

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Puppet Killer Productions Inc. v.
Industryworks Studios Inc.*,
2026 BCCA 311

Date: 20260724
Docket: CA49111

Between:

Puppet Killer Productions Inc.

Appellant
(Claimant)

And

Industryworks Studios Inc.

Respondent
(Respondent)

Before: The Honourable Justice Fleming
The Honourable Justice Mayer
The Honourable Justice MacNaughton

On appeal from: A decision under the *Arbitration Act*, S.B.C. 2020, c. 2, dated
April 28, 2023 (*Puppet Killer Productions Inc. v. Industryworks Studios Inc.*).

Counsel for the Appellant: R.S. Fleming

Counsel for the Respondent: R.L. Power
S.R.R. Lusztig

Place and Date of Hearing: Vancouver, British Columbia
May 22, 2026

Place and Date of Judgment: Vancouver, British Columbia
July 24, 2026

Written Reasons by:
The Honourable Justice Mayer

Concurred in by:
The Honourable Justice Fleming
The Honourable Justice MacNaughton

Summary:

The respondent terminated a film distribution agreement entered into with the appellant film production company. An arbitrator ordered the respondent to pay the appellant the Agreement's required minimum guarantee of \$150,000, additional damages of \$50,000, and \$21,324.62 in prejudgment interest. Against those amounts, the arbitrator set off a \$50,000 damages award for the respondents' expenses. The arbitrator declined to award costs on the basis that neither party was "fully successful". On appeal, the appellant argues the arbitrator erred in assessing its additional damages at \$50,000 by failing to draw an adverse inference from the respondents' deficient document production, and by providing insufficient reasons for the basis of that award. The appellant further argues the arbitrator erred in awarding the respondent \$50,000 in damages for expenses, as the only possible legal theory supporting the set-off was unjust enrichment, which was not pleaded or argued. Finally, the appellant appeals the arbitrator's decision not to award it costs, arguing the arbitrator erred by refusing to allow it to make further submissions on costs, and by applying a "fully successful" test for ordinary costs. Held: Appeal allowed. The arbitrator provided insufficient reasons with respect to his assessment of the appellant's damages and erred in assessing the respondent's damages at \$50,000. These issues and the issue of costs of the first arbitration is remitted to the arbitrator.

Reasons for Judgment of the Honourable Justice Mayer:

[1] The appellant, Puppet Killer Productions Inc. ("PK Productions"), appeals an arbitration award under s. 59 of the *Arbitration Act*, S.B.C. 2020, c. 2 [*Arbitration Act*], in which an arbitrator ordered the respondent, Industryworks Studios Inc. ("Industryworks"), to pay PK Productions \$171,324.62 for breach of a film distribution contract, after setting off a \$50,000 award for Industryworks' expenses.

[2] PK Production contends the arbitrator erred in law in 1) assessing the quantum of its additional damages at \$50,000; 2) awarding \$50,000 in set-off damages to the respondent; and 3) not applying the test, or applying the wrong test, in deciding the parties should bear their own costs of the arbitration, without benefit of the parties' submissions.

[3] For the reasons that follow, I would grant the appeal and remit these issues back to the arbitrator.

Background

[4] PK Productions is a small independent film production company. Industryworks is a film distributor, arranging for the distribution of films in movie theatres and other venues or forums. Both are based in British Columbia.

[5] In 2019, PK Productions made an indie horror film called “Puppet Killer” (the “Film”). The Film was produced with an overall budget of \$150,000, which is considered a micro-budget in the film industry.

[6] In April 2020, PK Productions and Industryworks entered into an exclusive, 25-year distribution agreement that required PK Productions to deliver the Film by June 1, 2020 and Industryworks to market and distribute the Film (the “Distribution Agreement”).

[7] The Distribution Agreement also required Industryworks to pay PK Productions 70% of gross revenue generated on the sale of the Film and, in any event, a minimum of \$150,000 (the “Minimum Guarantee”). The Film was released into movie theatres by Industryworks in September 2021, and it subsequently entered into sub-distribution agreements with other distributors around the world.

