

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Enns v. Abid*,
2026 BCSC 913

Date: 20260520
Docket: S252527
Registry: New Westminster

Between:

John Harold Enns and Lorna Mae Enns

Plaintiffs

And

Anwar Ul Haq Abid

Defendant

Before: The Honourable Justice Taylor

Reasons for Judgment

Counsel for the Plaintiffs:

S. Robertson

Counsel for the Defendant:

J. Singh

Counsel for Attendee Jinder Jhajj and
Sunny Awais:

S. Twining

Place and Date of Hearing:

New Westminster, B.C.
March 11, 2026
May 6, 2026

Place and Date of Judgment:

New Westminster, B.C.
May 20, 2026

I. INTRODUCTION

- [1] This is an application by the defendant, Anwar Ul Haq Abid, for:
- a) an order granting him leave to file and serve a counterclaim in the form attached as Schedule “A” to the Notice of Application; and
 - b) an order setting aside the Notice of Discontinuance filed on August 7, 2024, which discontinued the defendant’s third party claims against Jinder Jhaji and Sunny Awais (the “Realtor Respondents”).

II. BACKGROUND

[2] On March 6, 2024 the plaintiffs, John Harold Enns and Lorna Mae Enns, commenced this action by filing a notice of civil claim (the “NOCC”) alleging breach of contract by the defendant Mr. Abid and seeking damages.

[3] The plaintiffs alleged in the NOCC that they had entered into a contract of purchase and sale with Mr. Abid on January 11, 2022 (the “Contract”) for the sale of a residential property in Surrey, BC (the “Property”). The plaintiffs also alleged in the NOCC, among other things, that the purchase price of the Property was \$1,850,000, that Mr. Abid was required to pay a deposit of \$100,000 and that the sale would complete on June 30, 2022, which was subsequently amended by addendum to August 8, 2022.

[4] The plaintiffs further alleged in the NOCC that Mr. Abid failed to complete the sale of the Property on August 8, 2022, which they alleged was a repudiation. The plaintiffs alleged that they relisted and sold the Property on October 27, 2022 for \$1,300,000 and thereby suffered a loss, in addition to other losses and damages.

[5] On May 8, 2024, Mr. Abid filed a response to civil claim (the “Response to NOCC”) and, contemporaneously, a third party notice against the Realtor Respondents (the “Third Party Notice”), who were the realtors originally retained by the plaintiffs in relation to the sale of the Property. On July 3, 2024, the Third Party Notice was amended to plead, *inter alia*:

- a) That the Realtor Respondents were under an implied agency agreement with Mr. Abid;
- b) That the Realtor Respondents demanded that Mr. Abid pay a \$100,000 deposit to the plaintiffs;
- c) That the Realtor Respondents had personally assured Mr. Abid that they would secure funding on his behalf through a bank for the purchase of the Property but then, after the extended completion period had lapsed, suggested to Mr. Abid that he obtain a private mortgage, which was subsequently denied;
- d) That the Realtor Respondents had offered the \$100,000 deposit to the plaintiffs as a penalty to annul the Contract, to which the plaintiffs consented, while failing to make the same offer to Mr. Abid;
- e) That Mr. Abid relied on the expertise of the Realtor Respondents and the Realtor Respondents knew, or ought to have known, that their representations made to Mr. Abid were false or inaccurate; and
- f) contribution or indemnity from the Realtor Respondents on the basis that their conduct caused or contributed to the alleged breach and the resulting damages claimed by the plaintiffs.

(the “Amended Third Party Notice”)

[6] On July 11, 2024, the Realtors Respondents filed a reply to the Amended Third Party Notice wherein they asserted:

- a) That the Realtor Respondents were at all times acting as designated agents for the plaintiffs and were not agents for Mr. Abid;
- b) That Mr. Abid had signed various documents acknowledging that the Realtor Respondents were not his agents;

- c) A denial that the Realtor Respondents had provided assurances to Mr. Abid about financing the purchase; and
- d) That, even if the Realtor Respondents were at fault, then any such fault could be raised as a defence to the plaintiffs' claims, rendering the Amended Third Party Notice unnecessary, pursuant to the principles set out in *Adams v. Thompson, Berwick, Pratt & Partners* (1987), 15 B.C.L.R. (2d) 51 (C.A.) [*Adams*].

[7] On August 7, 2024, Mr. Abid filed a notice of discontinuance of the Amended Third Party Notice (the "Notice of Discontinuance") against the Realtor Respondents. Mr. Abid deposed in an affidavit on this application that his legal counsel at the time, Affan Bajwa, filed the Notice of Discontinuance without Mr. Abid's knowledge or consent.

