



COURT OF APPEAL FILE NO. CA49175
Joseph Wayne Palmer Sather v Sather Ranch Ltd.
Response Book

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Justice Elwood of the Supreme Court of British Columbia pronounced on the June 1, 2023

BETWEEN:

JOSEPH WAYNE PALMER SATHER

APPELLANT
(DEFENDANT)

AND:

SATHER RANCH LTD. and C. CHEVELDAVE & ASSOCIATES LTD.

RESPONDENT (PLAINTIFF) and COURT APPOINTED RECEIVER

RESPONSE BOOK

Joseph Wayne Palmer Sather

Counsel for the Appellant, Joseph Wayne Palmer Sather

Tom Posyniak and Kaleigh Milinazzo

Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3

Phone: 604 631 3131

Email: tposyniak@fasken.com
kmilinazzo@fasken.com

Counsel for the Court Appointed Receiver and Manager of Sather Ranch Ltd., C. Cheveldave & Associates Ltd.

Scott R. Andersen

Lawson Lundell LLP
403 - 460 Doyle Avenue
Kelowna, BC V1Y 0C2

Phone: 250 979 8546

Email: scott.andersen@lawsonlundell.com

TABLE OF CONTENTS

DESCRIPTION	DATE	PAGE
PART 1 – AFFIDAVITS		
Affidavit #1 of Joseph Wayne Palmer Sather	December 1, 2023	1
Exhibit "A" - 2022 personal income tax return of Joseph Sather		6
Exhibit "B" - Living trust of Joseph Sather dated November 30, 2017		18
Exhibit "C" - an email from Cecil Cheveldale to Mike Street and Joseph Sather dated November 7, 2023 attaching the Receiver's Interim Statement		25
Affidavit #1 of Gregory Berry	December 4, 2023	29
Exhibit "A" - email dated October 6 2023		31
Exhibit "B" - email dated October 31 2023		36
PART 2 – WRITTEN ARGUMENT		
Memorandum of Argument of Joseph Wayne Palmer Sather	December 5, 2023	46
Part 1: Facts		47
Part 2: Issues		48
Part 3: Analysis		48
Part 4: Order Sought		51
Table of Authorities		52

This the 1st affidavit
Of Joeseeph Wayne Palmer Sather in this case
and was made on 1st of December, 2023

Court of Appeal File No. CA49175

COURT OF APPEAL

BETWEEN:

JOSEPH WAYNE PALMER SATHER

DEFENDANT
(APPELLANT)

AND:

SATHER RANCH LTD

PLAINTIFF
(RESPONDENT)

AFFIDAVIT

I, Joeseeph Wayne Palmer Sather of 10635 Oakmoor Way, SW, in the city of Calgary,
Province of Alberta, SWEAR THAT:

1. I am the appellant in this proceeding, and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. I swear this affidavit in response to the Respondents' application that I post security for costs of this appeal in the amount of \$18,000 (the "Security").
3. I have reviewed the Affidavit #1 of Cindy Curran, sworn November 20, 2023 (the "Curran Affidavit").

My background

4. I am 78 years old. I will turn 79 on January 3, 2024.

5. As a result of my age and health, I have retired from full time employment as a realtor. My mobility has become more compromised over the years. I cannot keep up with the physical demands of the work, including going up and down the stairs while showing homes.
6. I remain the owner of Sather Real Estate Pro Brokers Ltd. ("the Brokerage"). The Brokerage is a collection of independent realtors who are registered with the Brokerage. The Brokerage charges those realtors a small fee on their commissions which go toward the operating expenses of the business.
7. The Curran Affidavit notes that the Brokerage "appears to have 25 staff members" and attaches a copy of our web page. This is not correct. The Brokerage does not currently have any employees on payroll. The realtors who operate through the Brokerage are independent contractors. Our website is not up to date, and many of the realtors listed are not with us anymore.
8. The Brokerage is not profitable. I have tried to sell the Brokerage but have not been successful. A number of real estate companies have looked at it, but are not interested in buying it.
9. I have not taken any money out of the Brokerage this year. I made about \$13,000 on some small deals this year which went into the company's expenses. I maintain the Brokerage as a courtesy to the realtors who are registered with us, many of whom are friends of mine. When I reach 80 in a year from now, I expect to close the business and fully retire
10. I have my accounting designation, but have not worked full time as an accountant since the 1970s.

My financial circumstances

11. I receive \$2100 a month from Old Age Pension and Canada Pension Plan.
12. As described above, I recently generated some income as a realtor, but it went toward the expenses of the Brokerage.

13. Now produced and shown to me and marked as **Exhibit "A"** to this my affidavit is a true copy of my 2022 personal income tax return.
14. I do not have any savings. My life savings were spent on legal fees in the various court proceedings involving SRL in the courts below. The stress of the litigation has also impacted my ability to work.
15. Apart from the 160 acre parcel of land which is the subject of this litigation (the "160 Acres"), I do not have any assets apart from my personal effects.
16. I am separated from my ex-wife Patricia Sather. We continue to have a good relationship. We share a daughter and a grandchild. Patricia rents me a room in her home at 10635 Oakmoor Way and I use a truck she owns to get around.
17. Of my \$2100 in monthly income, I give Patricia about \$2000 a month for rent, food and use of the truck. I keep roughly \$100 for anything else I need.
18. I have outstanding debts of over \$200,000. This includes credit card debt (about \$20,000), a substantial outstanding account to my former counsel, and loans advanced to me by family members and Patricia, including loans to pay for the property taxes on the 160 Acres.
19. My ownership of the 160 Acres is subject to the terms of a living trust. It also has a certificate of pending litigation registered on title. Now produced and shown to me and marked as **Exhibit "B"** to this my affidavit is a true copy of the living trust dated November 30, 2017.
20. In response to paragraph 9 of the Curran Affidavit, I no longer have any funds received through my father's estate. My father died in 2017. His assets were dealt with during his lifetime, and a portion of the funds went toward paying for his care and maintaining his home until it was sold. My sister and I received about \$150,000 each from the estate. I used my share to pay for the 160 Acres and any funds leftover went toward expenses and debts. I no longer have any funds available to me from his estate.

Sather Ranch Ltd. Receivership

21. On November 7, 2023, I received a copy of the receiver's interim statement of receipts and disbursements in the matter of the receivership of Sather Ranch Ltd. for the period November 21, 2019 to October 31, 2023 (the "**Receiver's Interim Statement**").
22. The Receiver's Interim Statement indicates \$1,245,375.62 in total receipts, \$739,297.04 in disbursements and a balance of \$506,078.58.
23. Now produced and shown to me and marked as **Exhibit "C"** to this my affidavit is a true copy of an email from Cecil Cheveldale to Mike Street and I dated November 7, 2023 attaching the Receiver's Interim Statement.
24. In reasons for judgment indexed at *Street v. Sather Ranch Ltd.*, 2023 BCSC 1525 Justice Brongers approved a number of claims made by the stakeholders in Sather Ranch Ltd.
25. I could not afford legal counsel and I represented myself in this proceeding.
26. I have not received any correspondence from counsel for the plaintiffs in relation to the reasons for judgment on costs included at Exhibit "C" to the Curran Affidavit.
27. To the best of my knowledge, those costs have not been assessed. I have not received a bill of costs, or any request for payment. As a result of my financial circumstances, any cost award would cause me significant financial hardship.
28. I am not aware of any other costs awards made against me.

Assistance from Access Pro Bono


29. I was referred to my counsel on this appeal by Access Pro Bono.
30. Fasken is representing me in this appeal on a pro bono basis.

- 31. Access Pro Bono has confirmed that they will cover disbursements of up to \$2500 in my appeal.
- 32. Fasken is representing me on a "low bono" basis at a substantial discount in the continuation of the summary trial before Justice Elwood, which is scheduled for December 14, 2023. I obtained a loan from a family member for this purpose.
- 33. I disclose these facts for the purpose of responding to paragraph 10 of the Curran Affidavit, which lists a number of my prior counsel and the suggestion in the Receiver's Written Argument that I have the means to post security because I have retained legal counsel in the past. In doing so, I do not intend to waive solicitor-client privilege and such privilege is strictly maintained and asserted.

Conclusion

- 34. Without pro bono representation, and Access Pro Bono's coverage of disbursements. I would be unable to pursue this appeal.
- 35. As a result of my financial circumstances as described in this affidavit, I cannot post the Security sought by the Respondent. If the Court grants the order requiring me to post the Security, I will be unable to pursue my appeal.

SWORN BEFORE ME at the City of)
Calgary, in the Province of Alberta, the 1)
day of December, 2023.)



A Commissioner for Oaths in and for the)
Province of Alberta)

Carter Lindsay
Student-at-Law
3400, 350 7thAvenue SW
Calgary, Alberta T2P3N9
Ph: 1-403-261-9448



JOSEPH SATHER

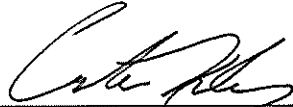
THIS IS EXHIBIT "A"

Referred to in the Affidavit of

Joseph Wayne Palmer Sather

Sworn before me this 1st

day of December, 2023



A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

Carter Lindsay

Student-at-Law

3400, 350 7th Avenue SW

Calgary, Alberta T2P3N9

Ph: 1-403-261-9448



Canada Revenue Agency

Agence du revenu du Canada

Income Tax and Benefit Return

T1 2022

Protected B when completed

If this return is for a deceased person, enter their information on this page.

Attach to your paper return only the documents that are requested to support your deduction, claim, or expense. Keep all other documents in case the Canada Revenue Agency (CRA) asks to see them later. See the guide for more information about supporting documents.

Step 1 – Identification and other information

AB 7

Identification First name: <u>Joseph W</u> Last name: <u>Sather</u> Care of: Apt. No. No./Street: <u>10635 Oakmoor Way S.W.</u> PO Box, RR: City: <u>Calgary</u> Prov./Terr.: <u>AB</u> Postal code: <u>T2W 2L1</u> Email address: _____ By providing an email address, you are registering to receive email notifications from the CRA and agree to the Terms of use in Step 1 of the guide.			Social insurance number (SIN): <u>703 472 407</u> Date of birth (Year Month Day): <u>1945/01/03</u> If this return is for a deceased person, enter the date of death (Year Month Day): _____	Marital status on December 31, 2022: <u>5. Separated</u>
Your language of correspondence: English <input checked="" type="checkbox"/> Français <input type="checkbox"/> Votre langue de correspondance :				

Residence information Your province or territory of residence on December 31, 2022: <u>Alberta</u> Your current province or territory of residence if it is different than your mailing address above: Province or territory where your business had a permanent establishment if you were self-employed in 2022: <u>Alberta</u>	If you became a resident of Canada in 2022 for income tax purposes, enter your date of entry: _____ (Month Day) If you ceased to be a resident of Canada in 2022 for income tax purposes, enter your date of departure: _____ (Month Day)
--	--

Your spouse's or common-law partner's information Their first name: _____ Their SIN: _____ Tick this box if they were self-employed in 2022. 1 <input type="checkbox"/> Net income from line 23600 of their return to claim certain credits (or the amount that it would be if they filed a return, even if the amount is "0"): _____ Amount of universal child care benefit (UCCB) from line 11700 of their return: _____ Amount of UCCB repayment from line 21300 of their return: _____	
--	--

Do not use this area. [] [] [] [] [] []

Do not use this area.	17200					17100				
-----------------------	-------	--	--	--	--	-------	--	--	--	--

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Step 1 – Identification and other information (continued)

Elections Canada

For more information, see "Elections Canada" in Step 1 of the guide.

