as the funds are costing money and waiting to be invested for mutual benefits.

Therefore, please make this a priority and provide me with complete disclosure and documentation to move forward on this on an urgent basis.

[16] I pause to note that this is at the same time that Mr. Ibrahim is claiming to need Mr. Allibhai's assistance to manage his finances because of his failing health. It is also the same time that he is on disability assistance.

[17] In late 2017, Mr. Ibrahim and Ms. Mansouri discussed having a memorandum of understanding ("MOU") with respect to their business dealings. As Ms. Mansouri testified, Mr. Ibrahim did not have a licence to sell financial products so if anything happened she would be responsible. A number of versions of a document entitled "Mutual Confidentiality & Non-circumvention Agreement" were filed as exhibits. One copy dated December 20, 2017, was ostensibly signed by both Ms. Mansouri and Mr. Ibrahim. Ms. Mansouri denies that she signed a MOU and says that the signature is not hers. I accept that evidence as there are several iterations dated after that. If both parties had entered into the agreement on December 20, 2017, there would be no need to draft further versions. Of note all of the versions drafted by Mr. Ibrahim contain the following preamble which confirm his representations to Ms. Mansouri:

Naghmeh Mansouri has already established a financial planning business in selling diversified financial products including diversified insurance products, estate planning, recommending diversified financial products including mutual funds.

Ali Ibrahim has already established a venture capital and business consulting practice in providing venture capital funds to start ups and mid size companies as well as assisting companies in building strategic alliances, expansion as well as merger and acquisitions.

Naghmeh Mansouri and Ali Ibrahim plans (sic) to leverage on each other expertise and valid licensing, business contacts and strategic business models to expand their business for mutual benefits.

In order to achieve mutual benefits, Naghmeh Mansouri and Ali Ibrahim have already shared their key contacts and business models as identified in Naghmeh - Exhibit 1 and Ali - Exhibit 1. These exhibits will be updated on a month to month basis.

Based on multiple strategies and multi dimensional business models, compensation and commission schedules will be defined as Naghmeh - Exhibit 2 and Ali - Exhibit 2 for various sales and business transactions. These exhibits will be updated on a month to month basis. Every mutual business opportunity will define and strategize separately. It will include prospect's or business's objective, goals, its unique strategy and points and commissions. All mutual business between two parties will be compensated as 50%-50% after receiving the commission. Both parties are responsible for refunding any received commission in case of any client's cancellation or any business charge back.

[18] Throughout 2018, Ms. Mansouri shared confidential information with Mr. Ibrahim (subject to a Non-disclosure Agreement they entered into) and Mr. Ibrahim provided his business advice to Ms. Mansouri.

[19] In or about March 2018, Ms. Mansouri and Mr. Ibrahim approached a person to whom Ms. Mansouri had sold insurance about selling his \$15 to 16 million house in West Vancouver for him. They provided the man and his wife with a plan to market to their "list of prospective buyers" all over the world. In or around May, the home owners instructed them to stop working on "the project". Ms. Mansouri and Mr. Ibrahim sought reimbursement for the work they had done. In July 2018, Mr. Ibrahim commenced a civil action against the home owners claiming that they had breached their agreement with him.

[20] The homeowners lodged a complaint against Ms. Mansouri to her company and the Insurance Council of BC alleging that she had shared confidential information which had been provided only for insurance purposes. Clearly this was in reference to sharing with Mr. Ibrahim. As a result, in either late 2018 or early 2019, Ms. Mansouri was fired from her employment. There followed a news story in the local North Shore paper that according to Ms. Mansouri "completely ruined" her reputation. Ms. Mansouri's licences to sell insurance and mutual funds were cancelled. Ms. Mansouri testified that her licences were cancelled because of Mr. Ibrahim's actions.

[21] Nonetheless, Ms. Mansouri continued to associate with Mr. Ibrahim.

[22] In 2018, Mr. Ibrahim asked Ms. Mansouri to co-sign an agreement with BMW in order for him to lease a new car. When his car payments did not go through in 2020, BMW withdrew the lease payments from Ms. Mansouri's bank account. Ms. Mansouri repeatedly asked Mr. Ibrahim to take her name off the lease agreement. Despite Mr. Ibrahim's assurances that he would repay her and that he would take her off the lease agreement, he never did.

[23] By June 2020, the relationship between Mr. Ibrahim and Ms. Mansouri was at an end. Mr. Ibrahim texted Ms. Mansouri threatening to sue her, claiming that she had harmed him and his business. Ms. Mansouri responded to Mr. Ibrahim saying that it seems like his "real business is suing people" and telling him not to contact her in any manner ever again.

