

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kinnaird v. Response Biomedical Corp.*,
2026 BCSC 1256

Date: 20260707
Docket: S251619
Registry: Vancouver

Between:

Dr. Barbara Kinnaird

Plaintiff

And

Response Biomedical Corp.

Defendant

And

Dr. Barbara Kinnaird

Defendant by way of Counterclaim

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the Plaintiff:

R.A. Jarvis

Counsel for the Defendant:

B. Li

Place and Date of Hearing:

Vancouver, B.C.
April 1, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 7, 2026

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Overview

[1] The plaintiff, Dr. Barbara Kinnaird, obtained a prejudgment garnishing order against the defendant, Response Biomedical Corp., her former employer, in this claim in which she alleges that Response Biomedical dismissed her without cause and without notice. Response Biomedical seeks to set aside the garnishing order.

[2] Dr. Kinnaird's written employment contract with Response Biomedical provided for Response Biomedical to pay her 24 months of base salary and a prorated incentive payment as pay in lieu of notice in the event that Response Biomedical did not provide 24 months of written notice of severance. Dr. Kinnaird sought and obtained a pre-judgment garnishing order in the amount of \$646,418.86 to be paid into court on November 13, 2025.

[3] Response Biomedical advances the following arguments in support of setting aside the garnishing order:

- a) Dr. Kinnaird's claim is not for a liquidated debt because the severance to be paid under the employment contract was to be paid over 24 months, only 10 of which had elapsed when the garnishing order was made.
- b) Dr. Kinnaird did not discharge her duty to disclose all material facts when applying for the garnishing order because she did not append the amended response to civil claim in which Response Biomedical raised the defence of dismissal for cause or the amended counterclaim in which Response Biomedical seeks damages for breach of contract, breach of fiduciary duty, and disgorgement of profit earned through conflict of interest activities.
- c) The garnishing order is unjust, unnecessary, and an abuse of process causing Response Biomedical undue hardship.

[4] Dr. Kinnaird submits that her claim is for a liquidated debt because it is a claim pursuant to an employment contract that provides for the payment in lieu of

notice. Dr. Kinnaird submits that she disclosed all material facts as required by the jurisprudence, and those facts that Response Biomedical alleges she did not disclose do not go to whether the debt was justly due and owing or are not relevant and material to the issuance of the garnishing order. Dr. Kinnaird argues that factors to be considered when determining whether it is just and equitable to set aside the garnishing order favour maintaining it.

Legal Principles

[5] A prejudgment garnishing order is considered an extraordinary pretrial order because it can have significant financial repercussions for a defendant against whom there has not been a finding of liability made.

[6] The principal object of such an order is to provide a plaintiff with security for the claim being advanced: *Key Insurance Services Partnership v. T. Clarke Insurance Services Ltd.*, 2010 BCSC 1857 at para. 17. It is an exception to the ordinary rule that there can be no execution before a judgment has been made in which there has been a determination of the parties' rights. Prejudgment garnishing orders are, therefore, granted sparingly and often on terms as their consequences can be severe: *Helicraft Enterprises Ltd. v. Quasar Helicopters Ltd.*, [1986] B.C.J. No. 2863 at para. 6, 1986 CarswellBC 3788 (B.C. Co. Ct.); *Ocean Floors Ltd. v. Crocan Construction Limited*, 2010 BCSC 409 at para. 16.

[7] Prejudgment garnishing orders are created by the *Court Order Enforcement Act*, R.S.B.C.1996, c. 78. Section 3(2)(d) of the COEA sets out the information that is statutorily required on an application for a prejudgment garnishing order. Because of the potentially severe financial consequences for a defendant against whom a prejudgment garnishing order has been made, strict adherence to the statutory requirements is required. In *Politeknik Metal San ve Tic A. Ş. v. AAE Holdings Ltd.*, 2015 BCCA 318 at para. 23, the Court of Appeal, citing *Golder Associates Ltd. v. North Coast Wind Energy Corp.*, 2010 BCCA 263 at para. 24, explained that compliance must be meticulous, but not perfect. Defects in the application materials

that do not create confusion or uncertainty as to the basis on which the order was issued are fatal.