A) Do you have Canadian citizenship?

If yes, go to question B. If no, skip question B.

1 Yes 2 No

B) As a Canadian citizen, do you authorize the CRA to give your name, address, date of birth, and citizenship to Elections Canada to update the National Register of Electors or, if you are 14 to 17 years of age, the Register of Future Electors?

1 Yes 2 No

Your authorization is valid until you file your next tax return. Your information will only be used for purposes permitted under the Canada Elections Act, which include sharing lists of electors produced from the National Register of Electors with provincial and territorial electoral agencies, members of Parliament, registered and eligible political parties, and candidates at election time.

Your information in the Register of Future Electors will be included in the National Register of Electors once you turn 18 and your eligibility to vote is confirmed. Information from the Register of Future Electors can be shared only with provincial and territorial electoral agencies that are allowed to collect future elector information. In addition, Elections Canada can use information in the Register of Future Electors to provide youth with educational information about the electoral process.

Indian Act – Exempt income

Tick this box if you have income that is exempt under the Indian Act.

For more information about this type of income, go to canada.ca/taxes-indigenous-peoples.

1

If you ticked the box above, complete Form T90, Income Exempt from Tax under the Indian Act, so that the CRA can calculate your Canada workers benefit for the 2022 tax year, if applicable, and your family's provincial or territorial benefits. The information you provide on Form T90 will also be used to calculate your Canada training credit limit for the 2023 tax year.

Climate action incentive payment

Tick this box if you reside outside of the census metropolitan areas (CMA) of Calgary, Edmonton, Lethbridge, Red Deer, Saskatoon, Regina, Winnipeg, or Halifax as determined by Statistics Canada (2021), and expect to continue to reside outside the same CMA on April 1, 2023.

1

Note: If your marital status is married or living common-law, and both you and your spouse or common-law partner were residing in the same location outside of a CMA, you must tick this box on both of your returns.

Foreign property

Did you own or hold specified foreign property where the total cost amount of all such property, at any time in 2022, was more than CAN\$100,000?

26600 1 Yes 2 No

If yes, complete Form T1135, Foreign Income Verification Statement. There are substantial penalties for not filing Form T1135 by the due date. For more information, see Form T1135.

Response Book - Page 9

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Complete only the lines that apply to you, unless stated otherwise. You can find more information about the lines on this return by calling 1-800-959-8281 or by going to canada.ca/line-xxxxx and replacing "xxxxx" with any five-digit line number from this return. For example, go to canada.ca/line-10100 for information about line 10100.

Step 2 – Total income

As a resident of Canada, you need to report your income from all sources inside and outside Canada.

Employment income (box 14 of all T4 slips)	10100				1
Tax-exempt income for emergency services volunteers (see line 10100 of the guide)	10105				
Commissions included on line 10100 (box 42 of all T4 slips)	10120				
Wage-loss replacement contributions (see line 10100 of the guide)	10130				
Other employment income (see line 10400 of the guide)	10400				2
Old age security (OAS) pension (box 18 of the T4A(OAS) slip)	11300	12,404		88	3
CPP or QPP benefits (box 20 of the T4A(P) slip)	11400	10,207		20	4
Disability benefits included on line 11400 (box 16 of the T4A(P) slip)	11410				
Other pensions and superannuation (see line 11500 of the guide and line 31400 of the return)	11500				5
Elected split-pension amount (complete Form T1032)	11600				6
Universal child care benefit (UCCB) (see the RC62 slip)	11700				7
UCCB amount designated to a dependant	11701				
Employment insurance (EI) and other benefits (box 14 of the T4E slip)	11900				8
EI maternity and parental benefits, and provincial parental insurance plan (PPIP) benefits	11905				
Taxable amount of dividends from taxable Canadian corporations (use Federal Worksheet):					
Amount of dividends (eligible and other than eligible)	12000				9
Amount of dividends (other than eligible)	12010				
Interest and other investment income (use Federal Worksheet)	12100				10
Net partnership income (limited or non-active partners only)	12200				11
Registered disability savings plan (RDSP) income (box 131 of the T4A slip)	12500				12
Rental income (see Guide T4036)	Gross 12599		Net 12600		13
Taxable capital gains (complete Schedule 3)	12700				14
Support payments received (see Guide P102)	Total 12799		Taxable amount 12800		15
Registered retirement savings plan (RRSP) income (from all T4RSP slips)	12900				16
Other income (specify):	13000				17
Taxable scholarships, fellowships, bursaries, and artists' project grants	13010				18
Add lines 1 to 18.				22,612	08 19
Self-employment income (see Guide T4002):					
Business income	Gross 13499		Net 13500		20
Professional income	Gross 13699		Net 13700		21
Commission income	Gross 13899		Net 13900		22
Farming income	Gross 14099		Net 14100		23
Fishing income	Gross 14299		Net 14300		24
Add lines 20 to 24.			Net self-employment income		25
Line 19 plus line 25				22,612	08 26
Workers' compensation benefits (box 10 of the T5007 slip)	14400				27
Social assistance payments	14500				28
Net federal supplements paid (box 21 of the T4A(OAS) slip)	14600				29
Add lines 27 to 29 (see line 25000 in Step 4).	14700				30
Line 26 plus line 30			Total income 15000	22,612	08 31

Response Book - Page 10

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Step 3 – Net income

Enter the amount from line 31 of the previous page.		22,612	08	32
Pension adjustment (box 52 of all T4 slips and box 034 of all T4A slips)	20600			
Registered pension plan (RPP) deduction (box 20 of all T4 slips and box 032 of all T4A slips)		20700		33
RRSP deduction (see Schedule 7 and attach receipts)		20800		34
Pooled registered pension plan (PRPP) employer contributions (amount from your PRPP contribution receipts)	20810			
Deduction for elected split-pension amount (complete Form T1032)		21000		35
Annual union, professional, or like dues (receipts and box 44 of all T4 slips)		21200		36
Universal child care benefit (UCCB) repayment (box 12 of all RC62 slips)		21300		37
Child care expenses (complete Form T778)		21400		38
Disability supports deduction (complete Form T929)		21500		39
Business investment loss (see Guide T4037)	Gross 21699	Allowable deduction 21700		40
Moving expenses (complete Form T1-M)		21900		41
Support payments made (see Guide P102)	Total 21999	Allowable deduction 22000		42
Carrying charges, interest expenses, and other expenses (use Federal Worksheet)		22100		43
Deduction for CPP or QPP contributions on self-employment income and other earnings (complete Schedule 8 or Form RC381, whichever applies)		22200		• 44
Deduction for CPP or QPP enhanced contributions on employment income (complete Schedule 8 or Form RC381, whichever applies)	(maximum \$460.50) 22215			• 45
Exploration and development expenses (complete Form T1229)		22400		46
Other employment expenses (see Guide T4044)		22900		47
Clergy residence deduction (complete Form T1223)		23100		48
Other deductions (specify):		23200		49
Federal COVID-19 benefits repayment (box 201 of all federal T4A slips)		23210		50
Add lines 33 to 50.		23300		51
Line 32 minus line 51 (if negative, enter "0")		Net income before adjustments	23400	22,612 08 52

Social benefits repayment:

Complete the chart for line 23500 using your Federal Worksheet if one or more of the following apply:

- You entered an amount for EI and other benefits on line 11900 and the amount on line 23400 is more than \$75,375
- You entered an amount for OAS pension on line 11300 or net federal supplements paid on line 14600 and the amount on line 23400 is more than \$81,761

If not, enter "0" on line 23500.

Line 52 minus line 53 (if negative, enter "0") (If this amount is negative, you may have a non-capital loss. See Form T1A.)			23500	• 53
		Net income	23600	22,612 08 54

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Step 4 – Taxable income

Enter the amount from line 54 of the previous page.		22,612	08	55
Canadian Armed Forces personnel and police deduction (box 43 of all T4 slips)	24400			56
Security options deductions (boxes 39 and 41 of T4 slips or see Form T1212)	24900			57
Other payments deduction (enter the amount from line 14700 if you did not enter an amount on line 14600; otherwise, use Federal Worksheet)	25000			58
Limited partnership losses of other years	25100			59
Non-capital losses of other years	25200			60
Net capital losses of other years	25300			61
Capital gains deduction (complete Form T657)	25400			62
Northern residents deductions (complete Form T2222)	25500			63
Additional deductions (specify):	25600			64
Add lines 56 to 64.	25700			65
Line 55 minus line 65 (if negative, enter "0")				66
Taxable income		26000	22,612 08	

Step 5 – Federal tax

Part A – Federal tax on taxable income

Use the amount from line 26000 to complete the appropriate column below.

	Line 26000 is \$50,197 or less	Line 26000 is more than \$50,197 but not more than \$100,392	Line 26000 is more than \$100,392 but not more than \$155,625	Line 26000 is more than \$155,625 but not more than \$221,708	Line 26000 is more than \$221,708	
Amount from line 26000	22,612 08					67
	0 00	50,197 00	100,392 00	155,625 00	221,708 00	68
Line 67 minus line 68 (cannot be negative)	22,612 08					69
Line 69 multiplied by the percentage from line 70	15% 3,391 81	20.5%	26%	29%	33%	70
Line 71 plus line 72	0 00	7,529 55	17,819 53	32,180 11	51,344 18	71
Federal tax on taxable income	3,391 81					72
						73

Enter the amount from line 73 on line 116 and continue at line 74.

Part B – Federal non-refundable tax credits

Basic personal amount:

If the amount on line 23600 is \$155,625 or less, enter \$14,398.

If the amount on line 23600 is \$221,708 or more, enter \$12,719.

