

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *De Thomas Family Holdings Ltd. v Glen Valley Cannabis Ltd.*,
2026 BCSC 1915

Date: 20261005
Docket: S233848
Registry: New Westminster

Between:

De Thomas Family Holdings Ltd.

Plaintiff

And

**Glen Valley Cannabis Ltd., Grant Curtis, Jillian Clair Curtis,
Cion Farms Ltd. and Paul De Thomas**

Defendants

- and -

Docket: S208211
Registry: Vancouver

Between:

Grant Brian Curtis and Jillian Clair Curtis

Plaintiffs

And

Glen Valley Cannabis Ltd.

Defendant

Before: The Honourable Justice Sukstorf

Reasons for Judgment

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Plaintiff's Written Submissions Received:

May 11, 2026

Defendants' Written Submissions Received:

May 19, 2026

Place and Dates of Hearing:

Port Coquitlam, B.C.

January 26, 2026

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Place and Date of Judgment:

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October 5, 2026

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Overview

[1] This litigation arises from the breakdown of both a cannabis business venture and a marriage. The dispute concerns millions of dollars Ceridwen Holdings Ltd. ("Ceridwen"), formerly DeThomas Family Holdings Ltd. ("DFH"), alleges it advanced to companies created to operate a cannabis cultivation business in Langley, British Columbia. What began as an effort to recover those funds has become intertwined with ongoing family law proceedings between Kimberly Cawson and Paul DeThomas concerning the ownership, management, and value of their interests in Ceridwen.

[2] Ceridwen is a family holding company established during Ms. Cawson and Mr. DeThomas's marriage. It financed the cannabis venture undertaken by Mr. DeThomas and his longtime friends, Grant and Jillian Curtis. The venture began through Cion Farms Ltd. ("Cion"), incorporated in January 2018, and later through Glen Valley Cannabis Ltd. ("GVC"), incorporated in April 2018. Ceridwen alleges it advanced substantial funds to those entities and relies on personal guarantees to claim repayment from Mr. DeThomas and the Curtises. The Curtises' deny executing the guarantees and, alternatively, dispute their legal effect.

[3] By 2019 and 2020, the venture had begun to unravel. Disputes arose over the repayment of Ceridwen's advances and the business's financial affairs. At the same time, Ms. Cawson and Mr. DeThomas separated on July 9, 2020, leading to contentious family law proceedings. The parties' shares and other interests in Ceridwen form part of the asset pool at issue in those proceedings. As such, Ceridwen's commercial claims have significant consequences beyond the present action.

[4] On November 19, 2020, DFH commenced this action against GVC and the Curtis defendants. In February 2022, the claim was expanded to include Mr. DeThomas and Cion. Although the Curtis defendants defended the action, Mr. DeThomas, GVC, and Cion did not. The court entered default judgment against them on June 2, 2022, with damages to be assessed later. The litigation

subsequently proceeded primarily between Ceridwen and the Curtis defendants and culminated in a settlement agreement reached in October 2023 (the “Settlement Agreement”).

[5] The present applications arise against the backdrop of a restraining order made in the family law proceeding under s 91 of the *Family Law Act*, SBC 2011, c 25 [FLA]. That order prohibits dealings with certain assets, including assets held by Ceridwen, without consent or further order of the court. Mr. DeThomas contends that Ceridwen's settlement with the Curtis defendants improperly compromises a valuable corporate asset and breaches that order. Ceridwen disputes that characterization and says the settlement represents a commercially reasonable resolution of disputed claims.

[6] These reasons address applications heard together in this action and Vancouver Registry Action No. S208211. Mr. DeThomas and GVC seek to set aside the default judgment entered against them; Cion did not join in that application. Ceridwen and the Curtises’ bring separate applications to distribute the \$350,000 held in trust from the 2020 sale of land and a manufactured home (the “Holdback Funds”) in accordance with their Settlement Agreement. Ceridwen also seeks an assessment of damages exceeding \$9 million to the extent that the default judgment remains in place.

[7] Although these applications raise distinct legal issues, they share a common factual context. The Court must determine how a family holding company may pursue and compromise commercial claims while the ownership and value of that company remain the subject of active family litigation. The applications also require the Court to balance the principles of finality that favour enforcing judgments and settlements against the broader interests of justice and the need for disputes to be resolved on a proper evidentiary foundation.

Facts

The Parties and Their Relationships

[8] Ms. Cawson is presently the sole director of Ceridwen. Mr. DeThomas ceased to be a director of Ceridwen effective September 12, 2019. The notice of change of directors was filed on September 30, 2019. Ms. Cawson says his resignation was intended to avoid potential conflicts of interest as Ceridwen contemplated recovery efforts against the Curtises and the companies involved in the cannabis venture.

[9] Mr. DeThomas is currently the sole director and president of GVC and a director of Cion.

[10] Grant Curtis served as a director of Cion and was formerly a director and corporate secretary of GVC.

The Relevant Restraining Order

[11] The order material to the Settlement Agreement was pronounced by Master Nielsen (as he then was) on August 4, 2023, in the family proceeding (the “Restraining Order”). It vacated and replaced a without-notice order pronounced the previous day. A separate restraint had earlier been made against Mr. DeThomas. The August 4, 2023 order directed to Ms. Cawson and the corporations she controls governs the present issue.

[12] The Restraining Order applies to Ms. Cawson personally and in her capacity as majority shareholder, director, or officer of the entities listed in Schedule A, defined as the “Corporations”, as well as to any third party notified of the order. Schedule A expressly includes Ceridwen.

[13] Paragraph 2(a) restrains the transfer, sale, conversion, disposition, encumbrance, assignment, or similar dealing with assets held personally, corporately in the Corporations, or within the Emerald Willow Trust in which

Mr. DeThomas has or may have an interest, without his prior written consent or further order of the Court.

[14] Paragraph 2(c) permits certain expenditures, including expenditures in the ordinary course of business. It expressly provides, however, that such business does not include the liquidation of corporate assets or the dissipation, transfer, or other disposition of assets of the Corporations, including a transaction that may have the effect of defeating or adversely affecting Mr. DeThomas's interest in those assets.

[15] The Restraining Order provides that Ms. Cawson may apply to set it aside or vary it on seven days' notice to Mr. DeThomas. It remained in force when Ceridwen entered into the Settlement Agreement on October 10, 2023. Mr. DeThomas did not provide prior written consent, and no further order authorizing the agreement had been obtained.

The Business Venture and Financing Arrangements

[16] In 2017 and 2018, Mr. DeThomas and Ms. Cawson, together with Grant and Jillian Curtis, embarked upon a cannabis cultivation and business venture.

[17] To finance the operations, Ceridwen (then DFH) alleges that it advanced a series of loans to Cion between February and August 2018. The Curtises' deny that those advances were made and put Ceridwen to proof.

[18] Ceridwen relies on personal guarantees dated September 2018 that identify Cion as the borrower and extend to its present and future indebtedness. Mr. DeThomas disputes the scope and enforceability of his undertaking. The Curtises' deny executing the guarantees attributed to them and advance alternative defences concerning their effect.

[19] Later in 2018, the business operations were transferred from Cion to GVC. Ceridwen relies on a document dated December 31, 2018, headed "Consolidated Promissory Note" and described in its pleading as the "Consolidation Agreement".

The document identifies GVC as borrower and records a mortgage payable of approximately \$3.17 million and an operations payable of approximately \$3.16 million. I refer to that document as the Consolidated Promissory Note.

[20] Ceridwen further alleges that it advanced approximately \$2.19 million to GVC in 2019 and 2020. The Curtises' also dispute whether Ceridwen made those advances.

[21] During the same period, GVC occupied warehouse premises owned by Ceridwen. Ceridwen relies on a lease providing for monthly rent of \$25,000. It pleads that the parties subsequently agreed to defer collection until GVC became profitable, at which point the unpaid rent would be repaid with interest. Ceridwen also pleads that it retained the right to demand payment of the rent at any time. The parties dispute the existence and effect of the alleged rental obligations.

Sale of the Property and Holdback Funds

[22] In 2017 and 2018, the Curtises' purchased and installed a manufactured home on land used by the cannabis operation, at a cost of approximately \$350,000. In 2020, GVC, which owned the land, agreed to sell it together with the manufactured home for approximately \$3.6 million.

[23] The Curtises' claimed that \$350,000 of the sale proceeds was payable to them for their home. On August 14, 2020, they commenced an action against GVC seeking payment of that amount and registered a certificate of pending litigation ("CPL") against the land.

[24] On or about August 17, 2020, GVC, the Curtises and the purchaser reached the 2020 Holdback Agreement. The Curtises' agreed to discharge the CPL on condition that \$350,000 of the sale proceeds (the "Holdback Funds") would be paid into Fraser Litigation Group's trust account and held pending agreement or court order.

[25] Ceridwen consented to the holdback through Ms. Cawson while preserving its claim to priority over the funds as second mortgagee. The Curtises' maintained that the proceeds attributable to their home were not subject to Ceridwen's mortgage. The holdback preserved the disputed funds without resolving those competing claims.