Mr. Ibrahim's Claims

[24] Mr. Ibrahim advances four distinct claims:

- 1) Breach of an agreement: That Mr. Allibhai kept rent monies he collected from Mr. Ibrahim's property located at 146- 2979 Panorama Drive, Coquitlam (the "Property") instead of depositing the money into Mr. Ibrahim's bank account;
- 2) Breach of fiduciary duty: That Mr. Allibhai obtained a judgment against Mr. Ibrahim while he held a POA over Mr. Ibrahim's affairs;
- 3) Perjury: That Mr. Allibhai swore contradictory affidavits in Mr. Ibrahim's family claim regarding whether he served the notice of family claim on Ms. Soomi Lee, a person whom which Mr. Ibrahim claims to have had a common-law relationship; and
- 4) Tortious interference in business relationships: That Mr. Allibhai interfered with Mr. Ibrahim's business relationship with Ms. Naghmeh Mansouri.

[25] During the course of this trial, I heard evidence of other law suits brought by and against Mr. Ibrahim. Some of those law suits are used to underscore the background to Mr. Ibrahim's present claims. I do not take the evidence of Mr. Ibrahim's other law suits into consideration for any other reason except if specifically noted.

ISSUES

[26] The issues can be framed according to the claims as follows:

- 1) Did Mr. Allibhai breach an agreement he had with Mr. Ibrahim by collecting rents and keeping them for his own purposes?
- 2) Did Mr. Allibhai breach his fiduciary duty to Mr. Ibrahim by obtaining a judgment against him?
- 3) Did Mr. Allibhai commit perjury by swearing a false affidavit of service in Mr. Ibrahim's family claim against Ms. Lee?
- 4) Did Mr. Allibhai interfere in Mr. Ibrahim's business relationship with Ms. Mansouri? and
- 5) Does Mr. Ibrahim's filing of a CPL on Mr. Allibhai's property amount to an abuse of process?

[27] I will consider these issues in turn. Before I do, I will touch on the credibility of witnesses and how courts assess it.

CREDIBILITY

[28] The credibility of the witnesses and the reliability of their evidence is a key consideration in any trial. It is especially critical in cases such as this where there is a dearth of documentary evidence to back up any of the claims.

[29] The distinction between reliable evidence and credible evidence was discussed by Doherty J.A. in *R. v. Morrissey* (1995), 1995 CanLII 3498 (ON CA), 22 O.R. (3d) 514 (C.A.) at para. 526:

Testimonial evidence can raise veracity and accuracy concerns. The former relates to the witness's sincerity, that is, his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is, honest witness, may, however, still be unreliable. ...

[30] In *Bradshaw v. Stenner*, 2010 BCSC 1398, at para. 186, Justice Dillon set out a non-exhaustive list of factors the court may consider when assessing credibility:

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [Faryna]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (Faryna at para. 356).

[31] Both Mr. Ibrahim and Mr. Allibhai have issues with their credibility.

Mr. Ibrahim

[32] In the main Mr. Ibrahim's evidence in this trial consisted of vague allegations, virtually unsupported by any other evidence. In fact, most, if not all, of Mr. Ibrahim's evidence is contrary to all of the other evidence. Additionally, Mr. Ibrahim's evidence was replete with contradictions. For example, he portrayed himself as an easily taken advantage of, naive

business person of fragile health who has struggled with medical issues since 2012 and who has been designated as a person with a disability. However, he represented himself to Ms. Mansouri as a successful, savvy business man with vast and successful business experience and contacts. He also portrayed himself as naive regarding litigation.

- [33] The basis for Mr. Ibrahim's main claim is that Mr. Allibhai abused the POA yet it defies logic that he has not revoked it. He testified that he believes that the POA is still in force meaning that Mr. Allibhai still has access to his bank accounts. Would that not be a concern if someone has stolen from you?
- [34] In addition, Mr. Ibrahim testified that his attorney in the USA sent a cheque to Mr. Allibhai and he thinks that it was deposited in his bank account but he has not checked. Why would Mr. Ibrahim not check when he alleges that Mr. Allibhai was stealing money from him?
- [35] Mr. Ibrahim's evidence does not make sense. For example, a short time before the trial was originally scheduled to begin, Mr. Ibrahim warned Mr. Visram in an email that he would be breaching solicitor-client privilege if he was to testify. When he was asked about this in cross-examination, Mr. Ibrahim stated that he does not think that Mr. Visram was his lawyer. He then changed his evidence and said that he does consider that Mr. Visram was his personal lawyer. In addition to the reversal in his evidence, it defies logic that Mr. Ibrahim would retain a lawyer that he thought tricked him into signing something.
- [36] I have concerns regarding the reliability of Mr. Ibrahim's evidence as well. In direct examination, he testified that he signed what he thought was a foreclosure document. However, in cross-examination Mr. Ibrahim testified that he has no memory of signing a document with lawyer Mr. Visram while in jail but that he is "reframing and building a recollection".