[8] On September 16, 2025, Mr. Abid filed an amended response to the NOCC (the "Amended Response to NOCC") which added material facts similar to those in the Amended Third Party Notice, including the dual agency role of the Realtor Respondents, and the representations relating to financing, the deposit and other contractual matters.

[9] On this application, Mr. Abid seeks an order setting aside the Notice of Discontinuance and granting him leave to file and serve a Counterclaim (the "Proposed Counterclaim") naming the plaintiffs and the Realtor Respondents as defendants by way of counterclaim.

[10] In the Proposed Counterclaim, Mr. Abid seeks to advance claims and relief against the Realtor Respondents which are very similar or identical to those previously advanced in the discontinued Amended Third Party Notice, including:

- a) That the Realtor Respondents were under an implied or dual agency agreement with Mr. Abid;

- b) That the Realtor Respondents demanded or advised that Mr. Abid pay a \$100,000 deposit to the plaintiffs;
- c) That the Realtor Respondents had personally assured Mr. Abid that they would secure funding on his behalf through a bank for the purchase of the Property but then, after the extended completion period had lapsed, suggested to Mr. Abid that he obtain a private mortgage, which was subsequently denied;
- d) That the Realtor Respondents had offered the \$100,000 deposit to the plaintiffs as a penalty to annul the Contract, to which the plaintiffs consented, while failing to make the same offer to Mr. Abid;
- e) That Mr. Abid relied on the expertise of the Realtor Respondents and the Realtor Respondents knew, or ought to have known, that their representations made to Mr. Abid were false or inaccurate; and
- f) Contribution or indemnity from the Realtor Respondents on the basis that their conduct caused or contributed to the alleged breach and the resulting damages claimed by the plaintiffs.

[11] There are some additional material facts and particulars in the Proposed Counterclaim that were not previously contained in the Amended Third Party Notice, particularly with regard to the nature and scope of the alleged misrepresentations made by the Realtor Respondents. However, the main allegations and relief sought against the Realtor Respondents in the Proposed Counterclaim and the Amended Third Party Notice are essentially the same.

[12] Further, as noted by counsel for the Realtor Respondents, although both the Proposed Counterclaim and the Amended Third Party Notice were framed as claims for damages, both these pleadings are in essence a claim for contribution or indemnity from the Realtor Respondents as it relates to the plaintiffs' claim for damage against Mr. Abid arising from his failure to complete the purchase.

[13] Mr. Abid's application is opposed by the Realtor Respondents. The plaintiffs take no position on Mr. Abid's application.

III. ANALYSIS

[14] Mr. Abid seeks leave to file and serve the Proposed Counterclaim on both the Realtor Respondents and the plaintiffs.

A. Application for Leave to File and Serve the Proposed Counterclaim

Applicable Law on Amendments

[15] Rules 6-1(1)(b) and 22-4(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 ["*Rules*"] state that pleadings may be amended with leave of the court and that the court may extend or abridge any time period set by the *Rules*.

[16] As a general principle, amendments necessary to determine the real question in issue between the parties should be permitted and evidence is not required on an application to amend pleadings, as the pleadings are assumed to be true: *W.O.M. Mastercraft Construction Ltd. v. TFN Meadows Development Limited Partnership*, 2020 BCSC 1345 at para. 10.

[17] The test to amend pleadings is whether it is plain and obvious that the proposed amendments are bound to fail: *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372 at para. 40 [*Violette*].

[18] The principles that govern the granting of leave to amend pleadings were set out in *Continental Steel Ltd. v. CTL Steel Ltd.*, 2014 BCSC 104:

[26] Some of the basic principles governing applications for leave to amend pleadings include:

1. The court has a wide discretion to permit amendments so as to enable the real issues between the parties to be determined;
2. The discretion to permit amendments is unfettered, subject only to the general rule that it be exercised judicially;
3. The overriding consideration is the interests of justice generally and to direct what is just and convenient between the parties;

4. Amendments may not be allowed if they would cause actual and meaningful prejudice to the opposing party that cannot otherwise be dealt with in costs;
5. Additional considerations include any delays in applying for the amendment, the reasons for such delay, and whether deliberate or voluntarily dilatory conduct is involved; and
6. While useless amendments which do not advance a reasonable cause of action or defence are to be avoided, justice is generally best served by permitting amendments that will allow the real controversy between the parties to be decided on the merits.

[19] Rule 3-4(1) of the *Rules* provides that a defendant has 21 days from the filing of a notice of civil claim to file a counterclaim. Given that the NOCC was filed on March 6, 2024, the time for filing the Proposed Counterclaim expired almost two years prior to this application.