[8] On December 7, 2021, Industryworks purported to terminate the Distribution Agreement, claiming that they had just cause to do so because PK Productions had not met certain technical delivery obligations. It refused to pay the \$150,000 Minimum Guarantee and, according to PK Productions, failed to provide an accounting of the revenue it earned on the distribution of the Film.

[9] PK Productions accepted Industryworks’ repudiation of the Distribution Agreement and demanded return of the Film. Industryworks did not return the Film. Instead, it continued to market and distribute it, refused to terminate existing sub-distribution agreements, and entered into new sub-distribution agreements.

[10] On March 23, 2022, PK Productions commenced arbitration proceedings under the Vancouver International Centre (VanIAC) expedited rules. Industryworks counterclaimed.

[11] As is the case with expedited arbitrations, the arbitration proceeded on written evidence only and without cross-examination of witnesses. The parties tendered a number of witness and expert statements, and both filed affidavits.

[12] In reasons issued on April 28, 2023 (the “Arbitrator’s Reasons”), the arbitrator found that Industryworks had breached the Distribution Agreement by: failing to notify PK Productions of alleged defects in the Film so PK Productions could rectify them; failing to pay the Minimum Guarantee (subject to a reduction for the costs of materials that were eligible to be set off against the amounts payable to PK Productions); refusing to return the Film and instead continuing to market, distribute, and sub-contract distribution after termination of the Distribution Agreement; and failing to produce accounting statements to PK Productions, especially after the Film’s theatrical release.

[13] The arbitrator ordered Industryworks to immediately return the Film to PK Productions and to pay Minimum Guarantee, \$50,000 in additional damages, and \$21,324.62 in prejudgment interest — for a total of \$221,324.62. He set off \$50,000, the amount he awarded to Industryworks under its counterclaim, for what he found were reasonable expenses incurred in helping PK Productions meet its delivery obligations under the Distribution Agreement. As a result, the net award to PK Productions was \$171,324.62. The arbitrator declined to award costs on the basis that neither party was “fully successful”.

On Appeal

[14] Leave to appeal the arbitrator’s decision on the errors of law alleged by PK Productions (see para. 2 above) was granted by this Court on September 13, 2023.

[15] The matter proceeded as an expedited arbitration under the VanIAC rules limiting potential damages awards to \$250,000, exclusive of interest and costs. On appeal, there is no dispute with respect to the arbitrator's conclusions regarding breaches of the Distribution Agreement, his order that Industryworks pay the Minimum Guarantee, or with respect to prejudgment interest.

[16] PK Productions contends the arbitrator made two extricable errors of law in assessing its additional damages at \$50,000. First, the arbitrator erred by failing to consider principles concerning the drawing of an adverse inference — which they say he should have done given Industryworks' failure to provide critical accounting statements. Second, the arbitrator provided insufficient reasons explaining the basis for assessing its damages at \$50,000, which it says neither party had argued was appropriate.

[17] In addition, PK Productions contends the arbitrator erred in law in awarding Industryworks \$50,000 for expenses it incurred in helping PK Productions meet its delivery obligations and by setting this amount off against the award in its favour. It submits the arbitrator did not conclude PK Productions failed to meet its delivery obligation in breach of the Distribution Agreement. It says the only possible legal theory supporting the set-off was unjust enrichment, which was not pleaded. In the alternative, it submits that if this award was in respect of expenses due to Industryworks under the Distribution Agreement, the arbitrator erred by forgetting, ignoring, or misconceiving the evidence and his findings.

[18] Finally, PK Productions says the arbitrator erred in principle by failing to allow it to make submissions on costs, despite its request to do so. It also submits the arbitrator erred in law by applying a "fully successful" test for an award of ordinary costs, rather than a "substantial success" test.

[19] In response to PK productions' submissions regarding the \$50,000 damages award in its favour, Industryworks contends the judge made no error in principle in failing to draw an adverse inference arising from its failure to provide accounting records, which it says was not argued before the arbitrator. It also says the basis for

the award can be discerned from the record. With respect to the \$50,000 set-off award in its favour, it submits it was open to the arbitrator to make this award as an equitable set-off based on unjust enrichment. Finally, with respect to the arbitrator's decision that the parties bear their own costs of the arbitration, Industryworks says the arbitrator applied the correct legal test in declining to order ordinary costs. It says the arbitrator made no procedural error amounting to an error in law in refusing to allow PK Productions to provide additional submissions on costs.