Mr. Allibhai

- [37] Anytime a person knowingly misleads the court, it gives rise to serious concerns regarding their credibility. Such is the case with Mr. Allibhai. He swore an affidavit that he served Ms. Lee with the NOFC, then swore a contradictory affidavit saying that he did not serve her. And, he admitted that he embellished an affidavit which he swore in support of Mr. Ibrahim's release from jail pending extradition. Additionally, Mr. Allibhai's evidence was contradictory. For example, he claimed that he and Mr. Ibrahim were not close friends while the voluminous texts showed that they were.

Mr. Visram

- [38] Mr. Visram's evidence was troubling from a number of perspectives. First, it was vague and confused. He had little recall of the events. Second, it was troubling that as counsel he had no notes or documentation to aid his memory. Third, the professional integrity of the dealings that Mr. Visram had with the parties is questionable.

[39] As a result of my concerns, I approach the evidence of Messrs. Ibrahim, Allibhai and Visram with caution and will generally only accept it when it is corroborated by other evidence that I accept.

[40] Conversely, I find the evidence of Ms. Mansouri and Ms. Lee to be credible and reliable and I accept it. Both gave clear and consistent evidence which fit with the documentary evidence.

ISSUE 1: DID MR. ALLIBHAI BREACH AN AGREEMENT HE HAD WITH MR. IBRAHIM BY COLLECTING RENTS AND KEEPING THEM FOR HIS OWN PURPOSES?

[41] As stated above, while Mr. Ibrahim was incarcerated he asked Mr. Allibhai to take care of his townhouse on Panorama Drive in Coquitlam for him. This included renting the townhouse for Mr. Ibrahim (as per Mr. Ibrahim's instructions). He claims that he continued to need Mr. Allibhai's help when he returned to Canada because of a myriad of health issues. Mr. Ibrahim alleges that Mr. Allibhai kept rent monies which he collected from the rentals.

[42] Mr. Allibhai testified that he did help Mr. Ibrahim--both while he was in jail and after he was released. His efforts included obtaining an exemption from strata to allow the unit to be rented out, securing a tenant, setting up an Airbnb account, attending on one occasion with Mr. Ibrahim to evict a tenant and referring rental inquiries to Mr. Ibrahim.

[43] Mr. Allibhai denies that he kept rent monies.

[44] Like most of his evidence, Mr. Ibrahim's evidence regarding this claim was vague and at times confusing. Although, he claims to have "boxes of evidence", his allegations are unsupported by any documentary evidence. No rental contracts were produced. No bank statements. No lists of tenants or rentals. No communications between himself and Mr. Allibhai regarding rents. In the large volume of text messages sent between the parties that were put into evidence none of them speak of an arrangement for Mr. Allibhai to collect rents nor is there mention of him ever having done so. There is just one text from Mr. Allibhai to Mr. Ibrahim reminding him to contact a tenant about the return of his security deposit.

[45] The burden is on Mr. Ibrahim to prove that Mr. Allibhai collected rents and failed to remit them to him. He has failed to do so.

[46] There is no merit to this claim. It is dismissed.

ISSUE 2: DID MR. ALLIBHAI BREACH HIS FIDUCIARY DUTY TO MR. IBRAHIM BY OBTAINING A JUDGMENT AGAINST HIM?

[47] Mr. Ibrahim asserts that Mr. Allibhai used his POA to obtain a judgment against him. However, he was unable to explain how that was so. Further, if Mr. Ibrahim truly believed that Mr. Allibhai was able to somehow use the POA to create such harm, one would have expected that he would immediately rescind it. As noted above, Mr. Ibrahim testified that the POA is still in effect.

