

CANADA / JUDGMENT

Heaton Estate v. Heaton

2025 BCSC 1248

COURT

Supreme Court of British Columbia

DECIDED

30 April 2025

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

2025 BCSC 1248 Heaton Estate v. Heaton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Heaton Estate v. Heaton,

2025 BCSC 1248

Date: 20250430

Docket: S254174

Registry: New Westminster

Between:

Suzanne Carter in her Capacity as Personal Representative of

the Estate of Shirley Anne Heaton

Plaintiff

And:

Roger Heaton

Defendant

Before: The Honourable Justice Gibb-Carsley

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

J. Woods

The Defendant, appearing in person:

R. Heaton

Place and Date of Hearing:

New Westminster, B.C.

April 3, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 30, 2025

[1] THE COURT: These are my reasons for judgment.

Introduction

- [2] This is a summary trial application brought by the plaintiff, Suzanne Carter, in her capacity as personal representative of the estate of Shirley Anne Heaton, against the defendant, Roger Heaton. The essence of the trial relates to the home of the late Shirley Anne Heaton, who is the mother of both Ms. Carter and Mr. Heaton. The plaintiff seeks an order for a writ of possession in respect of the property, which is located at 585 Ten Mile Lake Road, North Quesnel, British Columbia (the "Property").
- [3] The plaintiff also seeks an order for occupational rent to be paid by the defendant, for the years he has been living in the Property without paying rent or otherwise remunerating the estate while he is living at the Property.
- [4] It appears that the defendant is willing to leave the Property but believes that the amount he would receive to move out of the Property if it is sold is insufficient to allow him to find new accommodation. He strongly disagrees with being ordered to pay occupational rent and says that he has made many contributions to the Property over the years.
- [5] I note that the defendant did not provide a response to the plaintiff's summary trial application, nor did he provide affidavit evidence in support of his position. At the application, the defendant appeared and represented himself, and I heard submissions from him. In this regard, I note that counsel for the plaintiff took a respectful tone with the defendant, understanding that the defendant was not legally trained and also understanding the emotional difficulty of this case, as it involves what appears to be a family conflict and also engages a family history between the children of the late Ms. Heaton. I commend counsel for the plaintiff for his respectful manner.
- [6] In these reasons for judgment, I will first provide a brief background of the facts for context and then turn to my discussion and analysis.

Background Facts

- [7] Ms. Shirley Anne Heaton passed away intestate on May 20, 2020. The plaintiff is the personal representative of Ms. Heaton's estate (the "Estate"). The defendant currently resides at the Property.
- [8] At the time of her death, Ms. Heaton was survived by five children, including the plaintiff, who is her daughter. Two additional children of Ms. Heaton predeceased her, but each left issue of their own.
- [9] On June 28, 2021, the administration of the estate was granted to the plaintiff. As per ss. 23 and 24 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], the Estate is to be divided into seven equal parts. Each of the five surviving children of Ms. Heaton will receive a part, with the remaining two parts to be divided between the issue of Ms. Heaton's two children that predeceased her.
- [10] The Estate's sole asset is the Property, which is a 67-acre farm. On August 24, 2021, the plaintiff had title to the Property transferred into the name of the Estate. The defendant does not dispute that he is not on title to the Property. The defendant has resided at the Property since at least May 20, 2020, and from his submissions, which I find are not disputed by the plaintiff's evidence, the defendant has resided at the Property for over 50 years, first with his parents and then, after his parents passed away, on his own.
- [11] In the evidence before me, the plaintiff asserts that on about April 19, 2021, Ms. Carter informed the defendant of her intent to charge rent in the amount of \$400 per month for the Property from May 1, 2021, onwards.
- [12] The plaintiff has made numerous attempts to have the defendant vacate the Property to allow for the Property to be sold and for the Estate to be distributed to the various beneficiaries as per the WESA. The defendant has nonetheless refused to vacate the Property in the almost five years since Ms. Heaton has passed away. The defendant's refusal to leave the Property has frustrated two different opportunities for the Property to be sold. The plaintiff says that the defendant, by his conduct, is therefore obstructing both the proper administration of the Estate and the eventual distribution of the Estate.
- [13] Indeed, there was an offer to purchase the Property on September 1, 2023. To get the Property prepared for the sale, the plaintiff, her husband, and other children of the deceased, Ms. Valerie Duncan and Ms. Bonnie Halvorson and their spouses, went to the Property to clean it in preparation for sale. Based on the affidavit evidence before me, while they were there, the defendant emerged from his mobile home located on the Property and screamed profanities. The defendant then called the police, who attended.