Analysis

[20] There is no dispute that the standard of correctness applies to an arbitrator's decision on questions of law for which leave has been granted: *Vancouver School District No. 39 v. Kingsgate Property Ltd.*, 2026 BCCA 98 at paras. 157, 172.

Did the arbitrator err in law by assessing the quantum of PK Productions' damages at \$50,000?

[21] As set out earlier, PK Productions argues the arbitrator erred in law in failing to draw an adverse inference arising from Industryworks' failure to provide accounting statements required under the Distribution Agreement. Without those statements, PK Productions says it was impossible to know the income Industryworks earned from the Film. Further, it argues the arbitrator did not explain the basis for his damage assessment at \$50,000.

[22] I will deal first with the adverse inference argument, which, in my view, is without merit.

[23] An adverse inference may be drawn where a defendant's conduct, including a failure to produce required records, prevents the plaintiff from proving its loss: *IDSS Enterprises Ltd. v. Dynasty P.G. & Grandsons Holding Inc.*, 2013 BCCA 354 at para. 47.

[24] The Arbitrator's Reasons demonstrate he considered Industryworks' failure to provide accounting statements in the context of whether this failure constituted a breach of the Distribution Agreement — not in the context of whether to draw an

adverse inference related to his damages assessment. For example, the arbitrator concluded that Industryworks “breached the Agreement by failing to produce accounting statements to the Claimant as required to do so especially when it released the Film theatrically and entered into sub-distribution agreements with third parties” (at para. 116).

[25] PK Productions did not ask the arbitrator to draw an adverse inference from the alleged failure to provide accounting records, and Industryworks was not given an opportunity to provide submissions rebutting why such an inference should be made.

[26] In the absence of a request by PK Productions that the arbitrator draw an adverse inference, there is no basis for an argument that he failed in not doing so. There is no such thing as a “mandatory adverse inference”: *Singh v. Reddy*, 2019 BCCA 79 at para. 9. In effect, PK Productions seeks to impermissibly raise a new argument on appeal. As this Court recently stated in *Northern Health Authority v. du Plessis*, 2026 BCCA 143 at para. 94, “[t]he principle that this Court will not entertain new arguments on appeal is necessarily more exacting on appeals from arbitral awards...”.

[27] I would further note, regarding the applicable standard of review, “[t]he question of whether or not to draw an adverse inference is a question of fact owed deference on appeal, subject to there being a palpable and overriding error”: *Insurance Corporation of British Columbia v. Mehat*, 2018 BCCA 242 at para. 90. In this case, there is no such error. Accordingly, I would not accede to this ground of appeal.

[28] I now turn to PK Productions’ argument that the arbitrator did not provide sufficient reasons for assessing its additional damages at \$50,000. In my view, this argument has merit.

[29] A helpful summary of the legal principles concerning sufficiency of reasons is set out in *Zhao v. Fang*, 2022 BCCA 227:

[22] There is no free-standing right of appeal on the basis of the sufficiency of a trial judge's reasons. Appellate intervention is only justified where the reasons, when considered along with the record, do not permit meaningful appellate review. This occurs where the reasons are both inadequate and inscrutable: see *R. v. Gagnon*, 2006 SCC 17; *Shannon v. Shannon*, 2011 BCCA 397; *Ecobase Enterprises Inc. v. Mass Enterprise Inc.*, 2017 BCCA 29.

[23] Reasons must be read generously and as a whole, bearing in mind the presumption that trial judges know the law: *Barendregt* at para. 104, citing *R. v. G.F.*, 2021 SCC 20 at para. 79. In *G.F.*, the Supreme Court described the task of appellate courts in assessing the sufficiency of reasons, which can be summarized as follows:

- The task of appellate courts is not to finely parse a trial judge's reasons but rather to assess whether the reasons, read in context and as a whole and in light of the live issues at trial, explain what the trial judge decided and why in a manner that permits effective appellate review: at para. 69.
- If the reasons do not explain the "what" and the "why", but the answers to those questions are clear in the record, there will be no error: at para. 70.
- Reasons must be both factually sufficient and legally sufficient. Factual sufficiency, which is ordinarily a very low bar, is concerned with what the trial judge decided and why. Legal sufficiency requires that the aggrieved party be able to discern the viability of an appeal and appellate courts be able to determine whether an error has occurred; this is highly context specific and must be assessed in light of the live issues at trial: at paras. 71, 74.