Otherwise, use the Federal Worksheet to calculate the amount to enter.	(maximum \$14,398)	30000	14,398	00	74
Age amount (if you were born in 1957 or earlier) (use Federal Worksheet)	(maximum \$7,898)	30100	7,898	00	75
Spouse or common-law partner amount (complete Schedule 5)		30300			76
Amount for an eligible dependant (complete Schedule 5)		30400			77
Canada caregiver amount for spouse or common-law partner, or eligible dependant age 18 or older (complete Schedule 5)		30425			78
Canada caregiver amount for other infirm dependants age 18 or older (complete Schedule 5)		30450			79
Canada caregiver amount for infirm children under 18 years of age (see Schedule 5)					
Number of children you are claiming this amount for	30499	x \$2,350 =	30500		80
Add lines 74 to 80.			22,296	00	81

Response Book - Page 12

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Part B – Federal non-refundable tax credits (continued)

Enter the amount from line 81 of the previous page.		22,296	00	82
Base CPP or QPP contributions (complete Schedule 8 or Form RC381, whichever applies):				
through employment income	30800			• 83
on self-employment income and other earnings	31000			• 84
Employment insurance premiums:				
through employment				
(boxes 18 and 55 of all T4 slips)	(maximum \$952.74)	31200		• 85
on self-employment and other eligible earnings				
(complete Schedule 13)		31217		• 86
Volunteer firefighters' amount (VFA)		31220		87
Search and rescue volunteers' amount (SRVA)		31240		88
Canada employment amount:				
Enter whichever is less: \$1,287 or line 1 plus line 2.		31260		89
Home buyers' amount	(maximum \$10,000)	31270		90
Home accessibility expenses				
(use Federal Worksheet)	(maximum \$20,000)	31285		91
Adoption expenses		31300		92
Digital news subscription expenses				
(see line 31350 of the guide)	(maximum \$500)	31350		93
Add lines 83 to 93.				94
Pension income amount (use Federal Worksheet)	(maximum \$2,000)	31400		95
Add lines 82, 94, and 95.			22,296	00 96
Disability amount for self				
(if you were under 18 years of age, use Federal Worksheet; if not, claim \$8,870)		31600	8,870	00 97
Disability amount transferred from a dependant (use Federal Worksheet)		31800		98
Add lines 96 to 98.			31,166	00 99
Interest paid on your student loans (see Guide P105)				
Your tuition, education, and textbook amounts (complete Schedule 11)		31900		100
Tuition amount transferred from a child or grandchild		32300		101
Tuition amount transferred from a child or grandchild		32400		102
Amounts transferred from your spouse or common-law partner (complete Schedule 2)		32600		103
Add lines 99 to 103.			31,166	00 104
Medical expenses for self, spouse or common-law partner,				
and your dependent children under 18 years of age		33099		105
Amount from line 23600	22,612 08	× 3% =	678 36	106
Enter whichever is less: \$2,479 or the amount from line 106.			678 36	107
Line 105 minus line 107 (if negative, enter "0")				108
Allowable amount of medical expenses for other dependants				
(use Federal Worksheet)		33199		109
Line 108 plus line 109		33200		110
Line 104 plus line 110		33500	31,166	00 111
Federal non-refundable tax credit rate			15%	112
Line 111 multiplied by the percentage from line 112		33800	4,674	90 113
Donations and gifts (complete Schedule 9)		34900		114
Line 113 plus line 114			4,674	90 115
		Total federal non-refundable tax credits		

Response Book - Page 13

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Part C – Net federal tax

Enter the amount from line 73.		3,391	81	116
Federal tax on split income (TOSI) (complete Form T1206)	40424			• 117
Line 116 plus line 117	40400	3,391	81	118
Amount from line 35000	4,674	90	119	
Federal dividend tax credit (use Federal Worksheet)	40425			• 120
Minimum tax carryover (complete Form T691)	40427			• 121
Add lines 119 to 121.	4,674	90	▶	
Line 118 minus line 122 (if negative, enter "0")		4,674	90	122
	Basic federal tax	42900		123
Federal surtax on income earned outside Canada (complete Form T2203)				124
Line 123 plus line 124				125
Federal foreign tax credit (complete Form T2209)	40500			126
Line 125 minus line 126				127
Recapture of investment tax credit (complete Form T2038(IND))				128
Line 127 plus line 128				129
Federal logging tax credit (see guide)				130
Line 129 minus line 130 (if negative, enter "0")		Federal tax	40600	• 131
Federal political contribution tax credit (use Federal Worksheet)				
Total federal political contributions				
(attach receipts) 40900	(maximum \$650) 41000			• 132
Investment tax credit (complete Form T2038(IND))	41200			• 133
Labour-sponsored funds tax credit (see line 41400 of the guide)				
Net cost of shares of a provincially registered fund 41300	Allowable credit 41400			• 134
Add lines 132 to 134.	41600		▶	135
Line 131 minus line 135 (if negative, enter "0")		41700		136
Canada workers benefit (CWB) advance payments received (box 10 of the RC210 slip)	41500			• 137
Special taxes (see line 41800 of the guide)	41800			• 138
Add lines 136 to 138.		Net federal tax	42000	139

Step 6 – Refund or balance owing

Amount from line 42000				140
CPP contributions payable on self-employment income and other earnings (complete Schedule 8 or Form RC381, whichever applies)	42100			• 141
Employment insurance premiums payable on self-employment and other eligible earnings (complete Schedule 13)	42120			142
Social benefits repayment (amount from line 23500)	42200			143
Provincial or territorial tax (complete and attach your provincial or territorial Form 428, even if the result is "0")	42800			• 144
Add lines 140 to 144.		Total payable	43500	• 145

Name: Joseph Sather SIN: 703 472 407

Protected B when completed

Step 6 – Refund or balance owing (continued)

Enter the amount from line 145 of the previous page.

Total income tax deducted (amounts from all Canadian slips)	43700			• 147	
Refundable Quebec abatement (see line 44000 of the guide)	44000			• 148	
CPP or QPP overpayment (see line 30800 of the guide)	44800			• 149	
Employment insurance (EI) overpayment (see line 45000 of the guide)	45000			• 150	
Refundable medical expense supplement (use Federal Worksheet)	45200			• 151	
Canada workers benefit (CWB) (complete Schedule 6)	45300			• 152	
Canada training credit (CTC) (complete Schedule 11)	45350			• 153	
Refund of investment tax credit (complete Form T2038(IND))	45400			• 154	
Part XII.2 tax credit (box 38 of all T3 slips and box 209 of all T5013 slips)	45600			• 155	
Employee and partner GST/HST rebate (complete Form GST370)	45700			• 156	
Eligible educator school supply tax credit					
Supplies expenses (maximum \$1,000)	46800		x 25% =	46900	• 157
Canadian journalism labour tax credit (box 236 of all T5013 slips)	47555			• 158	
Return of fuel charge proceeds to farmers tax credit (complete Form T2043)	47556			• 159	
Air quality improvement tax credit (complete Form T2039)	47557			• 160	
Tax paid by instalments	47600			• 161	
Provincial or territorial credits (complete Form 479, if it applies)	47900			• 162	
Add lines 147 to 162.			Total credits	48200	▶ 163
Line 146 minus line 163					
If the amount is negative, enter it on line 48400 below.					
If the amount is positive, enter it on line 48500 below.					
			Refund or balance owing		164

Refund <input type="text" value="48400"/>	Balance owing <input type="text" value="48500"/>
For more information and ways to enrol for direct deposit, go to canada.ca/cra-direct-deposit .	Your balance owing is due no later than April 30, 2023. For more information on how to make your payment, go to canada.ca/payments .

I certify that the information given on this return and in any attached documents is correct, complete and fully discloses all of my income.

Sign here _____

It is a serious offence to make a false return.

Telephone number: 403-836-8887

Date: _____

If this return was completed by a tax professional, tick the applicable box and provide the following information:

Was a fee charged? 49000 Yes No

EFILE number (if applicable): 48900

Name of tax professional: _____

Telephone number: _____

Personal information (including the SIN) is collected to administer or enforce the Income Tax Act and related programs and activities including administering tax, benefits, audit, compliance, and collection. The information collected may be used or disclosed for purposes of other federal acts that provide for the imposition and collection of a tax or duty. It may also be disclosed to other federal, provincial, territorial, or foreign government institutions to the extent authorized by law. Failure to provide this information may result in paying interest or penalties, or in other actions. Under the Privacy Act, individuals have a right of protection, access to and correction of their personal information, or to file a complaint with the Privacy Commissioner of Canada regarding the handling of their personal information. Refer to Personal Information Bank CRA PPU 005 on information about Programs and Information Holdings at canada.ca/cra-information-about-programs.

Do not use this area.	<input type="text" value="48700"/>	<input type="text" value="48800"/>	<input type="text" value="48900"/>	<input type="text" value="49000"/>
-----------------------	------------------------------------	------------------------------------	------------------------------------	------------------------------------

Name: Joseph Sather SIN: 703 472 407



Form AB428
2022

Alberta Tax and Credits

Protected B when completed

Part A – Alberta tax on taxable income

Enter your taxable income from line 26000 of your return. 22,612 | 08 1

Use the amount from line 1 to complete the appropriate column below.

	Line 1 is \$134,238 or less	Line 1 is more than \$134,238 but not more than \$161,086	Line 1 is more than \$161,086 but not more than \$214,781	Line 1 is more than \$214,781 but not more than \$322,171	Line 1 is more than \$322,171	
Amount from line 1	22,612 08					2
Line 2 minus line 3 (cannot be negative)	0 00	134,238 00	161,086 00	214,781 00	322,171 00	3
Line 4 multiplied by the percentage from line 5	22,612 08					4
Line 6 plus line 7	10%	12%	13%	14%	15%	5
Line 6 plus line 7	2,261 21					6
Alberta tax on taxable income	0 00	13,423 80	16,645 56	23,625 91	38,660 51	7
	2,261 21					8

Enter the amount from line 8 on line 52 and continue at line 9.

Part B – Alberta non-refundable tax credits

Basic personal amount	Internal use 56080 Claim \$19,814 58040	19,814 00	9
Age amount (if you were born in 1957 or earlier) (use Worksheet AB428)	(maximum \$5,521) 58080	5,521 00	10
Spouse or common-law partner amount:			
Base amount		19,814 00	11
Your spouse's or common-law partner's net income from line 23600 of their return			12
Line 11 minus line 12 (if negative, enter "0")	58120		13
Amount for an eligible dependant:			
Base amount		19,814 00	14
Your eligible dependant's net income from line 23600 of their return			15
Line 14 minus line 15 (if negative, enter "0")	58160		16
Amount for infirm dependants age 18 or older (use Worksheet AB428)	58200		17
Add lines 9, 10, 13, 16, and 17.		25,335 00	18
CPP or QPP contributions:			
Amount from line 30800 of your return	58240		19
Amount from line 31000 of your return	58280		20
Employment insurance premiums:			
Amount from line 31200 of your return	58300		21
Amount from line 31217 of your return	58305		22
Adoption expenses	58330		23
Add lines 19 to 23.			24
Line 18 plus line 24		25,335 00	25

Name: Joseph Sather SIN: 703 472 407

AB428

Protected B when completed

Part B – Alberta non-refundable tax credits (continued)

Amount from line 25 on the previous page			25,335	00	26
Pension income amount	(maximum \$1,526)	58360			27
Caregiver amount (use Worksheet AB428)		58400			28
Add lines 26 to 28.			25,335	00	29
Disability amount (for self)					
(claim \$15,284, or if you were under 18 years of age, use Worksheet AB428)		58440	15,284	00	30
Disability amount transferred from a dependant (use Worksheet AB428)		58480			31
Add lines 29 to 31.			40,619	00	32
Interest paid on your student loans (amount from line 31900 of your return)		58520			33
Your unused tuition and education amounts (attach Schedule AB(S11))		58560			34
Amounts transferred from your spouse or common-law partner (attach Schedule AB(S2))		58640			35
Add lines 32 to 35.			40,619	00	36
Medical expenses:					
Amount from line 33099 of your return		58689			37
Amount from line 23600 of your return	22,612	08			38
Applicable rate	3%				39
Line 38 multiplied by the percentage from line 39	678	36			40
Enter whichever is less: \$2,560 or the amount from line 40.			678	36	41
Line 37 minus line 41 (if negative, enter "0")					42
Allowable amount of medical expenses for other dependants (use Worksheet AB428)		58729			43
Line 42 plus line 43		58769			44
Line 36 plus line 44, plus line 13 of RC269.		58800	40,619	00	45
Alberta non-refundable tax credit rate			10%		46
Line 45 multiplied by the percentage from line 46		58840	4,061	90	47
Donations and gifts:					
Amount from line 13					
of your federal Schedule 9	x 10% =				48
Amount from line 14					
of your federal Schedule 9	x 21% =				49
Line 48 plus line 49		58969			50
Line 47 plus line 50					
Enter this amount on line 55.	Alberta non-refundable tax credits	61500	4,061	90	51

