

CANADA / JUDGMENT

Kakavelakis v. Boutsakis

2021 BCSC 1656

COURT

Supreme Court of British Columbia

DECIDED

23 August 2021

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2021 BCSC 1656 Kakavelakis v. Boutsakis IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Kakavelakis v. Boutsakis, 2021 BCSC 1656 Date: 20210823 Dockets: F892474 and S064190

Registry: Vancouver Between: John Kakavelakis Plaintiff And Diane Boutsakis d.b.a. Crown Travel and the said Crown Travel and George Boutsakis Defendants

- and - Between: John Kakavelakis Plaintiff And George Boutsakis Defendant Before: Master Muir (As Registrar) Reasons for Decision Counsel for the Plaintiff in both actions: D.C. Creighton Counsel for the Defendants in both actions: A. Howden-Duke Place and Dates of Hearing: Vancouver, B.C. July 8 and 9, 2021 Written Submissions of John Kakavelakis: August 9, 2021 Written Submissions of George Boutsakis: August 9, 2021 Place and Date of Decision: Vancouver, B.C. August 23, 2021 TABLE OF CONTENTS Issues. 3 Costs assessment 3 Post-judgment interest reference. 3 Background. 4 Assessment of Tariff Items. 7 Assessment of Disbursements. 21 Non-taxable disbursements. 22 Taxable Disbursements - Goods and Services Tax. 23 Dye and Durham.. 23 West Coast Title Search. 24 CWJ Forensics. 24 Grant Thornton. 28 Mair Jensen Blair LLP. 28 TSS Technical Support Services. 30 Court reporters. 30 Couriers. 30 Postage and Boutsakis document charges. 31 Carswell Online Charges. 31 Cheque certification fee. 31 Secretarial Services. 31 CD Transcript 31 Taxable Disbursements - PST and GST. 32 Photocopies. 32 Dominion Blue. 32 Conclusion. 32

Issues

Costs assessment

- [1] This is an assessment of a bill of costs arising from the decision of the Court of Appeal in reasons cited as Kakavelakis v. Boutsakis, 2017 BCCA 396 (the "appeal judgment"). In those reasons, the court granted the plaintiff, Mr. Kakavelakis' appeal of Justice G.C. Weatherill's refusal to award costs in his trial judgment, cited as Kakavelakis v. Boutsakis, 2014 BCSC 1145 (the "trial judgment").
- [2] As a result, the plaintiff is entitled to costs in both Vancouver Registry Actions F892474 (Kakavelakis v. Boutsakis dba Crown Travel and the said Crown Travel and George Boutsakis) and S064190 (Kakavelakis v. Boutsakis).

- [3] These two actions were intended to end the more than 30-year litigation feud between these parties.
- [4] As one might expect, given the history of this litigation, the costs claimed were seriously disputed over this two-day hearing. Post-judgment interest reference
- [5] In addition to the assessment of costs, there was a consent order of Master Bilawich of March 17, 2021, which provided in part:
1. By consent, there be a reference to the Registrar to assess the post-judgment interest payable on the trial award of Mr. Justice Weatherill pronounced June 24, 2014 and certify the results pursuant to Rule 18-1(1)-(2);
- [6] The post-judgment interest reference bogged down in a consideration of whether I had jurisdiction, as the defendants intended to ask for an order that interest cease to run as of a date in 2016.
- [7] The parties were invited to and have provided written submissions on whether I have jurisdiction to make the order sought by the defendants. I received those submissions on August 9, 2021.
- [8] I have concluded that I do not have jurisdiction to determine the question. On this assessment and on the post-judgment interest reference ordered by Master Bilawich, I am sitting as a Registrar of the court, not a Master. The arguments advanced in favour of me having jurisdiction to make an order that interest ceased to run would require me to be sitting as a Master.
- [9] Even if I had such jurisdiction, in my view, this issue is better put before G.C. Weatherill J. For me to decide that post-judgment interest either ends or does not end at some date could have consequences for the balance that he intended be effected by his decision. Justice G.C. Weatherill is in a better position to make that determination.
- [10] Thus, the parties should bring an application, preferably to G.C. Weatherill J., to argue the termination of post-judgment interest. When that issue is resolved, the assessment ordered by Master Bilawich can proceed. I am not seized of that assessment.

Background

- [11] I can best reference some of the earlier judgments of our court to give a sense of the history of the litigious relationship between the parties. Justice W.G. Baker in *Boutsakis et al v. Kakavelakis et al*, 2005 BCSC 541 noted:

INTRODUCTION

- [1] These summary trials are the latest battles fought in a long war of litigation between George Boutsakis and John Kakavelakis in relation to claims for rent, property taxes, insurance and utility costs arising out of two leases in a commercial building on West Broadway Street in Vancouver. Mr. Boutsakis and Mr. Kakavelakis own the building as tenants in common.
- [2] In addition to Messrs. Boutsakis and Kakavelakis, the combatants include Mrs. Diane Boutsakis, wife of George Boutsakis. Mrs. Boutsakis' travel agency proprietorship, "Crown Travel Service" (referred to in these Reasons as "Crown") is a tenant of a portion of the main floor of the building.
- [3] John Kakavelakis' company, Alexis House Café Ltd. (referred to in these Reasons as "Alexis House"), is also a tenant. Alexis House occupies the remainder of the main floor of the building, with the exception of a small area that is leased to neither tenant, and which the parties refer to as "common area".

HISTORY OF THE LITIGATION

- [10] I began the Introduction by a reference to these summary trials as the latest battles in a long war of litigation. In fact, there has been litigation among these parties for 18 years, and as stated earlier, there is no end in sight.
- [11] At some time prior to the hearing of these summary trials, the parties and the court learned from court registry staff that several of the older court files cannot be located and may have been destroyed. To the extent that I am able to recreate the history of the legal conflict from the files that remain, and the copies of pleadings provided by the parties, I conclude that the first action - Vancouver Registry F873452 - was commenced in 1987.
- [12] There have been ten subsequent Supreme Court actions: F892474, A902866, A913182, C923309, C942631, C964042, C966855, S021480, S035202 and S035083.
- [13] In addition, there has been one action in Provincial Court, and an appeal and cross-appeal from the Provincial Court decision to this Court. In the Supreme Court, the appeals were assigned Supreme Court Action No. A953614. Including that appeal, there have been 12 Supreme Court actions. Action F892474
- [21] This lawsuit was commenced by Mr. Kakavelakis, as plaintiff, against Diane Boutsakis, doing business as Crown Travel, and George Boutsakis. George Boutsakis was joined as a defendant in his capacity as guarantor of Diane Boutsakis' obligations under the Crown lease.
- [22] A Statement of Claim was filed on June 16, 1989, and a Statement of Defence was filed June 20, 1989. An Amended Statement of Claim was filed on October 14, 1997. The action then remained dormant until 2003, although from time to time Notices of Intention to Proceed were filed.

