

CANADA / JUDGMENT

Lewis v. Aurora Roofing Ltd.

2025 BCSC 1493

COURT

Supreme Court of British Columbia

DECIDED

17 June 2025

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

2025 BCSC 1493 Lewis v. Aurora Roofing Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lewis v. Aurora Roofing Ltd.,

2025 BCSC 1493

Date: 20250617

Docket: S247169

Registry: Vancouver

Between:

Craig Lewis

Plaintiff

And

Aurora Roofing Ltd.

Defendant

Before: The Honourable Justice Latimer

Oral Reasons for Judgment

Counsel for the Plaintiff:

C. R. Ferguson

Counsel for the Defendant:

C. Martin

Place and Dates of Trial:

Vancouver, B.C.

June 9-11, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 17, 2025

- [1] THE COURT: These reasons have been edited for transcription and publication.
- [2] This dispute arises from the breakdown of a business and working relationship.
- [3] The defendant terminated the plaintiff without cause on or about July 29, 2024.
- [4] At the time of his termination, the plaintiff (through a holding company) was a shareholder in the defendant (the "Company").
- [5] In this action, the plaintiff has not pleaded or pursued any claim that the termination of his employment was oppressive or unfairly prejudicial to him as a shareholder giving rise to remedies under the Business Corporations Act, S.B.C. 2002, c 57. However, there is a separate action in which the Company's shareholders' rights and remedies will be addressed (the "Shareholder Dispute").

Issues

- [6] The question before me is what compensation the plaintiff is entitled to following his termination. Specifically:
 - (a) Is the plaintiff entitled to continue to receive the \$80,000 annual salary set out in the Company's shareholders agreement, irrespective of his employment duties with the Company? Or,
 - (b) Is the plaintiff entitled only to damages for wrongful dismissal?
- [7] For reasons that follow, I conclude that the plaintiff is not entitled to continue receiving the salary of \$80,000 per annum pursuant to the Company's shareholders agreement, given the termination of his employment duties.
- [8] He is, however, entitled to damages for wrongful dismissal.

Background Facts

- [9] The Company was incorporated on March 21, 1979. It provides roofing services for residential, commercial, and industrial projects on Vancouver Island, British Columbia. Its business premises are in Parksville, British Columbia.

- [10] The plaintiff is currently 47 years old. He started a roofing apprenticeship upon his graduation from high school and has worked in roofing ever since.
- [11] In or around 2012, the plaintiff was hired as an employee by the Company. The Company's residential shingle division was struggling, and the initial focus of the plaintiff's work was to revive that division and get it back on track.
- [12] At the time, Murray Tysowski was the sole director and shareholder of the Company, and Richard Rae was one of the Company's employees. Mr. Rae had a work history as a general contractor and was learning the roofing trade from Mr. Tysowski.
- [13] Over time, the plaintiff and Mr. Rae moved into more managerial roles at the Company.
- [14] The plaintiff, Mr. Tysowski, and Mr. Rae shared a close working and personal relationship for a number of years.
- [15] In 2019, Mr. Tysowski was planning for his retirement and the succession of the Company's operations once he retired. Mr. Tysowski had experienced some health issues and testified that he wanted to give the plaintiff and Mr. Rae an opportunity to take over the Company and to continue his legacy. Mr. Tysowski understood that starting a business from scratch was difficult and that the plaintiff and Mr. Rae did not have the money to finance it. He, therefore, offered the plaintiff and Mr. Rae an opportunity to purchase a 49% interest in the Company through a holding company by making use of a vendor take-back loan.
- [16] Mr. Rae and the plaintiff caused 1227318 B.C. Ltd ("122 Company"), to be incorporated for this purpose.
- [17] On a date unknown, Mr. Tysowski also caused 1041536 B.C. Ltd., ("104 Company") to be incorporated.
- [18] On or about January 1, 2020, the plaintiff, Mr. Rae, and Mr. Tysowski in their personal capacity, together with 122 Company and 104 Company and Aurora Roofing Ltd., which is the Company, entered into an agreement (the "Agreement").
- [19] The Agreement is titled, "Shareholders Agreement".
- [20] In its recitals, the Agreement provides that Mr. Tysowski, 122 Company, and 104 Company are shareholders in the Company, that Mr. Tysowski is the only shareholder of 104 Company, and that the plaintiff and Mr. Rae are the only shareholders of 122 Company.
- [21] The Agreement provides:

F. Craig, Richard and Murray are employed by the Company.

G. The Parties wish to establish their respective rights and obligations in respect of their shares in the capital of the Company and their agreements in respect of the other matters set out in this Agreement. (Emphasis Added)