[26] The sale of the land and manufactured home was completed on August 21, 2020, with the CPL discharged and the Holdback Funds placed in trust. Ceridwen alleges that approximately \$1.48 million remained owing under its mortgage after the sale.

Commencement of the Litigation and Default Judgment

[27] Ceridwen commenced this action on November 19, 2020, against GVC, Grant Curtis and Jillian Clair Curtis. Pursuant to a court order dated February 2, 2022, Ceridwen filed an Amended Notice of Civil Claim on February 9, 2022, adding Cion and Mr. DeThomas as defendants. The Curtis defendants filed a response and actively participated in the proceedings. No response was filed on behalf of GVC, Cion, or Mr. DeThomas before the court entered default judgment. Mr. DeThomas subsequently filed a response on July 9, 2025, and GVC filed a response on October 20, 2025.

[28] Mr. DeThomas was personally served with the amended pleading on April 10, 2022.

[29] In his affidavit, Mr. DeThomas explains that his decision not to defend the action was deliberate, based on what he describes as a misapprehension of adversity. He deposes that, because the plaintiff company was a family asset, he believed the action was intended to recover funds from his former business partners, the Curtises, pursuant to their personal guarantees, for the benefit of the family. He states that he trusted his then-spouse, Ms. Cawson, who managed the family's business and legal affairs, and believed she was acting in the family's best interests.

Mr. DeThomas further deposes that he was unrepresented at the time and found the pleadings' legal terminology confusing and intimidating.

[30] In an email dated May 11, 2022, reproduced at para 11 of Ceridwen's written submissions dated May 11, 2026, Mr. DeThomas advised Jennifer R. Loeb, counsel for Ceridwen, that he did not dispute the claims and would not retain counsel. He expressly asked her to proceed, writing: "Please proceed with the default judgment."

[31] On June 2, 2022, the Court entered default judgment against Mr. DeThomas, GVC and Cion, with damages and costs to be assessed. The judgment was subsequently registered against several properties in which Mr. DeThomas held an interest.

The Settlement Agreement and the Present Applications

[32] In October 2023, Ceridwen, acting through Ms. Cawson, entered into a settlement agreement with Grant and Jillian Curtis.

[33] Under the Settlement Agreement, the Curtises' agreed to pay Ceridwen one-third of the \$350,000 Holdback Funds and 75% of the proceeds of any future sale of Grant Curtis' GVC shares. Ceridwen agreed to credit any share revenue against the Curtises' indebtedness and not to take steps to collect the remaining indebtedness until all the shares had been sold. The mutual releases were stated to become effective once the payment provisions in cls 2-4 had been met.

[34] Mr. DeThomas opposes the settlement. He contends that the settlement is improvident, substantially undervalues Ceridwen's claims against the Curtises, and constitutes an impermissible disposition of a family asset contrary to the Restraining Order made in the family proceeding.

[35] Ceridwen maintains that the agreement is a commercially reasonable compromise reflecting the risks and expense of continued litigation and collection. It says the agreement would provide a recovery from the Holdback Funds upon their

release and preserve an entitlement to a substantial portion of any future proceeds from the sale of Grant Curtis' GVC shares.

[36] As part of the settlement, Ceridwen and the Curtis' seek the release of the Holdback Funds presently held in trust. GVC, under the direction of Mr. DeThomas, has refused to consent to their release.

[37] In December 2025, Ceridwen also brought an application to assess damages pursuant to the default judgment. Ceridwen seeks approximately \$9.45 million in damages arising from the various loans, guarantees, mortgage obligations, rental obligations, and related indebtedness.

[38] Mr. DeThomas disputes the amount claimed. He submits that Ceridwen's calculations contain significant errors, including alleged double counting of indebtedness and unsupported interest calculations under the governing agreements.

[39] Against this factual and procedural backdrop, the Court must determine the present applications.

Preliminary Issues: Evidentiary Objections and Sequencing

Admissibility and Weight of the Affidavit Evidence

[40] Before addressing the substantive applications, I address objections to the admissibility and use of portions of the affidavit evidence. Rules 22-2(12), (13), and (14) of the *Supreme Court Civil Rules*, BC Reg 168/2009 [Rules] govern.

[41] *Rules 22-2(12) - 14* provide:

Subject to subrule (13), an affidavit must state only what a person swearing or affirming the affidavit would be permitted to state in evidence at a trial.

An affidavit may contain statements as to the information and belief of the person swearing or affirming the affidavit, if

- (a) the source of the information and belief is given, and
- (b) the affidavit is made

- (i) in respect of an application that does not seek a final order, or
- (ii) by leave of the court under Rule 12-5 (71) (a) or 22-1 (4) (e).

With leave of the court, an affidavit may be used in evidence despite an irregularity in its form.

[42] These provisions require separate attention to the evidence's foundation and intended use. Rule 22-2(12) permits evidence that would be admissible at trial, including under an applicable hearsay exception. Where a party relies on the information-and-belief exception in Rule 22-2(13), its requirements must be satisfied. Identifying a source does not, by itself, establish that an exhibited document is admissible for the truth of its contents. Rule 22-2(14) addresses irregularities in form.

[43] Mr. DeThomas and GVC object to Ceridwen's reliance on the financial records exhibited to Lin Jacques' affidavit sworn January 22, 2026. Ceridwen relies on those records in arguing that the applicants knew the extent of the indebtedness claimed. The applicants submit that the affidavit contains inadmissible hearsay, that its evidentiary foundation is inadequate, and that it is tendered in opposition to an application whose dismissal would be final.

[44] The objection requires distinguishing Ms. Cawson's explanations from the documents Ms. Jacques exhibited. Paragraphs 2-4 expressly identify Ms. Cawson as the source of the explanations of particular financial entries, and paragraph 1 states Ms. Jacques' belief in matters attributed to others. The objection therefore cannot be resolved on the footing that neither a source nor a statement of belief is identified. Whether the exhibited records may be relied on for their truth raises separate questions about their foundation and the purpose for which they are tendered.

[45] It is unnecessary to resolve those questions on these applications. My findings concerning the applicants' knowledge and delay do not depend on the disputed financial records; they rest on the pleadings served on them, the contemporaneous correspondence and Mr. DeThomas's discovery evidence. I do

not determine the amounts recoverable or the value of the GVC shares. Any reliance on the financial records to prove those matters at a subsequent trial or assessment will require an appropriate evidentiary foundation. I leave their admissibility for those purposes to be determined if necessary.

[46] Mr. DeThomas and GVC also object to Grant Curtis' first affidavit on the grounds that it was not properly sworn or affirmed and that the remote commissioning requirements were not met. Counsel advised the Court that the commissioning process had been followed. The Court need not determine those objections. The findings necessary to decide the holdback applications do not depend on that affidavit. Even accepting its evidence concerning the Curtises' financial circumstances, that evidence would not establish entitlement to the distribution sought.

[47] Ms. Cawson's fourth, fifth and sixth affidavits were filed on April 22, 2026. Their jurats expressly record that they were sworn. Each also acknowledges the solemnity of the affidavit and states that the deponent appeared before the commissioner by video technology using the prescribed remote commissioning process. I have considered those later affidavits in addressing the matters raised by her evidence.

[48] Ms. Cawson's fifth affidavit also provides evidence concerning her familiarity with Ceridwen's financial records, her personal involvement in the transactions, and the balances and calculations relied upon. I have considered that evidence without determining the amounts recoverable on these applications. The asserted inconsistencies between her recollection and the contemporaneous correspondence, records and discovery evidence concern reliability and weight. Where her recollection conflicts with reliable contemporaneous documents, I give greater weight to the contemporaneous record. I do not make final credibility findings.

[49] Accordingly, I leave the objections to Grant Curtis' first affidavit and the unresolved objections to Ms. Jacques' first affidavit undetermined because their resolution is unnecessary to the disposition of these applications.

Sequencing of the Applications

[50] The parties also disagree regarding the order in which the various applications should be addressed.

[51] I will first consider the applicants' conduct, their delay in seeking relief, and the evidence supporting their proposed defences. Those matters provide the starting point for determining whether to set aside the default judgment.

[52] Before reaching the overall balance, however, I will address the proposed implementation of the Settlement Agreement and distribution of the Holdback Funds. Those issues bear on Ceridwen's submission that its settlement with the Curtises removes the prospect of inconsistent findings in continuing litigation.

[53] I will then return to the overall interests of justice and determine the applications to set aside the default judgment. Finally, I will address the further proceedings required, including any remaining assessment of damages.

Issues

[54] The applications raise four principal issues:

Should the Default Judgment Be Set Aside?

[55] Mr. DeThomas and GVC seek an order setting aside the default judgment entered against them on June 2, 2022. Although the judgment was also entered against Cion, Cion is not an applicant, and no order setting aside the judgment against it is sought.