- [23] On July 12, 2002, Justice Boyd determined that Action F892474 had not been abandoned. She declined to order that the parties go to arbitration to determine the rental rates for the second and third renewal terms of the Crown lease. Justice Boyd indicated that the issue of the applicable rental rates, and other issues arising in the action should be decided by summary trial.
- [12] Some of the issues raised in Action F892474 were resolved by W.G. Baker J. in the summary trial noted above, but, apparently, not all. It is worthy of note, however, that W.G. Baker J. ordered the parties to bear their own costs.
- [13] Justice W.G. Baker pronounced those reasons before Action S064190 was commenced by petition on June 28, 2006.
- [14] In reasons for judgment cited as *Boutsakis v. Alexis House Café Limited*, 2014 BCSC 221, Justice Fitzpatrick noted that she had had a hand in "case managing" this litigation and:
- [12] By way of postscript, I assumed the case management of this entire matter in November 2010. Since that time, through various case planning conferences, efforts have been made to winnow down the number of issues to those plead in two actions (S064190 and F892474). The issues include those arising from the sale of the building and also include assertions that Mr. Boutsakis improperly obtained the benefit of a liquor license arising from that sale. The pleadings in these two actions were closed as of March 30, 2012 per my Order of January 3, 2012 and no further issues may be raised save with leave of the court.
- [13] Accordingly, it remains the case that the issues arising in Registrar Blok's 2005 and May 2011 reports (and soon to be the supplementary report of Registrar Sainty) will be addressed separately. Hence, leaving aside this residual issue, it is the intention that all matters will be addressed in these two remaining actions at the trial now scheduled to take place in late May 2014, so that once both matters are resolved, this will be a final conclusion to this marathon litigation.
- [15] Those two actions then came on for trial before G.C. Weatherill J. in 2014. In the trial decision, he noted:
- [1] This trial is the final episode in a more than 30-year feud between former business partners. The feud spawned no less than 15 separate lawsuits.
- [3] In addition, there have been numerous pre-hearing conferences, settlement conferences, applications and other proceedings conducted in an effort to consolidate the various actions or otherwise deal as efficiently as possible with the innumerable squabbles between the parties.

- [24] By any measure, the amount of court time and resources consumed by this feud over the years is indefensible. The parties have been shameless in their demands that the court shoulder the burden of their inability to resolve their frequent and often petty differences. Justice Blok (sitting as Registrar) summed up the situation in his Reasons for Decision dated May 26, 2011 (*Boutsakis v. Kakavelakis*, 2011 BCSC 679):
- [13] The absence of books of accounts, the unbending determination of both parties to claim or oppose even the most minor amounts, as it favoured them, the parties' divergent concepts of just what issues were the subject of this reference and the entirely dissimilar approaches to the calculations, together with a tendency to forget or ignore past judicial proceedings and determinations, made for a confused, disorganized, lengthy and tedious hearing, and made the sorting out of the various outstanding issues a very challenging task.
- [16] Justice G.C. Weatherill refused to award costs, other than regarding disbursements for certain expert reports. As noted, that was overturned in the appeal judgment and the plaintiff was awarded costs. *Assessment of Tariff Items*
- [17] The affidavits of justification for the plaintiff's bill of costs were sworn by his present counsel, Mr. Derek Creighton. Mr. Creighton has only been involved in these matters since 2010. Prior to that, the plaintiff was occasionally represented by other counsel, but often self-represented.
- [18] Similarly, the defendants, who were represented by recently retained counsel on this assessment, Mr. Adam Howden-Duke, were frequently self-represented.
- [19] That is perhaps one explanation for the multiplicity of actions.
- [20] It is also worth noting that for much of the litigation period, the parties remained partners and owners and tenants of the property in issue.
- [21] The principles which apply to an assessment of tariff items were dealt with by Registrar Nielsen in *Carreiro v. Smith*, 2015 BCSC 2379, as follows:
- [12] Pursuant to Supreme Court Civil Rule 14-1(2), the Registrar is to allow tariff fees with respect to work that was proper or reasonably necessary to the proceeding and must consider Supreme Court Civil Rule 1-3, the object of the Rules.
- [13] Whether work for which fees are claimed should be allowed must be determined objectively. A step was necessary if it was indispensable to the conduct of the proceeding. A step was proper if it was not necessary, but was nevertheless reasonably taken or incurred for the purpose of the proceeding. In fixing the number of units for items where a minimum and a maximum number of units is allowed, the Registrar is to allow the minimum amount of units for matters upon which little time should ordinarily have been spent; and the maximum amount of units for matters upon which a great deal of time should ordinarily have been spent.

- [14] The assessment of discretionary tariff items is an objective exercise. In determining the proper number of units to award in respect of each item, the Registrar is to compare the case that is before him or her with all other cases that come before the court, and decide where it fits within the spectrum. Certain objective factors are to be considered, such as whether the litigation was simple or straightforward, if the litigation involved numerous parties, extensive legal issues, numerous experts, large sums of money, or any other factors which may have impacted upon the case's difficulty.
- [15] Registrars are to have regard to the particular circumstances of the proceeding in which costs are claimed when deciding how many units within the prescribed range should be allowed.
- [22] Counsel for the defendants referred to many other authorities in his submissions, but, in my view, this statement captures the essence of the exercise. Tariff item 1: Correspondence, conferences, instructions, investigations or negotiations by a party until the start of a proceeding, for which provision is not made elsewhere in the tariff
- [23] The range of units is 1-10. The plaintiff claims 6 units for this item. The defendants dispute that and would concede only 2 units.
- [24] The defendants further argued that the absence of specific evidence of what was done prior to the commencement of each of these actions was fatal to the plaintiff's claim under this tariff item.
- [25] As noted in W.G. Baker J.'s reasons, Action F892474 was commenced in 1989, two years after the first litigation between these parties. The other action for which costs are to be assessed is Action S064190, which, as noted, was commenced by petition on June 28, 2006. It appears that there were perhaps 11 different actions commenced by these parties between 1989 and 2006.
- [26] Mr. Creighton's evidence in his affidavit #2, sworn March 15, 2021, although headed as if it was evidence for tariff item 2, actually deals with both tariff items 1 and 2. He deposed as follows:
32. The written correspondence between Mr. Kakavelakis and Mr. Boutsakis dealing with the issues that eventually went to trial before Weatherill, J. is voluminous. It would be an enormous task to sort out which letters deal specifically with the issues that proceeded to trial because of the many concurrent actions and because, for many of the years the dispute raged, the partnership was still active. In addition to the correspondence between the parties directly there was also written correspondent with third parties, such as BC Hydro on the electricity consumption issue and the liquor board on the LRS issue. I attach a very small selection of the correspondence at Exhibit "C" as an example of the letters being exchanged on the issues that proceeded to trial and to give a flavour of the parties' interactions. The letters at Exhibit C are only a very tiny fraction of the written correspondence in the file.