- [48] As with the previous claim, Mr. Ibrahim's evidence regarding this claim is confusing, implausible and has varied over time. On November 16 2022, he affirmed in an Affidavit for a without notice application to set a garnishing order aside, that he had no knowledge of the action brought by Mr. Allibhai and Iqbal over \$90,000 and \$120,000 in unpaid money, that he had never been served with it and that he never signed the Consent Order granting judgment. Yet in cross-examination at this trial, Mr. Ibrahim conceded that Mr. Visram came to see him at the North Fraser Pre-trial Centre and that he signed something, but he maintains that he thought he was signing a foreclosure document.
- [49] Mr. Allibhai testified that Mr. Ibrahim instructed him to contact Mr. Visram to bring the action.
- [50] Mr. Visram, a lawyer of 40 years, testified that he received instructions from Mr. Allibhai and Iqbal (via phone only) to commence the action. He was told that there was urgency to serving Mr. Ibrahim as he was about to be extradited to the USA. As a result, Mr. Visram went to see Mr. Ibrahim in jail. Mr. Visram testified that Mr. Ibrahim looked at the NOCC and said, "yeah I owe this money". Mr. Ibrahim then said that he would consent to a judgment against him. Mr. Visram was surprised and told him to seek legal advice. According to Mr. Visram, Mr. Ibrahim was "fine", "not stressed out" and was "quite friendly". According to Mr. Visram, Mr. Ibrahim understood what the NOCC was.
- [51] In 2015, after Mr. Ibrahim was released from jail, he retained Mr. Visram to act for him on another matter to do with his property.
- [52] While mindful, that I must be cautious accepting the evidence of Mr. Visram and Mr. Allibhai for the reasons outlined above, I accept their evidence. It fits with the documentary evidence. It fits with Mr. Ibrahim's assertion in a different proceeding that the judgment was a valid charge against the property. It also fits with the fact that although Mr. Ibrahim says that Mr. Allibhai fraudulently obtained a judgment against him, he has not done anything to try to set it aside for 10 years.
- [53] Finally, it fits with why Mr. Ibrahim considers Mr. Visram to be his lawyer. When Mr. Ibrahim found out that Mr. Visram was subpoenaed to testify at this trial for the defendant, Mr. Ibrahim cautioned him that he would be in breach of solicitor-client privilege if he did so.
- [54] There is more than an air of collusion regarding why Mr. Ibrahim signed the Consent Order. The judgment would be paid out to Mr. Allibhai on the sale of the matrimonial property. Mr. Allibhai would give the funds to Mr. Ibrahim.
- [55] I reject Mr. Ibrahim's evidence that he did not understand what he was signing. He is an experienced litigant with comprehensive knowledge of court documents. I am further satisfied that Iqbal had nothing to do with this false claim.

[56] In sum, I find that Mr. Ibrahim caused the action to be brought against himself. He used Mr. Allibhai in order to do so.

[57] There is no merit to this claim. It is dismissed.

ISSUE 3: DID MR. ALLIBHAI COMMIT PERJURY BY SWEARING A FALSE AFFIDAVIT OF SERVICE IN MR. IBRAHIM'S FAMILY CLAIM AGAINST SOOMI LEE?

[58] I am satisfied that Mr. Allibhai swore a false Affidavit stating that he had served Ms. Lee with a NOFC. However, I find that Mr. Allibhai did so on instruction of Mr. Ibrahim. Accordingly, there is no merit to this claim.

[59] However, even if I did not find that Mr. Ibrahim was the mastermind behind the false affidavit, no damages would flow. Mr. Ibrahim provided no evidence of damages. Ultimately, Ms. Lee successfully defended the family claim on its merits, that is on the grounds that she and Mr. Ibrahim had never been involved in a common-law relationship not on the non-service, so any fees incurred by Mr. Ibrahim in bringing the claim would have been incurred in any event. The costs and actions that Mr. Ibrahim sustained were incurred as a result of his lawsuit, not because of the affidavit of service.

[60] There is no merit to this claim. It is dismissed.

ISSUE 4: DID MR. ALLIBHAI INTERFERE IN MR. IBRAHIM'S BUSINESS RELATIONSHIP WITH MS. MANSOURI?

[61] The Supreme Court of Canada outlined the three elements of a claim for unlawful interference with economic relations in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at para. 5, as follows:

1. the defendant intended to injure the plaintiff's economic interest;
2. the interference was by illegal or unlawful means; and
3. the plaintiff suffered economic loss or harm as a result.

[62] Mr. Ibrahim has proved none of these elements.

[63] Mr. Ibrahim alleges that Mr. Allibhai said things to Ms. Mansouri that caused her to end their business relationship.

[64] As per the facts recounted above, I find that Mr. Ibrahim and Ms. Mansouri attempted to have a business relationship. Whether it actually amounted to anything is questionable.