[8] The requirements are set out in s. 3(2)(d) of the *COEA*. An affidavit by the plaintiff, his solicitor, or some other person aware of the facts must state that:

- (i) that an action is pending,
- (ii) the time of its commencement,
- (iii) the nature of the cause of action,
- (iv) the actual amount of the debt, claim or demand, and
- (v) that it is justly due and owing, after making all just discounts.

[9] Subsections 3(2)(d)(iv) and (v) of the *COEA* amount to a requirement that the plaintiff's claim be for a liquidated sum: *Politeknik* at para. 24.

[10] Section 5 of the *COEA* provides for a defendant against whom a garnishing order has been made to apply to the registrar or to the court for release of the garnishing order.

[11] Rule 8-5(8) of the *Supreme Court Civil Rules* provides that a court may change or set aside an order made without notice. The court may set aside a prejudgment garnishing order pursuant to R. 8-5(8) on the basis that the requirements in s. 3(2)(d) of the *COEA* are not satisfied. In addition the court may order that all or part of the garnished funds be released pursuant to s. 5(2) of the *COEA* on the basis that it is just to do so in all of the circumstances.

See: *Cummings v. Chen*, 2023 BCSC 266 at para. 30.

Liquidated Debt

[12] It is not disputed that Response Biomedical terminated Dr. Kinnaird on January 3, 2025. On January 9, 2025, Response Biomedical provided Dr. Kinnaird with a payment equating to eight weeks of pay in lieu of notice, which Response Biomedical asserted satisfied its statutory obligation. Dr. Kinnaird's counsel demanded the difference between pay equating to eight weeks and pay equating to 24 months. Response Biomedical did not respond.

[13] Response Biomedical asserts that Dr. Kinnaird's claim is not for a liquidated sum. It submits that the termination clause in the contract of employment provided Response Biomedical with the option of paying severance over 24 monthly installments, so the 24-month sum was not justly due and owing when the garnishing order was obtained in November 2025, 10 months after Dr. Kinnaird was dismissed. Dr. Kinnaird argues that claims made pursuant to such provisions are claims for a liquidated debt justly due and owing.

[14] A prejudgment garnishing order is only permissible where it is manifestly clear that the amount sought is a liquidated claim: *Politeknik* at para. 24. A claim in debt is a liquidated claim if the amount of the claim is fixed and "capable of being ascertained as a mere matter of arithmetic": *Dhaliwal v. Bonterra Resources Inc.*, 2019 BCCA 303 at para. 29. The difference between a liquidated debt and an unliquidated debt is when the amount to be recovered depends on the circumstances of the case and must be assessed based on what is reasonable or just: *Bear Ridge Railing MFG Inc. v. D.K. Railings Ltd.*, 2024 BCSC 1995 at para. 32. If the claim is truly an action for damages at large, it is not a liquidated claim, even if the plaintiff puts a precise number on the damages they are claiming: *Dhaliwal* at paras. 33–37.

[15] In *Hans v. Dynegent Technologies Inc.*, 2008 BCSC 494 at paras. 9 and 11, Master Scarth reviewed the law pertaining to the difference in actions for wrongful dismissal and actions based on a severance clause including ones where the severance can be paid over time. Master Scarth explained that the former give rise to claims for damages while the latter give rise to claims in debt. In *Pacific Ballet British Columbia Society (Re)*, 2009 BCSC 820 at para. 22, Justice C. Ross held that a claim for severance pay set out in a contract of employment, measured as months of salary in lieu of notice, is a claim for a debt, not damages. In *Wake v. Habitat for Humanity Society of Greater Vancouver*, 2013 BCSC 702 at para. 20, Justice Joyce, citing *Pacific Ballet*, held that a claim for pay in lieu of notice in an employment contract providing for pay in lieu of notice was a claim for a liquidated debt.

[16] Response Biomedical's submission is that the difference between those cases and this case is that in this case, the contract expressly provided for Response Biomedical to pay the severance in lieu of notice in equal installments over a 24-month period following the date of termination. Since the garnishing order was made 10 months after termination, Response Biomedical asserts that at least 14 of the payments were not yet due and owing.