- [27] Exhibit C is more than 50 pages of correspondence. Thirty-seven of those pages are correspondence that preceded action S064190 and dealt with the issues that were ultimately before G.C. Weatherill J.
- [28] Thus, I do not agree with the defendants that there is no evidence of what was done, at least prior to the commencement of Action S064190.
- [29] Action F892474 is more difficult. It was commenced in 1989. There were no documents produced going back to prior to its commencement.
- [30] As noted, much of the relief sought in this action was dealt with by W.G. Baker J. in a summary trial. There were obviously issues outstanding, which at least included an issue of electricity use as between the parties. An amended notice of civil claim was filed on March 27, 2012, and a response and counterclaim were filed on April 10, 2012.
- [31] Given the tenor of the correspondence prior to the commencement of S064190, I can only conclude that there were similar dealings prior to the commencement of Action F892474.
- [32] Even if I am incorrect in that conclusion, I believe that the 6 units sought by the plaintiff under this tariff item are deserved.
- [33] The plaintiff suggested in submissions that, given the history between the parties, perhaps even 10 units should be awarded for this tariff item.
- [34] At first blush, that is attractive, but I am satisfied that 6 units is appropriate, as it would not be proper to award costs in these actions that are attributable to the other litigation between the parties, as those actions will have their own costs awards. Tariff item 2: Correspondence, conferences, instruction, investigations or negotiations by a party after the start of the proceeding to the completion of the trial or hearing, for which provision is not made elsewhere in the tariff
- [35] The range for this tariff item is 1-30. The plaintiff seeks 30, the defendants would agree to 20.
- [36] In addition to the documents exhibited by Mr. Creighton referred to above, Exhibit C to his second affidavit contains some correspondence after action S064190 was commenced. He also deposed:
33. After I took over conduct of the file many more letters were exchanged. I am advised by my associate that there are over 200 letters in my digital correspondence file between 2010 and 2014, though I note these would include letters on related files running concurrently. In any event, the written correspondence between my office and the defendants was extensive.
34. I met with Mr. Boutsakis on numerous occasions to try to negotiate various aspects of the dispute. My recollection of these meetings is that they were unproductive given the firm and difficult stances Mr. Boursakis would take. I also had many calls to and from Mr. Boutsakis but ultimately little was resolved.

35. There were also many calls and meetings with Mr. Kakavelakis and his son Theo Kakavelakis to go over the very complicated facts, gather instructions, and prepare for trial. These are interspersed amongst the 36 pages of time entries attached hereto and marked as Exhibit "D".
36. Given the amount of time these actions were running prior to my involvement in the file, the work described above only reflects a small fraction of the work completed in these matters.
- [37] There is no question that these cases are near the top of the spectrum when objectively considering the range of cases for costs assessments. Given my concerns about awarding costs for matters not properly captured by these cases, however, I have concluded that 25 units is the appropriate award. Tariff item 3: Correspondence, conferences, instructions, investigations or negotiations by a party after the trial or hearing to enforce any final order obtained in that trial or hearing, for which provision is not made elsewhere in this tariff.
- [38] The plaintiff claims 10 units for this tariff item. The defendants assert the appropriate award is 0 units. The defendants point out that simply writing a few letters demanding payment, asking that orders be signed and trying to deal with costs are matters that, on the authority of *Capital Resource v. Coronado Resources*, 2008 BCSC 692, at para. 21, are recoverable under other tariff items and should not be awarded for tariff item 3.
- [39] Mr. Creighton's evidence is that there were two additional hearings before G.C. Weatherill J. after the trial and the plaintiff, at least, contemplated that the funds in trust would be paid out in short order.
- [40] The parties appealed to the Court of Appeal and there was an agreement that the funds would be held in trust pending the result of that appeal. The defendants then sought leave to appeal to the Supreme Court of Canada, however, a stay of execution was never granted.
- [41] Because the issue of post-judgment interest remains unresolved, there has been no agreement to full payment of the trial judgment and partnership funds remain in trust.
- [42] The fact that this has dragged on from 2014 to 2021, in my view, is evidence in and of itself that the plaintiff is entitled to recover under this tariff item. Mr. Creighton says there has been much negotiation and attaches a sampling of some 23 pages of correspondence involving negotiations over the payment out and calculation of post-judgment interest.
- [43] I am satisfied that an award of 6 units is appropriate for this tariff item. Tariff item 6: All process, for which provision is not made elsewhere in this tariff, for commencing and prosecuting a proceeding
- [44] The range is 1-10. The plaintiff claims 6 units and the defendants consent. That appears appropriate and I will allow 6 units. Tariff item 9: Response to Counterclaim and, if necessary, reply

- [45] The range is 1-10. The plaintiff claims 5 units and again the defendants consent. I will allow 5 units. Tariff item 10: Process for obtaining discovery and inspection of documents; 1 - 999 documents
- [46] The range is 1-10. The plaintiff claims 10 units and the defendants consent. I will allow 10 units. Tariff item 11: Process for giving discovery and inspection of documents
- [47] The range is 1-10. The plaintiff claims 10 units. The defendants disagree and would allow 5.
- [48] The defendants point to the decision in *Farrokhmanesh v Sahib*, 2010 BCSC 467, at para. 24 for the proposition that it is the number of documents listed, not the numbers of documents reviewed in the course of listing documents that is considered under this tariff item.
- [49] Mr. Creighton's evidence is:
43. The plaintiff disclosed just under 500 documents in these actions. Attached hereto and marked as exhibit G is a copy of the plaintiff's list of documents. These listed documents are only a small fraction of the boxes and boxes of documents brought to my office by Mr. Kakavelakis. Sorting through the thousands of pages to identify the documents to be listed was an immense task. Due to the longstanding dispute between the parties we had to deal with documents all the way back to the 1970s to determine which were relevant.
- [50] In the *Farrokhmanesh* case, District Registrar Sainty noted:
- [24] The reference in the tariff to units awarded for numbers of documents disclosed relates to the number of actual documents listed. It does not relate to the number of pages that make up the various documents listed on the list of documents. I do not think any special skill or effort went into the document discovery in this case and, accordingly, I would award 4 units for this process. I do so keeping in mind that the plaintiff has failed to claim anything under Item 7 which is for "process for obtaining discovery and inspection of documents". Had that item been claimed, I would have allowed two units for it and two units under Item 8.
- [51] From the reasons, it is clear that the *Farrokhmanesh* case was not a document intensive case, that it was a personal injury case with the "usual" types of documents.
- [52] This case before me is quite distinguishable from *Farrokhmanesh*. Selecting the documents to be listed from the history of dealings between these parties had to be an onerous and time consuming exercise. I am satisfied that the 10 units claimed are appropriate. Tariff item 14: Process for serving Notices to Admit
- [53] The range is 1-5. The plaintiff claims 3. The defendants would agree to 1.
- [54] The notice to admit was perfectly simple and sought only the admission of two documents. I agree that 1 unit is appropriate. Tariff item 15: Process for making admissions of fact

