

Court of King's Bench of Alberta

Citation: Pacific West Systems Supply Ltd v A & K Tiles & Drywall Ltd, 2026 ABKB 633

Date:

Docket: 2503 10884, 2603 03356

Registry: Edmonton

Between:

2503 10884

Pacific West Systems Supply Ltd.

Plaintiff

- and -

A&K Tiles & Drywall Ltd., Joga Dhothar also known as Joga Singh Dhothar, Blackmud Enterprises Ltd., Daljit Singh Aulakh, Tavinder Kaur Aulakh, Gurmeen Aulakh, Harjot Aulakh, Royal Bank of Canada, Canadian Western Bank, The City of Leduc, Fortis Alberta Inc., 1098949 Alberta Ltd., 412660 Alberta Ltd., The Toronto Dominion Bank., Her Majesty The Queen in Right of Canada c/o The Minister of National Defence, ATCO Gas and Pipelines Ltd., Epcor Distribution & Transmission Inc., Telus Communications Inc., Shaw Cable Systems Limited., and Epcor Water Services Inc.

Defendants

-and -

A&K Tiles & Drywall Ltd., and Joga Dhthar also known as Joga Singh Dhothar

Respondents

Between:

2603 03356

Pacific West Systems Supply Ltd.

Plaintiff

-and -

Dhothar Developments Inc.

Defendant

**Ruling on Costs
of the
Honourable Justice Douglas R. Mah**

A. Background

[1] This costs ruling results from my decision in *Pacific West Systems Supply Ltd v A & K Tiles & Drywall Ltd*, 2026 ABKB 526 (the Decision).

[2] In one action, Pacific West Systems Supply Ltd (Pac West) had sued A&K Tiles & Drywall Ltd (A&K) and Joga Dhothar (Joga) for a debt of some \$802,000 arising from the supply of construction materials under a revolving line of credit. A&K is the principal debtor and Joga is the guarantor. In a second action, Pac West sued Dhothar Developments Inc (DDI) for knowing receipt of A&K funds that should have been used to pay down A&K's debt to Pac West.

[3] In the Decision, I dismissed the application of Pac West against A&K and DDI for a pre-judgment Attachment Order under s 17 of the *Civil Enforcement Act (CEA)* to freeze the net proceeds of sale of a DDI property, understood to be in the area of \$200,000. The application, when I heard it, was aimed at those proceeds only. In dismissing the application, I found:

- Based on the record, it was likely that Pac West would be able to establish some debt against A&K, but the amount is unknown and subject to reconciliation.
- Based on the record, it was unlikely that Pac West would be able to establish its claim against DDI because of the lack of reliable evidence and because of what appeared to be a limitation problem.
- Further, DDI's offer on the record to place the disputed funds in trust pending resolution or further Court Order meant that there was no danger of dissipation.

[4] The parties agree that A&K and DDI as successful Respondents are entitled to costs arising from the application but are unable to agree to the scale and quantum.

B. Positions

[5] A&K seeks partial indemnity of 45% of verified actual costs (or \$35,395.41 out of an application-specific total of \$66,150) based on *McAllister v Calgary (City)*, 2021 ABCA 25 at paras 41-42. It argues:

- Rule 10.33 supports partial indemnity having regard to result, number of steps, complexity, size of the record, and amount of effort expended.
- 45% is proportional given the exceptional nature of the record and the extraordinary relief sought.

- A comparator case is ***Southwest Design & Construction Ltd v Janssens***, 2024 ABKB 698 at paras 2-3, 9-13 which also involved an injunction that was refused, a dense record and multiple defendants.
- A cross-check using tariff amounts (Schedule C, Column 4) shows that the amount requested is not out-of-line.
- Post-application work to prepare the costs submission was required.

[6] DDI requests party-and-party costs of \$9,250.91 based Schedule C, Column 3, specifically for Item 7(2) [contested adjournment - \$150], Item 8(1) [contested application with brief - \$2,025], Item 5(1) [preparation for questioning - \$1,350], Item 5(2) [first ½ day and second ½ day for questioning - \$1350 + \$1350], plus \$500 for Costs Brief, \$1,500 for discharge of Certificates of Lis Pendens, and disbursements of \$772.54 for transcripts and \$187 for filing fees.

