

CANADA / JUDGMENT

Martin v. Ferguson

2025 BCSC 1251

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1251 Martin v. Ferguson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Martin v. Ferguson,

2025 BCSC 1251

Date: 20250704

Docket: S62413

Registry: Kamloops

Between:

Melissa Martin

Plaintiff

And

Wendy Ferguson

Defendant

Before: The Honourable Mr. Justice Hori

Reasons for Judgment

Counsel for the Plaintiff:

G.W. Ireland

Counsel for the Defendant:

E. Chorneyko

Place and Date of Trial:

Kamloops, B.C.

January 13-16, 2025

Place and Date of Judgment:

Kamloops, B.C.

July 4, 2025

Introduction

[1] The plaintiff in this action seeks specific performance of a contract of purchase and sale (the "Contract"). Pursuant to the terms of the Contract, the plaintiff is the buyer and the defendant is the seller of real property located at 1388 Campbell Road, Salmon Arm, British Columbia, having a legal description of:

PID: 010-414-819

Lot 2, Section 31, Township 18, Range 10, West of the Sixth Meridian, Kamloops Division Yale District, Plan 5005

(the "Property")

[2] In the alternative, the plaintiff seeks damages for breach of the Contract.

[3] The defendant defends this action on the following bases:

- a) The Contract came to an end when the plaintiff failed to satisfy or waive the conditions of the Contract by the deadline established by the terms of the Contract;
- b) The Contract is invalid and unenforceable because the defendant executed the Contract and agreed to extend the completion date of the Contract under duress or as a result of undue influence; and
- c) The Contract came to an end when the plaintiff failed to complete the Contract by the completion date.

Background

[4] The plaintiff is the daughter of Douglas Gilbert and is the niece of the defendant. The defendant is the half-sister of Douglas Gilbert. The defendant is also the half-sister of Byron Gilbert and Judy Littke. All of these siblings have the same mother, Margaret Stewart (also referred to as Margaret Bolen), who is deceased. The defendant and her half-siblings have different fathers.

- [5] The Property initially belonged to the defendant's father. However, when the defendant's father passed away, the Property became registered in the name of Margaret Stewart, as to a 4/5th interest, and in the name of the defendant, as to a 1/5th interest. The evidence does not identify when or why the ownership of the Property came to be registered in this way.
- [6] When Margaret Stewart passed away, her 4/5th interest in the Property became vested in her estate. In or around February 2022, Douglas Gilbert obtained an order appointing him the administrator of Margaret Stewart's estate (the "Estate").
- [7] The Property is 3.8 acres and is located in a rural area. At the time of Margaret Stewart's passing, the Property included two residences. Neither of the residences were in good condition. The Property also included a barn, which was not in good condition, a number of vehicles in various states of disrepair and garbage both inside and outside the structures on the Property.

The Contract of Purchase and Sale

- [8] I am able to decide the issues in this action based on the terms of the Contract. I recognize that the defendant raises defences that challenge the validity and enforceability of the Contract but, for the purposes of this analysis, they are unnecessary and I will assume that the Contract was valid and enforceable.
- [9] The first factor of significance with respect to the Contract is that there are three parties. The plaintiff was the buyer of the Property, the Estate was the seller of a 4/5th interests in the Property, and the defendant was the seller of a 1/5th interest in the Property. It is clear that the Estate, as represented by the plaintiff's father, was advocating for the sale of the Property to the plaintiff. On the other hand, the defendant did not wish to sell the Property to the plaintiff at the proposed price.
- [10] In any event, the three parties to the Contract executed the Contract after significant, and sometimes heated, discussions about the sale of the Property to the plaintiff. Those discussions involved the parties to the Contract and other family members.
- [11] The three parties executed the Contract on May 23, 2023.
- [12] The relevant terms of the Contract for the purposes of these reasons are as follows:
 - a) The sellers of the Property were "WENDY CANDACE JULIA FERGUSON" and the "ESTATE OF MARGARET ANN RUTH BOLAND";
 - b) The buyer of the Property was "MELISSA DALENE MARTIN";
 - c) Douglas Frank Gilbert signed the Contract as the administrator of the estate of Margaret Ann Ruth Boland;
 - d) The purchase price for the Property was \$250,000;

- e) The completion date for the purchase was July 5, 2023;
- f) Time was of the essence;
- g) The Contract was subject to the following conditions which are set out in Schedule A to the Contract:
 - i. The buyer receiving a commitment for financing; and
 - ii. The buyer obtaining approval for fire and home insurance.
- h) The Contract conditions in Schedule A were subject to the following terms:

These conditions are for the sole benefit of the Buyer and unless all conditions are satisfied or waived by the Buyer on or before June 15, 2023 this Agreement shall terminate and the deposit shall be entirely refunded to the Buyer without consent from the Seller.