- [55] The range is 1-10. The plaintiff claims 5 units. The defendants would agree to 2. The notice to admit in question seeks admission of four facts and an admission as to the authenticity of 12 documents.
- [56] The defendants rely on the decision of Master Bouck in *McAdam v. Rosling*, 2016 BCSC 50 at para. 20:
- [20] The plaintiff delivered one notice to admit, seeking admission of 18 facts and the authenticity of 22 documents. The notice to admit goes beyond a pro forma document often seen in assessments and required some thoughtful work on the part of counsel. I allow 3 units for this item.
- [57] I agree with the defendants that 2 units are appropriate here. Tariff item 16: Process for preparation of accounts, statement of property or financial information if required by enactment or ordered by the court
- [58] The plaintiff claims the maximum amount of 5 units for instructing his expert, Mr. Brian Gardiner, to update post-judgment interest calculations in accordance with the trial judgment.
- [59] The defendants object and say that only 1 unit is appropriate, as the tariff provides elsewhere for retaining and consulting experts.
- [60] This was post-trial and did involve the preparation of an accounting. I accept that the plaintiff is entitled to 3 units for this item. Tariff item 17: All process and correspondence associated with retaining and consulting all experts for the purposes of obtaining opinions for use in the proceeding
- [61] The range of units is 1-10. The plaintiff claims 10 units. The defendants would concede 4.
- [62] The plaintiff's evidence regarding this and the next tariff item was as follows:
46. The plaintiff retained four experts, Doug Bastin, Dennis Coates, Brian Gardiner, and Klaus Geithner.
47. Mr. Bastin, a partner at Grant Thornton with expertise in liquor licences and valuations, was retained to provide an expert opinion about the value of the LRS. Weatherill, J. found Mr. Bastin to have considerable experience and expertise in liquor licences and valuations and to be an impressive witness. His evidence was accepted in its entirety. Mr. Coates, QC, a lawyer who specializes in issues facing the hospitality industry in B.C., including liquor licencing, was also retained In respect of the LRS valuation and worked in conjunction with Mr. Bastin.
48. The Instruction letter to Mr. Bastin is attached hereto and marked as Exhibit "J". Time entries reflecting Instructions and consultations with Mr. Bastin and Mr. Coates can be found in Exhibit D.

49. Mr. Gardiner was retained as a forensic accountant in accordance with a direction made by Blok, J. in his May 26, 2011 Report and Recommendation. Mr. Gardiner reviewed and calculated the rent, property tax and insurance arrears owed by Crown Travel and Alexis Cafe to the partnership and also the pre- and post-judgment interest on those arrears. At trial, Weatherill, J. accepted the calculations of Mr. Gardiner and found them helpful.
50. Given the history of the litigation these were not simple calculations, nor were the Instructions given to Mr. Gardiner to write his report. I believe this is self-evident by Mr. Gardiner's report of May 1, 2014 which is attached as Exhibit "K". The time entries reflecting instructions and consultations with Mr. Gardiner for the writing of his report can be found at Exhibit D.
51. Klaus Geithner was retained to Investigate the extent to which Crown Travel had not paid its fair share of electricity and heating bills. As stated above, Baker, J. in 2005 held this was the case but concluded the opinion of an expert was required to determine the allocation of costs.
52. Mr. Geithner was consulted in 2006 and provided a report around that time. This was before I was retained, but from my file I attach at Exhibit "LM" some of the early correspondence showing efforts to retain Mr. Geithner, and provide him information, and also Mr. Geithner's 2008 invoice which indicates at least one in person meeting around that time. Closer to the date of trial Mr. Geithner was contacted to update his report which was issued January 30, 2014.
53. Several discussions were had with Mr. Geithner thereafter to go over his report and prepare for trial. These time entries can be seen at Exhibit D.
54. Mr. Bastin, Mr. Coates, and Mr. Geithner were all subpoenaed to attend trial. Additionally, Mr. Kakavelakis' former lawyer, Gerald Martin, was interviewed on more than one occasion and subpoenaed to attend trial. Those four subpoenas are attached hereto and marked as Exhibit "M".
55. The plaintiffs son, Theo Kakavelakis, has been thoroughly involved in these matters and testified at trial. He was contacted and interviewed on innumerable occasions as evidenced by the many time entries at Exhibit D in which he is referenced.
- [63] The defendants take issue with the characterization of Mr. Coates as an expert witness. They argue that Mr. Coates was simply counsel assisting Mr. Creighton with the case, and that he may have had some expertise in the area of liquor licensing is irrelevant.
- [64] In addition, the defendants point out that the trial judge, G.C. Weatherill J. was quite dismissive of Mr. Geithner's report, as the trial judge noted:

- [149] Mr. Kakavelakis is not entitled to recovery of any disbursements in respect of Mr. Geithner's report because Mr. Kakavelakis has received an award of only \$731.50 in respect of electricity costs and because, through no fault of Mr. Geithner, his report was based upon flawed assumptions and was of little assistance to the Court.
- [65] Justice G.C. Weatherill's conclusion as to the plaintiff's entitlement to recover disbursements would, in my view, be overcome by the court of appeal's reversal of his ruling on costs. His views, however, on the usefulness of the report are relevant to consideration of this tariff item and in considering the disbursements claimed.
- [66] I note that G.C. Weatherill J. found both the Bastin and Gardiner reports to be useful. He noted:
- [44] Mr. Bastin was an impressive witness. I accept his opinion evidence in its entirety. I find that the LRS Application was and is a separate asset distinct from the LPL, although they were related.
- [67] I am satisfied that the issues that Mr. Bastin and Mr. Gardiner addressed in their reports were complicated and that their reports were well received.
- [68] I note that although Mr. Geithner's report may not have turned out to be particularly useful, that it was obtained at the suggestion of W.G. Baker J. His retainer, in those circumstances, was proper as that is defined by Registrar Nielsen in *Carreiro*.
- [69] Considering the issues dealt with, and the range of unit awards in the cases presented by the defendants, I am satisfied that 6 units is the appropriate award for this item. Tariff item 18: All process and correspondence associated with contacting, interviewing and issuing subpoenas to all witnesses
- [70] The range is 1-10. The plaintiff claims 5 units. The defendants would concede 4.
- [71] Again, these were complicated issues. Only four subpoenas were issued, and three of those were to persons identified as experts. I note in *Berard v. Robinson*, 2019 BCSC 502 where the plaintiff interviewed five lay witnesses on multiple occasions and issued four subpoenas that 5 units were allowed.
- [72] Although there were fewer witnesses, given the length of the litigation, the various issues being raised and the complexity of some of the claims, I am satisfied that 5 units are appropriate. Tariff items 19 and 20
- [73] The units proposed are agreed to by the defendants and are awarded accordingly. See the table following these reasons. Tariff item 21: Preparation for an application or other matter referred to in item 22, for each day of hearing if hearing begun
- [74] The tariff allows 2 units if the matter is unopposed and 3 units if it is opposed.