[17] In *Hans*, the employment contract provided for "severance in the amount of your monthly Base Salary for a period of six (6) months". Master Scarth refused to set aside the garnishing order even though it was payable over six months, rejecting the defendant's argument that it was, therefore, not due and payable on the date of termination: at para. 14.

[18] Response Biomedical relies on *Groenheyde v. Pringle*, 1995 CanLII 3380 (B.C.S.C.) at paras. 10–11, in which Justice Cowan addressed the requirement that the liquidated debt be "due and owing". Justice Cowan held that where commissions were payable under a contract, but the jobs to which those commissions applied were not completed, the debt was not due and owing.

[19] The reasoning in *Groenheyde* is not applicable to this case because the reason the liquidated debt was not due and owing was because a condition to trigger the plaintiff's entitlement, *i.e.*, that the work be completed, had not been fulfilled. In this case, there is no question that 24 months of salary is owed if Dr. Kinnaird was dismissed without cause. The only issue is the time over which it could be paid. That is not a condition for the debt to be due and owing.

[20] Section 3(1) of the *COEA* defines a "debt due" as including "debts, obligations and liabilities owing, payable or accruing due and wages that would in the ordinary course of employment become owing, payable or due within 7 days" of the affidavit sworn in support of a garnishing order. Applying the concepts enunciated in several cases, including *Hans*, a severance provision in a contract does not give rise to a claim for damages to be assessed based on wages, but rather a debt for the amount of the wages to be paid. I therefore conclude that the severance provision in this

contract is a debt “owing, payable or accruing” and not “wages in the ordinary course of employment”. Assuming Dr. Kinnaird proves she was dismissed without cause, each month of the 24 months of pay in lieu of notice was payable or accruing due as at the time of her termination.

[21] I conclude that 24 months of pay in lieu of notice is a claim for a liquidated debt due and owing.

Disclosure

[22] Response Biomedical argues that the garnishing order cannot stand because in her affidavit in support of the garnishing order, Dr. Kinnaird did not disclose the serious allegations Response Biomedical makes in its amended response to civil claim and amended counterclaim. Those allegations include dismissal for just cause due to misconduct including conflict of interest and self-dealing.

[23] Dr. Kinnaird asserts that she disclosed that Response Biomedical was claiming that she was terminated for cause. She stated that in her affidavit because, as she deposed, by the time she applied for the garnishing order, Response Biomedical took the position that she was dismissed for cause even though it had not asserted it was dismissing her for cause at the time of termination.

[24] In applying for a garnishing order, as with applications made without notice generally, the applicant must disclose all facts known to the applicant that are material to the exercise of the court’s discretion to grant the order: *Key Insurance* at paras. 38–73; and *Politeknik* at paras. 30–33. A garnishing order obtained without notice to the defendant should not be sustained if the facts set out in the supporting affidavit as to the cause of action against a defendant (or in a notice of civil claim attached to the affidavit) are misleading or otherwise fail to disclose all material facts: *Politeknik* at para. 30; *Cummings* at paras. 33 and 53.

[25] The duty of disclosure on a party seeking an *ex parte* garnishing order is “a very high one”, notwithstanding that the form of the affidavit is “statutorily

prescribed”: *Opus Consulting Group Ltd. v. Ardenton Capital Corporation*, 2019 BCSC 1847 at para. 9; *Key Insurance* at para. 45.

[26] Despite its height, the requirement is not at large; it is constrained to facts that are relevant and material to the application. At para. 11 of *Opus*, Justice Mayer, citing *Environmental Packaging Technologies, Ltd. v. Rudjuk*, 2012 BCCA 342, held that the party seeking a prejudgment garnishment order has a broad duty to disclose information which is relevant and material to the statutorily prescribed contents of the affidavit and to present the full context of the criteria on an application for a garnishment order. See also *Key Insurance* at paras. 40 and 46; *Evans v. Umbrella Capital LLC*, 2004 BCCA 149 at para. 33.