[22] The Agreement contains certain defined terms which are of particular significance in this action:

"Permanent Incapacity" means, with respect to any person, the condition that will be deemed to exist where:

- (a) such person has been declared by a court of competent jurisdiction to be mentally incompetent and such declaration has not, at the relevant time, been revoked; or
- (b) such person becomes unable, by reason of illness, mental or physical disability or incapacity or otherwise, to perform his or her normal duties as a director or officer of the Company or as a full-time employee of the Company:
 - (i) for a period of 180 consecutive days; or
 - (ii) for 270 days in the aggregate during any period of 365 consecutive days;

provided that in the event a qualified medical doctor certifies that the person's illness, disability or incapacity is not permanent but merely temporary and that the person shall be fully recovered and able to perform his or her normal duties as a director, officer and full-time employee of the Company within 180 days of the date of the certificate, then such illness, disability or incapacity shall not be deemed to constitute "Permanent Incapacity"

"Remuneration" means gross wages paid by the Company.

[23] The Agreement further provides:

3.3 Disagreement and deciding vote: If the directors on the Board cannot agree on any matter at a meeting of the Board, the director who is the nominee of 104Co (pursuant to subsection 3.1 above) shall have the decision vote.

5 REMUNERATION

5.1. Richard, Craig and Murray are entitled to an annual salary as set forth in Schedule A: Schedule of Remuneration attached hereto. The Schedule of Remuneration may be amended from time to time with the agreement of Richard, Craig and Murray in writing.

5.2 No additional remuneration will be paid to Richard, Craig and Murray in excess of the amounts listed in Schedule A.

6.1. Allocation of Dividends: The Board shall distribute cash in excess of the working capital required by the Company to carry on any business ("Core Working Capital"), which as of the date of this agreement the parties estimate to be in the range of \$700,000.00, as dividends payable to holders of the Common Shares pro rata in proportion to their respective holdings of the Common Shares, provided however that:

- (a) from January 1, 2020 to December 31, 2024, the Company will pay:

- (i) an annual dividend of \$440,000 (the "Initial Dividend") to holders of the Common Shares pro rata in proportion to their respective holdings of the Common Shares; and,
- (ii) An annual dividend (the "Excess Dividend") of all excess working capital, over and above the Core Working Capital and the Initial Dividend, to the holders of the Common Shares pro rata in proportion to their respective holdings of the Common Shares with the exception that, to the extent 122Co has an outstanding Vendor Take Back Loan to Murray, the pro rata Excess Dividend payable to 122Co. will be reduced to an amount equal to the percentage of the principal balance of the Vendor Take Back Loan that 122Co has repaid, including payment contemporaneous to the issuance of dividends, with the balance of the Excess Dividend otherwise payable to 122Co paid to 104Co. To further clarify, at the time of signing this Agreement 100% of the Vendor Take Back Loan was outstanding. In the event that, for example, 122Co reduces the Vendor Take Back Loan by 20% of the initial principal balance of the Vendor Take Back Loan, then 122Co, in that year of payment, will be entitled to only 20% of the prorated Excess Dividend that would have otherwise been payable on 122Co's Common Shares had no Vendor Take Back Loan been outstanding.

8.8. Death and Permanent Incapacity:

- (a) If the last Representative of a Shareholder dies or suffers a Permanent Incapacity (the "Subject Shareholder"), the other Shareholders or the Company shall purchase all of the Subject Shareholder's Interest for a purchase price equal to the fair market value of the Subject Shareholder's Interest within 120 days of the Subject Shareholder's date of death or determination of Permanent Incapacity (the "Date of Closing"). If the other Shareholders or the Company elect, the purchase price for the deceased or incapacitated Shareholder's Interest may be paid by delivering to the Shareholder's estate or personal representative 50% of the purchase price on closing and an interest-free promissory note for the remaining 50% payable in equal monthly payments over 36 months.

8.9. Termination of Employment: Craig and Richard agree to enter a Shareholders Agreement with respect to their shareholdings in 122Co which agreement shall provide that if Craig or Richard cease to be employed by the Company (the "Departing Employee"), for whatever reason, the Departing Employee shall be deemed to have provided all other shareholders of 122Co an RFR Offer to sell all of the shares held by the Departing Employee in 122Co. If the RFR offer arises while 122Co has an outstanding promissory note to 104Co, the RFR offer will be for a price equal to the issue price of the shares held by the Departing Employee, taking into account any outstanding debt of 122Co. If the RFR offer arises following full and final payment of the outstanding promissory note to 104Co., the RFR offer will be for a price equal to the fair market value of such shares held by the Departing Employee, taking into account any outstanding debt of 122Co. The RFR transaction must be completed within 90 days of the Departing Employee being employed by the Company.