- [75] The plaintiff advances 12 applications or groups of applications. Three were abandoned at the hearing.
- [76] Mr. Creighton's evidence was:
57. The multiplicity of proceedings and the fact that the parties were each self-represented at times confuses the history of applications and appearances. The applications as outlined in the bill of costs attached as Exhibit A are those for which I believe Mr. Kakavelakis to be deserving of costs based on the clerk's notes and application materials compiled to date. However, these may be slightly amended at trial taxation if any clearer evidence can be adduced by that time.
58. Attached hereto and marked as Exhibit "O" are the supporting clerk's notes for these applications which have been gathered to date.
- [77] I will deal with these as set out in the bill of costs:
- a) F892474 - motion filed by plaintiff for appointment of receiver, July 12, 2002. Claimed 3 units. There is no evidence before me as to the result obtained, the hearings required or any orders made as to costs. I cannot make an award in the circumstances.
 - b) F892474 - May 31, 2005. Claimed 3 units. There is no evidence before me as to the result obtained, the hearings required or any orders made as to costs. I cannot make an award in the circumstances.
 - c) F892474 - September 19, 2005. Claimed 3 units. There is no evidence before me as to the result obtained, the hearings required or any orders made as to costs. I cannot make an award in the circumstances.
 - d) F892474 - i) October 7, 2006, ii) March 6, 2006. Claimed 6 units. There is no evidence before me as to the result obtained, the hearings required or any orders made as to costs. I cannot make an award in the circumstances.
 - e) S064190 - February 12, 2007, 2 hr. 14 min. Claimed 1.5 units. There is no evidence of who brought the application, success is unclear and there is no order as to costs. I cannot make an award in the circumstances.
 - f) S064190 - Motion filed by the defendants Feb 22, 2007. The plaintiff claims 6 units for the following appearances:
 - i. 05/Mar/2007, 2 hr. This was the hearing of an application made by the defendants, filed February 22, 2007. It was adjourned to March 6 and costs are noted as adjourned. ii. 06/Mar/2007, 1 hr. 25 min. This was the hearing of an application made by the defendants adjourned from March 5, 2007. They appear to have been at least partially successful and costs are noted as adjourned. iii. 14/Mar/2007, 20 min. This is a continuation of the same application. Again, costs are noted as adjourned. iv. 28/Mar/2007, 52 min. This was an appointment to settle the orders. It is noted that costs were not spoken to. The defendants

take the position that there is insufficient evidence for me to make a determination one way or the other. I agree that there is simply not sufficient evidence here for me to conclude that the plaintiff is entitled to costs of these applications.

- g) Abandoned.
 - h) Abandoned.
 - i) S064190 - Application filed by the plaintiff 29/Dec/2011 to (i) convert action from petition to action; (ii) consolidate actions; (iii) release \$1.2 million. 4 hr. 20 min. Claimed at 3 units. On the clerk's notes, it indicates that costs were not spoken to. It appears from those notes, however, that the plaintiff was largely successful on the application. Pursuant to BCSC Rules 14-1(9) and (12), the plaintiff is entitled to his costs of this application in the cause. I am satisfied that 3 units are appropriate.
 - j) S064190 - Appointment before Fitzpatrick J. to settle terms of order 06/Jan/2012, 10 min. The plaintiff claims 1.5 units. There is nothing in the evidence to indicate why the plaintiff would be entitled to costs of this application.
 - k) Abandoned.
 - l) S065190/F892474 - Appointment before G.C. Weatherill J. to settle terms of order 02/Nov/2016. 20 min. The plaintiff claims 1.5 units. I do not have the settled order. I do not know whose position on the order prevailed. I cannot determine what costs are appropriate in the circumstances. Tariff item 22: Application, other than an application referred to in Item 23 or 27, for each day of hearing
- [78] The units prescribed are 4 units for unopposed hearings and 5 units for opposed hearings. The units in this tariff item track those in item 21. There will thus be an award of 5 units for item 22(j). The rest are unproven. Tariff item 23: Application by requisition or written submission
- [79] The plaintiff seeks 2 units for filing a consent order on April 27, 2015 for payment of funds in court to counsel for the defendants in trust. The defendants would agree to 1 unit and point out that the consent order consisted of one paragraph, and compares this to other orders, for example in *McEwan v. McEwan Estate*, 2015 BCSC 96, where 2 units were allowed for an order to amend pleadings.
- [80] Although it was a short order, it still had to be drafted and circulated for consent prior to entry. I think that 2 units is appropriate. Tariff items 24, 25, 26, 27, 29, 30, 31, 32, 34 and 35
- [81] All of these tariff items were agreed to and they are awarded as sought. See the table following these reasons. Tariff item 36: Written argument
- [82] The range of units is 1-10. The plaintiff claims 8 units. The defendants would agree to 5.
- [83] The evidence of Mr. Creighton was as follows:

64. Lengthy opening and closing statements were prepared on behalf of the plaintiff which are attached as Exhibits "Q" and "R", respectively.
65. The highly detailed opening statement is 41 pages. Much of its length is in setting out the complex litigation history between the parties due to Mr. Boutsakis bringing issues to court in a multiplicity of proceedings. The closing statement is 31 pages.
66. In addition to thorough opening and closing written arguments the plaintiff also prepared an 11-page joint statement of facts on behalf of all parties which is attached hereto and marked as Exhibit "S".
- [84] The defendants refer to *Cowichan Bay Contractors Ltd. v. Insurance Corp. of British Columbia*, 2008 BCSC 1326 in support of the proposition that the higher end of the range must be reserved for truly complex matters, such as lengthy historical aboriginal title disputes.
- [85] I agree. I do not agree that less than 100 pages of submissions, though thorough, warrant 8 units. I will award 6. Tariff item 39: Process for payment into or out of court
- [86] The plaintiff claims 1 unit for the process related to order for the payment out of funds of April 27, 2015, already dealt with in tariff item 23. The defendants argue that an award under both tariff items would be double recovery.
- [87] I agree. I think this is amply accounted for by the award under tariff item 23. No units are allowed. Tariff item 40: Process for setting down proceeding for trial
- [88] This is agreed at 1 unit. Tariff item 43: Conduct of sale if property sold by order of court
- [89] The range of units is 1-10. The plaintiff claims 5 for the conduct of sale of the partnership property. This was the subject of numerous applications, orders, and directions.
- [90] In the context of the petition by the plaintiff for a dissolution of the partnership, Justice Pitfield ordered that the commercial property be sold. Ultimately, the property was purchased by Mr. Boutsakis.
- [91] I am satisfied that this type of sale is covered by the tariff item. The 5 units claimed seem appropriate, perhaps even low. I will allow this at 5 units. Conclusion re tariff items
- [92] Thus, of the 474.5 units claimed, 377.5 are allowed. At the scale B value of \$110 per unit, the tariff amount allowed is \$41,525, plus GST of 5% (\$2,076.25) and PST of 7% (\$2,906.75), totals \$46,508 inclusive of taxes. Assessment of Disbursements
- [93] I refer again to the decision of Registrar Nielsen in *Carreiro*, where he also dealt with the principles applicable on the assessment of disbursements: Disbursements
- [17] Supreme Court Civil Rule 14-1(5) provides:
- (5) When assessing costs under subrule (2) or (3) of this rule, a registrar must