Name: Joseph Sather SIN: 703 472 407

Protected B when completed
AB428

Part C – Alberta tax

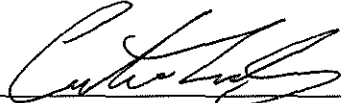
Alberta tax on taxable income from line 8				2,261	21	52
Alberta tax on split income (complete Form T1206)	61510					53
Line 52 plus line 53				2,261	21	54
Alberta non-refundable tax credits from line 51		4,061	90			55
Alberta dividend tax credit (use Worksheet AB428)	61520					56
Alberta minimum tax carryover:						
Amount from line 40427 of your return			x 35% =	61540		57
Add lines 55 to 57.		4,061	90			58
Line 54 minus line 58 (if negative, enter "0")						59
Alberta additional tax for minimum tax purposes:						
Form T691: line 111 minus line 112			x 35% =			60
Line 59 plus line 60						61
Provincial foreign tax credit (complete Form T2036)						62
Line 61 minus line 62 (if negative, enter "0")						63
Alberta political contributions made in 2022	60030		50	00		64
Alberta political contributions tax credit (use Worksheet AB428)					37	50
Line 63 minus line 65 (if negative, enter "0")						
Enter this amount on line 42800 of your return.						66
						Alberta tax

Part D – Alberta credits

Enter your unused Alberta investor tax credit from your 2021 notice of assessment or reassessment.						67
						(maximum \$60,000)
Alberta stock savings plan tax credit (complete Form T89)						68
Line 67 plus line 68						69
Enter this amount on line 47900 of your return.						

See the privacy notice on your return.

THIS IS EXHIBIT "B"
Referred to in the Affidavit of
Joseph Wayne Palmer Sather
Sworn before me this 1st
day of December, 2023



A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

Carter Lindsay
Student-at-Law
3400, 350 7th Avenue SW
Calgary, Alberta T2P3N9
Ph: 1-403-261-9448

The Living Trust
or
Joseph Wayne Palmer Sather

This Trust is hereby created on the **30th** day of **November 2017**.

SETTLOR:

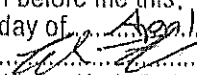
Joseph Wayne Palmer Sather
10635 Oakmoor Way S.W.,
Calgary, Alberta T2W 2L1

TRUSTEES:

1. **Julia Anna Patricia Sather**
c/o 10635 Oakmoor Way S.W.,
Calgary, Alberta T2W 2L1
2. **Patricia Diane Sather**
10635 Oakmoor Way S.W.,
Calgary, Alberta T2W 2L1

BENEFICIARIES

1. **Julia Anna Patricia Sather**
Social Insurance Number 659-552-343
c/o 10635 Oakmoor Way S.W.,
Calgary, Alberta T2W 2L1
2. **Daniel Peter Russell Sather**
Social Insurance Number 725-148-985
5313 Ivy Road,
Nelson, B.C. V1L 6N2
3. **Joseph Erik Palmer Sather**
Social Insurance Number 723-503-918
5313 Ivy Road,
Nelson, B.C. V1L 6N2
4. **Patricia Diane Sather**
Social Insurance Number 621-020-114
10635 Oakmoor Way S.W.,
Calgary, Alberta T2W 2L1

This is Exhibit "A" referred
to in the Affidavit of
Lucy E. Enn
Sworn before me this
12 day of April 2022

A Notary Public in and for the Province of British Columbia
A Commissioner for taking Affidavits within
British Columbia

1. Name of the Trust:

This Trust shall be known as the **Joseph Wayne Palmer Sather Living Trust** and is not an amendment to a prior Living Trust.

2. Transfer of Property:

The Trustees agree to hold any property transferred to this Trust, from any source whatsoever, in trust for the benefit of all of the herein named Beneficiaries.

The Settlor shall transfer to the Trustees, in the name of this Trust, the following identified property:

160 Acres of land located on the east side of Campbell Mountain in the City of Penticton, B.C. (British Columbia)

Legal: District Lot 2514S, Land District 54, PID 002-215-594

Herein referred to as the "Property"

This Property is currently registered in the name of the Settlor, **Joseph W.P. Sather**. The Title to this property shall be transferred to the Trustees named herein upon the following events:

- a. Upon the death of Joseph W.P. Sather or
- b. Upon the Settlor and Trustees herein being advised by their Lawyer or their Chartered Professional Accountant (CPA), to transfer Title to the Trustees named herein, whichever occurs first.

In the event that a transfer of Title to the property would attract a large sum of B.C. Transfer Tax or other taxes, then Title to the property may be held in trust by the Settlor until such a time as a Lawyer or other professional advisor recommends that the Title be transferred to the Trustees herein or until the property is sold.

3. History of the Property:

The Property was purchased by **Palmer Sather ("Palmer")** in about the late 1950's for the purpose of a long-term investment for his children and grandchildren. Palmer verbally expressed this desire, and gave instructions to his daughter, Carol Sather-Byman, and his son, Joseph W.P. Sather. Since the Property was purchased, Palmer's cattle would graze on Campbell Mountain, including his unfenced 160 acre parcel, during the period from mid-October to mid-November each year, as the cattle returned from the high mountain ranges, commonly known as Greyback and Carmi Ranges. The 160 acre property has no water or power and is not fenced and therefore is not suitable for grazing cattle or any other ranch use. During the entire year, Palmer also allowed local residents of Penticton to walk, hike or ride non-motorized bikes on the property. As Palmer verbally instructed and as advised by Palmer's Solicitor, Bill Oliver, this 160 acre property was offered for sale to his grandchildren first and when they declined for financial reasons, it was sold to Palmer's son, Joseph W.P. Sather, in September of 2017, as advised by Palmer's Solicitor, Bill Oliver, and as agreed to by his Power Of

Attorney, Carol Sather-Byman. The purpose of the purchase of this land by Joseph W.P. Sather was to limit or eliminate Probate Taxes that would be payable by the Estate of Palmer Sather upon his becoming deceased and for the purpose of establishing a Sather Family Trust for grandchildren of Palmer Sather, as specified herein.

4. Use of the Property and Lease Agreement:

While Title to the herein described Property is in the name of the Settlor or the Trustees named herein, the property may be leased to **Sather Ranch Ltd.**, herein the proposed Lessee, a corporation owned indirectly by **Mike Street** and Joseph W.P. Sather, 50% each, for a term of one year or less, for the purpose of grazing cattle during the months of October and November each year. Such a Lease Agreement may be extended or renewed annually, at the discretion of the Settlor or the Trustees named herein. Use of the Property by the Lessee is for the benefit of the Lessee's ranching business and shall be limited to cattle grazing during the months of October and November, during each year of the Lease. The Lease Agreement with Sather Ranch Ltd. may be terminated at any time by the Lessee by delivering written notice to the Settlor or the Trustees named herein. The Lease Agreement shall expire and therefore terminate each calendar year on September 30th, without written notice. The Lessee and Settlor or Trustees may, if mutually agreed upon, enter into a new Lease Agreement annually, on the same terms. The fee payable to the Settlor or Trustees, by the Lessee, for the use of the property by the Lessee, shall be the amount of the Annual Property Taxes or more plus any other costs incurred by the Settlor or Trustees relating to the Property.

5. Sale of the Property and Use of Funds

In the event the Settlor or Trustees receive an Offer to Purchase the Property, acceptance of the Offer shall require the approval by a majority of the Beneficiaries. Proceeds of the sale shall be deposited into an interest bearing account for the benefit of all Beneficiaries. Subject to the approval of a majority of Beneficiaries, these funds may be used for:

- a. Educational purposes for any Beneficiary or their children;
- b. Medical purposes for any Beneficiary;
- c. Professional Services, such as Doctors, Dentists, Accountants, Lawyers or other approved professional services required by a Beneficiary;
- d. A down payment for the Purchase of a home for a Beneficiary;
- e. Costs of renovations to a home owned by a Beneficiary;
- f. Purchase of a farm or livestock;
- g. Purchase of a vehicle for essential transportation;
- h. A loan to a Beneficiary for the purpose of any of the above listed uses;
- i. Secured, low or medium risk investments.

The Settlor hereby encourages the Trustees and Beneficiaries to sell the Property to the Province of BC and/or the City of Penticton, for the purpose of establishing a Public Park on Campbell Mountain. Such a Park should be named "Palmer Sather Park", if possible.

6. Compensation

Any Trustee shall be entitled to be paid a reasonable fee, based on time expended by the Trustee for the benefit of the Beneficiaries, for their services performed for this Trust. Such compensation shall be paid from the Bank account for this Trust or by the Settlor if there are no funds available from the Trust.

7. Trustee's Powers

The Trustees named herein have discretionary power to act on behalf of this Trust. This discretionary power must be exercised in good faith and in accordance with the terms and purposes of this Trust. The Trustees shall always act in the best interests of this Trust.

The Trustees will ensure that the net proceeds, if any, from this Trust will be divided equally (25% each) between the Beneficiaries, when determined by the Trustees, in accordance with the terms and instructions of this Trust.

8. Removal or Resignation of a Trustee

During the lifetime of the Settlor, the Settlor shall have the right to remove any Trustee without written Notice or cause. A Trustee may resign their position as a Trustee by delivering written Notice to the Settlor or, in the event the Settlor is deceased, to the Beneficiaries of the Trust.

9. Funding the Trust and Accounting Duties

The Settlor, while alive, shall be responsible to the Trustees and Beneficiaries for all accounting duties and financial reporting on behalf of the Trust. Such duties shall include, but not limited to, payment of property taxes, professional fees, any other debts or accounts payable and preparation and distribution of Financial Statements or Accounting Reports to the Trustees and Beneficiaries of this Trust. Such payments shall be paid from the Trust's bank account or by the Settlor from his personal funds. In the event payments are made by the Settlor from his personal funds on behalf of the Trust, the monies will be repaid to the Settlor when funds become available.

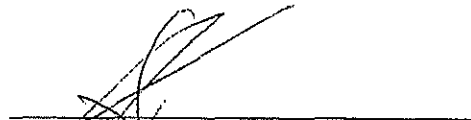
10. Acquisition Costs

In the event the Property is sold, the cost of purchasing the Property described herein, including legal fees, may, at the discretion of the Trustees, be repaid to the Settlor.


11. Governing Law

Although the Property described herein is located in the Province of B.C., this Trust is made and executed in the Provinces of Alberta, Canada, where the Settlor and Trustees reside, and as such shall be governed by and construed according to the laws of Alberta, Canada.

I, Joseph Wayne Palmer Sather, the Settlor, hereby accept the Trust herein created. Signed the 30th day of November 2017.