- 11. No Competition Covenant. So long as a Shareholder owns any Shares and for a period of 3 years after a Shareholder ceases to hold shares in the Company, that Shareholder or Representative shall not, individually or in partnership, by way of trust, agency or

otherwise, jointly or in connection with any person or persons, including without limitation any individual, firm, association, syndicate, company, corporation or other business enterprise, as principal, agent, shareholder, director, officer, employee or in any other manner whatsoever:

- (a) carry on or be engaged in or be concerned with or interested in or advise, lend money to, guarantee the debts or obligations of or permit their names to be used or employed by any individual, firm, syndicate, corporation or other business enterprise engaged in or concerned with any business which:
 - (i) is similar to or competitive with the Business; and
 - (ii) is within the province of British Columbia;
- (b) attempt to solicit any business or customers away from the Company;
- (c) do any act the probable effect of which would be detrimental to the Business or would be to impair relations between the Company and any of its customers or employees; or
- (d) use or disclose to any person, except to duly authorized officers and employees of the Company any trade secret, business data or other confidential or proprietary information acquired by a Shareholder or Representative by reason of that Shareholder's involvement and association with the Company.

Notwithstanding the foregoing, the parties acknowledge that 104Co has an outstanding debt owed to it by Aurora Roofing LM Ltd. and consent to 104Co's enforcement of rights with respect to same.

12.TERMINATION OF AGREEMENT

12.1.Termination by Agreement: This Agreement will terminate if all the Parties agree in writing.

13.3 Legal Advice: The Parties acknowledge that each:

- (a) has received independent legal advice with respect to all matters relating to this Agreement; or
- (b) has had the opportunity to obtain independent legal advice and has declined to do so.

[24] Up until 2020, the plaintiff and Mr. Rae were compensated through a salary. Mr. Rae earned \$100,000 per year and the plaintiff earned \$80,000 per year. Mr. Rae's uncontested evidence, which I accept, is that he earned more than the plaintiff because he was responsible for some additional duties with respect to safety.

- [25] The salaries set out in Schedule A were the same salaries the plaintiff and Mr. Rae received prior to signing the Agreement. Mr. Tysowski was to receive a salary of \$60,000. Both prior to and after signing the Agreement, the Company deducted Canada Pension Plan ("CPP") and tax from these salaries and the income was reported as employment income to the Canada Revenue Agency.
- [26] Prior to signing the Agreement, the plaintiff and Mr. Rae received annual bonuses. After signing the Agreement, they no longer received annual bonuses. However, 122 Company and 104 Company were issued dividends pursuant to s. 6.1 of the Agreement. The plaintiff and Mr. Rae benefitted from these dividends, the only shareholders in 122 Company, and Mr. Tysowski benefitted from 104 Company's dividends as its only shareholder.
- [27] It is common ground that the plaintiff, Mr. Rae, and Mr. Tysowski have never unanimously agreed in writing to any changes to the annual salaries set out in Schedule A.
- [28] Despite the terms of s. 8.9 of the Agreement the plaintiff and Mr. Rae did not enter into a written shareholders agreement with respect to 122 Company.
- [29] On July 29, 2024, the Company terminated the plaintiff's employment without cause.
- [30] A significant body of evidence was led that addressed issues that are not relevant to the questions before me. For example:
- (a) evidence addressing the question of why the Company terminated the plaintiff;
 - (b) evidence with respect to the post-termination treatment of certain Avion points that had been accumulated on the plaintiff's Company credit card prior to his termination;
 - (c) evidence with respect to pre- and post-termination withdrawals from the bank account of 122 Company; and
 - (d) evidence with respect to disclosure of financial information about the Company post-termination.
- [31] No relief is sought in this proceeding with respect to any of these issues, nor were they addressed in the parties' arguments, nor are the issues relevant to the question of contractual interpretation before me. Given the parties' positions that some or all of these issues may be relevant in the Shareholder Dispute which is not before me, I do not intend to discuss this evidence further.
- [32] What is relevant to the matter before me is the undisputed fact that, following the July 29, 2024, termination, the Company has not continued paying the plaintiff the \$80,000 annual salary set out in the Agreement.

Analysis

[33] The question before me is one of contractual interpretation. In approaching such a question, a decision maker must read the contract as a whole giving the words used their ordinary and grammatical meaning consistent with the surrounding circumstances known to the parties at the time of formation of the contract: *Sattva Capital Corporation v. Creston Moly Corp.*, 2014 SCC 53 [Sattva], at para. 47; see also *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, at para. 64.

