



Court of Appeal File No. CA49175
Sather v. Sather Ranch Ltd.
Affidavit

This the 2nd Affidavit
of Gregory Bery in this case
and was made on May 28, 2025

COURT OF APPEAL

BETWEEN:

JOSEPH WAYNE PALMER SATHER

APPELLANT/RESPONDENT BY CROSS APPEAL
(DEFENDANT)

AND:

SATHER RANCH LTD.

RESPONDENT/APPELLANT BY CROSS APPEAL
(PLAINTIFF)

AFFIDAVIT

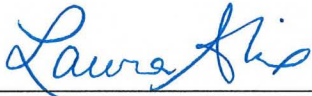
I, Gregory Berry, of 2900 – 550 Burrard Street, Vancouver, British Columbia, SWEAR,
THAT:

1. I am a Legal Assistant employed by the firm Fasken Martineau DuMoulin LLP, counsel for the Appellant/Respondent by Cross Appeal, 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 March 31, 2025 from Kaleigh Milinazzo, counsel for the Appellant Respondent by Cross Appeal, to Scott Andersen, counsel for the Respondent. Attached to the email, but not exhibited, were an unfiled copy of Mr. Sather’s Affidavit #2 made on March 28, 2025 in *Sather Ranch Ltd. v. Sather*, BCSC Action No. 122417, Kelowna Registry (the “**Lower Court Action**”) and a draft form of an Order Made

After Application by the Honourable Justice Elwood on April 11, 2024 in the Lower Court Action.

3. Now produced and shown to me and marked as **Exhibit "B"** to this my affidavit is a true copy of an email string dated from May 20 to May 22, 2025, between Mr. Andersen and Ms. Milinazzo.
4. I have been advised by Ms. Milinazzo and verily believe it to be true that on April 3, 2025 she served by email on Mr. Andersen Mr. Sather's Affidavit #2 in the Lower Court Action, filed on April 1, 2025.

SWORN BEFORE ME at the City of
Vancouver, in the Province of British
Columbia, May 28, 2025.



A Commissioner for taking Affidavits for
British Columbia



GREGORY BERRY

LAURA ABRIOUX
Barrister & Solicitor
Fasken Martineau DuMoulin LLP
2900 - 550 Burrard Street
Vancouver, BC V6C 0A3
604 631 3512

Gregory Berry

From: Kaleigh Milinazzo
Sent: March-31-25 4:53 PM
To: Scott Andersen
Subject: RE: [EXT] Sather
Attachments: 2024-04-11 Draft Order of Elwood.DOCX; Sather Affidavit #2.pdf

Hi Scott:

I attach an unfiled copy of Mr. Sather's affidavit. We just received the original and will attend to filing and provide you a copy once in hand.

With respect to the form of Order, I cannot agree that the conclusion at para. 121-124 do not reflect an Order of the Court. Justice Elwood made an order on how we are to get to the quantified judgment amount, but he did not make an order as to the dollar figure. That was for the parties to determine following his order, which we have now done. Your Notice of Cross Appeal appeals from the Orders made in the April Reasons for Judgment. How could that be if these paragraphs were not an order? My view of the Reasons is that the quantified judgment amount was to be confirmed by consent of the parties, or Court order if required, as his Order provides us leave to re-appear if a dispute.

I remain optimistic that we work together to deal with this reasonably and avoid troubling Justice Elwood.

Can you agree to the attached form of Order and attend to expedited entry, and we can agree to enter a consent order quantifying the judgment? This should address both of our concerns.

By my math, the judgment amount is \$564,883.46 (66% of 1.1 million = \$726,000 less the purchase price (\$120,000) and Property Tax (\$41,116.54)

Otherwise, I am available on June 2,5,6, and 9 (as well as the later dates)–I am anticipating we need a full day for this but let me know if you have a different view.

As always, happy to discuss if of assistance.

Kind regards,

Kaleigh Milinazzo

Partner

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 28th day of May 2025



A Commissioner for taking Affidavits
for British Columbia

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: March-31-25 10:57 AM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Subject: [EXT] Sather

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Hi Kaleigh,

I write to follow up on various aspect of this file.

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You had indicated you would provide your client's affidavit by March 17th. On March 16th you wrote to say that you had been delayed but were expecting to have that affidavit later than that week (i.e. by March 21st). Another week has now passed. I would like to have that affidavit so that I can prepare the form of order with all the calculations in it when we are back before Justice Elwood next week. Will you be able to send me the affidavit this week?

We had a further exchange about the form of the remedy order. I had sent you caselaw about reasons not belonging in the order. The order should include the terms that would be enforced, which is in this case a money judgment. Have you had a chance to consider that further? I am wondering if we still need to appear before Justice Elwood at all?

Finally, on the scheduling of the appeal, we had discussed booking a June hearing date. Last Wednesday you said you were going to review the dates and propose one. I would appreciate hearing from you in that regard. We really should secure a date so that this isn't delayed further. Are you able to advise what dates work for your schedule so that we can book that now.