- [14] Guy Carter, the spouse of the plaintiff, deposed that when he attended the Property to have electrical work completed on another occasion, he was threatened by the defendant. Further, the defendant's refusal to leave the Property has left the Estate unable to pay outstanding debts until the Property can be sold. I understand that there are significant legal fees that have amassed in attempt to resolve the Estate, and the defendant's refusal to vacate the Property is frustrating the ability to resolve those issues.
- [15] While not providing supporting affidavit materials, in his submissions, the defendant argues that he has put money into the buildings on the Property. Further, he asserts that if he does not receive sufficient funds from the sale of the Property, he will not be able to find accommodation away from the Property. While not articulated as such, the defendant believes that he was promised the Property by his parents, or at least his mother, and he now believes that it is an unfair outcome that he has to leave the Property.
- [16] Further, he asserts that he should not have to pay rent because he has made contributions over the years to the Property, and he is entitled to some reimbursement or compensation from those contributions. There was no particularity or specificity to what those contributions were or their amounts. Although the defendant referenced that he has made tax payments and has repaired items on the Property over the years.

Analysis

- [17] As a starting point, as referenced above, I did not have any affidavit evidence from the defendant but heard his submissions during the chambers hearing. As such, I am careful with what, if anything, I can do with the statements made by the defendant to the Court. As I will describe in a moment, one of the main aspects for which I have used the defendant's submissions is my consideration of whether all of the issues before me are proper for disposition by summary trial. Further, the facts relating to the ownership of the Property are not seriously in dispute and the plaintiff's ownership rights to the Property are accepted by the defendant.
- [18] I will now turn to the first issue which is the suitability of this matter for disposition by summary trial.

Suitability for Summary Trial

- [19] As a starting point, I will consider whether all, some, or none of this matter is proper for summary trial. I recently described the test for whether a matter would be appropriate for summary trial in *Veritiv Canada Inc. v. Western Pacific Transport Ltd.*, 2025 BCSC 636 at paras. 24-26 as follows:

- [24] The Supreme Court in *Hyrniak v. Mauldin*, 2014 SCC 7 held that "summary judgment rules must be interpreted broadly, favouring proportionality and fair access to the affordable, time and just adjudication of claims": at para. 5. Indeed, this accords with Rule 1-3 of the Supreme Court Civil Rules, that sets out that the object of the Rules is to secure the just, speedy, and inexpensive determination of every proceeding on its merits.
- [25] However, under Rule 9-7(15), the presiding judge has the role of a gatekeeper. Judgment should not be given on a summary trial if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so: *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249 at para. 89.
- [26] Our Court of Appeal in *Gichuru v. Pallai*, 2013 BCCA 60, cited the following factors that a court should consider in assessing whether it would be just to have a matter proceed by summary trial at paras. 30 and 31. I would distill those factors to the following:
- a) the amount involved;
 - b) the complexity of the matter;
 - c) its urgency;
 - d) any prejudice likely to arise by reason of delay;
 - e) the cost of taking the case forward to a conventional trial in relation to the amount involved;
 - f) the course of the proceedings;
 - g) the cost of the litigation and the time of the summary trial;
 - h) whether credibility is a critical factor in the determination of the dispute;
 - i) whether the summary trial may create unnecessary complexity in the resolution of the dispute;
 - j) whether the application would result in litigating in slices; and
 - k) any other matters which arise for consideration on the issue of whether it would be unjust to give judgment based on the procedures of a summary trial.
- [20] I am satisfied that the requirements for a summary trial are met in this case in respect of the plaintiff's request for a writ of possession and an injunction. I accept that I have the necessary facts before me, and it is in the interests of justice to make that determination.
- [21] In short, the defendant has no legal claim to be on the Property. Indeed, he admits as much, but his concern is that he will not have sufficient funds to find new accommodation. While I understand that after living for so many years on the Property the change may be difficult, both financially and emotionally, I conclude the plaintiff has a legal right to have vacant possession of the Property. Indeed, as the trustee of the Estate, the plaintiff has a legal obligation to maximize the Estate for the beneficiaries, including the defendant, who is a

beneficiary.