[34] As the Supreme Court of Canada explained in *Sattva*:

[47] Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

[35] I begin, then, with Clause 5 of the Agreement which is titled, "Remuneration". As I have noted, "Remuneration" is a defined term in the Agreement which means "gross wages paid by the Company".

[36] The plain and ordinary meaning of "wage" accords with the definition in the Oxford English Dictionary, which is "payment to a person for service rendered". Similarly, the plain and ordinary meaning of "salary" accords with the definition in the Oxford English Dictionary, which is "a fixed payment made periodically to a person as compensation for regular work" or "a reward or remuneration for services rendered". I conclude that the plain and ordinary meaning of the words used links the concept of remuneration with work and services rendered.

[37] As I have set out above, the circumstances known to the parties at the time of formation of the Agreement was that the plaintiff and Mr. Rae were senior salaried employees of the Company. The fact that all of the plaintiff, Mr. Rae, and Mr. Tysowski were employed by the Company was specifically recognized in the recitals to the Agreement. Pursuant to s. 2.1 of the Agreement, the recitals to the Agreement are an integral part of the Agreement. The salaries set out in Schedule A of the Agreement are the same salaries that the plaintiff and Mr. Rae were receiving prior to entering into the Agreement. As noted, although their ownership interest in the Company through 122 Company was the same, their salaries were different. Mr. Rae's was higher because of the specific services he rendered to the Company.

[38] The plaintiff argued that Mr. Tysowski was drawing a salary and not performing any employment duties for the Company. This, it was argued, was evidence that the remuneration set out in Clause 5 was not tied to the performance of employment services.

- [39] This argument is not supported by the evidence. It is accurate that Mr. Tysowski scaled back his work over the period of time he employed the plaintiff and Mr. Rae. He did a fair bit of travelling in the winter months when the roofing industry is slower. However, I find that, starting in the spring in or around April and through the summer, Mr. Tysowski was an engaged employee of the Company. He attended the office on most working days. While there, his evidence, which I accept, is that he oversaw job costing, went over all the projects and solicited updates about them, answered phones, and went on site visits. He fielded concerns from contractors and employees. Although he did not attend the foreman meetings daily because they were quite early in the morning, I accept Mr. Rae's evidence that Mr. Tysowski did attend them with some regularity once or twice a week. He would also bid on the odd project, go over income statements, assist with the accounts receivable, and offload materials. Although Mr. Tysowski was the most senior employee of the Company and had the largest ownership interest in it, he had and has the lowest salary when compared to both the plaintiff and Mr. Rae. I find this reflects a smaller workload.
- [40] In the statutory definition, the reference to "gross wages" introduces the notion that there will be deductions from the remuneration. Consistent with the circumstances known to the parties at the time of formation of the Agreement, the specific deductions that occurred under the Agreement were deductions for income tax and CPP. These deductions were made from employment income and the salary was reported as employment income to the Canada Revenue Agency.
- [41] The circumstances known to the parties at the time of formation of the Agreement are consistent with the salaries being linked to services rendered.
- [42] Turning to a consideration of the contract as a whole, although this clause is found in a contract which is entitled "Shareholders Agreement", the Agreement does not only establish the rights and obligations of shareholders of the Company.
- [43] As noted above, the only shareholders of the Company are Mr. Tysowski, 122 Company, and 104 Company. Yet, the plaintiff, Mr. Rae, and the Company are also parties to the Agreement. Recital (G) specifically recognizes that the subject matter of the Agreement encompasses rights and obligations in respect of shares in the capital of the Company and "in respect of the other matters set out in this Agreement". One of those "other matters" is employment income for the plaintiff, Mr. Rae, and Mr. Tysowski. Clause 5 specifically addresses their remuneration in their personal capacity. None of the other parties to the Agreement, for example, 122 Company and 104 Company, are mentioned in Clause 5. If Clause 5 addressed rights arising qua shareholder, it would refer to 122 Company and 104 Company.
- [44] Clause 5.1 requires that any amendment to the schedule of remuneration be made with the agreement of the plaintiff, Mr. Rae, and Mr. Tysowski in writing. The commercial purpose of this requirement is to prevent Mr. Tysowski (who controlled the Company under Clause 3.3) from resetting salaries in a manner which would lower profits and jeopardize dividends for the shareholders. This was significant in this case because the dividend formula in the

Agreement is what allowed the plaintiff and Mr. Tysowski to repay the vendor take-back loan. Thus, for so long as each of the plaintiff, Mr. Rae, and Mr. Tysowski was employed, Clause 5.1 protected maintenance of the status quo.