[30] As this Court said in *M. McIsaac Family Holdings Ltd. v. Tolam Holdings Ltd.*, 2020 BCCA 371 at para. 107, "...reasons will be inadequate if they are merely bald conclusions on issues disputed before the trial court without any indication of the reasoning process: *Gibson v. Insurance Corporation of British Columbia*, 2008 BCCA 217 at para. 36, cited with approval in *Phillips v. Keefe*, 2009 BCCA 523 at paras. 8–9."

[31] Sufficient reasons are necessary because, in their absence, "...[an] appellate court will not be able to apply the correct standard of review if the judge only presents conclusions in the reasons, without any indication of why the judge reached those conclusions: *Gibson* at paras. 35–36": *M. McIsaac*, at para. 108.

[32] Whether reasons are adequate is a threshold question. If they are not, when considered in the context of the record, the appeal should be allowed and a new trial ordered: *M. McIsaac*, at para. 109, referring to *Shannon v. Shannon*, 2011 BCCA 397 at para. 9. This reasoning applies equally to an arbitrator's reasons.

[33] The entirety of the arbitrator's reasons for assessing PK Productions' damages at \$50,000, are brief. He stated:

155. On the ... facts before me I find that the Respondent breached the Agreement on multiple occasions during its duration and the continual refusal of the Respondent to return the Film to the Claimant is also a breach of contract which has resulted in loss of opportunity for the Claimant to market the Film by itself or secure another distributor for that purpose. However, the assessment of damages at the date of breach would adequately reflect the Claimant's loss.
156. The Respondent shall pay the Claimant damages in the amount of \$50,000.00 for breach of contract.

[34] The arbitrator did not set out the basis for his assessment — that is, why he settled on this amount. A review of the record does not assist. The evidence and submissions of the parties to the arbitrator can be summarized as follows:

- a) PK Productions relied upon expert evidence from Aaron Koontz, another film-maker and distributor, and a "proforma sales projection" created by a third-party distributor, Viva. The Koontz report projected gross earnings from the distribution of the Film of between \$300,000 and \$400,000. The sales projection projected potential revenue from Film of \$779,750 USD over six months if it was released on 50 screens, and a high estimate of \$1,683,250 USD over six months.
- b) PK Productions submitted, after deducting Industryworks' share of receipts and the Minimum Guarantee, the range of damages available to it was between \$62,000 and \$132,000. It sought \$100,000 for damages for breach of the Distribution Agreement (in addition to payment of the Minimum Guarantee) to stay within the \$250,000 claim limit for an expedited arbitration.

- c) Industryworks' evidence was that it earned nothing from screening the Film in North America and approximately \$16,875 in gross earnings from sub-distribution agreements in international markets.

[35] Although the arbitrator concluded PK Productions suffered a loss of opportunity to market the Film by itself, or through another distributor, he did not quantify that loss. In particular, he did not accept or reject the Koontz or Viva evidence concerning projected earnings for the Film, or Industryworks' evidence with respect to its actual earnings. As a result, the Arbitrator's reasons for an award of \$50,000 damages to PK Productions, when considered along with the record, are insufficient and do not permit meaningful appellate review, amounting to an error in law.

[36] Section 59(6) of the *Arbitration Act* provides that this Court may either confirm, amend, or set aside an arbitral award or remit the arbitral award to the arbitrator together with the Court's opinion on the question of law that was the subject of the appeal.

[37] PK Productions seeks an order that this Court substitute an award of \$100,000 for its damages on the strength of its expert evidence. In my view, it would be inappropriate for this Court to do so, given that Industryworks raises a number of challenges to the reliability of the projected earnings evidence set out in those reports. Generally, inadequate reasons do not allow this Court to make its own findings of fact and conclusions of law based on those findings: *M. McIsaac*, at para. 181. A new arbitration on this issue is required, in which the necessary findings of fact can be made. I would remit the assessment of PK Productions' damages arising from Industryworks' breach of the Distribution Agreement (over and above the \$150,000 minimum guarantee) to the arbitrator.