[27] A registrar issuing a prejudgment garnishing order does not adjudicate the merits of the claim, so disclosure of facts going to the strength or weakness of a claim are not required: *Bear Ridge* at para. 58. Defences to a claim are only relevant and material, and thereby required to be disclosed, where they go to the statutory requirements of whether there is a liquidated debt that is due and owing.

[28] In this case, Dr. Kinnaird attached her amended notice of civil claim to her affidavit and deposed that although she was advancing several claims, her application for a garnishing order only applied to the severance amount, which she defined as 24 months of salary less the lump sum payment she received when she was terminated. She deposed that she was not aware of any set-off or counterclaim which would reduce the amount owing. She deposed that Response Biomedical was alleging just cause for her dismissal and had brought a counterclaim against her, but she did not depose as to the substance of the claims made in the counterclaim.

[29] Dr. Kinnaird’s affidavit included her evidence that Response Biomedical alleged that she had been dismissed for cause. That provided context to the registrar but would not, in and of itself, affect the issuance of the order because it does not go to whether Dr. Kinnaird’s claim was for a liquidated debt due and owing.

[30] The amended response to civil claim and the amended counterclaim alleges that Dr. Kinnaird acted in a conflict of interest while working for Response

Biomedical, contrary to her contractual commitments and common law duty of loyalty obligations and fiduciary duty, amounting to misconduct that justified her dismissal. While that would provide further context for the defence of just cause termination, it would not affect the issuance of the garnishing order because it did not assist, one way or the other, in determining whether the claim was for a liquidated debt that was due and owing.

[31] The amended response to civil claim also alleges that the termination without just clause in the employment contract is unenforceable because Dr. Kinnaird participated in the board of directors vote at which it was approved and that was inappropriate, in a conflict of interest and in breach of fiduciary duty. Response Biomedical pleads the provisions of the *Business Corporations Act*, S.B.C. 2002, c. 57, which it asserts empowers the court to make orders it considers appropriate where a director has inappropriately voted on a resolution approving a transaction, including rendering a transaction unenforceable.

[32] In its amended counterclaim, Response Biomedical repeats the factual allegations it makes in its response to civil claim. It claims damages for breach of contract, damages for breach of fiduciary duties and disgorgement of profit obtained through the alleged conflict of interest activities. The amended counterclaim does not advance a claim for a liquidated debt to be set off from Dr. Kinnaird's claim. In such circumstances, the substance, particulars and details of the claims in the counterclaim are not relevant and material to the garnishing order: *Bear Ridge* at para. 42.

[33] In *Opus*, Justice Mayer found that the duty of disclosure required the plaintiff to disclose to the registrar the fact that the defendant took the position that it had paid the relevant invoices pursuant to wire transfer instructions received via an Opus email account but that the plaintiff's email had been breached and a third party had absconded with the funds. Justice Mayer held that this defence was material to whether there was a claim for a liquidated debt due and owing. If the invoices had been paid, nothing was due and owing.

[34] This case is not analogous. There is no dispute that Response Biomedical terminated Dr. Kinnaird without notice and did not pay her the severance required by the contract in lieu of notice. While the question of whether Dr. Kinnaird was terminated without cause is a live issue, that is not a fact that goes to whether there is a claim for a liquidated debt due and owing.

[35] I conclude that Dr. Kinnaird's affidavit on the application for a garnishing order was adequate.

Whether the Garnishing Order is Just in All the Circumstances

[36] Section 5(2) of the *COEA* provides the court with a discretion to set aside a garnishing order if it causes undue hardship, is an abuse, unnecessary, or unjust in the circumstances. A defendant relying on s. 5(2) bears the onus of establishing a lack of necessity and must demonstrate that there is little or no chance of a "dry judgment": *Yinghe Investment (Canada) Ltd. v. CCM Investment Group Ltd.*, 2023 BCSC 2295 at para. 62.

[37] In *Bear Ridge* at paras. 63–64, Justice Elwood held that the following factors are relevant to an application under s. 5(2): the relevant merits of the case; whether the garnishing order is an abuse of process or unnecessary, and the existence or potential for undue hardship arising out of the garnishment.

