

CANADA / JUDGMENT

Kur v. Juhasz

2025 BCSC 1676

COURT

Supreme Court of British Columbia

DECIDED

6 August 2025

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2025 BCSC 1676 Kur v. Juhasz

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kur v. Juhasz,

2025 BCSC 1676

Date: 20250806

Docket: S142172

Registry: Kelowna

Between:

Jason Kerry Kur, John Haydn Gurmin, Grant Wesley Endres,

Jennifer Kirsten Endres, Stuart Paul Glassford, Monika Glassford

Barbara Renate Kinnaird, Jeffrey Alan Kinnaird, Ian Cairn Smith

Jeannette Kent, Danny Wayne Lepitre

Plaintiffs

And

Balazs Thomas Juhasz also known as Thomas Juhasz

Erin Leanne Kooger

Defendants

Before: The Honourable Justice S. Ramsay

(by videoconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs Jason Kur, John Gurmin, Grant Endres, Jennifer Endres, Stuart Glassford, Monika Glassford, Barbara Kinnaird, Jeffrey Kinnaird, Ian Smith, Jeannette Kent, and Danny Lepitre:

D. Horvath

Counsel for the Defendants Balazs Juhasz and Erin Kooger:

S. Srivastava

Place and Date of Hearing:

Kelowna, B.C.

July 18, 2025

Place and Date of Judgment:

Kelowna, B.C.

August 6, 2025

- [1] THE COURT: These are my oral reasons for judgment in respect of the plaintiffs' application. They have been edited for clarity, organization, and as necessary to add complete citations to the authorities.
- [2] This dispute centres on the interpretation of a statutory building scheme that applies to neighbouring properties in a small residential community. The defendants own one of the properties; the plaintiffs own all but one of the other properties. The remaining property owner is not a party to this proceeding and did not take a position on or participate in the application before me.
- [3] The plaintiffs commenced this action because they say the defendants have breached the building scheme in various ways. They seek a mandatory injunction requiring that the defendants comply with the building scheme, as well as mandatory injunctions prohibiting specific activities that the plaintiffs say constitute breaches of the building scheme. They apply for judgment under Rule 9-7. The defendants do not oppose proceeding by way of summary trial.

- [4] That said, the parties' agreement that the dispute is appropriate for resolution under Rule 9-7 is not determinative. I may not grant judgment under Rule 9-7 if I am unable, on the whole of the evidence before me, to find the facts necessary to decide issues of fact or law, or if I am "of the opinion that it would be unjust to decide the issues on the application": Rule 9-7(15)(i) and (ii). I must therefore turn my mind to both of these factors before engaging with the plaintiffs' application on its merits.
- [5] I acknowledge that the parties are seeking an expeditious and cost-effective resolution to their dispute regarding the interpretation of the building scheme and its application to the defendants' use of their property. They worked to narrow the issues and to arrive at agreed facts. Their efforts made it possible to complete the plaintiffs' application in the scheduled time, something that might otherwise not have been possible.
- [6] However, as I will explain, after careful consideration of the agreed facts and the evidence before me, I have concluded that I cannot grant judgment on the plaintiffs' application. The issues are not suitable for summary trial, at least not on the record and submissions before me.
- [7] My analysis of suitability starts with the relief sought by the plaintiffs. They say that the usual remedy for breach of a building scheme is an injunction. I do not take issue with that as a general proposition. However, the general principles of law applicable to injunctions also apply.
- [8] As I indicated at the hearing of this application, I have concerns with the terms of three of the injunctions being sought: the proposed mandatory injunction requiring compliance with all terms and conditions of the building scheme; the proposed mandatory injunction prohibiting the defendants from keeping chickens and other livestock on the property; and the proposed mandatory injunction prohibiting the defendants from storing or utilising a mobile home or trailer on the property.
- [9] The defendants say they have no difficulty with an injunction that they comply with all terms and conditions of the building scheme, because they do not dispute that it applies to their property and they agree that they must comply with it. The issue between the parties is not about the application of the building scheme, but rather, its interpretation.
- [10] While the defendants may not object to an injunction requiring compliance with the building scheme, I have serious concerns with such a broad and general order. The consequences of failure to comply with an injunction are significant; it "is enforced, ultimately, through the law of contempt of court": *Este v. Esteghamat-Ardakani*, 2020 BCCA 202 at para. 54. For that reason, an injunction order must be "clear and specific" so that parties "know exactly what has to be done to comply with the order": *Este* at para. 54, citing *British Columbia (Director of Civil Forfeiture) v. Onn*, 2009 BCCA 402.