(Settlor's Signature)
Joseph Wayne Palmer Sather




(Witness Signature)
MARIO ARCARO

(Witness Name)

I, Julia Anna Patricia Sather, the Trustee, hereby accept the Trust herein created. Signed the 30th day of November 2017.



(Trustee's Signature)
Julia Anna Patricia Sather




(Witness Signature)
MARIO ARCARI

(Witness Name)

I, Patricia Diane Sather, the Trustee, hereby accept the Trust herein created. Signed the 30th day of November 2017.



(Trustee's Signature)
Patricia Diane Sather



(Witness Signature)
MARIO ARCARI

(Witness Name)

RECEIPT

**Of the LIVING TRUST of Joseph Wayne Palmer Sather
Document
By the BENEFICIARIES Of the LIVING TRUST**

The Beneficiaries of this Trust, named below, hereby acknowledge having received a signed copy of the document called **The Living Trust of Joseph Wayne Palmer Sather**:



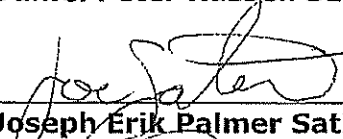
Julia Anna Patricia Sather

Dated November 30, 2017



Daniel Peter Russell Sather

Dated December 8TH, 2017



Joseph Erik Palmer Sather

Dated December 8TH, 2017



Patricia Diane Sather

Dated November 30, 2017


THIS IS EXHIBIT "C"

Referred to in the Affidavit of

Joseph Wayne Palmer Sather

Sworn before me this 1st

day of December, 2023



A COMMISSIONER FOR OATHS IN AND
FOR THE PROVINCE OF ALBERTA

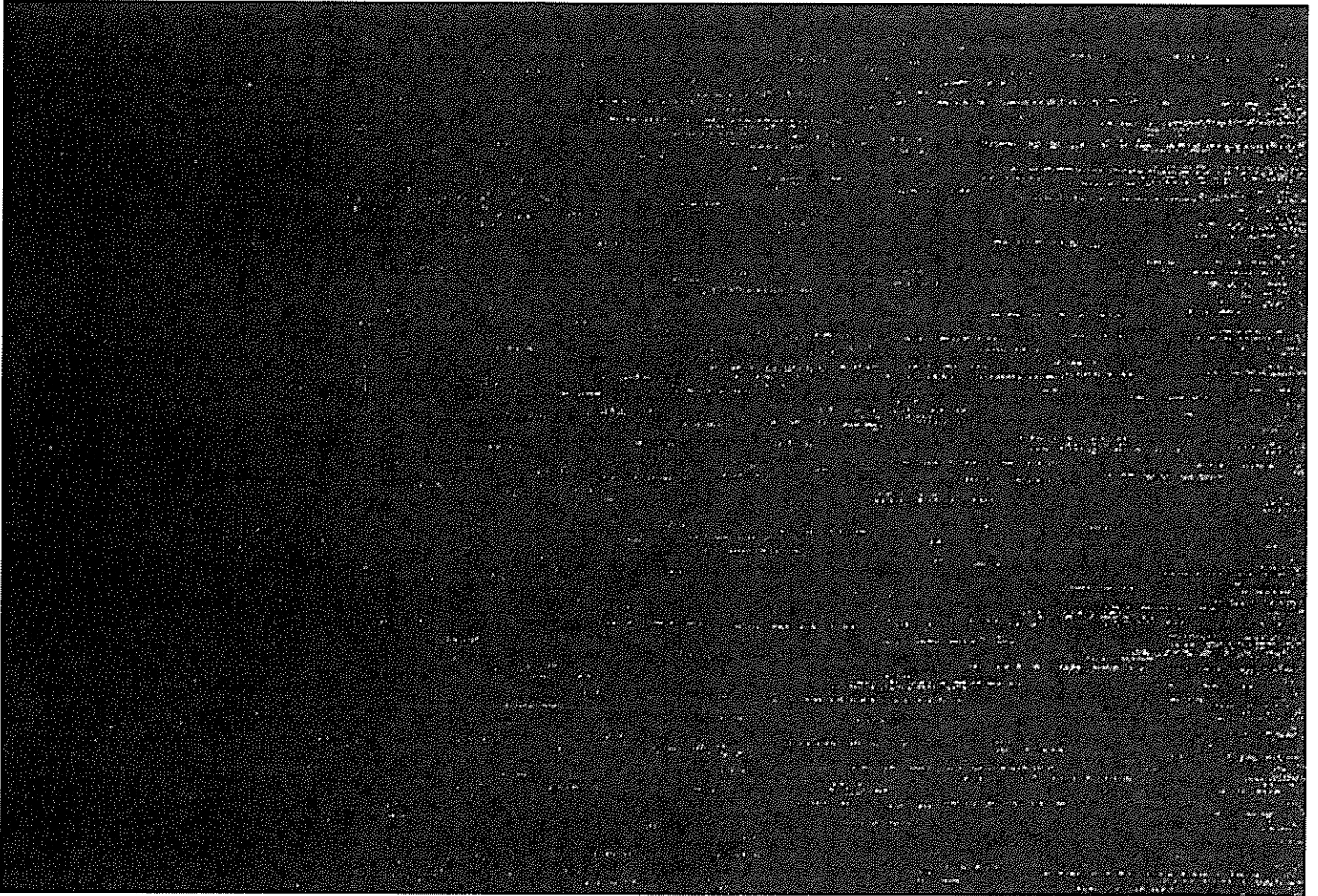
Carter Lindsay

Student-at-Law

3400, 350 7th Avenue SW

Calgary, Alberta T2P3N9

Ph: 1-403-261-9448



----- Forwarded Message -----

From: Cecil Cheveldave <ctcheveldave@telus.net>

To: 'Mike Street' <20xranchltd@gmail.com>; "joesather_realtor@yahoo.ca" <joesather_realtor@yahoo.ca>

Sent: Tuesday, November 7, 2023 at 02:10:58 PM MST

Subject: Sather Ranch Ltd. Receivership - Interim Statement of Receipts and Disbursements to 10/31/23

Good Afternoon,

Attached for your review and file is a copy of the Receiver's Interim Statement of Receipts and Disbursements to October 31, 2023.

Thanks.

Cecil Cheveldave, CPA, CMA, CAFM, CMC, CIRP, LIT

President

C. Cheveldave & Associates Ltd.

Suite 600-I, 235 – 1st Avenue

Kamloops, BC V2C 3J4

250-819-8614

ctcheveldave@telus.net

www.cheveldave.ca

www.linkedin.com/in/cecil-cheveldave

IN THE MATTER OF THE RECEIVERSHIP OF
SATHER RANCH LTD.
RECEIVER'S INTERIM STATEMENT OF RECEIPTS AND DISBURSEMENTS
FOR THE PERIOD NOVEMBER 21, 2019 TO OCTOBER 31, 2023

Note

RECEIPTS:

Sale of Property	\$ 984,197.39
Collection of Cattle Auction Proceeds	91,667.56
Funds Transferred Into ISCU Credit Line Acct From BMO Trust Acct. to payout borrowing	57,497.20
Funds Transferred Into BMO Trust Acct From ISCU Credit Line Acct.	55,163.00
GST refund	26,480.75
Sale of Cattle	12,528.00
Holdback funds from sale of land	10,000.00
Interest on GIC	3,499.88
Residual funds from previous Receiver's account	2,085.27
GST Collected on Equipment Sale	2,050.00
Funds Transferred Into ISCU Credit Line Acct From BMO Trust Acct.	182.73
Reimbursement of Filing Fee	20.00
Refund of Service Charge - ISCU	3.84
TOTAL RECEIPTS	<u>\$ 1,245,375.62</u>

DISBURSEMENTS:

Property taxes	\$ 26.74
Filing Fees	70.00
Utilities	145.00
Bookkeeping	180.00
Funds Transferred to ISCU Credit Line Account from BMO Trust Acct.	182.73
Fuel	366.96
Interest Charges	457.43
Bank charges	1,376.65
Receivership Loan Set Up Fees & Costs - ISCU	1,557.50
Grazing License Renewal	4,935.50
Insurance	6,000.00
Ranch Management - wages / fees	6,048.04
Accounting fees	8,375.00
Appraisal	9,272.20
Payout of Previous Receiver's Taxation Costs	12,707.63
GST Paid	26,279.34
Payout of Previous Receiver's Borrowing Charge	40,000.00
Funds Transferred to BMO Trust Acct. from ISCU Credit Line Acct.	55,163.00
Payout of ISCU receivership loan	57,497.20
Receiver's Fees	236,029.37
Receiver's Legal Counsel Fees	272,626.75
TOTAL DISBURSEMENTS	<u>\$ 739,297.04</u>

EXCESS OF RECEIPTS OVER DISBURSEMENTS \$ 506,078.58 1

Notes:

1. Balance represented by:

BMO Trust Account balance at 10/31/2023	\$ 6,078.58
BMO Investment in GIC	<u>\$ 500,000.00 *</u>
TOTAL BALANCE - ALL ACCOUNTS	<u>\$ 506,078.58</u>

- * A partial redemption of \$60,000 was made in March 2021
- * A partial redemption of \$70,000 was made in May 2021
- * A partial redemption of \$50,000 was made in May 2022
- * A partial redemption of \$50,000 was made in October 2022
- * A partial redemption of \$30,000 was made in December 2022
- * The GIC matured in December 2022 - \$500,000 was reinvested February 2023

This the 1st affidavit
of Gregory Bery in this case
and was made on 1st of December, 2023

Court of Appeal File No. CA49175

COURT OF APPEAL

BETWEEN:

JOSEPH WAYNE PALMER SATHER

DEFENDANT
(APPELLANT)

AND:

SATHER RANCH LTD

PLAINTIFF
(RESPONDENT)

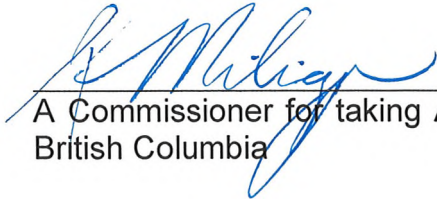
AFFIDAVIT

I, Gregory Berry, of 2900 – 550 Burrard Street, Vancouver, British Columbia, SWEAR,
THAT:

1. I am a Legal Assistant employed by the firm Fasken Martineau DuMoulin LLP, counsel for the Defendant/Appellant, Joseph Wayne Palmer Sather, and as such have personal knowledge of the facts hereinafter deposed to except where stated to be on information and belief, in which case I verily believe them to be true.
2. Now produced and shown to me and marked as **Exhibit “A”** to this my affidavit is a true copy of an email dated October 6, 2023 from Kaleigh Milinazzo, counsel for the Appellant, to Scott Andersen, counsel for the Respondent.
3. Now produced and shown to me and marked as **Exhibit “B”** to this my affidavit is a true copy of an email dated October 31, 2023 from Mr. Andersen to Ms. Milinazzo

attaching the Reasons for Judgment on Costs made by the Honourable Justice Brongers on September 27, 2023 (*Street v. Sather Ranch Ltd.*, 2023 BCSC 1694).

SWORN BEFORE ME at the City of)
Vancouver, in the Province of British)
Columbia, December 4, 2023.)