[56] The question is whether, having regard to all the circumstances, the interests of justice favour setting aside the judgment against either or both applicants.

May the Settlement Agreement Be Implemented Consistently With the Restraining Order?

[57] The notices of application filed by Ceridwen and the Curtises' seek distribution of the Holdback Funds rather than a free-standing declaration approving the Settlement Agreement. Because the proposed distribution is the consideration through which the Settlement Agreement is to be implemented, the following preliminary questions arise:

- a) whether Ceridwen's claims against the Curtises were corporate assets captured by the Restraining Order;
- b) whether the Settlement Agreement constituted a prohibited disposition of, or form of dealing with, those assets; and
- c) if the agreement was not permitted when made, whether the Court can direct its implementation.

Should the Holdback Funds Be Distributed?

[58] Ceridwen and the Curtises' seek distribution of the Holdback Funds in the proportions prescribed by the Settlement Agreement.

[59] The question is whether the Court may order the proposed distribution on the present application, having regard to the basis advanced for that allocation, the competing claims to the funds, and GVC's lack of consent.

How Should Any Remaining Assessment of Damages Proceed?

[60] Ceridwen seeks an assessment of damages to the extent that the default judgment remains in place.

[61] The question is whether the Court should determine any remaining assessment on the present record or proceed at trial, and what directions are required to coordinate it with the defended claims.

Legal Framework

Setting Aside a Default Judgment

[62] Rule 3-8(11) of the *Rules* provides that the Court may set aside or vary a judgment entered against a defendant who has failed to file a response to a civil claim. The *Rules*' discretion must be exercised in accordance with the interests of justice: *1163499 B.C. Ltd. v Holm*, 2026 BCCA 270 at paras 8, 19 [*Holm*].

[63] The considerations traditionally relevant to that determination were identified in *Miracle Feeds v D. & H. Enterprises Ltd.* (1979), 10 BCLR 58 at p 61 (BC Co. Ct.) [*Miracle Feeds*] and are summarized in *Holm* at para 8. They are:

- a) whether the defendant wilfully or deliberately failed to file a response;
- b) whether the defendant applied to set aside the judgment as soon as reasonably possible after learning of it, or has provided an explanation for any delay; and
- c) whether the defendant has a meritorious defence or, at least, a defence worthy of investigation.

[64] The applicant bears the burden of demonstrating that the interests of justice favour setting aside the judgment. The *Miracle Feeds* considerations are neither mandatory nor exhaustive and are not discrete preconditions, each of which must be satisfied. Their weight depends upon the circumstances: *Holm* at paras 8, 19, 23-29; *Forgotten Treasures International Inc. v Lloyd's Underwriters*, 2020 BCCA 341 at para 17 [*Forgotten Treasures*]. I do not accept Ceridwen's submission insofar as it would require an applicant who deliberately defaulted and delayed seeking relief to establish fraud or a shocking and unconscionable result as a separate prerequisite. Those adverse circumstances carry substantial weight, but the governing inquiry remains whether the interests of justice favour relief.

[65] The threshold for establishing a defence worthy of investigation is low. The applicant must point to some evidence showing that the proposed defence could

succeed; the applicant need not establish that it will succeed. At this stage, the Court does not decide the merits through a searching, extended, or detailed weighing of the evidence: *Holm* at paras 26-28; *Forgotten Treasures* at paras 26-30.

[66] A proposed defence may satisfy this threshold even if it would defeat only part of the plaintiff's claim, including by reducing the damages recoverable. The applicant must provide some evidence that the defence could succeed; its ultimate merits are not determined on this application: *Holm* at paras 27-28.

[67] The Court may consider any other circumstance relevant to the interests of justice, including practical problems that maintaining the judgment may create for the assessment of damages: *Holm* at paras 14, 19. Alleged prejudice from reopening must be supported by evidence: *Holm* at paras 29-30.

[68] The ultimate inquiry is therefore contextual. The Court must weigh the defendant's explanation and conduct, the timing of the application, the evidentiary foundation for and potential validity of the proposed defence, any demonstrated prejudice, and all other circumstances relevant to whether justice is better served by maintaining the judgment or permitting the dispute to be determined on its merits.

The Settlement Agreement & Section 91 of the FLA

[69] Section 91 of the *FLA* provides interim protection of the property at issue in a family proceeding. On a spouse's application, s 91(1) requires a restraint against disposal by the other spouse unless that spouse establishes that disposal will not defeat or adversely affect the property or pension claim. Section 91(2) also authorizes orders to preserve property and prohibit dealings that could defeat or adversely affect the applicant's interest.

[70] A restraining order made under s 91 remains binding until it is changed, suspended, or terminated under s 91(4), or until it expires according to its terms. Parties cannot treat the order as inapplicable merely because they consider a proposed transaction reasonable or believe it will not cause prejudice. The operative

question here begins with the wording of the order actually made and the circumstances existing when the Settlement Agreement was executed.

[71] Corporate personality must be kept distinct from family-property ownership. A spouse's shares or other interest in a corporation may be family property, but that does not make every asset of the corporation the spouse's property. The corporation owns its own assets and choses in action. A court does not disregard that distinction merely because one or both spouses own or control the corporation.

[72] A chose in action is nevertheless a form of property: *Sidhu v Sidhu*, 2025 BCCA 263 at paras 82-85 [*Sidhu*]; *Hannigan v Hannigan*, 2007 BCCA 365 at paras 55-56 [*Hannigan*]. Whether a corporate chose in action is restrained in a family proceeding therefore turns not simply on share ownership, but on the statutory context and, critically in this case, the express language and reach of the Restraining Order.

Distribution of the Holdback Funds

[73] The 2020 Holdback Agreement expressly provides that the funds are to remain in trust pending agreement of the parties or further court order. The agreement therefore contemplates judicial determination as an alternative to unanimous consent, but it does not predetermine the parties' substantive rights or itself supply a basis for any particular allocation.

[74] The *Rules* permit preservation of a disputed fund pending determination of entitlement. Rule 10-1(2) permits the Court to order that the fund be paid into court or otherwise secured. Under Rule 10-1(3), if property is the subject matter of a proceeding and will be more than sufficient to answer all claims on it, the Court may allow income from the property to be paid to an interested party or, in the case of personal property, order that part of the property be delivered or transferred.

[75] An applicant seeking final distribution must therefore establish a legal basis for the allocation sought, whether through an adjudication of the competing claims, an enforceable agreement among the interested parties, or some other substantive

entitlement. Rule 1-3 states the object of the *Rules*, and Rule 14-1 concerns costs; neither creates an entitlement to the fund. Where the proposed allocation is consideration for a broader settlement, the Court must also determine whether implementing that settlement is legally permitted.

Assessment of Damages Following Default Judgment

[76] If a default judgment remains in place, the plaintiff must nevertheless prove the damages recoverable under that judgment through admissible evidence: *Mclsaac v Healthy Body Services Inc.*, 2009 BCSC 1716 at para 44; *Besic v Kerenyi*, 2011 BCSC 1277 at para 53.

[77] *Rules* 3-8(12) and (13) provide for assessment at trial and permit the Court to give directions respecting the conduct of the assessment. Under Rule 3-8(12)(b), an assessment set for trial is ordinarily heard together with the action or issues involving the remaining defendants unless the Court otherwise orders.

Analysis

Should the Default Judgment Be Set Aside?

[78] Mr. DeThomas and GVC apply to set aside the default judgment entered against them on June 2, 2022. Ceridwen opposes the application. The Curtises' take no position, provided that no costs are sought against them. Although Mr. DeThomas's and GVC's conduct in permitting the judgment to be entered is closely connected, their applications require separate consideration because the claims against them and the grounds advanced in support of relief differ.

Background and Positions of the Parties

[79] As set out above, Ceridwen commenced the action against GVC and the Curtises on November 19, 2020. The Amended Notice of Civil Claim filed on February 9, 2022 added Cion and Mr. DeThomas as defendants. It sought declarations and judgment against GVC under the Consolidated Promissory Note

and related agreements and against Mr. DeThomas under a personal guarantee and a lease indemnity.

[80] Mr. DeThomas was then the principal and directing mind of GVC. He had formerly been involved in the management of Ceridwen, the family holding company controlled by his spouse, Ms. Cawson. He says that he regarded the litigation as a family strategy directed principally toward recovering funds from the Curtises for the benefit of Ceridwen and the family property pool.

[81] Mr. DeThomas acknowledges that he deliberately chose not to defend. He says he relied upon Ms. Cawson's greater legal and financial experience, found the pleading confusing and intimidating, and did not appreciate that Ceridwen would ultimately seek to impose substantial personal liability upon him while compromising its claims against the Curtises.

[82] Ms. Cawson disputes that account. In her sixth affidavit, at paras 3 and 5-7, she describes Mr. DeThomas's involvement in several businesses and states that she recalls him being aware of the content and purpose of the lending documents. She says she understood that he knew she required his personal guarantee. She also states that she understood he obtained legal advice when he ceased acting as an officer of Ceridwen. She denies discussing a strategy under which Ceridwen would recover the entirety of its advances from the Curtises.

