

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1145194 B.C. Ltd. v. MKB Investments Ltd.*,
2026 BCSC 1185

Date: 20260611
Docket: S227630
Registry: Vancouver

Between:

**1145194 B.C. Ltd.
1076897 B.C. Ltd.**

Plaintiffs

And

**MKB Investments Ltd., Berarco Investments Ltd.,
Berar Capital Corporation, 1180423 B.C. Ltd., 651365 B.C. Inc.,
653965 B.C. Inc., and 1140912 B.C. Ltd.**

Defendants

- and -

Docket: S227631
Registry: Vancouver

Between:

**1145198 B.C. Ltd.
1145182 B.C. Ltd.**

Plaintiffs

And

**1140909 B.C. Ltd.
1140910 B.C. Ltd.
1140912 B.C. Ltd.
1140398 B.C. Ltd.**

Defendants

- and -

Docket: S232892
Registry: Vancouver

Between:

**1145194 B.C. Ltd.
1076897 B.C. Ltd.**

Plaintiffs

And

**MKB Investments Ltd.
Berar Capital Corporation
1247381 B.C. Ltd.
1368236 B.C. Ltd.**

Defendants

- and -

Docket: S236346
Registry: Vancouver

Between:

Karmjit Kaur Berar

Plaintiff

And

**Sundeep Gill, Pawandeep Gill, 1318801 B.C. Ltd.,
Amarjeet Gill, 1145198 B.C. Ltd. and
Warwickshire Homes (Bedford Gardens) Ltd. Inc. No. BC1510644**

Defendants

Corrected Judgment: The text of the judgment was corrected at the cover page on
June 25, 2026.

Before: The Honourable Justice Stephens

**Oral Reasons for Judgment
(Mid-trial Ruling re use of Excerpts of Certain Documents and
Cases during Cross-Examination of Mr. Carmichael)**

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Y. Li-Reilly

Place and Date of Trial/Hearing:

Vancouver, B.C.
June 11, 2026

Place and Date of Judgment:

Vancouver, B.C.
June 11, 2026

Overview

[1] **THE COURT:** Yesterday at the end of the hearing day, I heard submissions on a notice of application filed by the Gill plaintiffs (the "Gill Parties") on June 10, 2026, to use certain excerpts of documents and cases during the cross-examination of Mr. Carmichael, a proposed expert to be called by the Berar parties on Friday, June 12, 2026. Specifically, the Gill Parties seek the following at para. 1 of their notice of application:

1. An order pursuant to Rule 7-1(21) granting the Applicants leave to use the documents listed at Schedule "A" during the cross-examination of the Defendants' appraisal expert, Stuart Carmichael.

[2] The application is opposed by certain Berar parties, as I will call them, who are represented by Ms. Basham, KC. They submit that the Gill Parties have failed to comply with the applicable document production rules and the court should not exercise its discretion to permit use of these documents on cross-examination.

[3] By way of brief background, yesterday was day 35 of this trial. Mr. Carmichael is scheduled to testify tomorrow on day 37 of the trial, which is scheduled to be the last day of evidence in this trial before closing argument.

[4] Yesterday I gave my decision, with reasons to follow, and these are my Reasons.

[5] Given the timing of the application in the context of this trial, I am giving concise and expeditious Reasons for Judgment.

Discussion

[6] Mr. Carmichael is to be called as a proposed land appraisal expert. I understand he has produced two expert appraisal reports for use in this trial.

[7] The documents sought to be relied on fall into two categories: (1) documents including planning reports, community and neighbourhood plans, a report to municipal council, servicing plans, a judgment said to have been registered against

a comparable, and a road improvement package; and (2) five BC Supreme Court decisions.

[8] There are 13 listed documents in Schedule A of the notice of application at items 1 to 13, and then five reported cases, also at Schedule A, at items 14 to 18.

[9] I am advised by counsel for the Berar parties that those documents comprise about 1,030 pages.

