

CANADA / JUDGMENT

Bower v. Sutter

2025 BCSC 2709

COURT

Supreme Court of British Columbia

DECIDED

16 December 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 2709 Bower v. Sutter IN THE SUPREME COURT OF BRITISH COLUMBIA Citation:

Bower v. Sutter, 2025 BCSC 2709 Date: 20251216 Docket: S244323 Registry: New Westminster

Between: Steven Albert Bower Plaintiff And Trevor Allen Sutter and Vancouver City Saving Credit Union doing business as Vancity Defendants And Steven Albert Bower Defendant by way of Counterclaim Before: The Honourable Justice Thomas Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: M. Menkes Counsel for the Defendant Sutter: J. Goheen Place and Date of Trial/Hearing: Port Coquitlam, B.C. December 16, 2025 Place and Date of Judgment: Port Coquitlam, B.C. December 16, 2025

- [1] THE COURT: This is an action commenced by Mr. Bower for sale of a jointly owned property pursuant to s. 6 of the Partition of Property Act, R.S.B.C. 1996, c. 347 [PPA]. The background facts are summarized, in my view, fairly at paras. 8-14 of the defendant applicant Mr. Sutter's written argument. The signed memorandum of understanding ("MOU") is contained in the application record at tab 3, Exhibit A.
- [2] The mortgagor cancelled the mortgage and the manner of repayment of the principal. At around that same time, Mr. Bower provided Mr. Sutter with an opportunity to purchase the jointly owned property, but they could not agree on a price. Neither of these events were really contemplated by the MOU.
- [3] The result was that for a period of time, no mortgage payments had to be made. Eventually, Mr. Sutter repaid the principal to prevent the property from going into foreclosure. Mr. Bower was unable to sell the property and was required to bring this application pursuant to s. 6 of the PPA because that is the only way that the property could be sold.
- [4] In my view, there has been no breach of contract. Mr. Sutter has complied with his obligations to pay the monthly mortgage payments and was under no obligation to renew the mortgage, obtain a different mortgage, or pay off the principal. Mr. Bower complied with the contractual obligation to provide a first option to purchase, but the parties could not agree on the price, and the contract contained no mechanism to resolve that. The status is now in limbo, awaiting sale.

- [5] Since there is no breach of contract, the claim and counterclaims of damages for breach of contract are dismissed.
- [6] An application was brought by Mr. Bower pursuant to s. 6 of the PPA. Mr. Sutter has responded by providing an unqualified offer to purchase pursuant to s. 8. In my view, the unqualified offer precludes Mr. Bower from seeking a competitive sale in the open market. If I am wrong on this point, the parties agreed at the time of purchase that Mr. Sutter would have the right to remain living in the property if he purchased out Mr. Bower's interest at a reasonable price. This is evidence that I believe reflects the intentions of the parties, and in my view, it is sufficient to defeat an application for sale under s. 6.
- [7] Mr. Bower seeks the difference between the mortgage and rent as an adjustment on any sale or purchase of the property. In my view, this issue is governed by the MOU or the contract, and as such, it would not be appropriate to impose this condition on the sale. As I said, I believe that the terms of the contract were complied with. If I am wrong on this, in my view, the rationale set out in *Mastron v. Cotton*, [1925] O.J. No. 134, 1925 CanLII 464 (ON CA) at paras. 17-18 is persuasive and would dictate the same result.
- [8] The parties are in agreement that the adjustments to Mr. Sutter under the MOU are contained at para. 161 of his arguments are valid and should apply to any sale.
- [9] Therefore, I make the following orders:
- a) The claim for breach of contract is dismissed.
 - b) Mr. Bower is ordered to sell the property to Mr. Sutter, accounting for the adjustments referred to earlier at para. 161 of the argument at a price determined by a valuation conducted by an associate justice. This valuation is to take place on or before May 15, 2026. The parties, by consent, have leave to book the valuation in other registries. I do note, for the parties' convenience, that there is an assize on May 11, 2026, in Port Coquitlam.
 - c) With respect to the valuation, Mr. Sutter is to obtain a valuation and serve it on Mr. Bower by February 2, 2026. The current appraisal can be relied on if Mr. Sutter wishes.
 - d) Mr. Sutter will provide an appraiser of Mr. Bower's choosing access to the property on one of two provided dates to conduct an appraisal of the property, including both the suite and the main house.
 - e) Mr. Bower will provide Mr. Sutter with his appraisal and/or response to Mr. Sutter's appraisal by February 27, 2026.
 - f) Mr. Sutter will provide any response by his appraiser to Mr. Bower's appraisal or response to his appraisal or both thereof by March 13, 2026.

- [10] With respect to costs, Mr. Sutter brought two positions: one based on breach of contract, the other pursuant to the PPA. Mr. Bower brought an action for sale pursuant to the PPA but then also sought damages for breach of contract. All claims for breach of contract were dismissed, and a sale was ordered pursuant to the PPA. In my view, success or, perhaps more accurately, lack of success was shared equally by the parties. Therefore, each will bear their own costs. [DISCUSSION RE DATE OF VALUATION/APPRAISAL]
- [11] THE COURT: The date of the valuation of the property will be the date of the appraisal. And I am just going to leave it at that because I do not know when the date of the application before the associate justice will be to value the property. [DISCUSSION RE CLARIFICATION OF ORDERS]
- [12] CNSL M. MENKES: To clarify, may I use an appraisal from 2021 at the hearing?
- [13] THE COURT: You can use whatever appraisal you want at the valuation hearing. The hearing will determine the value of the property as of the date of the hearing. So if the hearing is set for March 11, 2026 the adjudicator is going to set the value of the property for what it is worth on that date. Now, it may be that someone submits the 2021 appraisal or historical property assessments, that is fine. All the historical appraisals can be referred to.
- [14] If this raises an issue with respect to service of materials, what I will say is this:
- a) Mr. Sutter is to obtain a valuation and serve it on Mr. Bower by February 2, 2026. All other valuation materials to be relied on in his possession at this time will be served as well
 - b) Mr. Bower will provide Mr. Sutter with his appraisal and/or response to Mr. Sutter's appraisals as well as all other evidence to establish the value of the property by February 27, 2026.
 - c) Mr. Sutter will provide any response by his appraiser to Mr. Bower's appraisal by March 13, 2026. [DISCUSSION RE CLARIFICATION OF ORDERS]
- [15] THE COURT: Now, is there anything else that people think might need to be or helpful to be addressed?
- [16] CNSL M. MENKES: Well, I suppose once we get the purchase price sorted out, then we have to have a closing.
- [17] THE COURT: So what I would say is what I have ordered is there is a sale, and then it is subject to the valuation. What I would propose to do is to leave the particulars of the sale up to the associate justice that conducts the valuation. So the terms of closing will be set at the valuation. "Thomas J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/27/2025BCSC2709.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bower-v-sutter-2025>

Prepared on 24 October 2026 · Esheria