[83] Ceridwen submits that both applicants made a deliberate and informed choice. It emphasizes that GVC had counsel when the amended pleading was served, that it received repeated notice of the impending default, and that neither applicant challenged the judgment for more than three years. It further submits that the documents and financial records establish GVC's indebtedness and that the applicants have not adduced evidence supporting a defence worthy of investigation.

[84] The applicants accept that the default was deliberate and that they did not bring the application promptly. They rely on the unusual family and corporate context, potentially valid defences to Mr. DeThomas's personal liability, challenges

to GVC's loan and lease documents, and the absence of demonstrated litigation prejudice to Ceridwen.

Deliberate Failure to Defend

[85] The first *Miracle Feeds* consideration weighs strongly against both applicants. This was not a case of inadvertence, a missed filing deadline, failed service, or neglect by counsel.

[86] Mr. DeThomas was personally served with the amended notice of civil claim on April 10, 2022. In May 2022, he advised Ceridwen's counsel that he would not retain a lawyer, file a response, or dispute the allegations. After being told that Ceridwen intended to proceed by default, he confirmed that he understood.

[87] GVC was represented by counsel when the amended pleading was accepted for service on March 18, 2022. Ceridwen's counsel wrote to GVC's counsel on May 11 and May 24, 2022 concerning the overdue response and the intention to seek default judgment. On May 26, 2022, GVC's counsel advised that the firm was no longer acting. No response was filed before judgment was entered.

[88] Mr. DeThomas's asserted misapprehension of adversity does not alter the deliberate character of either default. As GVC's directing mind, his decision not to respond was also GVC's decision. The pleading expressly sought judgment against both.

[89] The overlapping family and corporate relationships nevertheless provide some context for Mr. DeThomas's personal decision. The plaintiff was not an arm's-length commercial creditor, but a family holding company in which he claimed an interest. His evidence that he expected the action to benefit the family by pursuing the Curtises is not wholly implausible, particularly given that the litigation originally arose in the context of the dispute with them.

[90] Ms. Cawson disputes that account. In any event, any misunderstanding on Mr. DeThomas's part ceased to be objectively reasonable once he was served with

a pleading seeking judgment against him personally. His business experience and prior access to legal advice further undermine his claim that he did not appreciate the adverse nature of the proceedings. I therefore give that explanation limited weight in relation to his personal default.

[91] The explanation carries even less weight with respect to GVC. GVC was the principal debtor, was represented by counsel when served, and was expressly alleged to be in default under the governing commercial agreements. The family context provides no reasonable explanation for the corporation's decision to permit judgment to be entered without taking steps to preserve its position.

Delay

[92] The second *Miracle Feeds* consideration also weighs strongly against both applicants. The judgment was entered on June 2, 2022 and the application was filed on October 20, 2025, approximately three years and four and a half months later.

[93] Ceridwen sent Mr. DeThomas a copy of the default judgment on June 9, 2022. The judgment was subsequently registered against several properties in which he held an interest, and releases were later provided to facilitate particular transactions. Those events demonstrated that the judgment had practical consequences.

[94] More significantly, during his examination for discovery in the family proceeding on November 4, 2022, Mr. DeThomas acknowledged the judgment and said that GVC's indebtedness would be disputed. He estimated the amount owing at less than \$2 million while acknowledging that Ceridwen claimed more than \$9 million. By then, he plainly understood that a substantial dispute existed.

[95] GVC had counsel when the proposed settlement with the Curtises and the release of the Holdback Funds were addressed in 2023. Mr. DeThomas was represented when he sought relief from a judgment registration in 2024. Neither applicant applied at those times to set aside the judgment.

[96] The applicants submit that, after they objected to the proposed settlement in 2023, Ceridwen took no further steps to implement it, leading them to believe the matter would not proceed. They also say that, after retaining new counsel in July 2025, they needed time to obtain and review the relevant files and to respond to the holdback applications before bringing the present application. I have considered those explanations, together with the surrounding family litigation and the applicants' financial circumstances. While they may explain some of the later delay, they do not satisfactorily account for the entire period during which the applicants knew of the judgment and its consequences. The dispute over the proposed settlement did not suspend the judgment or eliminate the need to challenge it. The judgment's practical consequences were evident from its registration against Mr. DeThomas's properties and his 2024 application concerning one of those registrations.

[97] Ceridwen submits that a party should not be permitted to reverse a deliberate litigation choice simply because the consequences later become disadvantageous. I accept that submission. The applicants were aware of the judgment and its consequences for years, yet took no steps to challenge it. Their decision to prioritize other matters, and their later dissatisfaction with the course of the litigation, do not adequately explain that conduct. I therefore find that the application was not brought as soon as reasonably possible and that no satisfactory explanation has been provided for the full period of delay. This factor weighs in favour of finality. It does not, however, end the inquiry, which also requires consideration of the proposed defences and the overall interests of justice.

Defences Worthy of Investigation

[98] The third consideration must be assessed separately for each applicant. The threshold is low. An applicant need only point to some evidence showing that the proposed defence could succeed; it need not be shown that the defence will succeed: *Holm* at para 27. The Court does not determine the merits of the defence or engage in a searching weighing of the evidence at this stage: *Holm* at paras 26-28; *Forgotten Treasures* at paras 27-30.

Mr. DeThomas

[99] Mr. DeThomas relies first on the scope of his written guarantee. It identifies Cion as the “Borrower” and defines the guaranteed liabilities by reference to Cion’s present and future indebtedness. Ceridwen seeks to recover from him amounts owing under the Consolidated Promissory Note executed by GVC, subsequent advances, and lease-related obligations. Mr. DeThomas submits that his guarantee does not extend to all of those obligations.

[100] Mr. DeThomas relies on cls 6.4 and 6.5 of the guarantee. Clause 6.4 provides that the guarantee constitutes the entire agreement concerning the guaranteed liabilities, and cl 6.5 requires any amendment, modification, or waiver to be in writing and signed by the lender. He submits that the representations alleged by Ceridwen cannot, without more, expand the guarantee beyond its written terms to include GVC’s indebtedness.

[101] Ceridwen pleads that GVC assumed Cion’s indebtedness without releasing either Cion or the guarantors. It also pleads that Mr. DeThomas represented that the guarantee would apply to the current and future indebtedness of both corporations. Those allegations must be considered together with the terms of the guarantee, including cl 3.1(d), which provides that a novation of an agreement or security relating to the guaranteed liabilities does not release the guarantor.

[102] The transfer of indebtedness to GVC does not, by itself, establish a defence under the guarantee. The issue is whether the obligations for which Ceridwen now seeks recovery fall within the guaranteed liabilities and what effect, if any, the alleged representations have in light of cls 6.4 and 6.5. The guarantee, the Consolidated Promissory Note, and the pleaded basis of recovery provide a sufficient foundation for investigating whether Mr. DeThomas’s personal liability is narrower than Ceridwen alleges. I do not determine the proper interpretation of those documents on this application.

[103] Mr. DeThomas also disputes whether Ceridwen made the demand required by his guarantee before pursuing its claim against him. Clause 2.1 requires the guarantor to pay the guaranteed liabilities “forthwith upon demand by the Lender”. He submits that Ceridwen neither made the required demand nor pleaded that it had. Where a guarantee makes demand a condition of liability, the lender must make the required demand before the obligation is enforceable: *CSRS Ltd. v Embley*, 2008 BCCA 533 at paras 159-164 [*CSRS*]; *0867740 B.C. Ltd. v Quails View Farm Inc.*, 2014 BCCA 252 at paras 54, 56 and 60-62.

[104] I distinguish between the alleged failure to make a demand and the alleged failure to plead one. This application need not decide whether Ceridwen was required to plead demand in these circumstances. For present purposes, the issue is whether the evidence identifies a potentially valid defence based on compliance with the guarantee's demand requirement.

[105] Ceridwen distinguishes *CSRS* because it arose in the context of contractual solicitor-client costs. Although that was the issue before the Court, the Court nevertheless considered whether the guarantees required a demand before proceedings could be commenced: *CSRS* at paras 159-164. That analysis is therefore relevant here. Ceridwen also submits that the absence of a pre-action demand does not necessarily preclude enforcement and that any deficiency may be remedied. Whether that is so depends on the terms of the particular guarantee. Mr. DeThomas disputes that the demand required by cl 2.1 was made, and no pre-action demand under that provision appears in the materials before me. While cl 2.3 waives notice of the borrower's default, it does not expressly waive the demand required by cl 2.1. Whether the demand requirement was satisfied, waived, or otherwise unnecessary in the circumstances raises issues that warrant investigation. I make no final determination of those issues and do not conclude that the absence of an earlier demand necessarily defeats Ceridwen's claim.