[10] The Gill Parties submit that the documents go to Mr. Carmichael's comparable sales in his reports.

[11] I add in passing that item 13 of Schedule A of the notice of application is an excerpt from a textbook, the use of which in cross-examination is not objected to and I do not deal with it in these Reasons.

[12] I was told that notice by the Gill Parties was given of the intended use of these documents listed in Schedule A late last weekend, which would be effective notice as of Monday morning, June 8, 2026.

[13] I was further advised that excerpts of the documents sought to be used by the Gill Parties were delivered on Monday evening. Specifically, I am advised that:

On June 8, 2026, the Applicants provided the Defendants with highlighted extracts showing what sections of documents 1 to 11 they intended to refer to during Mr. Carmichael's cross-examination.

[14] Again, Mr. Carmichael is scheduled to testify on June 12, 2026.

[15] Thus, Mr. Carmichael will have had notice of these documents for four business days by the time he testifies and notice of the excerpts for three days. The Gill Parties propose to cross-examine him on the excerpts of the documents: see notice of application page 5, para 7.

Are the disputed documents subject to Rule 7-1?

[16] The Gill Parties submit in the notice of application that documents which could be used solely to challenge the credibility of a witness or which may be subject to privilege as part of the solicitor's brief (until the expert says something inconsistent with them) do not need to be disclosed. The Gill Parties rely on *Cook v. Kang*, 2020 BCSC 575, which states:

[24] Plaintiff's counsel cited *Beazley v. Suzuki Motor Corporation*, 2010 BCSC 613 [*Beazley*], in which Mr. Justice Goepel, then a member of this Court, stated at para. 8 that "[m]ost documents which go to challenge an expert's opinion on credibility are not documents which are related to the matter in question in the action".

[17] The *Beazley* case appears to have dealt with the former R. 26 (see para. 6) not the current document production R. 7-1.

[18] The Gill Parties also relied on *Cahoon v. Brideaux*, 2010 BCCA 228 at para. 29, but that case also appears to deal with the former R. 26: see paras. 37–39.

[19] However, the actions before me are governed by R. 7-1 of the subsequently-enacted *Supreme Court Civil Rules*.

[20] I add that *Tran v. Kim Le Holdings Ltd.*, 2011 BCSC 1463, considered *Cahoon*, but nevertheless proceeded to analyze the request to use the documents in that case under R. 7-1(21).

[21] Rule 7-1(1)(a)(ii) states that each party of record to an action must prepare a list of documents in Form 22 that lists, among other things, "all other documents to which the party intends to refer at trial".

[22] In my view, this sub-rule captures the documents the Gill Parties seek to use on cross-examination of Mr. Carmichael set out in Schedule A of the notice of application.

[23] These documents were not listed and were not produced until very recently, and I must determine if I should exercise my discretion to permit them to be used at trial.

Should I exercise my discretion under Rule 7-1(21) to permit use of the disputed documents and cases?

[24] Rule 7-1(21) gives the court this discretion. It states:

Party may not use document

Unless the court otherwise orders, if a party fails to make discovery of or produce for inspection or copying a document as required by this rule, the party may not put the document in evidence in the proceeding or use it for the purpose of examination or cross-examination.

[Emphasis added.]

[25] I also approach this application cognizant of the rule of proportionality. Rule 1-3 states this principle in the context of the object of the *Supreme Court Civil Rules*:

(2) Securing the just, speedy and inexpensive determination of a proceeding on its merits includes, so far as is practicable, conducting the proceeding in ways that are proportionate to

- (a) the amount involved in the proceeding,
- (b) the importance of the issues in dispute, and
- (c) the complexity of the proceeding.

[26] The claims in these actions are significant.

[27] The leading case on R. 7-1(21) is *Tran*, summarized in *Cowichan Tribes v. Canada (Attorney General)*, 2020 BCSC 1175 [Cowichan], which principles I adopt for the purposes of this ruling.