- [13] Another relevant fact is that the notary public who represented the interests of the plaintiff drafted the Contract.

Failure to Remove Conditions

- [14] The Contract was subject to financing and the arranging of fire and home insurance. The Contract specifically provided that the deadline, by which the buyer was to either satisfy the conditions or waive the conditions, was June 15, 2023.
- [15] The plaintiff acknowledged, in cross-examination, that she received information from her notary public that if she did not remove the conditions by June 15, 2023, the Contract was terminated.
- [16] The plaintiff admits that the conditions were not satisfied or waived by her before the deadline passed. The reason for failing to satisfy or waive those conditions is immaterial. The Contract is clear that the conditions are to be satisfied or waived on or before June 15, 2023. The plaintiff did not satisfy or waive the conditions in Schedule A by the deadline.
- [17] The plaintiff executed a subject removal document on June 23, 2023. However, there is no evidence that the plaintiff delivered the subject removal document to the defendant or that the plaintiff communicated the removal of the condition to the defendant in any other way.
- [18] Neither the plaintiff nor the plaintiff's notary public notified the defendant that the deadline for removing the conditions had passed without those conditions being satisfied or waived by the plaintiff.
- [19] Pursuant to the terms of Schedule A, upon the plaintiff failing to satisfy or waive the conditions on June 15, 2023, the Contract was terminated.

- [20] The Contract terminated as a result of the plaintiff failing to comply with the terms of Schedule A. The plaintiff's notary public prepared the terms of the Contract, including Schedule A, and advised the plaintiff about the consequences of failing to satisfy or waive the conditions before the June 15, 2023, deadline.
- [21] The plaintiff seeks to avoid the consequences of her failure to comply with Schedule A by suggesting that the Contract did not terminate until the defendant formally repudiated the Contract which she did not do. In support of this proposition, the plaintiff relies on *Gulston v. Aldred*, 2011 BCCA 147 at para. 49.
- [22] The plaintiff's submission on the defendant's failure to repudiate the Contract cannot be sustained for two reasons.
- [23] Firstly, there is no evidence that the plaintiff notified the defendant of the plaintiff's failure to fulfill the requirements of Schedule A by the deadline. There is also no evidence that the plaintiff ever delivered a copy of the subject removal document to the defendant after the deadline. It is not reasonable to expect the defendant to have formally repudiated the Contract due to the plaintiff's failure to meet the requirements of Schedule A when the defendant had no knowledge of the plaintiff's failure.
- [24] The requirement to repudiate a contract arises where a party to a contract breaches a fundamental term of the contract. In that circumstance, the innocent party has an election. As set out in *Gulston* at para. 50, citing *Morrison-Knudsen Co. v. British Columbia Hydro & Power Authority (No. 2)* (1978), 85 D.L.R. (3d) 186 (B.C.C.A.), the innocent party may elect to:
- a) affirm the contract, require the other party to perform its contractual obligations, and sue for damages as compensation for the breach; or
 - b) terminate the contract, be relieved of any further duty to perform, and sue at once for damages.
- [25] Where there has been a breach of a fundamental term of a contract and the innocent party wishes to treat the contract as at an end, the innocent party must make that election and communicate it to the party in breach: *The Owners, Strata Plan LMS 3905 v. Crystal Square Parking*, 2025 BCSC 1017 at paras. 132-133.
- [26] However, there cannot be an election until the innocent party has knowledge of the right to elect: *VSA Highway Maintenance Ltd. v. British Columbia*, 2007 BCCA 362 at para. 25.
- [27] Accordingly, the defendant's failure to repudiate the Contract cannot be held against her in these circumstances.
- [28] Secondly, the contractual terms in Schedule A are clear. If the plaintiff fails to satisfy or waive the conditions on or before June 15, 2023, the Contract will terminate. This circumstance is different from the circumstance in *Gulston*. In *Gulston*, the question before the Court was whether a contractual party committed a breach of a fundamental term of the contract and, if so, what result should follow. In those circumstances, the Court found that if

the contracting party's conduct was a breach of a fundamental term of the contract, then the non-breaching party could elect to affirm the contract or repudiate the contract and sue for damages.