[20] Rule 22-4(2) allows a court to extend or shorten this deadline, even if the application for extension has been made after the time period has expired. In *Evans v. Dumitrean*, 2019 BCSC 203 at para. 50, Justice Forth, in the context of a counterclaim, cited *Smith v. British Columbia*, 2010 BCSC 928 with respect to the factors to be considered on an application for an extension of time to file:

[50] As summarized by Madam Justice Grey in *Smith*, the following should be considered:

[18] The court has discretion under Rule 3(2) to extend a time period set out in the *Rules*, and will do so if it is “just and convenient”.

[19] In *Squamish Indian Band v. Canadian Pacific Ltd.*, [1998] B.C.J. No. 1726 (S.C.), Saunders J. (when she was a member of this Court), held that the following factors should be considered in making any determination of whether it is just and convenient to extend the time to permit a counterclaim to be filed:

- a) What was the length of the delay between receiving the statement of claim and proposing the draft counterclaim;
- b) What were the reasons for delay;
- c) Whether the counterclaim would be time barred but for s. 4(1) [now s. 22] of the *Limitation Act*;

- d) The connection between the proposed counterclaim and the plaintiff's claim;
- e) Whether there will be prejudice to the defendant, such as would arise if denial of the application to file a counterclaim would prevent the defendant from making full answer and defence to the claim brought against it; and
- f) Whether there will be prejudice to the plaintiff by permitting the proposed counterclaim, such as if the counterclaim would require additional investigation and potentially delay the trial of the matter.

Analysis on Leave to File and Serve Proposed Counterclaim

[21] Having considered the above factors, my view is that it is plain and obvious that the amendments in the Proposed Counterclaim, as they relate to the Realtor Respondents as defendants, are bound to fail and that the interests of justice do not favour an order entitling Mr. Abid to file to proceed with the Proposed Counterclaim as against the Realtor Respondents as the defendants. By contrast, it is not plain and obvious that the amendments in the Proposed Counterclaim are bound to fail as against the plaintiffs and accordingly Mr. Abid should be granted leave to file and serve the Proposed Counterclaim on the plaintiffs.

[22] With respect to the Realtor Respondents, I have reached the above conclusion for three reasons:

- a) The Amended Third Party Notice was previously discontinued as against the Realtor Respondents pursuant to an earlier settlement agreement;
- b) The claims in the Proposed Counterclaim against the Realtor Respondents are being commenced outside applicable limitation periods without adequate explanation for the delay; and
- c) There is no prejudice to Mr. Abid in denying the amendment because the claims in the Proposed Counterclaim can be raised as defences against the plaintiffs in the Amended Response to NOCC.

[23] I will address each of these arguments in turn.

a) Previous Discontinuance

[24] It is plain and obvious in my view that the Proposed Counterclaim will not succeed because the Amended Third Party Notice, which contained allegations materially similar to the Proposed Counterclaim, was discontinued against the Realtor Respondents on August 7, 2024.

[25] Rule 9-8 of the *Rules* addresses discontinuance and withdrawal, and the cost consequences that may arise as pertaining to the discontinuing party. Rule 9-8(9) states that this rule applies to a counterclaim and a third party proceeding.

[26] In *DLC Holdings Corp. v. Payne*, 2021 BCCA 31 [*DLC*] at para. 33, our Court of Appeal explained that, upon a discontinuance, an action is generally considered to be “forever at an end except for the matter of costs”. At the same time, the Court of Appeal in *DLC* explained that the court does retain a residual discretion to set aside a notice of discontinuance to prevent an injustice:

[28] It follows that there is no basis upon which a plaintiff can be prevented from discontinuing its action under Rule 9-8(1). Two questions arise. First, what are the consequences of discontinuing as of right? Second, under what circumstances can the court exercise jurisdiction thereafter?

[29] In *Adam v Insurance Corp of British Columbia* (1985), 1985 CanLII 584 (BC CA), 66 BCLR 164; 1985 CarswellBC 265 (CA), this court addressed both questions in the context of an application by a plaintiff to set aside its own notice of discontinuance. At para 27 (cited to CarswellBC), it recognized that, as a consequence of discontinuance, the action is “forever at an end except for the matter of costs”. I will discuss this consequence further below.

[30] At the same time, this court accepted that, as part of the Supreme Court’s wide inherent jurisdiction over its own process, it could set aside a notice of discontinuance notwithstanding that the action was forever at an end. This could be done where, for instance, there had been a misapprehension by the lawyer as to his or her instructions, and there was no real prejudice to the other side—in short, to prevent an injustice.

[27] On this application, Mr. Abid argues that the Notice of Discontinuance filed by his legal counsel on August 7, 2024 should be set aside to prevent an injustice to Mr. Abid. Specifically, Mr. Abid argues that the injustice arose from the fact that his

lawyer in 2024, Affan Bajwa, filed the Notice of Discontinuance without Mr. Abid's knowledge or consent.