[28] Considering the *Tran* factors, I find:

a) Whether there is prejudice to the opposing parties due to lack of notice

[29] There is some prejudice to the Berar parties from late notice of the proposed use of these documents in cross-examination.

[30] However, by the time he testifies, Mr. Carmichael will have had three business days to review the excerpts of the documents sought to be relied on (and the five cases) and, of those, complete documents as well. While that timing is tight, in my view he has had some opportunity to refer to them to prepare, especially if cross-examination is limited to use of the excerpts of the documents which the Gills wish to refer to in cross-examination.

[31] This is unlike *Cowichan* where leave was denied to use documents on cross-examination of an expert, where the court found that: "It is simply not an answer to this prejudice to say I gave him an extra hour at lunch to read over the documents": at para. 13.

[32] Here Mr. Carmichael will have had three days.

b) Whether there is a reasonable explanation for the parties' failure to disclose the documents

[33] Counsel for the Gill Parties said he did not believe he had to list the documents intended to be used in Mr. Carmichael's cross examination. As I have stated above, I disagree with that. Counsel gave no other explanation for the delay.

[34] There is not a satisfactory explanation for the delay, but I note that in *Tran* the court did allow cross-examination documents to be used in the interests of justice in somewhat similar circumstances, and where the court's view was that "excluding the use of the document may indeed prevent the determination of the issue on the merits": see *Tran* at paras. 24, 31.

[35] While this factor is not in the Gill Parties' favour, it is not dispositive of the application.

c) Whether excluding the documents would prevent the determination of the issue on the merits

[36] Given the nature of the documents and the topic of Mr. Carmichael's evidence, in my view there is a potential that excluding the use of the documents may prevent the determination of these actions on their merits. These documents all

appear to be documents that could potentially go to the weight of his opinions, although nothing in these reasons expresses any view on that at this time.

[37] Unlike *Cowichan* at para. 19, I cannot say that it is "not clear to me that this evidence is critical to the defence"; nor is it "apparent that this evidence may be put to other witnesses." *Cowichan* is distinguishable on this factor.

[38] This factor militates in favour of the use of the documents at issue.

d) Whether the interests of justice weigh in favour of allowing the documents to be used in cross-examination

[39] In my view, the interests of justice weigh in favour of allowing the documents and cases in Schedule A of the notice of application to be used in cross-examination.

[40] However, and after hearing submissions on this, I make this finding on the basis that the prejudice of doing so is mitigated by limiting the Gill Parties during cross-examination to use of the excerpts of the documents provided to the Berar parties, which is what I understand the Gill Parties are proposing to do.

[41] Prejudice has further been mitigated by the passage of time from the date of the notice of these excerpts on Monday evening to the date of Mr. Carmichael's evidence this coming Friday.

[42] In short, in my view, the ends of justice require the use of the document excerpts and the cases referred to at Schedule A of the notice of application, and I exercise my discretion to permit the Gill Parties to use them in cross-examination in the circumstances: *Tran* at paras. 32, 34.

Order Made

[43] For these reasons I find that the documents and cases referred to in Schedule A of the notice of application filed June 10, 2026, fall within R. 7-1(1) and ought to have been listed, but I nevertheless grant para. 1 of the notice of application

and exercise my discretion under R. 7-1(21) to permit the Gill Parties to use the following during Mr. Carmichael's cross-examination:

- 1) the excerpts of the documents provided by the Gill Parties; and
- 2) cases referred to in Schedule A of the application.

[44] This ruling expresses no view on whether any of those documents or cases are admissible if objected to on other grounds, and I reserve the right to make rulings on any admissibility issues which may arise during cross-examination.

[45] This ruling is also without prejudice to the Berar parties' ability to seek to use other parts of the documents, not contained in the excerpts of the documents I have permitted to be used by the Gill parties, in re-examination of Mr. Carmichael, and I express no view on that at this time.

“Stephens J.”