Did the arbitrator err in law by awarding Industryworks \$50,000 in damages?

[38] PK Productions contends the arbitrator erred in law in awarding \$50,000 to Industryworks. It submits there was no legal basis for any award. In its counterclaim,

Industryworks sought damages under two heads: 1) those flowing from an alleged breach of the delivery obligations for the Film under the Distribution Agreement and, 2) for expenses payable to it under the terms of the agreement. It submits the arbitrator dismissed Industryworks' claim that PK Productions breached the delivery obligations under the Distribution Agreement — leaving only its claim that it was owed expenses.

[39] PK Productions says the arbitrator did not award Industryworks \$50,000 for expenses payable under the Distribution Agreement but rather as compensation for “assistance to [PK Productions] in meeting the delivery obligation” (Arbitrator’s Reasons, para. 152). It submits that, in the absence of a finding that PK Productions breached the Distribution Agreement, the only possible legal basis to support the award is unjust enrichment, which was not pleaded.

[40] Alternatively, PK Productions argues if the arbitrator’s award was for expenses due to Industryworks under the Distribution Agreement the arbitrator appears have forgotten, ignored or misconceived the evidence or his findings, referring to *Escape 101 Ventures Inc. v. March of Dimes Canada*, 2021 BCCA 313, para. 21.

[41] Industryworks says the award was based on unjust enrichment. It argues the elements of unjust enrichment are set out in its counterclaim and therefore it was open to the arbitrator to award it an equitable set-off of \$50,000.

[42] In my view, the basis of the arbitrator’s award to Industryworks was not unjust enrichment, but instead for recoupable expenses payable under the Distribution Agreement. I will explain why.

[43] An unjust enrichment claim requires the plaintiff to show: 1) an enrichment of the defendant; 2) a corresponding deprivation of the plaintiff, and 3) an absence of juristic reason for the enrichment. There are established categories for what constitutes a juristic reason, including a contract, a disposition of law, a donative intent, and other valid common law, equitable or statutory obligations. Absent a

juristic reason under one of those established categories, the plaintiff has made out a *prima facie* case under the juristic reason component of the analysis: *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paras. 30, 44.

[44] Industryworks did not plead unjust enrichment in its counterclaim. Of relevance, it pleaded: 1) it was required to provide PK Productions with excessive support and assistance far beyond its contractual obligations; and 2) it incurred significant recoupable expenses directly related to and incurred on behalf of the Film. Instead, Industryworks sought an award of \$146,932 for “expenses” it says were directly related to and paid to ready the Film for distribution and then to distribute it. It provided a spreadsheet setting out both internal labour costs and third-party costs.

[45] The Arbitrator’s Reasons do not include any analysis of a claim founded in unjust enrichment. The arbitrator concluded, “[t]here was a clear understanding among the Parties that [Industryworks] would provide greater assistance to [PK Productions] in meeting its Delivery Obligation on an ongoing basis” (Arbitrator’s Reasons, para. 108 a). Although the arbitrator commented that the Distribution Agreement “...did not put [Industryworks] in a position of providing unlimited assistance to [PK Productions] to meet the Delivery obligations” (para. 110), he did not reach a conclusion that such extra-contractual assistance had been provided.

[46] The Arbitrator’s Reasons focus on expenses. He acknowledged the parties’ positions with respect to expenses and stated, “I prefer the submissions of [PK Productions]” (para. 147). He concluded the Distribution Agreement only permitted Industryworks to recover expenses from the “gross receipts” it received (para. 148). He agreed that some of the expenses claimed by Industryworks did not meet the definition of “recoupable expenses” in the agreement, including work done by its employees — which were not third-party expenses (para. 149).

[47] The arbitrator appears to have initially accepted only a portion of Industryworks' claim for expenses. He said this in his analysis:

150. ... the Respondent is only permitted to recoup its expenses out of the gross receipts that it claimed, throughout this Arbitration, to have received under the Agreement. The Respondent claimed to have received the gross amount of \$16,000.00.
151. Also, ... the Respondent has not been fully transparent in its accounting records with the Claimant. The Respondent refused to provide accounting statements to the Claimant, and it is therefore very difficult to determine that all recoupable expenses claims are actual, verifiable, bona fide, third-party expenses directly related to the production and distribution of the Film.
152. Nevertheless, the Respondent did provide significant assistance to the Claimant in meeting the delivery obligation. Therefore, the counterclaim of the Respondent succeeds in part.