A Commissioner for taking Affidavits for)
British Columbia)



GREGORY BERRY

KALEIGH F. MILINAZZO
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 4859

Gregory Berry

From: Kaleigh Milinazzo
Sent: October-06-23 11:22 AM
To: scott.andersen@lawsonlundell.com
Cc: Tom Posyniak
Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

Hi Scott:

Thank you for confirming your clients' position.

Our position is that your application for security for costs is pre-mature where we have an agreement to defer the appeal on liability and remedy to a future date, to be heard together once remedy is decided,

The premise of this agreement, at least from my clients' perspective, is that if we are successful in the remedy hearing, the appeal proceeding may not be necessary. No security for costs motion should proceed until we have clarity on whether an appeal is actually required. Put another way - your client is not at risk of not recovering costs for an appeal that is not happening anytime soon (as the result of this effective stay), or may not happen at all (depending on the final outcome of the BCSC proceeding).

Any motion for security should only proceed once the remedy decision is in hand. The Court will be asked to consider an incomplete picture of the merits of the appeal without it.

If your client still intends to proceed with an application for security while the remedy decision is outstanding, can you please advise:

- The quantum of security sought, so I may seek instructions on your proposal
- The intended timing of your application

In any event, please let me know your availability and intended timing for the continuation before Justice Elwood.

If you would like to discuss any of this by phone, I am available early next week.


Thank you very much, and enjoy the long weekend.

Best,

Kaleigh Milinazzo
Associate

T +1 604 631 4859 | kmilinazzo@fasken.com
Fasken Martineau DuMoulin LLP

This is **Exhibit "A"** referred to in the affidavit of **Gregory Berry** sworn before me at Vancouver BC this 4th day of December 2023



A Commissioner for Taking Affidavits
for British Columbia

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: Wednesday, October 4, 2023 1:13 PM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Cc: Tom Posyniak <tposyniak@fasken.com>
Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.} 2

Hi Kaleigh,

I have instructions to apply for security for costs of the appeal. Please advise whether your client will consent. Except for that step, I am otherwise in agreement that the remedy issue can be determined before additional steps are taken in the appeal.

Regards,

Scott R. Andersen | Partner
Lawson Lundell LLP
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Sent: Wednesday, September 27, 2023 6:59 PM
To: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>
Cc: Tom Posyniak <tposyniak@fasken.com>
Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Hi Scott:

I'm writing in follow up to my voicemail yesterday afternoon.

As I mentioned, we have been retained by Mr. Sather to act on his behalf in the continuation of the hearing before Justice Elwood on remedy. I would be happy to discuss dates for that appearance at your convenience.

With respect to the appeal, we are in agreement with your proposal to have the appeal on liability and remedy joined together, provided that the parties agree to:

- take no steps in the existing appeal proceeding while Justice Elwood's decision on remedy is outstanding;
- execute the appropriate consent orders to extend time and get off the inactive list (if needed); and
- bring both appeals together under s. 17 of the Rules.

Please let me know if this is agreeable. I am out of the office Friday/Monday but happy to discuss at your convenience.

Many thanks,

Kaleigh Milinazzo
Associate

T +1 604 631 4859 | kmilinazzo@fasken.com
Fasken Martineau DuMoulin LLP

From: Kaleigh Milinazzo
Sent: Wednesday, September 20, 2023 1:33 PM
To: scott.andersen@lawsonlundell.com
Cc: Tom Posyniak <tposyniak@fasken.com>
Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

Hi Scott:

A brief note to apologize for being slow to confirm whether our position is that the appeal should proceed on liability only, or together with the remedy issues once the BCSC proceedings complete, further to our discussions in late August.

I expect to have instructions this week and will connect when I do.

I hope otherwise your busy fall calendar is going well.

Best,

Kaleigh Milinazzo

Associate

T +1 604 631 4859 | kmilinazzo@fasken.com

Fasken Martineau DuMoulin LLP

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Sent: Wednesday, August 30, 2023 2:05 PM

To: Scott Andersen <scott.andersen@lawsonlundell.com>

Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

I'll call you at 250.979.8546 unless there is another number you'd prefer.

Kaleigh Milinazzo

Associate

T +1 604 631 4859 | kmilinazzo@fasken.com

Fasken Martineau DuMoulin LLP

From: Scott Andersen <scott.andersen@lawsonlundell.com>

Sent: August-30-23 2:03 PM

To: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Subject: RE: [EXT] Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Sure, that works -

Scott R. Andersen | Partner

Lawson Lundell LLP

D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Sent: Wednesday, August 30, 2023 1:58 PM

To: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>

Subject: RE: [EXT] RE: Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Hi Scott: Thank you for getting back to me. How about 3 p.m. today?

4

Kaleigh Milinazzo

Associate

T +1 604 631 4859 | kmilinazzo@fasken.com

Fasken Martineau DuMoulin LLP

From: Scott Andersen <scott.andersen@lawsonlundell.com>

Sent: August-30-23 1:23 PM

To: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Subject: [EXT] RE: Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Hi Kaleigh,

Yes, I could discuss the appeal this afternoon or tomorrow. Let me know what time would be convenient for you.

Scott R. Andersen | Partner

Lawson Lundell LLP

D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Sent: Monday, August 28, 2023 11:23 AM

To: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>

Cc: Tom Posyniak <tposyniak@fasken.com>

Subject: FW: Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Hi Scott:

Do you have some time this week to discuss this appeal? Please let me know what might work for you and I can set up a call if you're available.

Thank you very much,

Kaleigh Milinazzo

Associate

T +1 604 631 4859 | kmilinazzo@fasken.com

Fasken Martineau DuMoulin LLP

From: Gregory Berry <gberry@fasken.com>

Sent: August-28-23 9:53 AM

To: scott.andersen@lawsonlundell.com

Cc: Kaleigh Milinazzo <kmilinazzo@fasken.com>; Tom Posyniak <tposyniak@fasken.com>; Heather Liesch <hliesch@fasken.com>

Subject: Joseph Wayne Palmer Sather v. Sather Ranch Ltd. et al, BCCA File No. CA49175

Dear Mr. Andersen,

On behalf of Kaleigh Milinazzo, please see the attached letter and documents listed in it.

Kind regards,

Gregory Berry

Legal Assistant

T +1 604 631 3259

gberry@fasken.com | fasken.com

FASKEN

Fasken Martineau DuMoulin LLP

550 Burrard Street, Suite 2900, Vancouver, British Columbia V6C 0A3

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address: <https://www.fasken.com/en/terms-of-use-email/>.

Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/terms-of-use-email/>.

Disclaimer

This email and any accompanying attachments contain confidential information that may be subject to solicitor-client privilege and are intended only for the named recipients. If you have received this email in error, please notify the sender and destroy the email. Our e-mail terms of use can be found at <http://www.lawsonlundell.com/disclaimer.html>

Gregory Berry


From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: October-31-23 10:27 AM
To: Kaleigh Milinazzo
Subject: RE: [EXT] Joe Sather
Attachments: 081 RFJ Brogers on Costs (Joe to pay special costs).PDF

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

See attached, as requested.

Scott R. Andersen | Partner
Lawson Lundell LLP
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

This is **Exhibit "B"** referred to in the affidavit of **Gregory Berry** sworn before me at Vancouver BC this 4th day of December 2023


A Commissioner for taking Affidavits for British Columbia

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Sent: Tuesday, October 31, 2023 10:24 AM
To: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>
Subject: RE: [EXT] Joe Sather

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Thank you Scott. Could you send me a copy? The reasons are not published which may be why I had a hard time turning them up.

Best,

Kaleigh Milinazzo
Associate

T +1 604 631 4859 | kmilinazzo@fasken.com
Fasken Martineau DuMoulin LLP

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: Tuesday, October 31, 2023 10:23 AM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Subject: RE: [EXT] Joe Sather

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Hi Kaleigh,

Yes, I think a half day would be fine. I will submit the request to reappear this morning and will copy you.

As for costs, please refer to 2023 BCSC 1694.

I look forward to hearing from you regarding whether it will be necessary to apply for security for costs of the appeal, which I think would readily be granted.

Scott R. Andersen | Partner
Lawson Lundell LLP
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

From: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Sent: Monday, October 30, 2023 5:19 PM
To: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>
Subject: RE: [EXT] FW: Joe Sather

[THIS MESSAGE ORIGINATED FROM OUTSIDE OUR FIRM]

Hi Scott:

I do not yet have instructions on your proposal, but I hope to connect with Mr. Sather tomorrow and be back to you this week. To assist me in considering your proposal, can you point to the outstanding awards of cost and special costs you refer to below?

In terms of December availability for the Elwood continuation, I am available December 1, 4-5 and December 11-14. We may want to provide broader availability to up our odds of getting a date - I can do any day from Jan 8-31.

I would anticipate we'd need a half day total. Do you agree with that assessment?

Thank you,

Kaleigh Milinazzo
Associate

T +1 604 631 4859 | kmilinazzo@fasken.com
Fasken Martineau DuMoulin LLP

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: Monday, October 30, 2023 3:46 PM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Subject: [EXT] FW: Joe Sather

{CAUTION: This email originated from outside of Fasken. Exercise care before clicking links or opening attachments.}

Hi Kaleigh,

Just following up regarding the below and attached.

Thanks,

Scott R. Andersen | Partner
Lawson Lundell LLP
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801

From: Scott Andersen (2546) - 4Flr <scott.andersen@lawsonlundell.com>
Sent: Friday, October 20, 2023 3:03 PM

To: Kaleigh Milinazzo (kmilinazzo@fasken.com) <kmilinazzo@fasken.com>
Subject: Joe Sather

8

Kaleigh,

As mentioned, I have instructions to apply for an order requiring your client to post security for the costs of the appeal. Other than the property in issue, I am not aware of him having any property in BC. Further, he has now been ordered on several occasions to pay special costs, all of which costs orders remain unpaid and outstanding. Attached is our draft bill of costs, which is premised on the assumption that the appeal can be heard in a 1 day. Please seek instructions and advise whether your client will agree to post security for those costs, failing which please provide me with your available dates in November or December for the hearing of that application.

I would like to also reset the hearing before Justice Elwood to address the submissions Mr. Justice has requested. Can you please provide me with the dates (and time estimate) for which you would be unavailable to speak to that application in December. His reason for judgment already set out the timeline for the exchange of materials between counsel.

I look forward to hearing from you.



SCOTT R. ANDERSEN | Partner
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801 | E scott.andersen@lawsonlundell.com
LAWSON LUNDELL LLP Suite 403, 460 Doyle Avenue, Kelowna, BC V1Y 0C2
Vancouver | Calgary | Yellowknife | Kelowna



Disclaimer

This email and any accompanying attachments contain confidential information that may be subject to solicitor-client privilege and are intended only for the named recipients. If you have received this email in error, please notify the sender and destroy the email. Our e-mail terms of use can be found at <http://www.lawsonlundell.com/disclaimer.html>

This email contains privileged or confidential information and is intended only for the named recipients. If you have received this email in error or are not a named recipient, please notify the sender and destroy the email. A detailed statement of the terms of use can be found at the following address: <https://www.fasken.com/en/terms-of-use-email/>.