[38] With regard to the relevant merits, while the court may consider the apparent strength of the claim and defence, it cannot make a determination on the merits: *Min-En Laboratories Ltd. v. Westley Mines Ltd.*, 57 B.C.L.R. 259 at para. 5, 1983 CanLII 177 (C.A.).

[39] In this case, there are two primary issues about the merits. The first is whether the dismissal was for just cause based on Response Biomedical's allegations that Dr. Kinnaird engaged in activities with competitors of Response Biomedical that cost Response Biomedical revenue and which amounted to self-dealing. The second is whether the severance provision in Dr. Kinnaird's contract is unenforceable because Dr. Kinnaird participated in the board of directors vote on the terms of her employment contract.

[40] Response Biomedical has detailed what it submits are significant and inappropriate dealings, some remunerated, that Dr. Kinnaird had with several organizations that it asserts were competitors in the same sector as Response Biomedical. Response Biomedical has led evidence that it asserts shows that Dr. Kinnaird was setting up her own company to provide coaching services to the leadership teams of biomedical companies during the year prior to her termination. Response Biomedical argues that Dr. Kinnaird was distracted by her extra-employment commitments and did not devote herself to the financial well-being of Response Biomedical, resulting in multiple years of poor financial performance.

[41] Dr. Kinnaird does not deny she had involvement with other organizations, but denies it was at the level that Response Biomedical asserts and denies that it benefited her at Response Biomedical's expense. She submits that the alleged conflict of interest conduct included: serving on the board of a not-for-profit organization that trains leadership teams; attendance at a meeting of a life sciences organization under the umbrella of Global Affairs Canada which advised Canada where to focus its efforts in trade; being a member of the Advisory Committee for Genome BC for which she was remunerated a few thousand dollars but which also brought Response Biomedical funding and contracts. She denies she was sub-contracting work to a competitor of Response Biomedical until she was told she was going to be terminated about a month before she was officially terminated. She denies she was indirectly involved with a direct competitor of Response Biomedical; she deposed that company was a start-up with no product and no sales, but she assisted the CEO, a friend of hers, with his "pitch deck" to attract investors.

[42] Dr. Kinnaird has led significant evidence about the events of her termination, including that she was not told she was terminated for cause at the time of the termination and not until after she had refused to accept a severance payout of less than what her contract of employment provided for. She deposed, and Response Biomedical has not disputed, that Response Biomedical purported to pay her statutory termination in lieu of notice.

[43] Response Biomedical also alleges that Dr. Kinnaird voted, but not should not have voted, on the directors' resolution to approve her employment contract including the 24-month severance term. Response Biomedical points out that Dr. Kinnaird's predecessor had a 12-month severance term, and that several of the other directors who voted in favour of the contract reported to Dr. Kinnaird.

[44] Dr. Kinnaird submits that Response Biomedical has blown this issue way out of proportion. Dr. Kinnaird asserts that in 2015, when she was promoted to the position of CEO, she had been working for the company for over 10 years. She deposed that she accepted the position on the basis that the terms of her employment would be renegotiated because of her length of service with the company and her requirement for security. She asserts that her renegotiated contract, including the 24-month severance term, was negotiated by Response Biomedical's Compensation Committee, which recommended that the Board of Directors approve it. She asserts the 12-month severance in the previous CEO's employment contract did not set a strict precedent because she had many more years with the company than did the former CEO.

[45] Dr. Kinnaird deposed that the resolution to approve her employment contract was one of several consent resolutions which were circulated by email, and each of the directors, including her, were asked to sign the consent resolutions. They all did. She deposed that the employment agreement was also put to a "say-on-pay" advisory vote of the shareholders at the next Annual General Meeting of the company and was endorsed with a 99.95% vote in favour.

[46] The parties have divergent views on the issue of whether Dr. Kinnaird was terminated for cause, including whether she was responsible for the company's poor financial performance for several years prior to her termination. It is not possible for me to make any determinations in that regard on bare bones affidavit evidence without cross-examination. However, it is anomalous that while Response Biomedical pleads that it terminated Dr. Kinnaird for cause, it has not led any evidence on this application from anyone who states that a decision was made to

terminate the CEO for cause or why Response Biomedical attempted to persuade Dr. Kinnaird to take severance other than provided for in her contract, and why Response Biomedical paid statutory severance.

