

CANADA / JUDGMENT

Gesner v. Buitrago

2026 BCSC 531

COURT

Supreme Court of British Columbia

DECIDED

13 January 2026

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2026 BCSC 531 Gesner v. Buitrago IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Gesner v. Buitrago, 2026 BCSC 531 Date: 20260113 Docket: S243155 Registry: Vancouver Between: Ashley Gesner Plaintiff And Aldo Buitrago Defendant Before: The Honourable Madam Justice Sharma Oral Reasons for Judgment In Chambers The Plaintiff, appearing in person: A. Gesner The Defendant, appearing in person: A. Buitrago Place and Date of Trial/Hearing: Vancouver, B.C. January 13, 2026 Place and Date of Judgment: Vancouver, B.C. January 13, 2026 This judgment includes a transcription of certain comments made by the parties while oral reasons were being delivered, and my response to those comments. I have left those in as they give context for the judgment. I have not edited those comments. I add that my comments at paragraph 78 were not directed to Ms. Gesner, but to two sheriffs who had entered the courtroom to hand something to Ms. Gesner.

- [1] THE COURT: There are a number of applications in front of me. This matter was a referral to me from general chambers, which means that I had not seen it before. I thank both of the parties for assisting me and, in particular, for giving me certain information over the lunch hour.
- [2] Ms. Gesner has filed a lawsuit against the defendant. His application before me today is to strike her claim.
- [3] I already made a brief ruling addressing applications Ms. Gesner wanted to have heard. She filed a requisition purporting to set down today previous applications she had filed. The substantive point in them was her assertion that the defendant has not complied with court orders, in particular by not producing particular documents. Whether he did produce those or not is a relevant issue. So, even though I find those applications were not properly set down, I agreed with her that they raise a relevant issue that I can consider, and I agreed I would hear her submissions on that.
- [4] This litigation has a long history, and there has been numerous filings and many applications heard before a number of different presiders.

- [5] The defendant seeks an order striking the entirety of the claim pursuant to Rule 9-5 of the Supreme Court Civil Rules for Ms. Gesner's noncompliance. Going by memory, one of the subsections deals with noncompliance with the Rules and one deals with abuse of process. I am generally aware of the legal test related to both. I asked both parties to address the issue of their conduct in the litigation.
- [6] Both parties are self-represented. I am aware of my duty to ensure that their status as a self-represented litigant does not operate to their prejudice. Of course, they are both self-represented, so this is not the situation where one side has a lawyer and the other does not.
- [7] Several times, I explained my questions and certain things that have happened in the litigation in clear terms to assist the parties. I do not expect that they have the same knowledge or familiarity with legal terms as lawyers. However, I am also aware that the Court of Appeal and this Court has been clear that the status of a self-represented litigant does not mean that there is necessarily a more lenient standard with regard to compliance with the Rules, legal requirements or rules of evidence. Any leniency granted is to ensure that self represented parties who appear in Court are not prejudiced by their status. However, both parties here are on equal footing in terms of their representation.
- [8] The defendant's notice of application sets out the facts that he relies on to say the claim should be struck, and those are supported by affidavit evidence. I did take the time to read the notice of application and the response over the lunch hour. I am satisfied that his assertions in the notice of application appropriately reflect facts included in his affidavit, except certain paragraphs that are mainly descriptive.
- [9] His primary complaint is that he set up an examination for discovery and Ms. Gesner refused to participate. He said that was wilful on her part. They have a trial date coming up in March. He submits her refusal to participate in the examination for discovery will prevent a fair trial.
- [10] He complains that she has occasionally blocked him from being able to email her. It is unclear if she agreed that she had blocked him, but she did complain that he emailed her too often.
- [11] She did agree that she had returned material he had mailed to her as "return to sender". She does not want to receive mail, and only wants to receive things electronically, which is why she put her email as her address for service on the notice of civil claim.
- [12] The defendant was granted costs in relation to the Court of Appeal dismissing Justice A. Ross's order made in April. Ms. Gesner has not paid those costs.