Ce message contient des renseignements confidentiels ou privilégiés et est destiné seulement à la personne à qui il est adressé. Si vous avez reçu ce courriel par erreur, S.V.P. le retourner à l'expéditeur et le détruire. Une version détaillée des modalités et conditions d'utilisation se retrouve à l'adresse suivante : <https://www.fasken.com/fr/terms-of-use-email/>.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Street v. Sather Ranch Ltd.*,
2023 BCSC 1694

Date: 20230927
Docket: S1913131
Registry: Vancouver

Between:

Michael Neil Street and Marielle Jacqueline Angella Brule
Plaintiffs

And

**Sather Ranch Ltd. by its Court Appointed Receiver and Manager,
C. Cheveldave & Associates Ltd.**
Defendant

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment on Costs

Counsel for the Plaintiffs S.D. Dvorak

No other appearances

Place and Date of Hearing: Vancouver, B.C.
Written Submissions Received
August 23, 2023

Place and Date of Judgment: Vancouver, B.C.
September 27, 2023

Introduction

[1] This is my decision on costs arising from my reasons for an oral judgment pronounced August 10, 2023 and indexed as *Street v. Sather Ranch Ltd.*, 2023 BCSC 1525 (“Reasons”). They were issued further to a summary trial proceeding whose purpose was to determine the validity of certain claims made against Sather Ranch Limited (“SRL”), a corporation that is in receivership. It was adjudicated in accordance with a process mandated by claims process order issued by Justice Walker on January 14, 2021 (the “CPO”).

[2] As noted at paragraphs 1 to 4 of the Reasons, there are six parties to the proceeding. Four of them – Michael Street (“Mike”), Boundary Machine Limited (“Boundary”), Marielle Brule (“Marielle”), and Profectus Financial Inc. (“Profectus”) – were referenced as the “Street Claimants”. Two of them – Joseph Sather (“Joe”) and AMX Real Estate Inc. (“AMX”) – were referenced as the “Sather Claimants”. I will continue to use these shorthands going forward.

[3] In my Reasons, I effectively allowed all of the Street Claimants’ claims. I also dismissed all of the Sather Claimants’ claims, except for one aspect to which the Street Claimants had consented.

[4] At the request of counsel for the Street Claimants, I have permitted the parties to make written submissions with respect to costs. The Street Claimants produced such submissions on August 23, 2023. The deadline for the Sather Claimants to provide responding submissions was September 7, 2023. None were received. Accordingly, the only submissions before me are those of the Street Claimants. My consideration of them is set out here.

The Street Claimants’ Position

[5] The Street Claimants seek an award of special costs.

[6] They say such an award is warranted because the Sather Claimants:

1. made unfounded allegations of serious misconduct against Mike and Marielle (theft, falsifying accounting records, and conspiracy to defraud SLR and the Sather Claimants);
2. provided false evidence in support of their allegations of misconduct; and
3. filed a claim that was both ill-conceived and unsubstantiated.

[7] With respect to the scope of the relief sought, the Street Claimants ask for “an order that they be awarded their special costs of and incidental to this proceeding” (para. 1 of the Street Claimants’ submissions). In other words, they “are seeking special costs in connection with this proceeding generally, and alternatively in relation to the Claims Process specifically” (para. 15 of the Street Claimants’ submissions).

Analysis

[8] The Court’s authority to issue an award of special costs in respect of all or part of a proceeding is provided for by Rule 14-1(1)(b) of the *Supreme Court Civil Rules*, BC Reg. 168/2009 [*Rules*].

[9] Such a discretionary award may be made if there has been “reprehensible conduct” by a party in relation to the litigation. A helpful discussion of the principles to be applied by the Court when exercising this discretion can be found in *De Cotiis v. Hothi*, 2020 BCSC 1545; aff’d 2021 BCCA 60:

[7] This court has the jurisdiction to make an award of special costs pursuant to its inherent jurisdiction and Rule 14-1(1) of the *Supreme Court Civil Rules*.

[8] The Court of Appeal reaffirmed in *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 that an order for special costs requires some form of “reprehensible conduct”, which can include “scandalous or outrageous conduct as well as milder forms of misconduct deserving of reproof or rebuke”: at paras. 57, 132.

[9] The Court of Appeal went on to say, at para. 134: “*Special costs should be reserved to punish and deter reprehensible conduct in the course of litigation.*” [Emphasis added.] The purpose of an award of special costs is to chastise a litigant. Such awards are meant to punish and deter bad behavior, as well as to distance the court from the conduct at issue.

[10] The question is whether reprehensible conduct occurred in the course of this litigation. Have exceptional circumstances been demonstrated to justify an award of special costs? That is the focus of the inquiry that must be undertaken.

[11] In *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570 (BC CA), 9 B.C.L.R. (3d) 242, [1994] B.C.J. No. 2486 (C.A.) at para. 17, Lambert J.A. identified "reprehensibility" as the standard for special costs, the meaning of which is broad in scope:

...the word reprehensible is a word of wide meaning. It encompasses scandalous or outrageous conduct but it also encompasses milder forms of misconduct deserving of reproof or rebuke. Accordingly, the standard represented by the word reprehensible, taken in that sense, must represent a general and all encompassing expression of the applicable standard for the award of special costs.

[12] Reprehensible conduct is found, per *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 [*Westsea*] at para. 73:

...in circumstances where there is evidence of improper motive, abuse of the court's process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant[.]

[13] Standing alone, failure to disclose critical documents is conduct deserving of rebuke:

...

[14] Special costs may also be awarded where a party shows a "lack of concern for the truth" by swearing false and contradictory affidavits in an effort to advance their interests, or has otherwise deliberately provided untruthful evidence: *Mee Hoi Bros. Company Ltd. v. Borving Investments (Canada) Ltd.*, 2017 BCSC 1910 at para. 371.

[15] Special costs have been awarded especially when:

...evidence was presented by the respondents that was "calculated to mislead the trial judge and jury" and...[where] the lack of candour demonstrated by [a witness] in giving his evidence "cannot be condoned": *Fullerton v Matsqui (District)*, 1992 CanLII 5985 (BC CA), 74 B.C.L.R. (2d) 305, [1992] B.C.J. No. 2969 (C.A.) at para. 17.

[16] The line is drawn between evidence which is merely rejected by the court, not warranting an award of special costs, and evidence which is intended or designed to mislead, or is otherwise put forth for an improper motive, which does warrant the court's rebuke.

[17] Finally, in *Westsea*, Gropper J. summarized the principles for awarding special costs at para. 73:

- a) the court must exercise restraint in awarding special costs;
- b) the party seeking special costs must demonstrate exceptional circumstances to justify a special costs order;

- c) simply because the legal concept of “reprehensibility” captures different kinds of misconduct does not mean that all forms of misconduct are encompassed by this term;
- d) reprehensibility will likely be found in circumstances where there is evidence of improper motive, abuse of the court’s process, misleading the court and persistent breaches of the rules of professional conduct and the rules of court that prejudice the applicant;
- e) special costs can be ordered against parties and non-parties alike; and
- f) the successful litigant is entitled to costs in accordance with the general rule that costs follow the event. Special costs are not awarded to a successful party as a “bonus” or further compensation for that success.

[10] On my assessment of the claims process litigation, I agree with the Street Claimants that there has been reprehensible conduct by the Sather Claimants that is deserving of rebuke in the form a special costs award.

[11] In particular, the Sather Claimants made serious allegations of misconduct by the Street Claimants generally, and by Mike and Marielle in particular. These allegations were contained in both the Sather Claimant’s application response and in affidavits sworn by Joe and tendered into evidence. The allegations are summarized at paragraphs 19 and 21 of the Street Claimants’ submissions, reproduced here:

[19] The Application Response filed by the [Sather Claimants] sets out numerous allegations of misconduct, but the primary assertions are:

- a. That the costs of the Improvements to the Home Ranch were “wrongfully and intentionally incurred, without [Joe’s] approval, for the purpose of ‘debt loading’ SRL” in furtherance of a plot by the [Street Claimants] to acquire its assets [Application Response para. 26]; and
- b. That [Mike] caused SRL to engage Boundary’s services and charged “unreasonably high rates...for unreasonably long periods, without any justification” and directed Boundary’s employees to carry out work on the Home Ranch “...to the detriment of SRL.” [Application Response paras. 28, 36, 44 and 51].

...

[21] In support of these allegations, [Joe] deposed to the following false statements:

- a. That the [Street Claimants] created the “...wrongful indebtedness so as to acquire the entirety of the equity in the ranch without any payment to or value being realized by myself and AMX.” [Joe’s affidavit #1, para. 27]

- b. [Mike and Marielle] "...sought to accomplish this goal by retaining the services of their related companies and incurring inflated and fictitious costs and debts..." [Joe's affidavit #1, para. 28]
- c. [Mike and Marielle] "...conspired and acted jointly to create false and misleading financial statements and other corporate records purportedly documenting the indebtedness of SRL to themselves and their related entities..." [Joe's affidavit #1, para. 29]
- d. "The work carried out by Boundary at [Mike's] request did not reflect the fair market value of the work. For example, [Mike] rented equipment and used his own backhoe, charging unreasonably high rates via Boundary and for unreasonably long periods..." [Joe's affidavit #1, para. 36]
- e. The purpose of the arrangement with Boundary "...was to drain SRL of funds and divert the funds to a company owned by [Mike]." [Joe's affidavit #1, para. 38]
- f. [Mike] "...directed SRL to purchase fuel and equipment, which were then misappropriated by [Mike], [Marielle], and/or Boundary rather than being used by SRL." [Joe's affidavit #1, para. 39]
- g. [Mike] "...has concealed, relocated, and misidentified certain material assets of SRL." [Joe's affidavit #1, para. 40]
- h. Under [Mike's] care "...the size of the herd owned by and branded for SRL has mysteriously declined, while [Mike's] own personal herd has correspondingly increased in number...[Mike] absconded with approximately 110 head of cattle that belonged to Palmer Sather and about 30 head of cattle that belonged to [Joe] personally." [Joe's affidavit #1, para. 41]
- i. [Mike] "...altered the record-keeping associated with the herd of cattle, including the physical branding on the cattle." [Joe's affidavit #1, para. 43]
- j. Palmer Sather's assets "...were wrongfully converted by [Mike] and or SRL." [Joe's affidavit #1, para. 50]

[12] In addition, Joe made an affidavit and provided cross-examination testimony purportedly in support to his allegation that Mike was attempting to "debt load" SRL. They included an assertion by Joe that he found a document outlining Mike's alleged plan to wrongfully obtain SRL's assets (para. 23 of the Street Claimants' submissions).

[13] As noted by counsel for the Street Claimants, these allegations were made without any foundation, were not withdrawn, and were entirely rejected by the Court. For example, Joe's speculative allegations with respect to the document he found

were entirely refuted by the testimony of Marielle, as explained at paragraphs 61 to 68 of the Reasons.

[14] It is self-evident that alleging fraud, theft, and breaches of fiduciary duty in a court proceeding is a serious matter that can have a damaging impact on individual reputations. That is what has been done in this case by the Sather Claimants. On my review of the evidence, the allegations were entirely baseless and ought not to have been made. As such, I find that this is litigation conduct deserving of rebuke by way of an award of special costs.