- (a) determine which disbursements have been necessarily or properly incurred in the conduct of the proceeding, and
 - (b) allow a reasonable amount for those disbursements.
- [18] There are a number of principles to be considered on an assessment of disbursements. Those applicable principles were summarized in *Turner v. Whittaker*, 2013 BCSC 712 at para. 5, wherein Master MacNaughton stated:
- [5] Counsel were also able to agree on the following legal principles which are applicable on an assessment of disbursements:
1. Rule 14-1(5) requires an assessing officer to determine which disbursements were necessarily or properly incurred in the conduct of a proceeding and to allow a reasonable amount for those disbursements.
 2. The consideration of whether a disbursement was necessarily or properly incurred is case- and circumstance-specific and must take into account proportionality under Rule 1-3. (*Fairchild v. British Columbia (Vancouver Coastal Health Authority)*, 2012 BCSC 1207).
 3. The time for assessing whether a disbursement was necessarily or properly incurred is when the disbursement was incurred not with the benefit of hindsight. (*Van Dael v. Van Dael*, 1982 CanLII 808 (BC SC), 56 B.C.L.R. 176 (SC) rev'd 1983 CanLII 720 (BC CA), 56 B.C.L.R. 178 at para. 4 (CA))
 4. A necessary disbursement is one which is essential to conduct litigation; a proper one is one which is not necessary but is reasonably incurred for the purposes of the proceeding. (*McKenzie v. Darke*, 2003 BCSC 138, para. 17-18)
 5. The role of an assessing officer is not to second guess a competent counsel doing a competent job solely because other counsel might have handled the matter differently. (*McKenzie v. Darke*, 2003 BCSC 138, para. 21)
- [19] To these principles I would add those in *Holzapfel v. Matheusik* (1987), 1987 CanLII 2659 (BC CA), 14 B.C.L.R. (2nd) 135, which are summarized in *Cloutier v. Wong*, 1992 12 C.P.C. (3d) 169 where the Court stated at para. 5:
- [5] In *Holzapfel v. Matheusik* (1987), 1987 CanLII 2659 (BC CA), 14 B.C.L.R. (2d) 135, the Court of Appeal approved the following principles set out in the authorities:
1. The onus of proof rests on the party submitting the bill to establish affirmatively the necessity or reasonableness of the charges he claims as disbursements (*Hall v. Stroccl* (1983), 34 C.P.C. 170 (B.C.S.C.)).

2. The solicitor responsible for the preparation of the case should give evidence, which may be by affidavit, verifying that the work was necessary for the full and proper presentation of the case and that the fees charged for the work were reasonable in the circumstances (*Berite v. Schuette* (1980), 17 C.P.C. 259 (B.C.S.C.)).
 3. If the expert's bill contains less than a reasonably detailed outline of the work he performed and the hours he devoted to his retainer, an affidavit sworn by the expert may be required (*Berite v. Schuette* (1980), 17 C.P.C. 259 (B.C.S.C.)).
 4. The affidavit of verification does not bind the assessment officer but he should consider it carefully and weigh it against the other evidence (*Bell v. Fantini; Fasciana v. C.N.R.* (1981), 1981 CanLII 614 (BC SC), 32 B.C.L.R. 322 (B.C.S.C.)).
- [94] The plaintiff claims \$760 for agent fees. They did not provide much assistance in their evidence about the necessity for these fees. Looking at the invoices for non-taxable matters, they all appear to be court filings and I conclude they were necessary for the conduct of these proceedings.
- [95] The defendants submit this disbursement should be reduced by 50%. The primary issue taken with these is that they could have been filed online for lower cost.
- [96] I note, however, in *Parent v Lohia*, 2012 BCSC 1677, at para. 35, Master McDiarmid deals with this issue as follows:
- [35] Guidance with respect to agent's filing fees was provided by Mr. Justice Harvey in *Gill v. Widjaja*, 2011 BCSC 1822 at para. 31:
- [31] In my view, absent a practice direction indicating that the profession, generally, will be required to file electronically, the choice by counsel to engage agents to file paper documents at the registry cannot be seen as either excessively, cautious, zealous, extravagant or negligent. In the result, until such time as a practice direction is issued requiring electronic filing, it is my view that agents' filing fees, when incurred, is a proper disbursement allowable in a party and party taxation.
- [97] The defendants note that one of the invoices presented was for a filing that was rejected by the registry, and they submit that such a filing is neither necessary nor proper based on the decision in *Parent* at para. 55. I agree. The amount claimed of \$13.16 is not allowed.
- [98] The balance of the objections raised do not deal with the non-taxable disbursements claimed.
- [99] The Dye and Durham non-taxable disbursement is allowed at \$746.84.
- [100] The BC Online disbursement was agreed to and is allowed as sought. Taxable Disbursements - Goods and Services Tax Dye and Durham

- [101] The first claim is again for Dye and Durham. The amount claimed is \$1,668.26. Again, there is limited evidence, other than the nature of the proceedings and the invoices themselves, to show they were necessary. Mr. Creighton assured me that all proceedings taken and expenses incurred were necessary or reasonably incurred. He noted that this litigation was too complicated and longstanding to be taking steps that were not considered necessary at the time.
- [102] The defendants again submit that the amount should be allowed at 50% of that claimed. They object that some of the invoices are for obtaining copies of clerk's notes. There is sufficient evidence here, however, of the continued disagreement as to the terms of orders that obtaining clerk's notes was a reasonable precaution.
- [103] The objection that documents could have been more inexpensively filed online is dealt with above. The defendants noted one invoice that appears to be from a different proceeding. Mr. Creighton argued that it was simply an error on the part of Dye and Durham as the file number is correct. Out of an abundance of caution, I will disallow that invoice for a reduction of \$45.72.
- [104] The amount claimed is therefore reduced: $\$1,668.26 - \$45.72 = \$1,622.54$. West Coast Title Search
- [105] The amount claimed is \$59.45. The invoice attached to the materials is virtually indecipherable. The defendants concede they would allow \$29.75 and I will accept that value. CWJ Forensics
- [106] These were the accounts rendered for the work and reports of Mr. Brian Gardiner, CA, CFE. The accounts were significant, totalling \$55,679.25.
- [107] At para. 149 of the trial reasons, G.C. Weatherill J. noted that Mr. Gardiner's work was helpful to the court.
- [108] Mr. Creighton's evidence was:
72. Mr. Gardiner performed extensive and complex calculations with respect to the rent, property tax and insurance arrears owed by Crown Travel and Alexis Cafe to the partnership and also the pre- and post-judgment Interest on those arrears. This was to give effect to the judgment of Baker, J. In 2005 and the directions made during the various references to the Registrar that arose therefrom. As with Mr. Bastin, Weatherill, J. found Mr. Gardiner's report (at Exhibit K) was helpful to the court.
73. Mr. Gardiner's invoices reflecting the work done for his report and for trial preparation and attendance are attached hereto and marked as Exhibit "X".