[28] In an affidavit sworn November 26, 2025, Mr. Abid deposed that he “categorically den[ies] ever authorizing or instructing the withdrawal, discontinuance, or settlement of the Third-Party Notice”, and further denied that Mr. Bajwa ever requested instructions from him on this issue. In the affidavit, Mr. Abid also denied that Mr. Bajwa ever advised him of discussions between Mr. Bajwa and counsel for the Realtor Respondents concerning the discontinuance of the Amended Third Party Notice. Mr. Abid deposed:

Without consulting me or obtaining instructions, Mr. Bajwa proceeded to discontinue the Third-Party Notice. I was never informed that the Third-Party Notice had been discontinued, nor did Mr. Bajwa seek my instructions before doing so.

[29] In support of his argument, the defendant relies upon *Sherwood v. Cinnabar Brown Holdings*, 2021 BCCA 88 at paras. 8–12. In *Sherwood*, our Court of Appeal said that courts do have discretion to set aside a notice of abandonment in exceptional circumstances: at para. 10. However, to do so, there must be “inadvertence, mistake, or misapprehension”; it cannot be based simply on an “ordinary reason” or “change of heart”: at para. 12.

[30] In my view, Mr. Abid has failed to meet his onus of demonstrating an injustice justifying the exercise of my discretion to set aside the Notice of Discontinuance for at least four reasons.

[31] First, the *Sherwood* decision relied upon by Mr. Abid is not directly on point, as it addresses principles applicable to setting aside a notice of abandonment of an appeal and not a notice of discontinuance of an action or third party notice. While there are arguably some broad parallels between those two separate sets of principles, it is in my view the Court of Appeal decision in *DLC*, and not *Sherwood*, that governs in the context of this application.

[32] With respect to *DLC*, I emphasize that the Court of Appeal in that decision made it clear that the circumstances in which a discontinuance can be set aside are relatively narrow. Specifically, the Court of Appeal in *DLC* at para. 33 recognized that the court has inherent jurisdiction to set aside a discontinuance but limited that jurisdiction to circumstances where it is needed to prevent an injustice or an abuse of process:

...to prevent the perpetration of an injustice, or an abuse of process, including the sorts of problems discussed by Justice Anglin in *Lye*: where discontinuance amounts to fraud, or would deprive a defendant of rights arising from interlocutory applications...

[33] The Court of Appeal in *DLC* went on to state that “the categories are certainly not closed, but all involve matters sufficiently serious to move the court to invoke its inherent jurisdiction in the interests of justice”: at para. 33. Thus the evidentiary onus on Mr. Abid on this application is a relatively high one, namely, to demonstrate that the interests of justice justify the setting aside of the Notice of Discontinuance.

[34] Second, Mr. Abid’s argument failed to address the fact that his application necessitated not only the setting aside of the Notice of Discontinuance but also the setting aside of a prior settlement agreement between Mr. Abid and the Realtor Respondents. Specifically, in June 2024 counsel for the Realtor Respondents, Scott Twining, and Mr. Bajwa, counsel for Mr. Abid, engaged in a series of email exchanges which ultimately resulted in Mr. Bajwa making a settlement offer on behalf of his client. The settlement offer was that Mr. Abid would file the Notice of Discontinuance in exchange for a commitment by the Realtor Respondents not to seek costs against Mr. Abid.

[35] The correspondence between counsel commenced with an email from Mr. Twining to Mr. Bajwa on June 14, 2024 stating in part:

I am writing to make a formal offer to settle your third party claims.

[...]

In light of the foregoing we are prepared to offer a waiver of costs in exchange for a dismissal of the Third Party Notice. Should you client refuse this offer, we will apply to strike the Third Party Notice and also apply for summary judgement under Rule 9-6, and we will seek costs against your client.

[36] Subsequently, Mr. Bajwa advised in several emails that he was awaiting instructions from Mr. Abid in relation to this initial settlement offer. Ultimately, on July 24, 2024, Mr. Bajwa advised Mr. Twining that he had obtained instructions and that his client was agreeable to a settlement on the terms set out in that email:

Hi Scott,

Yes, I have instructions to discontinue against your clients, the Third Parties, so long as your clients do not seek any costs.

Please confirm the above and I will file the discontinuance.

[37] In my view this last email from Mr. Bajwa, after confirming he had instructions, was a firm offer to settle (as distinct from the previous discussions where there was ambiguity because Mr. Bajwa had advised that he had no instructions). On the same day, Mr. Twining clearly accepted the offer by responding as follows to Mr. Bajwa:

Hello Affan,

We have an agreement. Please go ahead and file the NOD and send me an entered copy when available.