[65] I further find that their business (and personal) relationship broke down. However, it is clear from the evidence that Mr. Allibhai did not cause the relationship between Mr. Ibrahim and Ms. Mansouri to break down. It became fatally damaged over time as a result of Mr. Ibrahim's actions which included him suing a client of Ms. Mansouri's causing her to lose her business licences and failing to take her off his car lease. This breakdown is clearly evidenced in written communications between Mr. Ibrahim and Ms. Mansouri.

[66] Nonetheless, even if I found that Mr. Allibhai did interfere in the business relationship, no damages would flow. On the evidence, Mr. Ibrahim and Ms. Mansouri's business relationship was unsuccessful. There is no evidence that they made any money to speak of, nor were they going to. And as with all of his other claims, Mr. Ibrahim has not introduced any evidence of loss suffered.

[67] There is no merit to this claim. It is dismissed.

ISSUE 5: DOES MR. IBRAHIM'S FILING OF A CPL ON MR. ALLIBHAI'S PROPERTY AMOUNT TO AN ABUSE OF PROCESS?

[68] The court frowns upon the misuse and perversion of its processes. In *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at para. 35, the Supreme Court of Canada commented generally on the doctrine of abuse of process stating, "Judges have an inherent and residual discretion to prevent an abuse of the court's process".

[69] The doctrine of abuse of process is used in a variety of contexts. In *Oei v. Hui*, 2020 BCCA 214, our Court of Appeal outlined the elements of the tort of abuse of process:

- 1) a collateral and improper purpose,
- 2) an overt act, and
- 3) damages resulting to the plaintiff from the wrongful use of the legal process.

See *Oei* at paras. 5-6.

[70] A collateral and improper purpose is one that is outside the "normal incidents of litigation" or "outside the ambit of the litigation". Delay, cost, or potential embarrassment are all considered unfortunate and inevitable consequences of litigation; however, where a plaintiff commences a baseless action to achieve these consequences and/or coerce the party being sued, such a purpose may be collateral to the underlying action (*Oei* at para 20). In order to be improper, the ulterior advantage must be one not reasonably related to the subject matter of the underlying claim and but for which the defendant to the tort of abuse claim would not have commenced the proceedings (*Oei* at para 26).

- [71] The second element, an overt act is described as "a definite act or threat, in furtherance of a purpose not legitimate in the use of the process": see Oei at para. 5. It has also been referred to as conduct amounting to "legal blackmail": see Office and Professional Employees Int'l. Union v. Office and Professional Employees Int'l. Union, Local 15 et al., 2006 BCSC 847 at para. 24.
- [72] As set out above, I find Mr. Ibrahim's claims to be spurious.
- [73] In an email to his sister dated January 21, 2016, Mr. Ibrahim boasted that he approaches "litigation from a pure ROI (Return on Investment) perspective, although sometimes it is personal". He then outlined some of his "good success in litigation because of creative and innovative approaches". One of the "successes" he notes is that he obtained freezing orders on his ex-wife's family assets.
- [74] The purpose of a CPL is to protect an interest in land. It is not a tool for litigants to leverage a financial claim. Mr. Ibrahim bases his CPL on his allegations that Mr. Allibhai used rent funds collected on Mr. Ibrahim's property to pay for repairs on his own property.
- [75] Mr. Ibrahim had no interest in Mr. Allibhai's property. To use Mr. Ibrahim's words, the claim was a "creative" way to place a CPL.
- [76] Mr. Ibrahim commenced his action months after Mr. Allibhai allegedly told him that he would not pay him back (there is no evidence to corroborate this claim of Mr. Ibrahim's) and filed his CPL on Mr. Allibhai's property weeks before a pending sale was to close.
- [77] Mr. Ibrahim's claim was based on assertions that are unsubstantiated and not founded in evidence. I have no difficulty concluding that these claims are a deliberate effort to get back at Mr. Allibhai, who Mr. Ibrahim believed wronged him.
- [78] Given all of my findings I am satisfied that the filing of the CPL was an abuse of process.
- [79] As a result of the CPL, the sale of Mr. Allibhai's property was put in jeopardy. In order to enable the sale, some of the proceeds had to be held in trust as security for Mr. Ibrahim's claim. Those funds remain in trust over three years later. I order that the funds held in trust be released to Mr. Allibhai.
- [80] In addition to the release of the security, Mr. Alibhai seeks general and punitive damages. I will address the categories in turn.

