

CANADA / JUDGMENT

1163499 B.C. Ltd. v. Holm

2025 BCSC 1925

COURT

Supreme Court of British Columbia

DECIDED

22 August 2025

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2025 BCSC 1925 1163499 B.C. Ltd. v. Holm IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: 1163499 B.C. Ltd. v. Holm, 2025 BCSC 1925 Date: 20250822 Docket: S223724 Registry: Vancouver Between: 1163499 B.C. Ltd. Plaintiff And Timothy David Holm and Raelene Danielle Holm Defendants Before: The Honourable Mr. Justice Coval Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: I. Ponomarenko Counsel for the Defendants: Y. Abhari Place and Date of Hearing: Vancouver, B.C. August 22, 2025 Place and Date of Judgment: Vancouver, B.C. August 22, 2025

- [1] THE COURT: Mr. Holm applies, under Rule 3-8(11), to set aside the plaintiff's default judgment obtained against him. The plaintiff opposes this setting aside.
- [2] In my view, given the apparent merits of Mr. Holm's defence and the evidence that suggests he has moved with reasonable dispatch, it is in the interests of justice to set aside the default judgment. I would go further to say that, given the apparent strength of his case on the merits, it would be a miscarriage of justice to allow the default to stand.

Background

- [3] At the material times, the parties owned adjacent residential properties in Chilliwack. The plaintiff company has since sold its property.
- [4] The plaintiff's claim alleges that in, I believe around 2021 or early 2022, Mr. Holm demolished various structures and improvements on the plaintiff's property, namely: parts of a fence, a workshop, apple tree, storage sheds, and a retaining wall. The plaintiff claims this caused diminishment of the property's value and some flooding. The plaintiff's causes of action are negligence, nuisance, and trespass.
- [5] Mr. Holm's evidence on this application is that all these structures and improvements were actually on his land, not the plaintiff's. Further, he says it was the plaintiff's licensee, not him, who removed everything but the shed and the apple tree.

Procedural History

- [6] Both parties were initially self-represented. The plaintiff obtained counsel in February 2025, the defendant in March 2025. The plaintiff's director, Mr. Li, has provided evidence for the plaintiff in these proceedings.
- [7] The plaintiff is a holding company which owned the property as an investment. No representatives of the plaintiff company resided on the land, and the evidence is that the house on the land was uninhabitable at the material times.
- [8] In terms of the procedural background, from the defendant's notice of application I incorporate the following key dates, with some additions: · May 5, 2022, the plaintiff filed the Notice of Civil Claim. · June 5, 2022, the defendant was personally served. · July 4, 2022, the plaintiff filed a requisition for default judgment and damages to be assessed. · August 17, 2022, the Registrar granted the default judgment application with damages to be assessed. · September 26, 2024, the plaintiff sold its land for \$855,000. · February 14, 2025, the plaintiff filed an application for a summary assessment of damages, to be heard on March 3, 2025. · February 18, 2025, the defendant was served by regular mail with the notice of the damages assessment hearing and a copy of the default judgment. · February 21, 2025, the defendant filed a Response to Application. Justice Fitzpatrick adjourned generally the damages hearing, due to the inadequacy of the plaintiff's evidence. · March 24, 2025, defendant's counsel advised plaintiff's counsel that Mr. Holm intended to bring this application, which was filed May 2, 2025. · April 25, 2025, the plaintiff filed a requisition to have the damages assessment hearing set down for May 14, 2025, by consent. · May 2, 2025, the defendant filed this application. Governing Law
- [9] The overall guiding question is whether it is in the interests of justice to set aside the default judgment. Mr. Holm bears the burden to show this.
- [10] In making this assessment, the Court should consider what are referred to as the Miracle Feeds factors: (i) Did the defendant willfully or deliberately fail to file its response? (ii) Did the defendant apply to set aside as soon as reasonably possible upon learning of the default or provide an explanation for any delay?, and (iii) Is there a meritorious defence or a defence worthy of investigation?
- [11] Failure to demonstrate any one factor is not necessarily fatal (*Mrsic v. 1106468 B.C. Ltd.*, 2022 BCSC 1149).

Analysis

Merits of the Defence

- [12] I address this factor first because, in the circumstances of this case, it is in my view by far the most weighty factor.