[7] DDI submitted that Pac West's case against DDI was weak, for reasons identified by the Court, the remedy sought was extraordinary, and the proceedings damaging and stressful for DDI. While DDI noted that enhancement might be available to it for these reasons, it did not actually request enhancement.

[8] Pac West argues that costs for A&K/Joga should be restricted to Schedule C, Column 4 (given the claim for \$802,000), Items 7(2) [contested adjournment application] and 8(1) [contested application with brief] and for DDI, Schedule C, Column 3 (in view of \$200,000 amount of proceeds in dispute) for the same items. Pac West says:

- The Court did not find that PacWest acted reprehensibly, scandalously, or outrageously, nor did it identify exceptional circumstances which warrant awarding costs on any other basis than party-and-party, relying on ***Secure 2013 Group Inc v Tiger Calcium Services Inc***, 2018 ABCA 110 at paras 12-15.
- Solicitor-client costs are not justified merely because one party was unsuccessful in the litigation, even if the "application has little merit": ***Qualex-Landmark Towers Inc v 12-10 Capital Corp***, 2024 ABCA 219 at para 8.
- The Court found that Pac West has a reasonable likelihood of establishing part of its debt claim against A&K and understood how some of the evidence advanced by DDI might give rise to suspicion. Overall, while the application was unsuccessful, there was no finding that it was improper, frivolous or vexatious.
- The extraordinary nature of pre-judgment attachment does not by itself attract enhanced costs. Costs must still be assessed with the factors set out in Rule 10.33 in mind.
- Citing ***McAllister*** at para 55, Pac West submits that items 5(1) and 5(2) should be excluded on the basis that such costs apply to questioning on affidavits of records.

C. Costs Principles

[9] The caselaw relating to costs has been a fertile area since the Court of Appeal released its seminal **McAllister** decision in 2021. I attempt to synthesize the applicable principles, as they pertain to this case, in the paragraphs below.

[10] The primary objective of a costs ruling is to provide a “reasonable and proper” measure of indemnity to a party for costs incurred in successfully advancing or defending an action, proceeding, or application: Rule 10.31(1); **McAllister** at para 2. In certain circumstances, costs award may also serve policy objectives, such as discouraging unnecessary litigation or sanctioning improper litigation conduct: **McAllister** para 2; **Fernando v Fernando**, 2025 ABKB 575.

[11] The determination of costs is inherently discretionary and recognizes judicial principles of reasonableness, fairness, balance and equity: **JBRO Holdings Inc v Dynasty Power Inc**, 2022 ABCA 258 at para 26; **Greco v Calgary (City)**, 2026 ABKB 153 at para 41, **JH Drilling Inc v Barsi Enterprises Ltd**, 2025 ABKB 456; and **JC v KC**, 2023 ABKB 96.

[12] In determining scale, the options include party-and-party costs as determined under Schedule C, or a multiple or fraction thereof, or a percentage (up to 100%) of actual legal costs: Rule 10.31(3); **McAllister** at para 25, **Barkwell v McDonald**, 2023 ABCA 87 at paras 53 & 55.

[13] While reliance on Schedule C is not mandatory, it retains utility “day in and day out ... in a great variety of situations” and has the advantage of providing parties with greater certainty as to their exposure to costs, is simple, efficient, and inexpensive to apply, and may avoid the need for a lengthy costs inquiry: **McAllister** at paras 59-60, 62; **Barkwell** at para 53.

[14] There are no legal presumptions in favour of using a percentage of actual legal expenses or Schedule C to set reasonable and proper costs. The overriding issue is proportionality. Proportionality means having regard to the amount involved or the significance of the issue to the parties. It also means balancing indemnity of the winner without unreasonably discouraging access to the court, or unduly penalizing the losing party, and considering the factors in Rule 10.33: See **McAllister** at para 45; **Barkwell** at paras 52-61; **Sutherland v Sutherland**, 2023 ABCA 185 at para 4; and **Sunridge Nissan Inc v McRuer**, 2023 ABCA 128 at paras 57-58; **Kantor v Kantor**, 2023 ABCA 329 at paras 12-15, **Prevatt v Prevatt**, 2024 ABKB 386 at para 18.