74. Portions of Mr. Gardiner's pre-and post-judgment calculations needed to be modified based on the directions of Weatherill, J. at trial. Attached hereto and marked as Exhibit "Y" are: · the instruction letter from my office setting out the further work needed; · the work product from Mr. Gardiner in response (excluding all of the updated schedules which were similar to those attached to his original report which is at Exhibit K); and · the invoice reflecting that work dated July 31, 2014.
75. Mr. Boutsakis then retained an accountant to perform calculations in response, which required further review and reply from Mr. Gardiner to ensure they were correct. Mr. Gardiner was required to attend court on December 2, 2014 in order to explain. The calculations to Weatherill, J., Mr. Gardiner's reply report and his final invoice are attached hereto and marked as Exhibit "Z".
- [109] The defendants say this disbursement should be reduced by half. The defendants object to Mr. Gardiner's report, alleging that it contains boilerplate and repetition. In addition, the defendants argue that Mr. Gardiner spent an excessive amount of time at an excessive hourly rate.
- [110] In support of the last point, the defendants bring the evidence of Edward G. Robinson, CPA, CA, IFA, CBV, CFF. His evidence is that, at the time, on similar work, his hourly rate was \$310 and no one in his firm charged more than \$350. In addition, he questioned the amount charged for travel, as no member of his firm would charge for travel within Vancouver.
- [111] Mr. Robinson did not take issue with anything else. In particular, although he indicates that he reviewed the reports of May 1, 2014 and October 16, 2014, Mr. Robinson took no issue with the substance of the reports or the time spent.
- [112] Mr. Robinson produced a spreadsheet showing a breakdown of the hours spent by Mr. Gardiner and the charges for them. He concluded that the average rate charged by Mr. Gardiner, due to discounts on some work done, was \$354.
- [113] That average is not much assistance, however, as it averages amounts charged at secretarial and other reduced rates.
- [114] There is no evidence from Mr. Gardiner or anyone else as to the reasonableness of his rates.
- [115] I agree that travel within Vancouver is not a charge that should be levied on the defendants here.
- [116] The defendants rely on a decision of Master Keim in *Neustaeter v. Woroniuk*, 2020 BCSC 273:
- [50] In support of their position, defence counsel referred me to:
- a) Senner, para. 113, wherein the court states: I have previously commented that a fee an expert can command from the person who retains the expert may well be justified, but the defendants are only required to pay a reasonable amount.

- b) Antulov, wherein Master McDiarmid reduced the amount allowed for an economist report. At para. 73, Master McDiarmid said: At the time he was retained, Mr. Matthews had additional expertise beyond that of an economist. It was proper for plaintiff's counsel to retain someone who had worked on a file with the same scenario. However, it is not reasonable to expect a losing litigant to pay significantly more than what is typically allowed for labour economists
- [117] I agree, however, the evidence of one expert as to the fees charged by members of his firm is not evidence of the fee "typically allowed" for similar work.
- [118] Mr. Creighton submitted that Mr. Robinson's firm's rates might be unusually low due to working for insurers.
- [119] I conclude that a reasonable rate is somewhere in between and believe that \$400/hour is appropriate.
- [120] If I go through each invoice and reduce the hours charged at \$500 per hour to \$400 per hour, I calculate the reduction as follows: Invoice date Hours at \$500 Hours at \$400 Reduction Dec 31, 2013 \$5,000 \$4,000 \$1,000 Jan 6, 2014 \$12,500 \$10,000 \$2,500 Feb 13, 2014 \$4,600 \$3,680 \$920 May 12, 2014 \$3,750 \$3,000 \$750 July 31, 2014 -- -- \$500* Total \$5,670.00 *There was no invoice produced, but as the amount was slightly less than the May invoice, I have assumed that the reduction should be similar, but reduced.
- [121] Including the \$750 charged for travel in Vancouver equals a reduction of \$6,420.
- [122] The total for these invoices was \$48,059.20. If we subtract the reduction for the hourly rate/travel decrease of \$6,420 the balance is \$41,639.20.
- [123] The defendants also argue there should be some deduction because certain amounts were agreed between the parties prior to the registrar's hearing before Master Taylor on May 5 and 6, 2014. They argue that this made some work done by Mr. Gardiner unnecessary.
- [124] In reviewing the documents provided, however, it appears the report of Mr. Gardiner was dated May 1, 2014. I have no evidence as to when the amounts were agreed. I conclude that I will make no deduction for this.
- [125] In addition, there is the invoice of June 10, 2015, which was for work done after Mr. Robinson's analysis. That Invoice was reduced from \$11,719 and settled at \$8,000 (\$7,619.05 + GST). I conclude that is a reasonable reduction. The disbursement for CJW Forensics Inc. is therefore allowed at \$41,639.20 + \$7,619.05 = \$49,258.25 plus taxes. Grant Thornton
- [126] These disbursements are for the work and reports of Mr. Doug Bastin. As noted above, G.C. Weatherill J. found Mr. Bastin to be an impressive witness and accepted his evidence in its entirety.

- [127] The defendants argue that, similarly to Mr. Gardiner, this disbursement should be reduced by half. They say that Mr. Bastin's hourly rate of \$480 was excessive and should be in line with Mr. Gardiner's and Mr. Robinson's.
- [128] Mr. Robinson did not comment on Mr. Bastin's hourly rate. Mr. Bastin has different expertise to either Mr. Gardiner or Mr. Robinson. He is a Certified Management Consultant. He seems to have a very specialized expertise in the hospitality industry.
- [129] I have no evidence as to what other experts in that field would charge.
- [130] The accounts of Mr. Bastin were \$15,937.65 for the work to produce his report and \$9,228.75 for trial preparation and attendance. Both amounts are before GST.
- [131] Having concluded that \$400/hour was appropriate for Mr. Gardiner, I have no reason to say that the amount charged by Mr. Bastin was unreasonable.
- [132] The disbursement for his charges is allowed. Mair Jensen Blair LLP
- [133] This disbursement is for the work done by Mr. Dennis Coates. As noted above, Mr. Creighton's evidence is that Mr. Coates has specialized expertise in liquor licencing and was retained in conjunction with Mr. Bastin. There are two invoices claimed, March 24, 2014 in the amount of \$8,392.56 and July 22, 2014 in the amount of \$1,553.84.
- [134] The defendants say that even if Mr. Coates had such expertise, which was not proved by providing even a copy of his curriculum vitae, that he was retained as a lawyer and his charges are properly captured in the tariff items.
- [135] In submissions, Mr. Creighton advised that Mr. Coates provided information that was essential to the Bastin report. He said this was not simply the type of information that can be researched online, that it involved an investigation of the City of Vancouver rules around liquor licensing, as they existed from time to time. He said Mr. Bastin needed Mr. Coates report in order to have the necessary assumptions to produce his report. Mr. Creighton argued that this was beyond legal work, that it was a forensic investigation of facts in an area that was required by Mr. Bastin.
- [136] Counsel for the defendants objects to Mr. Creighton providing evidence as an officer of the court, as all evidence was supposed to be provided in advance of the assessment hearing. It is not unusual, however, for gaps to be addressed at the assessment hearing by counsel involved and I have received this evidence.
- [137] From a review of the first invoices from Mr. Bastin and Mr. Coates, I can see that Mr. Coates did undertake some specialized investigations in the last two weeks of February 2014. I do not have his time records, but will roughly assess that portion of the work to have been half of the time spent.