- [13] Mr. Holm has put in evidence two professional surveys, obtained in April 2025, indicating that the structures and improvements in question were on his property, not the plaintiff's. The surveyor was able to make that determination because parts of the fence in question remain and the apple tree has re-grown in its original position because its roots were not removed.
- [14] The other structures in issue were adjacent to those items. I believe Mr. Holm's evidence is that he was aware that all of these were on his property in 2016 when he first obtained a property survey. He has put in some evidence of obtaining an original survey at that time.
- [15] The plaintiff has no evidence to combat the 2025 surveys. That is, no objective evidence that the structures, etc. in question were on the plaintiff's land, not Mr. Holm's, when they were removed.
- [16] Plaintiff's counsel points to a note in the two surveys which says the plan is prepared for design purposes only, not to be used for property line reestablishment. There is no evidence before me, however, about what the meaning, effect, or limitations of that note are. I am certainly left with two professional surveys, especially the second aerial survey, by which a professional surveyor is indicating the area in question was on Mr. Holm's land.
- [17] Further on the merits, Mr. Holm has put in evidence that he in fact did not remove the fence, workshop, or retaining wall, but that a licensee or a squatter on the plaintiff's property did so, someone who eventually had problems with the law due to his activities on the property. Mr. Holm has put in evidence pictures of this person and his belongings on the property at the time.
- [18] Also on the merits, the plaintiff has provided no compelling evidence of any damages. I understand that Justice Fitzpatrick adjourned generally the plaintiff's application to prove its damages so it could obtain satisfactory evidence, but it has not obtained any additional evidence since then.
- [19] There is no evidence that I have seen in the record that the plaintiff sold its property for a lower price because of any of these issues. The photos in evidence would suggest these structures, such as the shed, fence, and workshop, were in very poor condition and likely were of little, or perhaps more likely negative, value.
- [20] An additional point on damages relevant to this application is that, were the judgment to stand, I cannot see how damages could be assessed without consideration of whether these structures were actually on the plaintiff's land. It would be a highly artificial or impossible assessment, in my view, given that the plaintiff's theory is that the removal of these items from its property reduced the market value of the property. I do not see how the effect on its property value could be assessed, while at the same time artificially assuming that these structures were in fact on its property if they were not (*May v. Williams*, [1997] B.C.J. No. 900 (C.A.), para. 24).

- [21] I see little, if any, prejudice to the plaintiff from this set-aside. It has not prepared valid evidence of its damages. It is in the same position it was in when it went to assess the damages in 2025 originally. That is, its property is sold, and the structures in question are almost entirely gone. Timeliness of Application
- [22] On the second factor of the defendant moving with reasonable speed to set aside, on Mr. Holm's evidence that certainly occurred. Briefly, the chronology was: · February 18, 2025, he learned of the default judgment. · February 21, he filed his response to the plaintiff's damages application. · March 6, he retained counsel. · March 24, his counsel advised the plaintiff's counsel of the intention to make this application. · April 15, counsel agreed it would be heard on May 14, but when they appeared in court, they could not have the application heard.
- [23] Mr. Li, in his affidavit no 4, says he delivered the default judgment to Mr. Holm in late 2022. Mr. Holm denies this. Mr. Li has no documentation or objective evidence in support. In those circumstances, I have no reasonable basis to reject Mr. Holm's denial. Therefore, at least at this stage on his evidence, this factor does support the setting aside. Willful Failure to Respond
- [24] On the final factor, the evidence on this is somewhat murky, and it may not be a strong point for Mr. Holm.
- [25] His evidence is that he prepared a response and tried to file it electronically three times. He supports this with a copy of the draft and emails with his mother about the draft from that time. I do accept that his evidence appears to demonstrate he did prepare a response shortly after being served with the notice of claim.
- [26] What is unclear, however, is whether, at the time, he thought he had successfully filed it or whether he understood that he had not. Counsel for Mr. Holm advised during this hearing that it was certainly her understanding from Mr. Holm that he thought it had been filed, but she acknowledged that that was not expressly stated in the evidence.
- [27] In the end, I am satisfied that, even if Mr. Holm understood at the time that it had not been filed, because of the apparent strong merits of his case and the lack of prejudice to the plaintiff, it is very much in the interests of justice to set the default judgment aside.

Conclusion

- [28] I order that the default judgment obtained by the plaintiff against Mr. Holm on August 17, 2022, is set aside. "Coval J."

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