[106] Ceridwen also relies on a September 11, 2018 email from Clint Harcourt, copied to Mr. DeThomas, stating that the lender could pursue any guarantor for the

full amount and that liability was not divided proportionately among the guarantors: Cawson's sixth affidavit, Exhibit A, p 5. That contemporaneous communication weighs against Mr. DeThomas's assertion that he did not appreciate his personal exposure under the guarantee. It does not, however, answer the distinct questions of whether the guarantee extends to all of the obligations now claimed or whether its demand requirement was satisfied. Those issues remain worthy of investigation.

[107] Mr. DeThomas also argues that the pleaded allegations cannot support the personal liability Ceridwen seeks to enforce. He relies on *Malik v Eagle Mountain Farms (A Partnership)*, 2021 BCCA 379 at paras 18-21, for the proposition that an application to set aside a default judgment must be considered by reference to the claim as pleaded when the judgment was obtained. He also relies on *Testar Estate v Hean Wylie & Company*, 2024 BCCA 129 at paras 55-56, where the Court concluded that the default judgment could not support an award of damages because the pleading did not state the necessary cause of action. I need not determine whether the alleged pleading deficiencies independently require the judgment to be set aside.

[108] I find that Mr. DeThomas has identified defences worthy of investigation concerning the scope of his guarantee and its demand requirement. Those defences do not resolve Ceridwen's separate allegation, pleaded at Part 1, para 42 of the amended notice of civil claim, that he personally indemnified GVC's obligations under the lease. I make no determination of liability under that alleged undertaking. A potentially valid defence to part of the claim is sufficient to meet this threshold. The significance of the identified defences must be weighed with Mr. DeThomas's deliberate default, his delay and the other circumstances in the overall interests-of-justice analysis.

GVC

[109] GVC's position requires separate consideration. The scope of Mr. DeThomas's personal guarantee and the demand required under that instrument

do not determine GVC's obligations as principal debtor. I therefore consider the evidence supporting the defences advanced on GVC's behalf.

[110] The amended notice of civil claim pleads that GVC is bound by and in default under the Consolidated Promissory Note, the Subsequent Loans, the Rent Payment Agreement, and the Loan Repayment Agreement. The Consolidated Promissory Note identifies GVC as borrower, records a principal sum exceeding \$6.3 million, bears Mr. Curtises' signature on GVC's behalf, makes the balance payable upon sale of the secured lands, and expressly waives presentment, demand, notice, and protest.

[111] Mr. DeThomas deposes that he does not recognize the Consolidated Promissory Note as a document he saw when it was created. He found no related emails or text messages, expected to be a signatory to GVC's documents, and questions the document's origins and figures. He recognizes Mr. Curtises' signature and does not positively assert that it was forged or that Mr. Curtis lacked authority to bind GVC. Those limitations affect the weight of this aspect of GVC's proposed defence.

[112] Mr. DeThomas also questions the origins of the lease. He says it appears to have been signed electronically, but he found no contemporaneous electronic record indicating that he signed it. That evidence does not, by itself, establish that the lease was not executed or is unenforceable. The general denial in GVC's response to civil claim adds no supporting facts. These limitations must nevertheless be considered alongside the other evidence concerning the obligations and amounts claimed.

[113] GVC also relies on alleged interference with its business. In his affidavit sworn January 2, 2026, at paras 20-21, Mr. DeThomas describes Ms. Cawson obstructing access to the premises and warning prospective customers, clients and business partners to leave to avoid seizure of their equipment. He alleges resulting harm to GVC and identifies a proposed set-off or counterclaim. Ms. Cawson denies the alleged interference and says the eviction followed GVC's default under the

lease. The November 9, 2022 termination notice exhibited to Mr. DeThomas' affidavit was issued in Ceridwen's name and signed by Ms. Cawson as its director. That supports attribution of the termination activity to Ceridwen, but does not establish its wrongfulness or the alleged warnings. The allegations concern conduct both before and after the June 2022 default judgment. Their possible effect on the rent claim requires consideration, but a potential independent claim does not, without more, answer the separate loan obligations. I do not resolve the disputed evidence or determine whether the requirements for set-off are satisfied.

[114] A defence worthy of investigation need not defeat the whole claim. In *Holm* at paras 27-28, the Court identified the plaintiff's provable damages among the potential defences capable of defeating the claim in whole or in part. GVC must therefore provide some evidence supporting a potentially valid defence, but it need not demonstrate that it owes Ceridwen nothing. Mr. DeThomas' non-recognition of a document signed on GVC's behalf would not, standing alone, establish such a defence. His evidence must nevertheless be considered together with the other material concerning the obligations and amounts claimed.

[115] Mr. DeThomas' November 2022 estimate that GVC owed less than \$2 million does not, by itself, reconcile the amounts now claimed. There is, however, a specific question arising from the mortgage schedule exhibited to Dundas' first affidavit, Exhibit I, p 85. The December 31, 2020, row records an adjustment of negative \$2,130,128 and a closing balance of negative \$610,118, while the January 2021 opening balance is \$1,520,010. Ms. Cawson's fifth affidavit, para 12, explains the reduction following the August 2020 sale, but does not expressly reconcile those December and January entries. The schedule in Exhibit E, p 32, repeats them. I cannot determine on this record whether the adjustment reflects a credit already accounted for or affects the amount now claimed. These entries support scrutiny of the amount recoverable; they do not establish an additional credit or quantify any overstatement.

[116] The fact that damages remain unassessed is relevant, but does not remove those matters from consideration under the defence factor. An assessment could address disputed calculations, credits, overlap and interest without reopening liability. Whether that procedure would adequately address the issues arising in this litigation is a separate consideration in the overall interests-of-justice analysis. The availability of an assessment neither requires the judgment to remain in place nor, by itself, justifies setting it aside.

[117] Taken together, the evidence concerning the amounts claimed and the proposed business-interference claim satisfies the low threshold for identifying a partial defence worthy of investigation. That conclusion does not establish that the Consolidated Promissory Note or lease is invalid, that an additional credit is owing, or that a set-off is available. Nor does it determine GVC's application. The potential defence must be weighed with GVC's deliberate default, its delay, the consequences of maintaining the judgment, any demonstrated prejudice to Ceridwen, and the risk of inconsistent findings.

[118] The applicants' conduct, delay, and proposed defences must be considered together with the other relevant circumstances, including any prejudice and the risk of inconsistent findings. Ceridwen submits that its settlement with the Curtises' removes that risk. I therefore turn to the Settlement Agreement and the proposed distribution of the Holdback Funds before returning to the overall interests-of-justice analysis and determining whether the default judgment should be set aside against either applicant.

May the Settlement Agreement Be Implemented Consistently with the Restraining Order?

[119] The Settlement Agreement and the proposed distribution cannot be considered in isolation. The distribution sought is one component of the consideration for Ceridwen's compromise of its claims against the Curtises. The threshold question is therefore whether the Restraining Order in force when the Settlement Agreement was entered into permitted that compromise.

[120] I do not determine whether the Settlement Agreement is void or unenforceable for every purpose, nor do I finally determine the contractual rights and obligations as between Ceridwen and the Curtises if distribution is refused. Nor do I determine whether the Settlement Agreement may ultimately remain enforceable between the contracting parties following a variation of the Restraining Order or the granting of other relief.

[121] The narrower issue is whether this Court should direct a distribution that would implement an agreement entered into while the Restraining Order was in force, without the prior written consent or further order that the Restraining Order required. These reasons therefore address only whether the Settlement Agreement can provide the legal foundation for the distribution orders presently sought.

Were Ceridwen's Claims Assets Captured by the Restraining Order?

[122] When the Restraining Order was made, Ceridwen had existing claims against the Curtises arising from alleged loans, guarantees, and its asserted interest in the Holdback Funds. Those claims were already the subject of active litigation.

[123] A chose in action is a form of property, even if it remains disputed and has not yet been reduced to judgment: *Sidhu* at paras 82-85; *Hannigan* at paras 55-56.

[124] The claims belonged to Ceridwen, not to either spouse personally. The fact that the ownership and value of Ceridwen were at issue in the family proceeding did not make the claims Mr. DeThomas's or Ms. Cawson's personal property.

[125] The question is therefore not whether either spouse personally owned the claims, but whether they fell within the terms of the Restraining Order. In my view, they did.

[126] Paragraph 2(a) restrains Ms. Cawson, including in her capacity as a majority shareholder, director, or officer of the corporations listed in Schedule A, and extends to notified third parties. It applies to assets held "personally, corporately in the Corporations, or within the Emerald Willow Trust" in which Mr. DeThomas has or

may have an interest. Pending final determination of the family proceeding, it prohibits transferring, selling, converting, disposing of, encumbering, assigning, or otherwise dealing with those assets without his prior written consent or further order of the Court.

[127] Schedule A expressly includes Ceridwen. Its claims against the Curtises existed when the order was made and were corporate assets of a named corporation. Compromising those claims could have affected Ceridwen's value, in which Mr. DeThomas asserted a family-property interest. Those facts bring the claims within the express wording of the Restraining Order without treating Mr. DeThomas as their legal owner.