- [11] As Robert Sharpe explains in his text, *Injunctions and Specific Performance*, "courts should avoid vague or ambiguous language which fails to give the defendant proper guidance or which in effect postpones determination of what actually constitutes a violation of the plaintiff's rights" (1:14). Sharpe goes on to explain that "it is unfair to the defendant to do nothing more than give a warning not to do anything wrong and resolve the important questions of detail on a contempt application" (1:14).
- [12] The plaintiffs submit that a general injunction order will assist the parties in addressing future non-compliance with the building scheme efficiently, without resort to commencing a new proceeding. That is effectively a request for ongoing Court supervision of the parties, which is not something the Court usually does: see *Onn* at para. 20, applying *Pro Swing Inc. v. Elta Golf Inc.*, 2006 SCC 52.
- [13] The general injunction proposed by the plaintiffs does nothing to clarify for the parties how they should conduct themselves going forward. In my view, on the record before me it would be unjust to decide whether such a general order, which does not provide any clarity as to what is and is not permitted under the building scheme, is available to the plaintiffs. An injunction on those terms would be exceptional, and in my view ought not be ordered without the Court having the benefit of fulsome evidence and legal argument on that issue.
- [14] The two proposed injunctions regarding the chickens in the RV do not suffer from the same lack of specificity. The defendants also do not object to those proposed injunctions. They do not dispute that they have been out of compliance with the building scheme in the past by keeping chickens and by storing an RV on their property. They say they had forgotten about the building scheme and that their non-compliance was inadvertent. As I understand it, they do not object to the injunctions because they are already acting in a way that would comply with them--the chickens and the RV are now gone.
- [15] The difficulty, however, is that those proposed injunctions are moot. There is no "live controversy or dispute" between the parties that necessitates the granting of an injunction regarding chickens or the RV--the activities the plaintiffs seek to enjoin are no longer occurring: see *Alliford Bay Logging v. Mychajlowycz et al*, 2001 BCSC 147 at paras. 24 to 28. In these circumstances, the "more heavy-handed approach of issuing an injunction" is arguably not appropriate: *Stratton v Richter*, 2022 BCCA 337 at para. 139. In my view, the proposed injunctions also should not be ordered without the Court having the benefit of fulsome evidence and legal argument about why they should be made in the present circumstances of the parties.
- [16] Finally, the plaintiffs seek mandatory injunctions prohibiting the defendants from leasing or otherwise renting their property, and evicting any tenants within 30 days.

- [17] The plaintiffs say that the defendants continue to breach the building scheme by renting out a portion of their home, in violation of the building scheme prohibition on any commercial enterprise on or operated from the subject properties. The plaintiffs also submit that the defendants will be in breach of the building scheme if they renew their participation in a farming exchange program. The defendants argue that neither of these activities are prohibited under the building scheme.
- [18] The plaintiffs say that any tenancy agreement, regardless of length, is a commercial enterprise and therefore prohibited by the building scheme. The defendants agree that short-term rentals are a commercial enterprise and therefore prohibited, but they say that a longer-term rental is not a "commercial enterprise".
- [19] The plaintiffs say it is impossible to reconcile the defendants' acknowledgement that short-term rentals are prohibited with the defendants' position that longer-term rentals are not prohibited. I do not agree.
- [20] I am not persuaded that the interpretation of the building scheme is necessarily as black-and-white as the plaintiffs propose, in that it necessarily prohibits all tenancy arrangements. I have no difficulty accepting that a tenancy might be a commercial enterprise in some circumstances and not in others. While not exactly on point, I find the decision of *Winchester Resorts Inc. v Strata Plan*, 2002 BCSC 1165, and the cases cited therein, helpful examples of how a short-term tenancy can have a different legal character than a long-term tenancy.
- [21] In my view, determining whether the building scheme prohibits a tenancy requires consideration of facts that are not in evidence before me, such as the nature of the specific tenancy agreement, including its length, the amount of rent and other particulars of the tenancy agreement, and whether the tenancy is something transient or is more in the nature of a permanent residence for the tenant.
- [22] There is very little evidence before me regarding the nature and terms of the defendants' tenancy arrangement. There is no tenancy agreement in evidence. The defendants argue the tenancy is more akin to a roommate relationship, but they have not provided the kind of detailed evidence that would allow me to evaluate that assertion. The plaintiffs rely on advertisements that they say establish the defendants continue to make their residence available for short-term rentals; the difficulty with this evidence is that it is hearsay and somewhat dated, and I have no way to assess its reliability.
- [23] It is not surprising that the evidence is not well developed regarding the specifics of the tenancy. The proceeding is in very early stages. The defendants have not yet served their list of documents. Discoveries have not taken place. I expect that is because the parties were hopeful that the Court could provide some guidance as to the correct interpretation of the building scheme without having to engage more deeply in the litigation process, which can be time-consuming and costly.

[24] Unfortunately, in my view this is not a circumstance in which the Court can make general pronouncements about how the building scheme should be interpreted. Deciding whether the building scheme prohibits the activity the defendants wish to engage in--that is, long-term rental of some part of their residence--requires a fully developed factual matrix. I cannot, on the whole of the evidence before me, find the facts necessary to decide the interpretation of the building scheme and its application to the defendants' tenancy.

[25] For these reasons, I have concluded that the issues I have described are not suitable for summary determination. While I might well have been able to decide whether participation in the farming exchange program constitutes a commercial enterprise within the meaning of the building scheme, I do not consider it appropriate or just to resolve that question in isolation from the other issues in this proceeding. I therefore dismiss the plaintiffs' application in its entirety on the basis that I do not consider it suitable for summary trial.

[26] I am not seized of future applications or the trial in this proceeding.

"Ramsay J."

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