[29] In this case, the terms of Schedule A do not create such an option. It specifically provides that "unless all conditions are satisfied or waived by the Buyer on or before June 15, 2023, this Agreement shall terminate and the deposit shall be entirely refunded to the Buyer without consent from the Seller".

[30] The Law and Equity Act, R.S.B.C. 1996, c. 253, s. 54 provides:

Conditions precedent

54 If the performance of a contract is suspended until the fulfillment of a condition precedent, a party to the contract may waive the fulfillment of the condition precedent, even if the fulfillment of the condition precedent is dependent on the will or actions of a person who is not a party to the contract if

- (a) the condition precedent benefits only that party to the contract,
- (b) the contract is capable of being performed without fulfillment of the condition precedent, and
- (c) where a time is stipulated for fulfillment of the condition precedent, the waiver is made before the time stipulated, and where a time is not stipulated for fulfillment of the condition precedent, the waiver is made within a reasonable time.

[31] In order to be effective, the waiver of a condition precedent must be unequivocally communicated to the other contracting party: *Sun-Kahn Investments Ltd. v. Dalton*, 1982 CarswellBC 793 (S.C.) at paras. 30-41.

[32] Accordingly, once June 15, 2023 passed without satisfaction or waiver of the conditions, the Contract came to an end. In order to breathe life back into the Contract, the plaintiff required the specific consent of the defendant, which was neither sought nor obtained.

[33] On this basis, the plaintiff's action for specific performance and her alternative claim for damages for breach of contract against the defendant must fail.

[34] Although my conclusion that the Contract came to an end on June 15, 2023, disposes of the plaintiff's claims, the parties devoted a great deal of trial time to the other defences raised by the defendant. Therefore, I will provide my opinion with respect to those other defences.

Duress and Undue Influence

[35] The evidence supporting the pleas of duress and undue influence is essentially the same. The pleas arise from the conduct of Douglas Gilbert who is the plaintiff's father and the administrator of the Estate.

- [36] The evidence of the defendant is that Douglas Gilbert is a strong personality, who does not listen to others who may oppose his position. The defendant describes Douglas Gilbert as becoming angry when matters do not go his way. The defendant testified that Douglas Gilbert is someone she finds difficult to oppose.
- [37] The defendant's evidence is that she did not wish to sell the Property to the plaintiff at the price offered in the Contract because the purchase price was too low and she thought they could get more in the marketplace based on:
- a) a pricing recommendation from a realtor, dated August 27, 2022, in which the realtor stated that the Property could sell between \$350,000 and \$425,000 if the Property was cleaned up and the dwellings made liveable;
 - b) the defendant and the Estate having received an offer to purchase the Property from one of Byron Gilbert's sons for \$320,000, which they did not accept;
 - c) the defendant and the Estate having received an offer to purchase the Property from another son of Byron Gilbert for \$250,000, which they did not accept; and
 - d) the plaintiff offering to purchase the Property for \$300,000, on December 18, 2022, which the defendant and the Estate did not accept.