[15] With respect to the scope of this award, however, it will be limited to just the specific claims proceeding that I adjudicated by means of a summary trial. I do not agree with counsel for the Street Claimants' request that his clients be awarded costs "incidental" to this specific proceeding. I am not satisfied that I have the jurisdiction to make such an award and, in any case, I lack a proper evidentiary foundation to decide whether one would be warranted in this matter.

Disposition

[16] For all of these reasons, the Sather Claimants are jointly and severally ordered to pay the Street Claimants their costs of the SRL claims proceeding commenced pursuant to the CPO, such costs to be assessed as special costs.

"Brongers J."

COURT OF APPEAL FILE NO. CA49175
Joseph Wayne Palmer Sather v Sather Ranch Ltd.
Application Response Book for Security for Costs

COURT OF APPEAL

ON APPEAL FROM the order of the Honourable Justice Elwood of the Supreme Court
of British Columbia pronounced on June 1, 2023

BETWEEN:

JOSEPH WAYNE PALMER SATHER (Defendant)

AND:

**SATHER RANCH LTD. (Plaintiff) and C. CHEVELDAVE & ASSOCIATES LTD.
(Court Appointed Receiver)**

MEMORANDUM OF ARGUMENT

Joseph Wayne Palmer Sather

Joseph Wayne Palmer Sather

Sather Ranch Ltd. & C. Cheveldave &
Associates Ltd.

Tom Posyniak & Kaleigh Milinazzo

Scott R. Andersen

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
550 Burrard Street, Suite 2900
Vancouver, BC V6C 0A3

Lawson Lundell LLP
Barristers and Solicitors
Suite 403 - 460 Doyle Avenue
Kelowna, BC V1Y 0C2

Phone: 604-631-3131

Phone: 250-979-8546

Fax: 604-631-3232

604-631-9220

Email: tposyniak@fasken.com
kmilinazzo@fasken.com

Email: scott.andersen@lawsonlundell.com

Counsel for the Appellant

Counsel for the Court Appointed Receiver
and Manager of Sather Ranch Ltd.

Part 1: Facts

Overview of the appellant's position

1. The appellant, Joseph Sather ("**Joe**"), opposes the application for security for costs brought by the respondent, the court-appointed Receiver and Manager of Sather Ranch Ltd. ("SRL") (the "**Receiver**").
2. It is not in the interests of justice to order security because the application is premature as a result of the parties agreement to not prosecute the appeal while the proceeding on remedy below concludes. Even if it is not premature, it would not be in the interests of justice because the order would preclude Joe, who does not have the means to post the security, from prosecuting an appeal with merit.
3. This application is a tactical attempt to stifle this appeal without a hearing on the merits and without the full scope of the matter being before this Court. It should be dismissed, or alternatively, dismissed with leave to reapply.

The trial judgment on liability

4. This appeal centers on Joe's purchase of a 160 acre parcel of land (the "**160 Acres**"), which the trial judge found to be a corporate opportunity which belonged to SRL. SRL was incorporated to carry on the operations of Sather Ranch following Joe's father's inability to carry on the business. Joe and Mike Street ("**Mike**") were 50% shareholders and sole directors.
5. In 2017, Joe and Mike discussed plans for SRL to acquire the 160 Acres. The Liability Reasons conclude that whether Carol Sather-Byman ("**Carol**"), who had the power to authorize the sale, would have ultimately agreed to sell to SRL was "difficult to say". Carol ultimately authorized the sale of the 160 Acres to Joe.
6. With respect to the ripeness of the opportunity, the Court held that the opportunity was "sufficiently within [SRL's] reach", despite the uncertainty of Carol's agreement. While "the financial challenges facing the ranch were significant and

may only have been made worse by taking on debt to acquire the Grazing Lands”, the trial judge concluded SRL may have been able to obtain financing.

7. The trial judge found Joe breached his fiduciary duty by purchasing the property in his own name, and directed further submissions on the appropriate remedy.

Status of the appeal

8. A notice of appeal was filed on June 28, 2023. A continuation of the summary trial to speak to the appropriate remedy is scheduled for December 14, 2023.
9. The parties have agreed that: (a) the appeal will not be prosecuted while the remedy decision in the Court below remains outstanding, (b) this appeal, and any appeal brought on the remedy issues will be brought together under Rule 17 of the Rules; and (c) the parties will cooperate to extend time as needed.

Part 2: Issues

10. Whether the Court should order Joe post security for costs of the Appeal.

Part 3: Analysis

11. The criteria considered on an application for security for appeal costs were summarized in *Gardezi v. Positive Living Society of British Columbia*, 2018 BCCA 84 (“**Gardezi**”) at paras. 28-31 and continue to apply under the new Act and Rules: *Gonzales Hill Preservation Society v. Victoria*, 2022 BCCA 384.

(1) This application is premature

12. The timeliness of the application is a relevant consideration: *Gardezi* at para. 31. Here, the Receiver’s application is premature.
13. The parties, conscious of the bifurcated nature of the matter below, have opted to wait and see to determine whether the order from the remedy decision should be added to this appeal. This process respects judicial economy. From this agreement, the Receiver has already obtained an effective stay in this Court. As a result, there is no danger to the Receiver of an unpaid costs award now or in the foreseeable future. The principle animating security for costs is not yet engaged.

14. The prematurity of this application creates uncertainty about two relevant considerations on this motion. First, following the trial judge's decision on remedy, it is possible that the nature of the appeal could fundamentally change and impact the merits of the appeal. Second, if the CPL on the 160 Acres is removed following the decision on remedy, Joe may be able to raise funds to satisfy a costs award.

15. If this Court agrees the matter is premature, it should dismiss the application with leave to reply 30 days after the decision on remedy is pronounced.

(2) **Whether the Receiver's costs may be recoverable is presently unknown**

16. Whether the costs of the appeal will be readily recoverable if the respondent succeeds is a relevant, but not determinative factor: *Gardezi* at para. 30. As a result of the prematurity of this application, the likelihood of costs recovery if Joe is not successful in his appeal is uncertain, as noted above. The ability to raise funds from land owned by multiple parties is an asset potentially available to satisfy an award of costs: *Foote v. Canada (Attorney General)*, 2012 BCCA 253.

(3) **Joe does not have the financial means to post the security sought**

17. If ordering security for costs would prevent the appellant from pursuing a meritorious appeal, it may not be in the interest of justice to make the order.

18. As described in detail in his affidavit, Joe is 78 years old and effectively indigent. He does not have the financial means to post the security sought. Such an order would foreclose Joe's ability to proceed with the appeal, even with the assistance of pro bono counsel and disbursements covered by Access Pro Bono.

19. In response to the Receiver's argument that because Joe had legal counsel in the past, he ought to be able to post security, Joe has disclosed that Fasken is representing him pro bono on this appeal. Further, Joe could not afford legal counsel and acted for himself in the last legal proceeding in relation to SRL.

(4) **This appeal has merit**

20. This appeal raises important questions about the scope and nature of the corporate opportunity doctrine. If the appeal lacks merit in such a way that it is “virtually hopeless” or “bound to fail”, security may be ordered even if the order prevents the pursuit of the appeal. Security will not be ordered if it would prevent the appellant from pursuing a meritorious appeal: *Gardezi* at para. 32.
21. The trial judge’s adoption of a broad approach to the “maturity” of a corporate opportunity engages a question of law, reviewable on a standard of correctness. The extent to which a business opportunity must be “mature” to give rise to a claim for breach of corporate opportunity is unsettled in this province: *Sateri (Shanghai) Management Limited v. Vinall*, 2017 BCSC 491 at para. 328 citing *Blue Line Hockey Acquisition Co. v. Orca Bay Hockey Ltd. Partnership*, 2009 BCCA 34 at para. 61, where the Court of Appeal, without deciding the issue, observed:
- If and when the point is ever argued, then, a Canadian court might well take the view that the appropriation of an opportunity “belonging to” a corporation by a director or former director merit equitable intervention even where the opportunity is not a “mature” one.
22. There are British Columbia authorities which characterize a ripe opportunity as “a prize ready for immediate grasping”: *Consbec Inc. v. Walker*, 2016 BCCA 114, affirming 2014 BCSC 2070 at para. 140, quoting *Pizza Pizza Ltd. v. Gillespie*, 1990 CanLII 4023 (ONSC). Similarly, a number of Ontario authorities endorse a narrower approach to the maturity of a corporate opportunity as one that is “immediately available to the corporation”: *Tracey v. Tracey*, 2012 ONSC 3144; *Donor Gateway Inc. v. Passero*, 2007 CanLII 3677 (ON SC), at para. 12; *Roppovalente v. Danis*, 2020 ONSC 5290.
23. The appellant will argue that the judge erred in law in adopting a broader articulation of the question of maturity, observing that “while maturity is a relevant factor, the opportunity need not be so mature that it is a sure thing.” A narrower approach to the maturity of a corporate opportunity, which gives corporate

fiduciaries some clarity as to the nature of the ripeness of the opportunity and acknowledges practical realities ought to govern.

24. The appellant will further argue the judge made an error of mixed fact and law on whether there was a ripe opportunity. The 160 Acres was not a “mature” corporate opportunity when it was at best unclear whether the opportunity was even available to SRL. Carol—who had authority to sell the land—had not accepted SRL’s offer. The trial judge found “the financial challenges facing the ranch were significant and may only have been made worse by taking on debt to acquire the [160 Acres].”

(5) **The interests of justice**

25. Whether the order for security for costs would be in the interests of justice is the ultimate overall consideration. It is not in the interests of justice to order security for costs here because the order would have the effect of driving Joe from prosecuting a meritorious appeal. It would also preclude him from adding another potentially meritorious appeal from a decision on remedy. This is unfair.
26. Finally, if the Court is inclined to order security, the bill of costs sought by the Receiver is excessive. The hybrid trial process below was reasonably efficient and the appeal is of moderate complexity.

Part 4: Order Sought

27. The appellant seeks an order that the application be dismissed, or alternatively, dismissed as premature with leave to re-apply, or in the further alternative, that Joe be ordered to post security in a significantly reduced quantum. There is no basis to award the Receiver costs in any event of the cause, and they ought to follow the usual rule.

All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this December 5th of 2023.

DocuSigned by:

Kateigh Milinazzo

Kateigh Milinazzo

TABLE OF AUTHORITIES

<i>Blue Line Hockey Acquisition Co. v. Orca Bay Hockey Ltd. Partnership</i> , 2009 BCCA 34
<i>Consbec Inc. v. Walker</i> , 2014 BCSC 2070
<i>Consbec Inc. v. Walker</i> , 2016 BCCA 114
<i>Donor Gateway Inc. v. Passero</i> , 2007 CanLII 3677 (ON SC)
<i>Foote v. Canada (Attorney General)</i> , 2012 BCCA 253
<i>Gardezi v. Positive Living Society of British Columbia</i> , 2018 BCCA 84
<i>Gonzales Hill Preservation Society v. Victoria</i> , 2022 BCCA 384
<i>Pereira v. Klonarakis</i> , 2023 BCCA 454
<i>Pizza Pizza Ltd. v. Gillespie</i> , 1990 CanLII 4023 (ONSC)
<i>Roppoalente v. Danis</i> , 2020 ONSC 5290
<i>Sateri (Shanghai) Management Limited v. Vinall</i> , 2017 BCSC 491
<i>Tracey v. Tracey</i> , 2012 ONSC 3144