[38] This agreement between counsel (the "Settlement Agreement") was in my view clearly binding on Mr. Abid. In *Sekhon v. Khangura*, 2009 BCSC 670 at paras. 110-111, Justice Ker explained that a solicitor acting for a party in settlement negotiations is acting as the agent of the client and may bind the client unless his client has limited his authority and the opposing side has knowledge of the limitation:

[110] It is settled law that a solicitor acting for a party in settlement negotiations is acting as the agent of the client. The solicitor is presumed to have the authority to bind the client to the terms of settlement. There is no obligation on other parties to make enquiries regarding a solicitor's authority to settle a matter on a client's behalf. It is in the interests of the administration of justice that solicitors be free to complete settlements with solicitors without having to enquire about or be concerned with the actual authority of the solicitor: *Scherer v. Paletta*, 1966 CanLII 286 (ON CA), [1966] O.J. No. 1017

(C.A.); *Adamoski v. Mercer*, [1984] B.C.J. No. 2872 (S.C.) at ¶6; *Harvey v. British Columbia Corps of Commissionaires*, 2002 BCPC 69 at ¶30.

[111] In *Scherer*, Evans J.A. (as he then was) stated at ¶9-11:

9. *Bowstead on Agency*, 12th ed., pp. 65-6, reviews the scope of the implied authority of a solicitor and counsel and states that the relationship of a solicitor to his client is in general one of agent to principal.

10. The authority of a solicitor arises from his retainer and as far as his client is concerned it is confined to transacting the business to which the retainer extends and is subject to the restrictions set out in the retainer. The same situation, however, does not exist with respect to others with whom the solicitor may deal. The authority of a solicitor to compromise may be implied from a retainer to conduct litigation unless a limitation of authority is communicated to the opposite party. A client, having retained a solicitor in a particular matter, holds that solicitor out as his agent to conduct the matter in which the solicitor is retained. In general, the solicitor is the client's authorized agent in all matters that may reasonably be expected to arise for decision in the particular proceedings for which he has been retained. Where a principal gives an agent general authority to conduct any business on his behalf, he is bound as regards third persons by every act done by the agent which is incidental to the ordinary course of such business or which falls within the apparent scope of the agent's authority. As between principal and agent, the authority may be limited by agreement or special instructions but as regards third parties the authority which the agent has is that which he is reasonably believed to have, having regard to all the circumstances, and which is reasonably to be gathered from the nature of his employment and duties. The scope of authority is, therefore, largely governed by the class of agent employed provided that he is acting within the limit of his ordinary avocation or by relation of the agent to the principal or by the customs of the particular trade or profession.

11. A solicitor whose retainer is established in the particular proceedings may bind his client by a compromise of these proceedings unless his client has limited his authority and the opposing side has knowledge of the limitation, subject always to the discretionary power of the Court, if its intervention by the making of an order is required, to inquire into the circumstances and grant or withhold its intervention if it sees fit; and, subject also to the disability of the client. It follows accordingly, that while a solicitor or counsel may have apparent authority to bind and contract his client to a particular compromise, neither solicitor nor counsel have power to bind the Court to act in a particular way, so that, if the compromise is one that involves the Court in making an order, the want of authority may be brought to the notice of the Court at any time

before the grant of its intervention is perfected and the Court may refuse to permit the order to be perfected. If, however, the parties are of full age and capacity, the Court, in practice, where there is no dispute as to the fact that a retainer exists, and no dispute as to the terms agreed upon between the solicitors, does not embark upon any inquiry as to the limitation of authority imposed by the client upon the solicitor.

[39] In this case, the evidence was clear that Mr. Abid had a retainer agreement with Mr. Bajwa during the period when the Settlement Agreement was negotiated and there was also no evidence that Mr. Abid had limited the authority of Mr. Bajwa or that any such limitation had been communicated to Mr. Twining. Further, there was no evidence that Mr. Abid was underage or lacked capacity in a manner that would justify the court embarking on an inquiry as to a limitation of authority.

[40] Thus, Mr. Abid was clearly legally bound by the Settlement Agreement negotiated by Mr. Bajwa on his behalf with counsel for the Realtor Respondents. As noted in *Sekhon*, it is “in the interests of the administration of justice” that solicitors be free to complete settlements without the other solicitors having to make inquiries into their actual authority”: at para. 110. For this reason, setting aside the Settlement Agreement would be, in my view, an injustice against the Realtor Respondents, who were entitled to rely upon the ostensible authority of Mr. Bajwa as the solicitor for Mr. Abid.

[41] For this reason, it seems to me that if Mr. Abid believes that Mr. Bajwa failed to obtain his instructions in relation to the Settlement Agreement, his remedy lies with Mr. Bajwa directly, and not with the Realtor Respondents.