[128] I therefore conclude that Ceridwen's claims against the Curtises were corporate choses in action captured by the Restraining Order. This conclusion rests on the language of the particular order before me, not on any broader proposition that every asset of every spouse-owned corporation is automatically restrained.

Did the Settlement Agreement Constitute a Prohibited Dealing?

[129] Paragraph 2(a) of the Restraining Order prohibits not only an outright sale or transfer, but also the conversion, disposition, assignment, or any similar dealing with a protected asset. A compromise of litigation falls within that language because it changes the content, enforceability, and value of the chose in action.

[130] The Settlement Agreement did more than identify a possible source from which an existing debt might be paid. In exchange for one-third of the Holdback Funds and 75% of the proceeds of any future sale of Grant Curtises' GVC shares, Ceridwen agreed to credit share-sale proceeds against the indebtedness, refrain from collecting the remaining indebtedness until all shares had been sold, discontinue its action upon satisfaction of the stipulated conditions, and provide broad releases.

[131] By prescribing when Ceridwen could collect the remaining indebtedness and the conditions for discontinuance and release, the Settlement Agreement altered the

terms on which Ceridwen could pursue and recover its claims. That was a dealing with Ceridwen's choses in action within the meaning of the Restraining Order.

[132] Ceridwen's stated intention to preserve its claims against GVC, Cion, and Mr. DeThomas does not answer that concern. Clause 9 further provides that a settling party will not pursue a related claim against another person who might seek contribution or indemnity from a settling party. I need not finally construe that provision. Its potential effect is sufficient to make it unsafe to assume that implementation of the Settlement Agreement could have no impact on Ceridwen's claims against non-settling defendants or on related contribution or indemnity rights.

[133] Mr. DeThomas did not provide prior written consent and no further order authorizing the transaction was obtained before the Settlement Agreement was executed. Unless the agreement fell within the ordinary-course exception, the Restraining Order prohibited it.

The ordinary-course exception

[134] Section 91 of the FLA does not create a general ordinary-course-of-business exception. Any such exception in this case arises solely from para 2(c) of the Restraining Order and must be interpreted in the context of that order as a whole.

[135] Paragraph 2(c) permits "expenditures in the ordinary course of business". The Settlement Agreement was not an expenditure incurred to operate or preserve Ceridwen's business. It was a compromise of litigation claims and a proposed disposition of a corporate asset. On its face, it therefore falls outside the ordinary-course exception.

[136] Even if para 2(c) were interpreted more broadly, the result would be the same. In *Louie v Zhou*, 2019 BCSC 799 at para 55, the Court described the ordinary course of business as a corporation's usual, customary, and day-to-day activities. Whether a transaction falls within that description depends on the nature of the particular corporation and its business, not simply on whether corporations generally have the power to enter into such transactions.

[137] Ceridwen is a family holding company. The evidence does not establish that compromising substantial litigation claims formed part of its ordinary day-to-day activities. The Settlement Agreement was an exceptional transaction. Under cl 5, Ceridwen agreed not to take steps to collect the remaining indebtedness from the Curtises' until all of Grant Curtises' GVC shares had been sold. The agreement imposed no deadline for those sales. The agreement also contemplated conditional releases in exchange for a payment from the Holdback Funds and contingent future share-sale proceeds. Those terms materially altered both when and on what terms Ceridwen could pursue and recover its claims.

[138] Paragraph 2(c) also excludes from ordinary business transactions involving the liquidation or disposition of corporate assets, including transactions that may defeat or adversely affect Mr. DeThomas's interest. The Settlement Agreement was at least capable of reducing the value of Ceridwen's claims. Whether the agreement was commercially prudent does not bring it within the exception.

[139] I therefore conclude that the Settlement Agreement constituted a disposition, conversion, or similar dealing with Ceridwen's claims against the Curtises'. It did not fall within the ordinary-course exception and was entered into without the prior consent or court authorization required by the Restraining Order.

The Alternative Request to Vary the Restraining Order

[140] The order also permitted Ms. Cawson to apply to vary or set it aside on seven days' notice. In their respective notices of application, Ceridwen and the Curtises' alternatively ask the Court to vary the Restraining Order or authorize the proposed transaction.

[141] I have considered that alternative request. The relevant question is whether the proposed dealing would defeat or adversely affect Mr. DeThomas's protected property claim: *FLA*, s 91; *Zaepernick v Sayani et al.*, 2023 BCSC 1642 at para 59. Ceridwen points to the risks and expense of continued litigation, the payment from the Holdback Funds, potential future share-sale proceeds, and the existence of other

funds held in trust. Those considerations are relevant. However, the evidentiary record does not permit a meaningful assessment of what Ceridwen is relinquishing compared to what it may receive under the Settlement Agreement. The agreement imposes no deadline for any share sale, and the likely proceeds and timing of those sales remain uncertain. Nor does the evidence sufficiently explain how the other funds held in trust would protect Mr. DeThomas's claim from any adverse effect resulting from the compromise. I therefore lack a sufficient evidentiary basis to conclude that the proposed dealing would leave his protected claim unaffected. The difficulty lies in the evidence supporting the request, not merely in the procedural vehicle chosen. I therefore leave the alternative request for determination on a properly supported application.

[142] That evidentiary deficiency relates only to whether the Court should now authorize or give effect to the compromise through a variation of the Restraining Order or other relief. It does not affect the separate question of whether the Settlement Agreement, when entered into, constituted a dealing with a restrained corporate asset.

[143] The result is narrower. Ceridwen entered into a dealing with a restrained corporate asset while the Restraining Order remained in force and without obtaining the consent or authorization that the order required. This Court should not direct a distribution whose legal and practical effect would be to implement that dealing while the Restraining Order remains unchanged.

[144] This conclusion does not determine whether the Settlement Agreement is void or unenforceable for every purpose, nor does it finally determine the parties' contractual rights and obligations. It determines only that the Settlement Agreement cannot provide the legal foundation for the distribution orders sought on these applications.

Should the Holdback Funds Be Distributed?

[145] The holdback applications concern approximately \$350,000 held in trust pursuant to the 2020 Holdback Agreement. That agreement permitted the sale of the land and manufactured home to be completed while preserving the disputed proceeds in trust pending agreement or court order. Ceridwen consented to that arrangement while reserving its asserted mortgage priority. The competing claims to the funds were not resolved.

[146] In October 2023, Ceridwen and the Curtises' entered into the Settlement Agreement. Under it, one-third of the Holdback Funds would be paid to Ceridwen, and two-thirds to the Curtises, and Ceridwen would also receive 75% of the proceeds of any future sale of Grant Curtises' GVC shares. The proposed distribution now sought reflects that agreement.

[147] Ceridwen and the Curtises submit that neither GVC nor Mr. DeThomas has any beneficial interest in the Holdback Funds. They rely on the Curtises' asserted ownership of the manufactured home, the absence of any mortgage registered against it, and GVC's acknowledgment that the \$350,000 was attributable to its sale. They say GVC's refusal to consent is being used as leverage in the parallel family proceeding.

[148] Mr. DeThomas and GVC oppose the proposed distribution. They submit that Ceridwen's claimed entitlement to one-third of the funds arises solely from the Settlement Agreement. Because that agreement compromised Ceridwen's claims against the Curtises' contrary to the Restraining Order, they argue that the Court should not distribute the funds in a manner that would implement the impugned transaction.

The Parties' Interests in the Holdback Funds

[149] The Holdback Funds remain in trust because the parties dispute both their character and ultimate destination. Although GVC acknowledges that the \$350,000 is attributable to the manufactured home, it pleads that the Curtises' agreed to

advance those proceeds to GVC as a shareholder loan to be applied toward Ceridwen's mortgage indebtedness.

[150] Ceridwen argues that the default judgment establishes its mortgage priority through the deemed admissions of the defaulting defendants. However, the default judgment does not declare priority over the Holdback Funds or direct their distribution. It simply orders damages and costs to be assessed. Whatever effect the deemed admissions may have as between GVC and Ceridwen, they do not determine the competing rights of the Curtises', who defended the action. Nor do they establish the one-third/two-thirds allocation sought on these applications.

[151] The proposed payment of one-third of the Holdback Funds to Ceridwen derives from the Settlement Agreement, not from any adjudication of the parties' underlying rights to the funds. Although Ceridwen's amended pleading asserts mortgage priority, Part 3, para 8 of its July 2025 notice of application disclaims an in rem claim to the home proceeds. It is unnecessary to resolve that apparent tension on these applications. The allocation presently sought depends upon the Settlement Agreement, and I do not determine whether any party has a separate entitlement to the funds.

[152] Mr. DeThomas does not claim a personal beneficial interest in the Holdback Funds. GVC likewise disclaims beneficial ownership. It nevertheless relies on the alleged agreement that the Curtises would advance the home proceeds to GVC as a shareholder loan and opposes the proposed distribution. More fundamentally, GVC objects to using the Holdback Funds to implement a settlement through which Ceridwen proposes to compromise its claims against the Curtises', thereby potentially affecting Ceridwen's value in the family proceeding.