[47] With regard to the issue of board approval of the employment contract, again, the parties' views on whether Dr. Kinnaird inappropriately participated in that vote are divergent and do not lend themselves to resolution based on affidavit evidence on a chambers application. Response Biomedical submitted that Dr. Kinnaird was able to influence other board members who reported to her and who would not "vote against the boss", but has led no evidence from any of those other board members despite that she is no longer their boss. The employment contract was approved over 10 years ago. According to the evidence of Dr. Kinnaird, her potential termination was signalled to her over a month prior to the official termination. Response Biomedical has not explained, on this application, why it did not address the allegedly void severance provisions at the time of termination or before.

[48] At this stage I am unable to make any firm conclusions about the merits. Response Biomedical has not led any evidence to back up its defences of termination for cause or undue influence on the directors' vote on the employment contract. I am unable to accept Response Biomedical's assertions that its defences are strong.

[49] Response Biomedical has given evidence that while it is a financially sound company and will pay any judgment rendered against it, the garnishing order has caused it to delay paying rent and has hampered its pursuit of product development initiatives. Its evidence on those topics is skeletal. It has not indicated what financial backstopping it has from its majority shareholder, which Dr. Kinnaird described as a Chinese public company listed on the Shanghai stock exchange. Dr. Kinnaird also deposed that there have been discussions at the board level about the majority shareholder's views that Response Biomedical should be shut down. Dr. Kinnaird deposed that when she was terminated, the majority shareholder's representative told Dr. Kinnaird that the majority shareholder might shut down Response

Biomedical. According to Dr. Kinnaird, that potential was referred to in an attempt to persuade Dr. Kinnaird to accept less severance than provided for in her employment contract to protect herself from that eventuality.

[50] I readily accept that tying up \$650,000 of cash is financially unwelcome. However, I cannot relate to that to the financial well-being of Response Biomedical. Its financial statements show that up to October 2025 (I do not know when the company's fiscal year starts and ends), the year-to-date revenue was just under \$8 million and the month of October revenue was \$625,000 less than budgeted. It would appear that Response Biomedical's struggles to pay rent and continue initiatives could be due to depressed revenue.

[51] The record has many references, from both parties, of disappointing financial results. However, causes of the financial problems are not well enough developed for me to understand the extent to which the garnishing order is causing actual financial harm.

[52] With regard to how long the garnished funds will be unavailable to Response Biomedical, Dr. Kinnaird has been attempting to set hearing dates for a summary trial since August 2025 but has been unable to secure dates when both sets of counsel are available. Based on the conflicting evidence on this application, the suitability for summary trial must be questioned.

[53] I conclude that the amount of time the garnished funds will be held is unknown because no notice of trial has been issued, there is no date for a summary trial, and it cannot be assumed that the matter will be resolved by summary trial. This factor weights in favour of setting aside the garnishing order.

[54] As I have related, Dr. Kinnaird deposed that there was discussion about winding up Response Biomedical at a board meeting in December 2024. During Dr. Kinnaird's termination meeting, the majority shareholder's representative threatened Dr. Kinnaird that because that could happen, Dr. Kinnaird's severance was not secure and she should be willing to take less. This is evidence of the

prospect of a dry judgment that Response Biomedical has not addressed in a meaningful way. This factor weighs in favour of maintaining the garnishing order.

[55] The only factor that weighs in favour of setting aside the garnishing order or returning the funds garnished is that the fund will be held for a unknown amount of time. However, given that is not due to Dr. Kinnaird's delay in attempting to get it on for summary trial, and given that it is not clear that the garnishing order is the only or primary cause of Response Biomedical's financial problems, I do not consider it just to order that the garnished funds be returned to Response Biomedical.

[56] Having considered all of these factors and the evidence, I conclude that Response Biomedical has not established that the garnishing order should be set aside or the garnished funds returned on the basis that the order is an abuse, is causing undue hardship, is unnecessary, or unjust in the circumstances.

Disposition

[57] The application of Response Biomedical is dismissed.

"Matthews J."