D. Reasons

[15] In this case, I accept that the governing concept is that proportionality.

[16] I appreciate that A&K’s counsel says he stripped out superfluous and unrelated legal costs from his account and that by comparison to a Schedule C model, A&K’s proposal for 45% of actual costs is reasonable. I also agree that the material was somewhat voluminous and the factual narrative advanced by each party was detailed.

[17] But in the end, the questions presented to me were quite simple: Did the evidence show to the required standard of reasonable likelihood that a purported \$400,000 advance from A&K to DDI, as shown in the 2022 financial statements, somehow morphed into the 81 Avenue property owned by DDI? If so, should Pac West be allowed to preserve the \$200,000 in net proceeds from the sale of that property by way of pre-judgment attachment because there are reasonable grounds to believe that DDI was dissipating its property to avoid enforcement?

[18] As presented to me in its final form, the application was restricted to that exact \$200,000 (which was, or would be, the property of DDI) and A&K did not have any jeopardy in this application. A&K was required to put in its perspective with regard to the origin of the claimed indebtedness and the alleged transfer of \$400,000, and while it eventually faces the possibility of a civil judgment, it did not face attachment of its assets. I realize that Pac West revised its position at the hearing with regard to the extent of remedy it was seeking and that A&K had to prepare as if its assets were in jeopardy in the application. However, ultimately, I was only asked to decide the fate of the \$200,000 of net sales proceeds, funds in which A&K had no stake.

[19] Even though Pac West abandoned any actual remedy against A&K at the hearing, its Notice of Application and Brief advanced pre-judgment attachment and other relief against both A&K and Joga. A&K and Joga, through their joint lawyer, was required to address the initial scope of remedy in both their joint Reply Brief and in preparation for argument. Thus, despite having no risk in the application itself, it is still entitled to costs.

[20] I decided in the end that Pac West had not adequately made out a case that any funds had flowed from A&K to DDI so as to enable the latter's acquisition of the 81 Avenue property. The \$802,000 debt claim by Pac West against A&K remains unadjudicated and unresolved. The most I could say, and did say, is that A&K owes some money, but I don't know how much. Liability for any amount is still subject to litigation.

[21] All to say, A&K played a useful role in the application by providing perspective and information but in the hearing itself was not in danger of any monetary consequences or attachment of its assets. Therefore, as a matter of proportionality as far as A&K is concerned, I do not agree that A&K is entitled to 45% of its actual costs.

[22] With regard to the ***Southwest Design*** case, cited by A&K as a comparator, it is true that the Respondents there were successful in resisting an injunction and were awarded 45% of their actual costs. The analogy ends there. ***Southwest Design*** is a case about a former employer (a construction contractor) attempting to enjoin former employees (who had formed their own company) from operating or bidding on contracts or soliciting any former clients or employees. The former employer alleged breach of fiduciary duty, and misappropriation of both business opportunity and confidential information. The factual and legal argument occurred in the context of the tripartite test in ***RJR-Macdonald Inc v Canada (Attorney General)***, 1994 CanLII 117 (SCC), [1994] 1 SCR 311. Had the injunction been successful, the new company and the Respondent principals would have been prohibited from working. Thus, the stakes were high.

[23] The case also involved more than following a money trail. In reading the merits decision at ***Southwest Design & Construction Ltd v Janssens***, 2024 ABKB 502, I note that Bourque J was required to determine the existence or not of fiduciary status of 2 individuals, whether they had breached their common law duty of good faith and loyalty by starting up their own company and soliciting employees and whether they had misappropriated business opportunities on 9 projects, while using misappropriated confidential information. I see the complexity as higher.