Should the Court Order the Proposed Distribution?

[153] The 2020 Holdback Agreement provides that the funds remain in trust pending agreement of the parties or a further order of the Court. It therefore contemplates two possible routes to distribution: agreement or court order.

[154] The parties to the 2020 Holdback Agreement have not agreed to the proposed distribution. While the absence of consent does not prevent the Court from making an appropriate order, Ceridwen must establish an independent legal basis for the allocation sought. The allocation proposed on these applications derives entirely from the Settlement Agreement. It reflects the consideration negotiated in exchange for Ceridwen's compromise of its claims against the Curtises'.

[155] For the reasons already given, the Settlement Agreement constituted a dealing with Ceridwen's choses in action contrary to the Restraining Order and outside the ordinary-course exception. It was entered into without the prior written consent or further order required by that order. I have also declined to determine, on the present record, the alternative request to vary the Restraining Order.

[156] It follows that the Settlement Agreement cannot provide the legal foundation for the distribution presently sought. An order directing payment of one-third of the Holdback Funds to Ceridwen and two-thirds to the Curtises' would give effect to a transaction that was entered into contrary to the Restraining Order while that order remains unchanged. This conclusion does not determine whether Ceridwen, the Curtises', or GVC may ultimately establish some different entitlement to the funds.

[157] Ceridwen argues that GVC's refusal to consent is tactical because GVC disclaims any beneficial interest in the funds. Given my conclusions concerning the Settlement Agreement, it is unnecessary to determine GVC's motivation or whether consent could properly be withheld indefinitely. Its objection cannot be dismissed as irrelevant or purely obstructionist where the proposed distribution depends upon a settlement that compromised a protected corporate asset without the consent or authorization required by the Restraining Order.

[158] I have also considered whether the Court could order payment of two-thirds of the Holdback Funds to the Curtises independently of the payment proposed to Ceridwen. The present applications and record do not support that order. The two-thirds allocation is itself a product of the Settlement Agreement, not an adjudication

of the competing claims preserved in 2020. The present record does not establish that the funds are indisputably the Curtises' property, that the remaining one-third would adequately protect the competing claims, or that a partial distribution would otherwise be appropriate.

[159] Continued retention of the funds may cause hardship to the Curtises and delay access to proceeds they say are attributable to their home. That concern is significant, but it does not establish entitlement to the proposed distribution. The applications before me seek implementation of the Settlement Agreement and do not provide a sufficient basis for finally determining the Curtises' ownership claim, Ceridwen's asserted mortgage priority, or GVC's alleged shareholder-loan agreement. Refusing the proposed distribution does not recognize a beneficial interest in the funds in favour of any party.

Conclusion

[160] I dismiss Ceridwen and the Curtises' applications to distribute the Holdback Funds pursuant to the Settlement Agreement. The funds shall remain in trust under the 2020 Holdback Agreement, subject to the Restraining Order, pending agreement of the parties to the 2020 Holdback Agreement or further order of the Court. This conclusion does not determine the parties' underlying entitlement to the funds, which remains available for determination on a proper evidentiary and procedural record.

Overall Interests of Justice

Risk of inconsistent findings

[161] The applicants also rely on the risk of inconsistent findings. They submit that, if the settlement with the Curtises' does not proceed, the claims against the Curtises' will remain to be determined and may produce findings inconsistent with the default judgment. That risk is relevant to the interests-of-justice analysis and may favour relief despite an adverse finding concerning the failure to defend: *Haro-Thurlow Street Project Limited Partnership v 1104227 B.C. Ltd.*, 2026 BCSC 1364 at paras 46-48 [*Haro-Thurlow*], discussing *Wang v Wang*, 2012 BCSC 1077 [*Wang*]. Its

significance depends on the nature and extent of the overlapping issues and the proceedings in which they may be determined. The risk of inconsistent findings does not, however, require the same result for every defendant.

[162] Ceridwen submits that its settlement with the Curtises' removes the risk of inconsistent findings. It also argues that the applicants should not be permitted to oppose the settlement and then rely on its failure to justify setting aside the default judgment. I have refused the proposed distribution because it would give effect to a settlement made contrary to the Restraining Order, which remains unchanged. That refusal does not mean the claims against the Curtises' must proceed to trial; I have not determined all the parties' rights under the Settlement Agreement. I therefore cannot treat the settlement as having eliminated the risk of inconsistent findings.

[163] The nature of the potential inconsistency is important. A finding that Mr. DeThomas's guarantee does not extend to a particular obligation, or that a required demand was not made on him, would not necessarily be inconsistent with a finding that GVC owes the underlying debt. Similarly, the Curtises' could succeed on a defence concerning the execution or effect of their alleged guarantees without affecting GVC's liability as principal debtor. Different outcomes for a guarantor and a principal debtor are not necessarily inconsistent.

[164] The overlap nevertheless extends beyond those personal defences. The Curtises' also dispute whether particular advances were made and whether the lease gave rise to enforceable obligations. If those issues were determined at trial, any findings could bear directly on GVC's underlying indebtedness. The significance of that risk depends on which claims and issues ultimately remain to be determined.

[165] The outstanding assessment of damages is also relevant. If GVC's default judgment remains in place, the assessment will permit challenge to the amounts recoverable without reopening liability. If the assessment proceeds at trial with the defended claims, a common evidentiary record may reduce, though not eliminate, the risk of inconsistent findings. The significance of that risk, and the extent to which

an assessment addresses the applicants' concerns, must be weighed in the overall interests-of-justice analysis together with the applicants' conduct, delay, and proposed defences.

Prejudice to Ceridwen

[166] At the hearing, Ceridwen submitted that reopening the proceeding after this delay would cause prejudice through faded memories, possible loss of records, additional expense, and disruption of the family arbitration then scheduled to proceed.

[167] Prejudice arising from delay must be assessed on the evidence. Ceridwen has not identified a particular lost document, an unavailable witness, or other evidence that has dissipated or become materially less reliable. Its claims are supported by a substantial contemporaneous record, including promissory notes, guarantees, security agreements, mortgage and lease documents, corporate financial records, and correspondence.

[168] Damages remain unassessed. Ceridwen must establish the amounts recoverable through admissible evidence notwithstanding the defaults. The parties have assembled extensive material concerning the lending arrangements, lease obligations and alleged indebtedness. Setting aside a default judgment would require determining the defendant's disputed liability and quantum, but the record does not show that the delay has materially impaired Ceridwen's ability to prove those claims.

[169] Nor does the anticipated effect on the family arbitration establish that Ceridwen's ability to litigate its commercial claims has been impaired. Coordination of the proceedings may create inconvenience and expense, but Ceridwen has not shown how those consequences would prevent a fair determination of its claims.

[170] I therefore find that Ceridwen has not established that reopening would cause a loss of evidence or otherwise materially impair its ability to prove its claims. It would nevertheless lose the benefit of a judgment fixing liability and incur the

expense of litigating that issue. Those consequences carry weight independently of evidentiary prejudice. Costs and procedural directions may address additional expense and delay, but do not restore the benefit of the liability judgment.

Overall balance

[171] Mr. DeThomas's deliberate default and lengthy, inadequately explained delay weigh strongly against relief. His asserted misapprehension of adversity was not objectively reasonable and carries limited weight. Nevertheless, the written instruments provide an evidentiary foundation for defences concerning the scope of his guarantee and its demand requirement. Those issues concern whether substantial obligations are enforceable against him personally, rather than merely the calculation of the amounts owing. An assessment of damages under the existing judgment would not provide an equivalent opportunity to contest that liability. I recognize that the identified guarantee defences do not resolve the distinct alleged lease indemnity and that reopening the judgment deprives Ceridwen of finality and requires it to litigate liability. Against those consequences, I weigh the nature and potential significance of the supported defences, the outstanding assessment, and the absence of demonstrated impairment of Ceridwen's ability to prove its claim. Considering those matters together, I conclude that the interests of justice favour setting aside the judgment against Mr. DeThomas.

[172] I have also considered the applicants' submission that implementation of the Settlement Agreement would increase the practical consequences of maintaining the judgment against Mr. DeThomas. Given my conclusion that the present record does not permit implementation of that agreement, I do not treat that consideration as materially affecting the balance.

[173] GVC's deliberate default and lengthy, inadequately explained delay weigh substantially against relief. It was represented when served, and judgment was permitted to be entered despite notice of Ceridwen's intention to proceed. Its circumstances differ from *Wang*, where promptness and a defence worthy of investigation were conceded, and *Haro-Thurlow*, where promptness was undisputed

and the proposed defences had substantive evidentiary support: *Wang* at para 2; *Haro-Thurlow* at paras 28, 35-43. *Haro-Thurlow* also considered the absence of reasonable warning at paras 49-50. That consideration does not arise here.