- [22] I will provide more analysis on this issue below, but conclude that pursuant to Rule 9-7(15) (a) of the Supreme Court Civil Rules, I am able to give judgment on this summary trial application on the issue of whether a writ of possession and permanent injunction should be granted. However, before doing so, I will turn to my consideration of whether the plaintiff's claim for rent from the defendant is suitable for summary trial.
- [23] The plaintiff asserts that an award of occupational rent should be made against the defendant for the benefit of the beneficiaries of the estate given the circumstances of the case. As support, plaintiff's counsel refers to *Stasiewski v. Stasiewski*, 2007 BCCA 205 and *Lennox v. Lennox*, 2022 BCCA 44.
- [24] I find that the issue of occupational rent is not suitable for summary trial. I have neither the facts before me to make the determination, nor is it just for me to make a determination summarily.
- [25] In Ms. Carter's affidavit, she deposed that on or about April 19, 2021, she informed the defendant of her intent to charge occupational rent in the amount of \$400 per month for the Property from May 1, 2021, onwards. In support of the plaintiff's claim, she provided a document titled, "The Proposed Plan For The Administration of the Estate" (the "Proposed Estate Plan"). The document sets out in part:

After May 1st, 2021, Roger will be assessed a modest rent of \$400 per month if he resides there, which will be deducted from his share of the estate's final proceeds. During his tenancy, Roger will pay utilities and all arrears in that regard. This is subject to all parties acknowledging and agreeing that Roger is able to reside at the property,

- [26] As just referenced, Ms. Carter deposes that she provided the defendant with the Proposed Estate Plan on or about April 19, 2021. However, there is no evidence before me that the defendant agreed to these arrangements. Further, there is no lease or rental agreement between the plaintiff and the defendant. In my view, an agreement cannot be unilaterally set between two parties, and I question whether it could be considered a binding agreement. In other words, even on the plaintiff's own facts, I find there is an issue that presents contested facts or at least an issue that needs a better evidentiary record for it to be resolved justly.
- [27] Indeed, I understand the plaintiff attempted to have the Residential Tenancy Branch ("RTB") become involved to evict the defendant, but they were unable to do so. The RTB gave a decision on November 1, 2023, in which the arbitrator declined jurisdiction on the basis that there was insufficient evidence that the defendant was a tenant and because the matter was linked to the probate file. In my view, this is some evidence of a lack of clear relationship between the defendant and the Estate establishing that the defendant was a tenant on the Property.

- [28] In addition to not having sufficient facts to determine if there was a valid rental agreement between the plaintiff and the defendant for rent, I am also concerned that there could be offsetting amounts the defendant may be entitled to claim against any rent he was purportedly charged. I do not have sufficient facts before me, either from the plaintiff or defendant, to make that determination.
- [29] However, given the small amounts in issue, it may be that some form of evidence or hybrid procedure in this matter could make it suitable for determination at summary trial, and it may be that it is in the interests of justice to do so. As such, pursuant to Rule 9-7(11)(a), I will adjourn the portion of the summary trial application that seeks an order for occupational rent. As will be required under Rule 9-7(16), I am not granting judgment on this issue, and the plaintiff will need to obtain leave to apply again for a summary trial application on this issue. I would expect that if such an application is made, the plaintiff would describe a proposed method to deal with the evidentiary issues.
- [30] I am not seized of this matter. Further, it may be that the parties can make some form of an arrangement or agreement for what is a fair resolution in the amount without the need to resort to further court applications.