[42] Further, the fact that Mr. Abid is seeking to set aside the Settlement Agreement distinguishes the nature of the order being sought from the more basic discretion discussed in *DLC*. Unlike in *DLC*, this was not a situation where Mr. Abid was merely seeking to set aside a notice of discontinuance previously filed by him unilaterally. Rather, it was a situation where Mr. Abid was seeking to set aside the Notice of Discontinuance which was filed only after the parties had reached a firm prior settlement agreement, involving an exchange of consideration, concerning that

same Notice of Discontinuance. This case brings into play an important countervailing principle not addressed in *DLC*, namely, that “[t]here is a strong public interest in favour of resolving disputes through agreement, and it is the policy of courts to promote and enforce settlement agreements”: *Turcotte v. Godine*, 2022 BCCA 24 at para. 52. This countervailing principle, in my view, weighs heavily against the order sought by Mr. Abid in this context.

[43] Third, and in any event, the evidence on the application did not support the conclusion that Mr. Bajwa had failed to obtain instructions from Mr. Abid with respect to the Settlement Agreement and the filing of the Notice of Discontinuance. In this respect, I note that Mr. Abid’s affidavit material amounted to little more than a bare denial that Mr. Bajwa had sought Mr. Abid’s instructions relating to the Settlement Agreement and the Notice of Discontinuance, without any compelling supporting documentation. Taken alone, Mr. Abid’s evidence is insufficient to meet Mr. Abid’s burden of proof.

[44] Fortunately, it was not necessary for me to resolve this matter on the basis of Mr. Abid’s affidavit alone because Mr. Bajwa himself also swore two affidavits on February 25, 2026, in which he described the specific legal advice that he provided to Mr. Abid and the instructions he received. This was made possible because Mr. Abid consented on the application to waive solicitor-client privilege.

[45] In his affidavits, Mr. Bajwa deposed that he had in fact met with Mr. Abid on July 22, 2024 and on that date had received instructions to file the Notice of Discontinuance. Unlike Mr. Abid’s affidavit material, Mr. Bajwa’s affidavit material also contained supporting documentary evidence with respect to the meeting, specifically, contemporaneous notes that he had made on his cloud-based legal billing and accounting system on July 22, 2024. Mr. Bajwa deposed as to the following facts:

- a) Mr. Bajwa was the lawyer of record representing Mr. Abid from the inception of the proceedings in March 2024 until May 6, 2025;

- b) Mr. Bajwa's firm uses a cloud-based legal billing and accounting system known as "Lean Law";
- c) Upon opening Mr. Abid's file, Mr. Bajwa created a new file in Lean Law using Mr. Abid's name as the reference;
- d) Mr. Bajwa contacted Lean Law to request a print out of his time entries for July 22, 2024;
- e) Lean Law responded to the request and provided a print-out showing two time entries. The first of those entries references a meeting that Mr. Bajwa had with Mr. Abid on July 22, 2024. The description states: "Met with client and received instructions to discontinue against the Third Parties";
- f) The time entry was recorded into Lean Law at 12:47 a.m. UTC on July 23, 2024;
- g) Mr. Bajwa affirmed that he met with Mr. Abid at his office on July 22, 2024 for a little over half-an-hour to discuss the discontinuance and that Mr. Abid gave his instructions to propose a discontinuance to the third parties in exchange for a waiver of costs;
- h) On January 29, 2026, Mr. Bajwa attended a call with Mr. Twining and Steve Owings, the Head of Engineering at "Lean Law" to request a more detailed record of the time entry for July 22, 2024; and
- i) Mr. Bajwa attached to his second affidavit a true copy of a document he received from Mr. Owings on February 11, 2026, authenticating the time entry from July 22, 2024.

[46] In my view, Mr. Bajwa's affidavit material persuasively demonstrates that Mr. Abid did in fact consult with and obtain instructions from Mr. Abid on July 22, 2024 with respect to both the Settlement Agreement and the Notice of Discontinuance. Mr. Abid invited me on the application to find that Mr. Bajwa, a member of the bar and officer of the court, had sworn false affidavits and falsified

documents on the application, despite clear evidence to the contrary. Given the lack of supporting evidence, I found this argument to be unfounded.

[47] Mr. Abid sought to adduce as evidence an email he sent on November 25, 2025 to Mr. Bajwa, where he purported to complain about being charged for a July 22, 2024 meeting which he stated in the email never occurred. However, as noted by counsel for the Respondent Realtors, Mr. Abid's new counsel had been advised by that time that the Respondent Realtors intended to rely on evidence from Mr. Bajwa that the meeting did in fact take place. Thus, the email from Mr. Abid was clearly a self-serving attempt to buttress the evidentiary record after the fact.

[48] Mr. Abid also sought to file a late affidavit in response to Mr. Bajwa's affidavits to attempt to impeach the truthfulness of Mr. Bajwa's affidavits. The evidence in this late affidavit was not compelling and did not directly contradict or undermine the evidence in Mr. Bajwa's affidavits.