- [13] An argument could be made that she had no right of audience in front of me because of that, but that was not raised and I did hear her. However, it is an element of non-compliance in this litigation that is significant and relevant. That is because the concern is not only non-compliance: she says she will not pay those costs, which is clearly stated in communications that she sent to Registrar Outerbridge.
- [14] The defendant points out that she has: emailed his employer; gone to police to complain when he filed an affidavit; and, in response to her complaint that he had set a matter down without consulting her first about the available dates, she has done the same. He says that she has made no serious attempt to move the case forward, and that she makes proceedings exceedingly difficult. She tends to attack people who oppose her. He characterizes this as the weaponization of the legal system.
- [15] He also refers to her statements in affidavits filed in this proceeding, which I find highly relevant, where she believes it is prejudicial and an abuse of the court process to require her to submit to an examination for discovery. She asserts that she does not have to submit because the defendant is in "open contempt" of multiple court orders, non-compliant with privacy directives, and has not met certain "preconditions" for examination.
- [16] None of her claims on these matters are made out.
- [17] First, she claims to have privacy over certain directives or orders made. There are orders that seal certain portions of court files and/or allow for redaction of certain information in other litigation. Contrary to Ms. Gesner's assertion, that has no impact or relevance to the defendant in this case. Unfortunately, I have come to the conclusion that she completely disregards that fact or does not understand it, because she referred to it continually, despite my pointing out to her that those orders do not have relevance.
- [18] She claims that the defendant is in contempt of multiple court orders. It appears that the parties were ordered to provide documents. Her position is that he has refused to provide a particular document, which is the proof of his insurance relevant to the Architects Institute. I have been shown no order that required production of that particular document, so with regard to her contention that he is in noncompliance or contempt for not producing that document, I do not accept that contention.
- [19] She also said in her Affidavit # 10 that she objects in the strongest terms to any examination proceeding. She believes that she is able to put - are you going to sit and listen to the judgment?
- [20] ASHLEY GESNER: I'm listening, but also a note --
- [21] THE COURT: Sit down.
- [22] ASHLEY GESNER: On February 6 --
- [23] THE COURT: Sit down.

- [24] ASHLEY GESNER: -- I consented to another --
- [25] THE COURT: Sit down. Sit --
- [26] ASHLEY GESNER: -- document discussion.
- [27] THE COURT: Sit down. I want to make sure that you are listening. If you do not want to listen --
- [28] ASHLEY GESNER: I'm listening.
- [29] THE COURT: -- you can leave, but that is your choice.
- [30] ASHLEY GESNER: I'm noticing it's very prejudicial and biased.
- [31] THE COURT: I do not allow people to be disruptive in the courtroom. Ms. Gesner, are you planning on leaving right away before I finish my judgment? Because you can if you want, but while I am delivering my judgment, I would ask you please be respectful, not be distracting, all right?
- [32] ASHLEY GESNER: Procedural fairness allowed me to speak --
- [33] THE COURT: So --
- [34] ASHLEY GESNER: -- and address, and my privacy concerns were not respected.
- [35] THE COURT: I am going to continue with my judgment, and Ms. Gesner, if there is a point in time when you want to leave, you can let me know. All right? But I would recommend --
- [36] ASHLEY GESNER: Well, my privacy --
- [37] THE COURT: -- against it.
- [38] ASHLEY GESNER: -- hasn't been respected and --
- [39] THE COURT: I am going to --
- [40] ASHLEY GESNER: -- he's not providing insurance. And I was on medical leave, and this -- this court --
- [41] THE COURT: Ms. Gesner --
- [42] ASHLEY GESNER: -- fined me while I was on medical leave.
- [43] THE COURT: Ms. -- Ms. Gesner, I am going to ask you to leave. You are being very disruptive. I will continue with my judgment. I will give you one last chance. If you want to listen to my judgment, I would ask you to sit down and please not put your material away yet. Can you do that?
- [44] ASHLEY GESNER: Are --

- [45] THE COURT: I am giving my judgment. If you can sit, are you able to do that? Thank you. I appreciate that. I am sure this is very disappointing for you.
- [46] As I was saying, in her affidavit, she complained, as well, that there was a hearing set down without her consent, and then she then addressed the scheduling issues, which we discussed earlier. She was right that there had been an application originally set down in December but, as the defendant said, he then abandoned that.
- [47] He filed the same application with some additional facts in it, and there is no dispute that that was properly set down in front of me, as I have said.
- [48] The issue of not participating in an examination for discovery does not always allow for the striking of a complete claim. There are often other remedies that can be granted.
- [49] The problem in this particular case is Ms. Gesner has no intention of showing up for an examination for discovery. She believes she has the right not to attend one, unless certain conditions that she decides should exist are met. She says that those conditions relate to prior court orders but, as I said, she is either misunderstanding those, or takes an unjustified, overly broad view of what those orders do.
- [50] She is not entitled to refuse to attend an examination for discovery because of allegations, which have not been established, of the defendant breaching court orders that do not apply to him. To be clear: the court orders that she refers to regarding her privacy have no application to the defendant at all.
- [51] I am satisfied that she has not complied with participating in the examination for discovery, that she did so with no good excuse, and that she has no intention of doing so in the future. There cannot be a fair trial if she does not participate in the process.
- [52] I should add that as was said in another judgment, it is sometimes difficult for Ms. Gesner to focus on the relevant issues that are before the court. I do appreciate that she would answer my questions to the best of her ability, but frequently I had to re-ask the question and I had to narrow the focus.
- [53] She, at almost all times, wanted to go to the merits of the matter, which in her mind are a broad, generalized assertions about the defendant's conduct, which she says breaches his professional responsibilities and the Privacy Act, R.S.B.C. 1996, c. 367, amounted to fraud, and other things that are outside the four corners of this particular litigation.
- [54] Whether or not they might have been relevant in her lawsuit is something that might have been pursued if there had been proper steps taken.