Writ of Possession For the Property and Permanent Injunction

- [31] As set out above, I have concluded that I have sufficient evidence before me, and it would be just to make the determination summarily regarding whether the plaintiff should be granted a writ of possession for the Property. I make this conclusion on the basis that it appears uncontested that title of the Property is held by the Estate. The defendant has no ownership rights in the Property. I am satisfied that the defendant's continued residence on the Property, despite being asked to leave on multiple occasions, constitutes a trespass within the meaning of the Trespass Act, R.S.B.C. 2018, c. 3.
- [32] The trespass claim is straightforward. The basic facts underlying the plaintiff's claim are not significantly contested, and the defendant acknowledges that he does not have legal rights to the Property. To decide this claim, I only need to determine the ownership of the Property and whether the defendant is on the Property without lawful justification. No proof or quantification of damages is required in order for the plaintiff to make out her trespass claim, and in this case, the plaintiff seeks only a writ of possession and an injunction.
- [33] In *Rossiter et al v. Swartz and Swartz*, 2013 ONSC 159, Justice Chappel succinctly articulated the principles of the tort of trespass to land:
- [21] The tort of trespass to land consists of directly and unlawfully applying force to the land of another person. It arises when a person without lawful justification enters upon, remains upon or places or projects any object upon land with respect to which another person has a legal right of occupation and possession. Liability for trespass arises regardless of the intention on the part of the defendant to engage in wrongdoing, provided that the defendant in fact engages in conduct that constitutes trespass, and does so voluntarily. However, the

interference with the property must be direct, rather than indirect or consequential. Where the entry upon or occupation of the property is intentional, it is actionable even if the trespasser honestly but mistakenly believed that they had a lawful right of entry or that the land was theirs

[Footnotes omitted.]

- [34] In *Hansen v. Stutters*, 2013 BCSC 1981 at para. 27, the tort of trespass was described succinctly as occurring "when the offender occupies another's land without permission". See also *Evans v. Dumitrean*, 2021 BCSC 1275 at para.184.
- [35] The plaintiff also claims that by not leaving the Property, the defendant's actions have deprived the plaintiff of her ability to sell the Property owned by the Estate. In circumstances such as those, a permanent injunction has been found to be an appropriate remedy for claims of both trespass and private nuisance. See *Steveston Harbour Authority v. Medanic Fisheries Ltd.*, 2019 BCSC 304. In that case, the Court referenced *Cambie Surgeries v. British Columbia*, 2010 BCCA 396, in which our Court of Appeal held:
- [28] In order to obtain final injunctive relief, a party is required to establish its legal rights. The court must then determine whether an injunction is an appropriate remedy. Irreparable harm and balance of convenience are not, per se, relevant to the granting of a final injunction, though some of the evidence that a court would use to evaluate those issues on an interlocutory injunction application might also be considered in evaluating whether the court ought to exercise its discretion to grant final injunctive relief.
- [36] The evidence supports that the defendant has no legal right to be on the Property given the title of the Property is held by the Estate. As such, I will grant the writ of possession and a permanent injunction sought by the plaintiff, albeit with some modifications. While I accept that the defendant has no legal claim to the Property and that legal title was never in his name, he has resided at the Property for over 50 years, based on his submissions to the Court. He also appears willing to leave the Property but says that he has insufficient money to find new accommodations and that the money from the inheritance will not allow him to find suitable accommodation or allow him to move from the Property.
- [37] I am sympathetic to the defendant's situation. However, I also understand that the Estate needs to move forward with the sale of the Property. Further, it appears that the plaintiff has been patient and attempted to give the defendant the option to vacate the Property for years. I reiterate that title of the Property was transferred to the Estate on August 24, 2021.
- [38] Balancing the number of years that he has been trespassing against the several decades he has been living on the Property, I find it appropriate to give the defendant approximately 45 days from today's date to vacate the Property. I put this to June 15, 2025, at 12:00 p.m. (noon). In my view, that will allow sufficient time for the defendant to secure accommodation and relocate from the Property.

- [39] Further, while I order the permanent injunction, I will order that it will commence June 15, 2025, at 12:00 p.m. The defendant will be permanently restrained from attending at or otherwise interfering with the Property except with the written permission of the plaintiff or by further order of the court.
- [40] I will also order that the defendant is not to interfere with any efforts by the plaintiff to market or sell the Property. I will make this order so that the plaintiff may be able to obtain the highest volume of interested purchasers for the Property with the aim of increasing the purchase price, which would benefit all of the beneficiaries, including the defendant.