[24] Every costs case coming before the Court is a matter of discretion. For me, the sum of \$200,000 that was in issue before me in this application would not justify indemnity for legal costs in the order of \$35,000 unless there was some other aggravating factor. This would be particularly so where the party seeking the costs did not stand to lose any money in the application.

[25] I dismissed Pac West's application, but I did not find that its claim for an Attachment Order was brought in bad faith or that it had acted in a reprehensible or scandalous manner.

[26] I recognize that pre-judgment attachment is an extraordinary remedy. But it is not extraordinary in the sense that it is rare or unusual. The Court hears these applications routinely. What is extraordinary is the *effect* of the remedy on the party whose property is attached, that is, deprivation of one's property and enforcement in advance of judgment. I agree with Pac West that the extraordinary nature of the remedy sought does not automatically or by itself elevate the scale of costs where the remedy is denied.

[27] As to personal stresses experienced and reputational damage caused by the bringing of the application, I say this. First, DDI's counsel mentioned these factors but did not ask for costs enhancement. Second, these factors came in by way of submission and not evidence. Third, unless one is a seasoned litigant, many court applications weigh heavily on the individual. I think of family law cases, in particular. Without more, this cannot be a reason for enhancement of costs.

[28] Thus, having regard to the relative level of factual and legal complexity involved in this case and the amount involved, I find that party-and-party costs are proportional and appropriate in this case. I admit that I am influenced by the fact that DDI, the entity that did stand to lose its property to pre-judgment attachment, is not asking for costs beyond party-and-party costs.

[29] With regard to the claimed Items 5(1) & (2), my reading of **McAllister** at para 55 is different than that of Pac West's counsel. In my reading, it does not speak to whether Items 5(1) & (2) are restricted to questioning on Affidavits of Records as opposed to other types of affidavits. Rather, para 55 makes a more general comment about how Schedule C is somewhat arbitrary in identifying litigation steps that are compensable and that it is eerily silent with regard to some important steps that measurably advance litigation.

[30] In this case, Items 5(1) & (2) directly address the distinct steps of preparation for and conduct of questioning that were undertaken here. The type of affidavit is not specified. I conclude that these Items are recoverable by A&K/Joga and DDI.

[31] With regard to some of the other Items claimed by A&K/Joga, I note:

- They claim a fee for a partial application that turned into an adjournment before Harris J on February 19, 2026. I will treat it as a successful contested adjournment application under Item 7(2). Pac West takes no issue with inclusion of the adjournment Item.
- There is a claim for Item 5(4) described as "Preparation of approximately 50 written questions required to complete Virginia Tomé's questioning: equivalent to one full day of oral-questioning attendance." This Item relates to written interrogatories in lieu of continued oral questioning, which is contemplated by Rule 5.24 where the parties consent. It is allowed.
- Item 5(3) – counsel presence for questioning when acting for neither witness nor examining party – allowed, as A&K/Joga certainly had an interest in observing this questioning.

Outcome

[32] In the result, A&K/Joga are permitted recover their costs of this application based on Schedule C, single Column 4 for Items 5(1), 5(2), 5(3), 5(4), 7(2) and 8(1), plus disbursements and applicable GST. DDI shall recover its costs of this application based on Schedule C, single Column 3 for Items 5(1), 5(2), 7(2) and 8(1) and disbursements and GST as claimed in its written costs submission.

[33] I decline to recognize any further steps post-application steps. Pac West has not had the opportunity to comment on those steps. Anything claimed but not recognized in this decision may be claimed again at the conclusion of the now consolidated action.

[34] I award no costs to A&K/Joga and to DDI for preparation of briefs for this contested written costs application. I did not accept the position of A&K/Joga on enhanced costs. As regards DDI, overall, there was mixed success. Aside from 2 Items, Pac West basically agreed with the costs claimed by DDI. I also declined some additional costs sought by DDI.

Heard by way of written submissions on the 12th, 20th, 21, day of August, 2026.

Dated at the City of Edmonton, Alberta this 8th day of September, 2026.

Douglas R. Mah
J.C.K.B.A.

Appearances:

Carly Toronchuk, MLT Aikins LLP
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