General Damages

- [81] Under this heading of damage Mr. Allibhai seeks compensation for his loss of ability to invest the security that he had to post in order to have the CPL removed \$61,750.
- [82] The sale of Mr. Allibhai's property completed on January 18, 2021. Mr. Allibhai conservatively calculates the loss using the rate of interest awarded post-judgment under the Court Order Interest Act, R.S.B.C. 1996, c. 79 as follows:

Principal	
Start date	
End Date	
Interest Rate	
Interest	
\$61,750.00	
January 19, 2021	
June 30, 2021	
2.45%	
\$671.47	
\$61,750.00	
July 1, 2021	
December 31.2021	
2.45%	
\$762.66	
\$61,750.00	
January 1, 2022	
June 30, 2022	
2.45%	
\$750.22	
\$61,750.00	
July 1, 2022	
December 31, 2022	
3.70%	
\$1,151.76	
Total	
\$3,336.11	

[83] Unlike procedural abuse of process which is addressed with elevated costs or striking of pleadings, the tort of abuse of process provides for damages in favor of the plaintiff. I find, in these circumstances, the amount proposed is fair and reasonable. I order Mr. Ibrahim to pay to Mr. Allibhai \$3,336.11 in general damages.

Punitive Damages

[84] In *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189, our Court of Appeal set out the principles governing punitive damages as follows:

[76] Unlike aggravated damages, which are compensatory in nature, punitive damages are directed toward punishment. The leading authority remains *Whiten v. Pilot Insurance Co.*, 2002 SCC 18.

[77] The three objectives of punitive damages are retribution, deterrence, and denunciation. Punitive damages awards should be approached with caution and restraint and resorted to only in exceptional circumstances: *Whiten* at para. 69. Punitive damages awards are rational only when compensatory damages do not adequately achieve the objectives of retribution, deterrence, and denunciation: *Performance Industries Ltd. v. Sylvan Lake Golf & Tennis Club Ltd.*, 2002 SCC 19 at para. 87.

[78] In *Whiten* at para. 94, the Court set out the factors that should be taken into account when considering an award for punitive damages. The factors include:

- a) Punitive damages are the exception rather than the rule, imposed only if there has been high-handed, malicious, arbitrary, or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour;
- b) Punitive damages are generally awarded only where the misconduct would otherwise be unpunished or where other penalties are unlikely to achieve the objectives of retribution, deterrence, and denunciation;
- c) Punitive damages are awarded only if compensatory damages (which to some extent are punitive in nature) are insufficient to accomplish these objectives, and the amount awarded is no greater than necessary to rationally accomplish their purpose;
- d) The purpose of punitive damages is not to compensate the plaintiff, but to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened;
- e) Punitive damages should be assessed in an amount reasonably proportionate to the harm caused, the degree of the misconduct, the plaintiff's relative vulnerability, and any advantage or profit gained by the defendant, having regard to any other fines or penalties suffered by the defendant; and

- f) Moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.
- [85] I agree with Mr. Allibhai that "misusing the court system to gain leverage over an individual by tying up his or her property with an unsupported certificate of pending litigation, particularly on the eve of a sale of that property, is certainly an overt act deserving of rebuke". Mr. Ibrahim used the justice system for an ulterior motive: to exact revenge on Mr. Allibhai. He used the CPL as a weapon.
- [86] I am satisfied that punitive damages are required to reflect the denunciation of society, address retribution and to send a deterrent message to Mr. Ibrahim and other like-minded individuals that the court system is not to be used for an improper purpose. I order Mr. Ibrahim to pay to Mr. Allibhai \$5,000 in punitive damages.

CONCLUSION

- [87] I dismiss all of Mr. Ibrahim's claims in both his Notice of Civil Claim and Amended Notice of Civil Claim.
- [88] I find that Mr. Ibrahim's filing of the CPL constitutes an abuse of process and make the following orders:
- 1) The security in the amount of \$61,750 being held in trust by counsel for Mr. Allibhai is to be released forthwith to Mr. Allibhai;
 - 2) Mr. Ibrahim is to pay to Mr. Allibhai damages in the amount of \$3,336.11 within 14 days of this judgment; and
 - 3) Mr. Ibrahim is to pay to Mr. Allibhai punitive damages in the amount of \$5,000 within 45 days of this judgment.
- [89] The parties shall arrange a date with Scheduling to appear before me to address two issues:
- 1) costs; and
 - 2) whether Mr. Ibrahim should be declared a vexatious litigant.

"The Honourable Madam Justice Murray"

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