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 1800 – 1631 Dickson Avenue, Kelowna, BC V1Y 0B5
Vancouver | Calgary | Yellowknife | Kelowna

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Gregory Berry

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: May-22-25 9:01 AM
To: Kaleigh Milinazzo
Cc: Sarah Hannigan
Subject: RE: [EXT] Appeal

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Hi Kaleigh,

Thank you for the below.

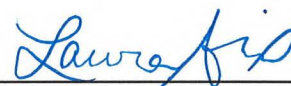
I think the application materials have already largely been prepared. In my view, your client's affidavit is relevant and I would prefer to have that before the court as it shows what the vendor actually agreed to accept for payment of the purchase price. Those facts are relevant to one of the negative contingencies made by the judge and would have been determinative on that issue. We will get you our application materials as soon they are complete.

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, May 21, 2025 5:08 PM
To: Scott Andersen (2546) - 18Flr <scott.andersen@lawsonlundell.com>
Subject: RE: [EXT] Appeal

This message originated from outside our firm.

This is **Exhibit "B"** referred to in the affidavit of **Gregory Berry** sworn before me at Vancouver BC this 28th day of May 2025



A Commissioner for taking Affidavits
 for British Columbia

Hi Scott:

When you get to the Order in your submissions on Appeal, I consent to you handing it up, advising the judgment has been quantified in accordance with the Remedy reasons, and advising the Court that Mr. Sather was directed at a subsequent hearing to produce proof that he paid the purchase price, he did not do so and accordingly it is not accounted for in the Order.

Beyond that, I do not agree it is relevant or appropriate to have further evidence before the Court and I will oppose any motion for fresh evidence, which is also out of time.

The suggestion from your email below is that you want to invite the Court to conclude that Mr. Sather is lying. The Court is not being asked to make findings of fact or credibility, and beyond that I do not agree that is a fair inference on the chronology here.

Please let me know if you will be pursuing a motion or if further discussion of this point would assist.

Best,

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Kaleigh Milinazzo

Partner

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

Fasken Martineau DuMoulin LLP

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

Sent: May-20-25 3:46 PM

To: Kaleigh Milinazzo <kmilinazzo@fasken.com>

Subject: RE: [EXT] Appeal

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Hi Kaleigh,

I think it would be misleading to keep from the court the fact that your client never paid anything other than property taxes. It is also contrary to the affidavit he swore in the CA regarding his financial circumstances.

I would have preferred to not use our time before the court on this issue, but that seems unavoidable.

If necessary, I will bring the application.

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: Tuesday, May 20, 2025 3:42 PM

To: Scott Andersen (2546) - 18Flr <scott.andersen@lawsonlundell.com>

Subject: RE: [EXT] Appeal

This message originated from outside our firm.

Hi Scott:

I do not consent to fresh evidence or oral submissions describing fresh evidence before the Division. Justice Elwood's order as to how the judgment was to be quantified is in the record. Nothing more is relevant or required. For example, the details of the appraisal are not relevant to the orders under appeal – this all occurred after the judgment and cannot meet the test for fresh evidence.

If your view remains that fresh evidence is required then you will have to bring an application, but I note you would need leave to do so as we are within 30 days of the appeal.

Kaleigh Milinazzo

Partner

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

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: May-20-25 11:22 AM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Subject: RE: [EXT] Appeal

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Hi Kaleigh,

That makes sense, except as to the calculation of the judgment. How it is calculated is relevant and that would require evidence – albeit a short affidavit. I assume you would not want me to simply make oral submissions regarding the calculation and I think the court would prefer to have that grounded in evidence, thus my question to you. I think we need an affidavit.

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: Tuesday, May 20, 2025 11:19 AM
To: Scott Andersen (2546) - 18Flr <scott.andersen@lawsonlundell.com>
Subject: RE: [EXT] Appeal

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Hi Scott:

In my view the best way to proceed is for you to hand the Order up as is and advise that the judgment has now been quantified in accordance with the remedy reasons for judgment.

I take no issue with the Order being before the Court, and I believe the Court is bound to take judicial notice of it (i.e would not consider the Order evidence, so no affidavit is required).

Best,

Kaleigh Milinazzo

Partner

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

Fasken Martineau DuMoulin LLP

From: Scott Andersen <scott.andersen@lawsonlundell.com>
Sent: May-20-25 9:23 AM
To: Kaleigh Milinazzo <kmilinazzo@fasken.com>
Subject: [EXT] Appeal

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Hi Kaleigh,

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To round out the chronology, I would like to advise the Court of Appeal regarding the entered judgment (a copy of which is attached) as well as how that amount was calculated. Rather than amending the Appeal Record and Appeal Books, I think the simplest way to do that may be to have my assistant swear an affidavit attaching the order and explaining how that was calculated. Would you consent to that affidavit being before the Court as fresh evidence? You could review affidavit before it was finalized.

Could you please let me know.

Or, if you have a better suggestion for how to put that material before the court, I would appreciate hearing that from you.

Regards,

SCOTT R. ANDERSEN | Partner
D 250.979.8546 | 604.631.9220 | M 250.300.7720 | F 604.641.2801 | E scott.andersen@lawsonlundell.com
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Vancouver | Calgary | Yellowknife | Kelowna

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