- [138] He accounted for \$7,450 in fees less a \$500 credit or \$6,950. I see that he has also charged \$601.88 for travel, \$30 for file opening, and \$173 for mileage. Those charges should be deducted in my view. They may be appropriate charges for his client, but are not appropriate to be passed on to the defendants. The balance is \$6,145.12 and half of that is \$3,072.56.
- [139] I see nothing in the second account that warrants inclusion as a disbursement for expert reports.
- [140] The amount claimed differs slightly from Mr. Coates' invoice. I will use the amounts from the invoice.
- [141] I will allow the amount of \$3,072.56, plus taxes. TSS Technical Support Services
- [142] This disbursement was for the work and report of Mr. Klaus Geithner. As noted above, G.C. Weatherill J. found this report of little use, as the assumptions provided to Mr. Geithner were not proved. The plaintiff has abandoned his claim for the cost of Mr. Geithner's report in the amount of \$8,290.58 and seeks only the recovery of expenses for preparation and delivery of that report in the amount of \$171.45. I will allow the disbursement for expenses. Court reporters
- [143] Court reporters were claimed at \$3,699.18. The defendants agree to all charges other than the charge of \$82.93 from JC Word Assist from March 5, 2015, for the transcript of the hearing before G.C. Weatherill J. on December 2, 2014.
- [144] The defendants argue that this disbursement was not necessary, as the clerk's notes would have been sufficient. Mr. Creighton advised that the expense was incurred so as to ensure that the partnership fund distribution calculations were done correctly. Although the expense may not have been necessary, I am satisfied that it was reasonably incurred and hence proper for the purposes of this litigation. Couriers
- [145] The plaintiff seeks \$597.85 for couriers. Mr. Creighton's evidence is:
80. I am informed by my associate and verily believe that Exhibit CC indicates \$597.85 (excl. GST) in courier charges related to the dispute between the parties, and that this total is a sum of all the "Courier" entries on pages 3-4 of that printout and the individual "Corporate Couriers Logistics Ltd. Courier" charges at pages 1-3.
81. Couriers were used somewhat frequently in this case because the defendants were lay litigants who typically communicated via regular mail or fax rather than email, and large volumes of documents were being exchanged.
84. Given that I have only been retained in these matters since 2010, I expect there were more courier, photocopying, and fax charges which were not tracked and therefore cannot be claimed.
- [146] The defendants takes issue with the courier charges.

- [147] I note, however, that couriers are allowed where circumstances dictate that their use is reasonable, such as where large volumes of documents are being exchanged. Here, I am satisfied that it was reasonable to use couriers in some circumstances.
- [148] The defendants submit that where the use of couriers is held to be necessary or proper, it is nevertheless appropriate for the assessor to use judgment and a rough and ready approach to the amount allowed.
- [149] Given the history of this litigation, the claim of \$597.85 seems readily explainable and it is allowed as sought. Postage and Boutsakis document charges
- [150] Both of these disbursements are agreed to and are assessed as sought. Carswell Online Charges
- [151] The plaintiff claims legal research of \$125. There is no explanation for this charge and it is disallowed. Cheque certification fee
- [152] There is no evidence about this charge of \$15. It is disallowed. Secretarial Services
- [153] This claim was abandoned. CD Transcript
- [154] There is no evidence as to what this transcript was for and I cannot decide that it was reasonably incurred. It is disallowed. Taxable Disbursements - PST and GST Photocopies
- [155] The plaintiff claims 20,897 pages of photocopies at \$0.30 per page for a total of \$6,965.72. The registrar's rate for photocopies is \$0.25 per page. At that rate, the photocopies would amount to \$5,224.25.
- [156] There is no real substantiation for the number of copies claimed.
- [157] The defendants would accept a charge of \$4,750.
- [158] The defendants submit, and many cases confirm, that the assessment of photocopies is a rough and ready exercise.
- [159] I conclude that \$5,000 is a reasonable amount in this case. Dominion Blue
- [160] The plaintiff claims \$457.76. There is no evidence as to what this is for. There is some indication on one of the invoices that it is for a matter that is not relevant to this assessment. In the circumstances, it is disallowed.

Conclusion

- [161] The tariff amount allowed is \$41,525, plus GST of 5% (\$2,076.25) and PST of 7% (\$2,906.75), totals \$46,508 inclusive of taxes.
- [162] The non-taxable disbursements are allowed at \$976.84.
- [163] The GST taxable disbursements are allowed at \$84,508.53 plus GST at 5% = \$4,225.43 for a total of \$88,733.96.

[164] The disbursements subject to GST and PST are allowed at \$5,000 plus GST at 5% = \$250 and PST at 7% = \$350, for a total of \$5,600.

[165] Thus, the total allowed for tariff items, disbursements, and taxes is \$141,818.80.

[166] Summary of tariff units allowed: Tariff item Claimed Allowed at 1. 6 6 2. 30 25 3. 10 6 6. 6* 6 9. 5* 5 10. 10* 10 11. 10 10 14. 3 1 15. 5 2 16. 5 3 17. 10 6 18. 5 5 19(a) 8* 8 19(b) 3* 3 20(a) 16* 16 20(b) 5* 5 21(a) 3 0 21(b) 3 0 21(c) 3 0 21(d) 6 0 21(e) 1.5 0 21(f) 6 0 21(g) Abandoned 0 21(h) Abandoned 0 21(i) 3 3 21(j) 1.5 0 21(k) Abandoned 0 21(l) 1.5 0 22(a) 3 0 22(b) 3 0 22(c) 3 0 22(d) 6 0 22(e) 1.5 0 22(f) 6 0 22(g) Abandoned 0 22(h) Abandoned 0 22(i) 3 5 22(j) 1.5 0 22(k) Abandoned 0 22(l) 1.5 0 23 2 2 24(a) 3* 3 25(a) 6* 6 26(a) 10* 10 26(b) 7.5* 7.5 27(a) 20 20 27(b) 15* 15 29(a) 4* 4 30(a) 8* 8 31 9.5* 9.5 32 11.5* 11.5 34 50* 50 35 100* 100 39 1 0 40 1* 1 43 5 5
Total Units 474.5 377.5 * = Agreed to by the defendants

[167] Summary of disbursements allowed: Non-taxable disbursements - Agents' fees Service provider Amount claimed Allowed at Dye and Durham \$760.00 \$746.84 BC Online \$230.00* \$230.00 Total \$990.00 \$976.84 * = Agreed to by the defendants Taxable Disbursements (GST) Service provider Amount claimed Allowed at Dye and Durham \$1,668.26 \$1,622.54 West Coast Title Search \$59.50 \$29.75 CJW Forensics Inc. \$55,679.25 \$49,258.25 Grant Thornton \$25,166.40 \$25,166.40 Mair Jensen Blair LLP \$9,946.40 \$3,072.56 TSS Technical Support Services \$8,462.03 \$171.45 Court Reporters \$3,699.18 \$3,699.18 Couriers \$597.85 \$597.85 Postage \$42.23* \$42.23 Boutsakis Document charges \$848.32* \$848.32 Carswell Online \$125.00 0.00 Cheque certification fee \$15.00 0.00 Secretarial services \$234.00 0.00 CD Transcript \$27.00 0.00 Total \$107,994.42 \$84,508.53 * = Agreed to by the defendants Taxable Disbursements - PST and GST Service provider Amount claimed Allowed at Photocopies \$6,965.72 \$5,000.00 Dominion Blue \$457.76 0.00 Total \$7,423.48 \$5,000.00 "Master Muir"

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Prepared on 28 October 2026 · Esheria