- [45] However, the Agreement specifically contemplates that the employment of the plaintiff, Mr. Rae, or Mr. Tysowski may cease for a number of reasons. For example, Clause 8.8 addresses what will occur in the event of their death or "Permanent Incapacity", as defined. In that circumstance, the Agreement does not provide for the indeterminate continued payment of the salary set out in Schedule A. Instead, the Agreement establishes a formula for the purchase of the subject shareholder's interest in the Company.
- [46] Likewise, upon the termination of employment of either the plaintiff or Mr. Rae, Clause 8.9 of the Agreement contemplates the sale of the terminated employee's shares. Again, the Agreement establishes formulae for establishing the value of such shares depending on whether the termination occurred prior to or after repayment of the vendor take-back loan.
- [47] There is an issue as to whether Clause 8.9 of the Agreement is valid and enforceable given that the plaintiff and Mr. Rae did not enter into a written shareholders agreement with respect to their shareholdings in 122 Company as is contemplated by that provision.
- [48] As well, the plaintiff has argued that Agreement Clause 8.9 was potentially improvident on the plaintiff's part. If a subsequent written agreement had been entered into as contemplated by this clause, then Mr. Rae and Mr. Tysowski could have fired the plaintiff for no good reason after 80% of the purchase price for an interest in the Company had been paid and force the plaintiff to sell his shares for less than fair market value.
- [49] However, these issues are the subject matter of the Shareholder Dispute and need not be resolved here, as I am not asked to adjudicate the questions of whether the plaintiff must sell his shares or at what value.
- [50] For the purpose of this litigation, the existence of Clauses 8.9 and 8.8 reinforces my view about the correct interpretation of Clause 5. In particular, these clauses reinforce my view that Clause 5 addresses employment income and does not contemplate the continuation of an annual salary in the event that employment comes to an end. Both Clauses 8.9 and 8.8 contemplate the sale of the parties' interest in the Company in the event they are no longer performing their employment duties.
- [51] This is the only interpretation that is consistent with the commercial purpose of the Agreement and the circumstances known to the parties when it was entered into. If the plaintiff's interpretation prevailed, it would permit all of the plaintiff, Mr. Rae, and Mr. Tysowski to cease working and draw the same salaries. That is not a commercially reasonable outcome.

- [52] The plaintiff argued that the no-competition covenant found in Clause 11 could be oppressive if the Company held the plaintiff to this burden while refusing to pay him the salary contemplated by Clause 5. He could thereby be forced to sell his shares at a reduced price in order to get out of the no-competition covenant. This, he argues, supports his interpretation of Clause 5 as requiring the continued payment of the salary despite the termination of the plaintiff's employment.
- [53] I am not persuaded by this argument. A covenant not to compete may be included in respect of employment remuneration or in respect of a sale of the business. The enforceability of those clauses may be put in issue by parties to those agreements. Neither party has put the enforceability of Clause 11 before this court in this action. The mere existence of that clause does not advance the interpretative argument.
- [54] I am also not persuaded that the operation of Clause 11 will necessarily be as financially controlling as the plaintiff suggests. He is entitled to damages for wrongful dismissal. Potential remedies in the Shareholder Dispute would also see the plaintiff receive a substantial amount of money.
- [55] I find that Clause 5 contemplates wages paid by the Company in exchange for services provided by the plaintiff, Mr. Rae, and Mr. Tysowski. It does not contemplate the ongoing payment of a salary in the event that any of these individuals ceases to provide services to the Company for whatever reason.

Conclusion

- [56] My findings and orders are as follows:
- (a) The plaintiff is not entitled to continue receiving the salary of \$80,000 pursuant to the Agreement given the termination of his employment duties.
 - (b) The plaintiff is entitled to damages for wrongful dismissal.
 - (c) In those circumstances, the parties have agreed and I order that:
 - (i) reasonable notice is 12 months;
 - (ii) the plaintiff is entitled to damages for lost income during the notice period of \$80,000 less \$12,307.68 in Employment Standards Act, R.S.B.C. 1996, c. 113 termination pay for a total of \$67,692.32 subject to statutory withholdings;
 - (iii) the plaintiff is entitled to damages for the cost of lost benefits for the balance of the notice period in the amount of \$15,000 inclusive.
 - (d) The defendant was successful on the only issue in dispute and is entitled to its costs.

"Latimer 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/25/14/2025BCSC1493.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/lewis-v-aurora-roofing-ltd-2025>

Prepared on 26 October 2026 · Esheria