[49] For example, the affidavit stated that Mr. Bajwa's time entry should not be believed because it was recorded at 12:47 a.m. UTC on July 23, 2024, not July 22. This statement seems to reflect an apparent failure to understand that "UTC" meant Coordinated Universal Time, which on that date was 7 hours ahead of Pacific time (i.e. equivalent to 5:47 p.m. PDT, July 22, 2024), which did in fact confirm that Mr. Bajwa met with Mr. Abid on July 22.

[50] Given the lack of any compelling evidentiary foundation to Mr. Abid's arguments, I therefore decline to find that Mr. Bajwa was untruthful in his affidavits.

b) Failure to Explain Delay

[51] Mr. Abid has not articulated reasons in his affidavits for the near two-year delay in filing the Proposed Counterclaim as against the Realtor Respondents. His application therefore contains a key evidentiary gap.

[52] The limitation periods for pursuing the various counterclaims have long since expired. In the application response of the Realtor Respondents, counsel helpfully

summarized the specific claims being advanced in the Proposed Counterclaim, and their respective expired limitation periods, which I adopt and include below:

- The Realtor Respondents promised/represented to Mr. Abid that they would secure the necessary financing: The representation was allegedly made in January 2022, but Mr. Abid must have known that the promise/ representation had not been fulfilled by August 8, 2022, when Mr. Abid breached the contract. The limitation period for this claim would have expired in August 2024.
- The Realtor Respondents were negligent in failing to advise Mr. Abid of the risks of presenting a subject-free offer and agreeing to pay the deposit directly to the plaintiffs: The risk of presenting a subject-free offer is that if the offer is accepted there is an unconditional and binding contract and the buyer will be obligated to complete the purchase on the completion date. Mr. Abid must have known that this risk had materialized when he breached the contract on August 8, 2022. The limitation period for this claim would have expired in August 2024.
- The Realtor Respondents represented that if Mr. Abid forfeited his \$100,000 deposit, the plaintiffs would not pursue further damages and would re-market the Property. The allegation here is that there was, to Mr. Abid's mind, a settlement agreement with the plaintiffs whereby Mr. Abid agreed to forfeit his \$100,000 deposit in exchange for the plaintiffs' commitment not to pursue any further claims against Mr. Abid. If such a representation was made, which is denied, Mr. Abid must have known that the Realtor Respondents were speaking as agents for the plaintiffs and with authority to bind the plaintiffs. The facts supporting this claim are not addressed in Mr. Abid's affidavit, but Mr. Abid must have known that there was no settlement agreement at the latest when he was served with the plaintiffs' claim in March 2024. The limitation period for this claim has likely already expired.

[53] Mr. Abid provided no compelling reasons in his application materials to justify an order enabling him to file the Proposed Counterclaim outside the applicable limitation periods. Instead, his argument appeared to be based solely on the supposition that Mr. Bajwa had failed to advise him about the Notice of Discontinuance, which is a factual premise I have rejected.

c) Absence of Prejudice

[54] In my view, Mr. Abid failed on the application to demonstrate that a denial of his ability to file the Proposed Counterclaim as against the Realtor Respondents would create any prejudice for him.

[55] As was persuasively argued by counsel for the Realtor Respondents, the claims and allegations in the Proposed Counterclaim are unnecessary for Mr. Abid in the context of this proceeding. This is because it is undisputed in the pleadings that the Realtor Respondents were the real estate agents acting for the plaintiffs (with Mr. Abid also taking the position that there was a form of implied dual agency with the Realtor Respondents, representing both the buyer and seller). Given that the Realtor Respondents were agents of the plaintiffs, with actual and ostensible authority to represent the plaintiffs in the transaction, any fault of the Realtor Respondents can be raised by Mr. Abid as a full defence to the claims of the plaintiffs: see e.g. *Adams*. As noted recently in *Bradley v. British Columbia (Public Guardian and Trustee)*, 2023 BCSC 1674 at para. 24:

[24] If fault were found to be attributable to an agent of the plaintiff, s. 4 would not apply and third party notice concerning those allegations should be struck because under the *Adams* Rule the plaintiff is responsible for the actions of their agent. This was described by McLachlin J.A. in *Adams* at paras. 20-21:

[20] Generally speaking, all acts falling within the scope of an agency between the proposed third party and the plaintiff fall into the category of acts for which the plaintiff is responsible and hence are not the proper subject to third party claims. At the same time, it must be recognized that a person acting as agent to the plaintiff may undertake duties

toward co-contractors and others outside the scope of his agency. To put it another way, the plaintiff's agent may, as a consequence of his relations with other contractors on the project, assume duties toward persons other than the plaintiff, for breach of which the plaintiff would not be vicariously liable...