- [55] I add that I am not satisfied that the defendant has breached a court order by not providing a specific document. It may be that neither side has produced documents, and certainly there has been an obligation on both sides to do so, but her insistence that he not providing his proof of his insurance amounts to contempt or a breach of a court order is not made out on the material before me.
- [56] Justice A. Ross ordered that she could not file any further application without obtaining leave of the court. I checked on the court file electronically, and she has tried to get permission to bring other applications. I was not aware that any had been granted.
- [57] I am concerned about the cost to the court system and to these parties of her practice of continuing to file applications that are grounded in matters that are of questionable relevance to this particular lawsuit.
- [58] In any event, based on the foregoing, I am striking the claim in its entirety.
- [59] ASHLEY GESNER: Thank you for saving myself the time --
- [60] THE COURT: In --
- [61] ASHLEY GESNER: -- and my privacy.
- [62] THE COURT: I note that Ms. Gesner is very upset right now and that she is, notwithstanding my asking her not to disrupt the courtroom, that she is preparing and she is walking out, which she is entitled to do.
- [63] ASHLEY GESNER: I'm entitled to --
- [64] THE COURT: And she --
- [65] ASHLEY GESNER: -- appeal this --
- [66] THE COURT: -- is --
- [67] ASHLEY GESNER: -- but I won't because you've wasted enough of my time. The defendant is an American citizen. He is in breach of his professional obligation.
- [68] THE COURT: I am going to ask you to stop talking.
- [69] ASHLEY GESNER: And the court is allowing it.
- [70] THE COURT: I am going to ask you to stop talking again. You can leave.
- [71] ASHLEY GESNER: I'm happily leaving. This will be the last time you humiliate me in this court. You are defending an American citizen. The governing body --
- [72] THE COURT: Okay, your conduct is in contempt of the face of the court. I am going to ask you to stop speaking. All right.
- [73] ASHLEY GESNER: I'm just trying to leave. I had you as my judge for the defamation trial and you excused that as well.

- [74] THE COURT: Stop talking, please. All right. Ms. Gesner has --
- [75] ASHLEY GESNER: I will not be paying any costs.
- [76] THE COURT: -- shown she is not able to comply with directions from the court as well. Further to what I have seen in the courtroom and in the history of this litigation --
- [77] ASHLEY GESNER: I will not be paying any costs.
- [78] THE COURT: Outside the courtroom, please. Outside the courtroom, please.
- [79] I am granting an order that Ms. Gesner cannot file an affidavit, a requisition, or any notice of application without first getting leave of the court.
- [80] You seek costs of this matter?
- [81] ALDO BUITRAGO: Yes I do.
- [82] THE COURT: You are granted costs.
- [83] ALDO BUITRAGO: Thank you. I appreciate that, Honour -- Your Honour.
- [84] THE COURT: All right. This is concluded.
- [85] THE CLERK: And Justice, just to confirm, so the two applications that were --
- [86] THE COURT: Sorry, those are also dismissed, yes, because the action is dismissed, but for clarity, her applications are also dismissed.
- [87] ALDO BUITRAGO: Can I ask a question?
- [88] THE COURT: Yes.
- [89] ALDO BUITRAGO: I had intended to, before she left, to issue a subpoena together for the outstanding costs. Is that now obsolete or does that still stand with the case being --
- [90] THE COURT: The Court of Appeal costs?
- [91] ALDO BUITRAGO: The Supreme Court, in this case, the --
- [92] THE COURT: I cannot give you legal advice.
- [93] ALDO BUITRAGO: Okay.
- [94] THE COURT: So it would surprise me if you could not do that, but please do not rely on me for that.
- [95] ALDO BUITRAGO: Okay.
- [96] THE COURT: I would suggest you talk to a lawyer, but costs are payable, even after something is dismissed, I think.
- [97] ALDO BUITRAGO: I understand.

[98] THE COURT: But do not take my word for it.

[99] ALDO BUITRAGO: Okay.

[100] THE COURT: All right, that is it, thank you.

[101] ALDO BUITRAGO: Thank you. "Sharma J."

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