[48] Later, under the heading "Decision", the arbitrator ordered that PK Productions "pay to [Industryworks] the sum of CAD\$50,000.00 as reasonable expenses incurred to assist the [PK Productions] to meet its delivery obligation", to be set off against the amount awarded to PK Productions (paras. 162(b) and 163, emphasis added). He made no reference to the spreadsheet provided by Industryworks and did not otherwise explain why he settled on an amount of \$50,000.

[49] A \$50,000 award for recoupable expenses payable under the Distribution Agreement is inconsistent with the arbitrator's finding that Industryworks could only recover an amount equivalent to the \$16,000 gross revenue it claimed to have received from distribution of the Film. In addition, to the extent that some or all of this award was intended to reimburse Industryworks for materials it created under the Distribution Agreement, it cannot be reconciled with his finding that the Distribution Agreement provided that "costs for materials created by [Industryworks] with [PK Productions'] approval are still eligible for set-off under the terms of the Agreement" (para. 114, emphasis added). There was no evidence before the arbitrator of any such approval.

[50] A question of law arises where an arbitrator has forgotten, ignored or misconceived evidence and this error is shown to have affected the result: *Escape 101 Ventures*, at para. 21. In my view, considering the Arbitrator's Reasons in light of the record as a whole, the arbitrator's error resulted from him forgetting or ignoring evidence limiting Industryworks' recovery for recoupable expenses to \$16,000 and the requirement that PK Productions approve expenses for materials.

[51] I would remit the assessment of Industryworks' damages, being the quantum of its recoupable expenses under the terms of the Distribution Agreement, to the arbitrator. Given that there is no appeal of the arbitrator's conclusion that Industryworks is only able to recover up to \$16,000 for such expenses, its damages are capped at this amount.

Did the arbitrator err in law by not applying the test, or applying the wrong test, for ordinary costs and deciding the issue of costs without the benefit of submissions from the parties?

[52] In their written submissions to the arbitrator, PK Productions sought special or full indemnity costs and Industryworks sought full indemnity costs. The arbitrator declined to award costs to either party, on the basis that "neither party was fully successful" (Arbitration Reasons, para. 160). After the reasons were released, PK Productions sought leave to make further submissions on costs, which the arbitrator denied.

[53] PK Productions contends the arbitrator erred in principle in refusing to allow it to make further submissions on costs, relying on this Court's decisions in *Loft v. Nat*, 2014 BCCA 108 at para. 52 and *Bolin v. Lylick*, 2018 BCCA 127 at paras. 3–12. Further, it contends that, in concluding that the parties should each bear their own costs, the arbitrator erred by applying a "not fully successful" test rather than the correct "substantial success" test, again relying on *Loft* at paras. 46–47. Industryworks disagrees that the arbitrator erred as alleged.

[54] I accept that the usual approach to determining whether a party is entitled to ordinary costs is whether they were "substantially" successful, not whether they were

“fully” successful: *Marquez v. Zapiola*, 2014 BCCA 35 at para. 16; *Canadian Centre for Bio-Ethical Reform v. South Coast British Columbia Transportation Authority*, 2018 BCCA 440 at para. 5. Further, failing to seek costs submissions may amount to an error in principle allowing appellate interference with a costs order: *Bolin*, at para. 9.

[55] However, rather than deciding the costs of the arbitration on appeal, I would refer the issue of costs of the initial arbitration to the arbitrator to be decided along with the other issues I have remitted.

Disposition

[56] I would grant the appeal with respect to the arbitrator’s award of \$50,000 in additional damages to PK Productions and the award of \$50,000 in damages to Industryworks, and remit these matters to the arbitrator, with Industryworks’ damages capped at \$16,000. I would also remit the issue of whether either party is entitled to ordinary costs.

“The Honourable Justice Mayer”

I AGREE:

“The Honourable Justice Fleming”

I AGREE:

“The Honourable Justice MacNaughton”