[21] Another situation where a third party claim cannot be raised because the obligation is essentially that of the plaintiff is where the claim is one that the proposed third party should have advised or assisted the plaintiff to mitigate his damages. In that situation, like the situation of agency, third party proceedings are redundant because the defendant can obtain any relief to which he may be entitled by reduction of the plaintiff's claim if he makes out the defence of failure to mitigate.

[56] As such, the Proposed Counterclaim, which seeks no damages over and above the amount required to offset the claims of the plaintiffs, is superfluous to the Amended Response to NOCC and unnecessary.

Conclusion

[57] Based on all the foregoing, I decline to exercise my discretion to (1) set aside the Notice of Discontinuance or the Settlement Agreement and (2) to allow Mr. Abid to file and serve the Proposed Counterclaim as against the Realtor Respondents.

[58] However, leave is granted to Mr. Abid to file and serve the Proposed Counterclaim as against the plaintiffs, who did not oppose the application. In my view it is not plain and obvious that the Proposed Counterclaim will not succeed as against the plaintiffs, in light of the principles in *Adams*. Further, I note that the Amended Response to NOCC, which contains material facts similar to those in the Proposed Counterclaim, was filed in 2024, so there is not the same issue with delay as there is with respect to the Realtor Respondents.

IV. ORDER

[59] The application of Mr. Abid is dismissed as against the Realtor Respondents but allowed as against the plaintiffs.

[60] The Realtor Respondents were substantially successful on this application and should have their costs to be assessed at Scale B.

[61] The Realtor Respondents also sought special costs on the application, principally on the basis that Mr. Abid had suggested or implied on the application that Mr. Bajwa, a lawyer, had sworn false affidavits.

[62] While such a suggestion by Mr. Abid was serious and raises justifiable concern, I am not persuaded that a special costs award is merited under the circumstances. While courts have recognized that unestablished allegations of dishonesty made against a professional can amount to reprehensible conduct for the purposes of a special costs award, courts have also stated that unestablished allegations alone, without more, are not sufficient: *Gill v. Zhang*, 2017 BCSC 47 at paras. 28-30.

[63] In *Patriquin v. Laurentian Trust of Canada Inc.*, 2002 BCCA 6, a case involving unfounded allegations made against a lawyer as a party, the Court of Appeal stated:

[29] Not every allegation of this kind will attract special costs, otherwise lawyers would become a protected class. I would want to avoid a policy on costs which discouraged legitimate claims against lawyers. Fraud was neither pleaded nor insinuated in this case. The plaintiff did not accuse Mr. Jackie of dishonesty or incompetency. I conclude, with respect, that the trial judge erred in principle by characterizing as reprehensible the allegations made in this case.

[64] In this respect, I note that Mr. Bajwa was not named a party to this proceeding nor was fraud pleaded against him by Mr. Abid. Mr. Bajwa was referred to solely as a witness and the allegation was merely that his recollection about the meeting of July 22, 2024 was mistaken (for example, Mr. Abid did not use the word “fraud” in his application materials, nor did he allege that Mr. Bajwa was dishonest or

incompetent). In this respect, as noted by Justice Voith (then a member of this Court) in *Gill*, a distinction must be drawn between a case where allegations are made against a lawyer acting in his or her capacity as a lawyer and where the lawyer appears solely as a witness:

[46] When such allegations are made, without any foundation or proper basis, they are attacks on the lawyer acting in his or her capacity as a lawyer.

[47] This is to be contrasted with a lawyer who appears as a witness. In such cases the attack, though still without foundation, is likely to be directed at the lawyer qua witness. Though it is not possible to draw fine lines such attacks are less likely to be directed at the lawyer's professionalism, professional existence or professional reputation. Instead, they are more likely to be directed, as they would with any other witness, at the lawyer's evidence.

[48] In such cases, I consider that an unfounded assertion that a lawyer's evidence is dishonest stands on the same footing as would that same unfounded assertion if made against a lay witness.

[49] Having said this, an assertion, made without any basis or foundation, that a witness is dishonest, is wrong. Such an assertion, in real terms, means that the witness is trying to mislead the court. Such groundless assertions, depending on the circumstances, may well attract special costs. Such assertions are not, however, more likely to attract a special cost award simply because the witness is a lawyer or other professional person. Instead the issue will turn on the nature of assertion, how egregious that assertion is, how persistently or repeatedly it is made, whether it is repeated in the face of a judicial admonition and other like considerations.

[65] In this case, Mr. Abid did not assert that Mr. Bajwa is dishonest or otherwise impugn his character, nor did he do so repeatedly in the face of judicial admonition. While Mr. Abid's allegation that Mr. Bajwa's affidavit evidence was untruthful was certainly serious I am not persuaded under the circumstances that it was sufficiently reprehensible to merit an award of special costs.

"M. Taylor J."