Costs

- [41] The plaintiff has been successful in this application regarding seeking an order for a writ of possession. As such, she should be entitled to her costs. The plaintiff asks for special costs to be paid out of the Estate from the defendant's portion. In my view, given the circumstances of this case, a fair award for costs is that the defendant should be required to pay costs of the application relating to the writ of possession and the injunction at Scale B, and those expenses should come out of the defendant's share of the Estate proceeds, if any.
- [42] For clarity, any remaining legal fees owed to the plaintiff as a result of this proceeding after the deduction of the defendant's costs at Scale B shall be shared equally amongst the beneficiaries, including the defendant, from the residual of the Estate, if any. If there are any issues regarding resolving the cost issue, the parties have leave to refer the matter to the Registrar.

Summary of Orders

- [43] In summary, I order as follows:
1. A writ of possession is granted to the plaintiff for the Property legally described as PID 005-627-289, district lot 6200, Cariboo District, Prince George District;
 2. The plaintiff's application for occupational rent is adjourned without prejudice to the plaintiff applying to the court for leave to reset that element of the application for summary trial, accounting for a process to address contested evidentiary issues;
 3. The defendant is to provide vacant possession of the Property by 12:00 p.m. on June 15, 2025;
 4. Commencing on June 15, 2025, at 12:00 p.m., the defendant will be permanently restrained from attending at, or otherwise interfering with, the Property except with the written permission of the plaintiff or by further order of the court;

5. Effective immediately and until June 15, 2025, at 11:59 a.m., the defendant is not to interfere with actions taken by the plaintiff, the plaintiff's agents, or others, in respect of listing the Property for sale or preparing the Property for sale, including allowing the plaintiff, the plaintiff's agents or others reasonable access to the Property on 24 hours' notice;
6. The defendant's signature is dispensed with on this order; and
7. The order shall come back to my attention for review and signature.

Conclusion

- [44] Before concluding, I wish to remark that this is a difficult factual case given the history between Mr. Heaton and his siblings as well as the parents. I understand that, as is often the case in litigation, the parties have very different views of what has occurred in the past, especially in respect of the care given to Ms. Heaton and the care and contribution to the Property by Mr. Heaton.
- [45] I ask that Mr. Woods communicate to his clients that the Court has some concerns about the calculation of occupational rents made by the plaintiff against Mr. Heaton. However, I am also acutely aware that the plaintiff is, in my view justifiably, frustrated and wants to move forward with selling the Property and resolving the Estate issues. Indeed, it is the obligation and duty of the plaintiff as the representative of the Estate to move the matter forward and also seek to maximize the value of the Estate for the beneficiaries.
- [46] While the issue may be determined ultimately at trial regarding the amount of fair occupational rent the defendant should be charged regarding the use of the Property, and if he has some claim against the Estate for his caregiving to Ms. Heaton or maintenance of the Property, pursuit of these issues may only result in the Estate using the money to fund the litigation that would effectively result in no benefit to anyone other than counsel moving the matter forward to litigation.
- [47] Put another way, given the expense of court, I ask that the plaintiff carefully consider the cost/benefit analysis and the circumstances of this case if they wish to pursue the occupational rent claim. It may be a more efficient outcome to have the defendant move out and proceed with the sale and the parties to start afresh.
- [48] I also wish to address Mr. Heaton. I understand this may be a difficult result for you. However, the law requires that on the circumstances before me, you are required to leave the Property. Given the history of this matter, this will not be a surprise for you. I hope that you can find arrangements that are suitable for you going forward. Further, if you are able to move out earlier than the deadline I have imposed, it may be to the benefit of the Estate and ultimately to you.

[49] As mentioned above, I commend Mr. Woods for his respectful approach taken during this hearing. In my view, he struck the proper balance between arguing strongly on his client's behalf but also understanding his role as an officer of the court, being mindful of some of the difficult facts of this case, and the fact that Mr. Heaton is self-represented.

"Gibb-Carsley 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/25/12/2025BCSC1248.htm>

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

Prepared on 29 October 2026 · Esheria