[174] GVC's partial defence favours relief, but does not determine the application. The outstanding assessment will permit scrutiny of the amount recoverable within the scope of the default judgment. I have also considered the proposed business-interference claim and recognize that an assessment does not necessarily permit GVC to advance every defence or set-off that would have been available had it defended the action. Maintaining the judgment therefore has substantive consequences for GVC. The availability of an assessment does not eliminate those consequences or exclude its quantum concerns from the overall balance.

[175] The risk of inconsistent findings also carries weight, but less than in *Wang* and *Haro-Thurlow*, where overlapping issues would be determined in other proceedings: *Wang* at paras 33-37; *Haro-Thurlow* at paras 46-48. Mr. DeThomas's personal guarantee defences do not necessarily contradict GVC's underlying obligations, and the scope of any future adjudication involving the Curtis' remains uncertain. I have weighed the resulting risk of inconsistent findings, GVC's proposed partial defence, the substantial amount claimed, the outstanding assessment of damages, and the absence of demonstrated evidentiary prejudice against GVC's deliberate default after notice, its prolonged and inadequately explained delay, and Ceridwen's interest in retaining the benefit of its liability judgment.

[176] Mr. DeThomas's supported guarantee defences concern whether he is personally liable for significant portions of the indebtedness claimed. An assessment under the existing judgment would not provide an equivalent opportunity to determine those issues. Much of GVC's supported challenge to the amounts claimed can be addressed through an assessment, although I have also weighed the limits of that procedure and its proposed business-interference claim. That distinction contributes to the different results. In GVC's case, considering all the circumstances

addressed above, the considerations favouring reopening do not outweigh those favouring finality. I decline to set aside the judgment against GVC.

[177] Cion did not apply to set aside the judgment against it, and that judgment also remains in place. The judgments against GVC and Cion fix liability within their respective scope; they do not establish Mr. DeThomas's liability under his alleged personal undertakings. Nor do these reasons determine the amount recoverable from any defendant.

Conclusion on the Default-Judgment Application

[178] The application to set aside the default judgment is therefore allowed as to Mr. DeThomas and dismissed as to GVC. Under Rule 3-8(11), the judgment entered on June 2, 2022 is set aside only insofar as it concerns Mr. DeThomas. GVC's alternative request for an assessment at trial is addressed below.

Further Proceedings and Assessment of Damages

[179] Ceridwen remains entitled to an assessment of damages under the default judgments against GVC and Cion. Its claims against Mr. DeThomas will proceed as defended claims on liability and quantum. GVC's participation in the assessment does not reopen the liability fixed by its judgment.

[180] Ceridwen submits that damages cannot be assessed while the Curtises' remain defendants. Their continued participation does not, by itself, prevent an assessment. Rule 3-8(12)(b) contemplates that an assessment set for trial will ordinarily be tried with the action or issues against the other defendants. The defended claims and assessments involve overlapping contractual documents, alleged advances, credits and interest calculations. Each assessment must remain confined to the liability established against the particular company; obligations alleged against GVC are not automatically recoverable from Cion. The amounts recoverable should be determined on a common evidentiary record where appropriate, with directions permitting the production, examination and participation necessary for a fair assessment.

[181] I direct that the assessments against GVC and Cion proceed at trial under *Rules* 3-8(12) and (13), together with the trial of Ceridwen's claims against Mr. DeThomas, subject to further order. Further directions shall address the scope of participation in the assessments and coordination with any Curtis claims remaining for adjudication. Ceridwen's present assessment application is dismissed insofar as it concerns Mr. DeThomas, without dismissing its underlying claims against him. The components concerning GVC and Cion are adjourned to the trial.

[182] Ceridwen also seeks to strike the responding pleadings. Mr. DeThomas's existing response does not set out the material facts and legal grounds of the defences advanced on this application. I direct him to file and serve an amended response complying with the *Rules*. GVC's response, filed after default judgment, does not displace that judgment or authorize it to contest liability fixed by the judgment. In light of those conclusions and the directions governing further proceedings, I make no additional order striking either response. This does not determine any independent objection to the sufficiency of an amended pleading.

[183] Ceridwen's submissions also refer to a filed counterclaim and seek to strike it. The applicants' reply states that no counterclaim has been filed and that the evidence concerns a claim GVC proposes to advance. No counterclaim has been placed before me for determination. I make no order striking a counterclaim and do not determine the availability, merits or limitation consequences of any proposed counterclaim or set-off. Nothing in these directions grants leave to advance a claim or defence inconsistent with the liability fixed by the retained default judgments.

Conclusion

[184] This litigation arises at the intersection of a commercial debt dispute and an ongoing family property proceeding. That context does not excuse the applicants' deliberate defaults or their lengthy delay, but it informs the consequences of the Court's discretionary decision.

[185] The applicants' circumstances require different results. Mr. DeThomas's identified guarantee defences, considered with the other circumstances, justify setting aside the judgment against him. GVC's proposed partial defence and the possibility of overlapping findings do not outweigh its deliberate default, prolonged delay and Ceridwen's interest in retaining the judgment fixing GVC's liability. The judgment remains in place against GVC and Cion.

[186] The Settlement Agreement was made while the Restraining Order was in force, without the prior written consent or further order it required. Ceridwen and the Curtis' alternatively invoke the Court's power to vary the restraint. For the reasons already given, I decline to determine that request on the present applications and record. I make no determination whether a properly constituted and supported application to vary, suspend or terminate the restraint should succeed.

[187] Because the proposed one-third/two-thirds allocation depends upon the Settlement Agreement, there is no present basis to distribute the Holdback Funds in the manner sought. The parties' underlying claims to the fund remain undetermined.

[188] Ceridwen's claims against Mr. DeThomas will proceed on a defended basis. Its damages against GVC and Cion will be assessed at trial together with those claims, subject to further directions concerning the assessments and any Curtis claims remaining for adjudication.

Disposition and Orders

[189] For the foregoing reasons, I make the following orders:

1. Paul DeThomas' application to set aside the default judgment is allowed. The judgment entered on June 2, 2022 is set aside insofar as it concerns him.
2. Glen Valley Cannabis Ltd.'s application to set aside the default judgment is dismissed. The judgment against it remains in place, with damages and costs to be assessed.

3. The default judgment against Cion Farms Ltd. remains in place, with damages and costs to be assessed.
4. Mr. DeThomas shall file and serve an amended response to civil claim within 21 days of these reasons, or such further time as the parties may agree in writing or the Court may order. The amended response shall comply with *Rules 3-3(2) and 3-7* by identifying the material facts and legal grounds relied upon in defence. This direction does not determine the merits of any defence or grant leave to advance a counterclaim.
5. No additional order is made striking the existing responses to civil claim. GVC's response does not reopen the liability fixed by the default judgment. No order is made striking a counterclaim, and the availability, merits and limitation consequences of any proposed counterclaim or set-off remain undetermined.
6. Ceridwen's damages against GVC and Cion shall be assessed at trial under *Rules 3-8(12) and (13)*, together with the trial of Ceridwen's claims against Mr. DeThomas, subject to further order. Mr. DeThomas may defend the claims against him on liability and quantum. GVC may participate in the assessment of damages within the scope permitted by its default judgment and further directions of the Court.
7. Ceridwen's present application for an assessment of damages under the default judgment is dismissed insofar as it concerns Mr. DeThomas. Its underlying claims against him are not dismissed. The components of the assessment application concerning GVC and Cion are adjourned to the trial directed above.
8. I dismiss the application of Ceridwen Holdings Ltd. in New Westminster Registry Action No. S233848 and the application of Grant Brian Curtis and Jillian Clair Curtis in Vancouver Registry Action No. S208211 seeking distribution of the Holdback Funds pursuant to the Settlement Agreement.

This determination does not adjudicate the parties' underlying claims to those funds. The merits of the alternative request to vary the Restraining Order remain undetermined. Nothing in this disposition prevents a properly constituted and supported application for that relief.

9. The Holdback Funds shall remain in trust in accordance with the 2020 Holdback Agreement, subject to the Restraining Order, pending agreement of the parties to the Holdback Agreement or further order of the Court.
10. No ruling is made on the objections to Grant Curtises' first affidavit or the unresolved objections to Lin Jacques' first affidavit. Their resolution is unnecessary to the disposition of these applications.
11. Within 60 days of these reasons, the parties shall take the steps required to arrange a case planning conference. The conference shall address the pleadings, document production, examinations for discovery, the defended claims, the assessments against GVC and Cion, and coordination with any Curtis claims remaining for adjudication. It shall also address the procedural directions required to define the issues and participation in the assessments consistently with the retained default judgments.

Costs

[190] Costs of these applications are reserved. If the parties cannot agree, they may file and serve written submissions, not exceeding five pages each, within 30 days of these reasons. Those submissions may address the parties' respective success, the applicants' deliberate defaults and delay, and the additional costs occasioned by that conduct. This reservation does not alter the costs provisions of the default judgments remaining against GVC and Cion.

"S. Sukstorf J."