Signing the Contract

- [38] At a meeting on February 22, 2023, Douglas Gilbert advised the defendant that he was the administrator of the Estate, and that he was intending to sell the Property to his daughter for \$250,000. When the defendant asked Douglas Gilbert what would happen if she did not agree, Douglas Gilbert advised her that he could force the sale as the administrator of the Estate and that the defendant had no say.
- [39] On April 2, 2022, the plaintiff made an offer to purchase the Property for \$250,000. The plaintiff made the offer to Douglas Gilbert as the administrator of the Estate, but the offer directed that the response to the offer be sent to the Estate administrator, Douglas Gilbert. The plaintiff sent a copy of the offer to the defendant. When the defendant received the plaintiff's offer of April 2, 2022, she advised Douglas Gilbert that \$250,000 was not enough for the Property.
- [40] The plaintiff made another offer to purchase the Property for the same purchase price of \$250,000 in an offer dated May 18, 2023. This offer was open for acceptance until May 23, 2023.
- [41] On May 21, 2023, the defendant, the plaintiff, Douglas Gilbert and Byron Gilbert, had a meeting to discuss the offer. The defendant testified that she expressed her disagreement with the purchase price of \$250,000 and said it was too low. The plaintiff recalls that at this meeting, the defendant indicated that the purchase price was not a lot and that it would be nice to have more.

- [42] The defendant testified that on May 23, 2023, she was feeling stressed because this was the last day that the offer to purchase the Property was open for acceptance. She did not want to be alone because she knew that Douglas Gilbert would be coming over to have her sign the acceptance of the offer. As a result, she went to Byron Gilbert's home. While at that location, the defendant received a telephone call from Douglas Gilbert who had arrived at the defendant's house and needed to talk to her about the Contract. The defendant advised Douglas Gilbert that she was not going to sign the offer unless Byron Gilbert and his wife agreed.
- [43] Within ten minutes of hanging up on the telephone call, Douglas Gilbert arrived at Byron Gilbert's house. The defendant testified that Douglas Gilbert advised her that if she did not sign the offer, they would sue her for work that they had already done on the Property.
- [44] The defendant testified that as a result of the pressure exerted upon her by Douglas Gilbert, she just gave up and signed the acceptance of the offer.

Signing the Completion Date Extension

- [45] There was no further communication between the plaintiff, the defendant or Douglas Gilbert with respect to the Contract until after the July 5, 2023, completion date passed.
- [46] The plaintiff tendered a handwritten amendment to the Contract dated June 27, 2023, as support for her position that the parties agreed to extend the completion date for the Contract to July 11, 2023 (the "Extension"). While the Extension is dated June 27, 2023, the plaintiff cannot recall when the Extension was presented to and signed by the defendant. The defendant testified that she saw the proposed Extension on July 6, 2023. The defendant's telephone records and a voice message she received from Douglas Gilbert on July 6, 2023, support the defendant's testimony. Therefore, I find that the plaintiff did not present the proposed Extension to the defendant until July 6, 2023.
- [47] On July 6, 2023, the defendant was present with Byron Gilbert when he received a telephone call from Douglas Gilbert. The defendant heard both sides of the telephone discussion because the telephone was on speaker. During that conversation, the defendant heard Douglas Gilbert requesting Byron Gilbert to help him make the defendant sign a document extending the completion date for the purchase of the Property. The defendant also heard Douglas Gilbert say that if she did not sign the Extension, then the plaintiff would sue her for the increase in her interest rate and for the money that she has spent on the Property.
- [48] During that conversation, the plaintiff was present with her father. At one point, the defendant heard the plaintiff on the telephone say that she would sue the defendant for breach of contract and the increased interest rate on her mortgage and perhaps even for her lawyer.

- [49] On cross-examination, the plaintiff admitted to being part of this telephone conversation. She testified that this was a heated discussion and everyone raised their voices. The plaintiff testified that her father told Byron Gilbert that she could sue the defendant. However, the plaintiff denies that she personally made such a comment. The plaintiff testified that she simply posed the question, "would it not be fair for me to get my money back?"
- [50] I find that during this heated discussion on the telephone, the plaintiff and her father threatened the defendant with litigation and negative financial consequences if the defendant did not sign the Extension.
- [51] Later that day, the defendant was at a restaurant with Byron Gilbert when Douglas Gilbert came in with the Extension documents. The defendant signed the Extension because she did not want to end up in court and she just wanted it all done and over. The Extension extended the completion date from July 5, 2023 to July 11, 2023.
- [52] Later in the day, after she signed the Extension, the defendant sought legal advice from the lawyers representing the Estate. As a result of there being a conflict of interest, the Estate lawyers referred the defendant elsewhere.
- [53] When the defendant received the closing documents, she decided not to execute them.
- [54] There are two instances in this purchase and sale transaction where the defences of duress or undue influence may apply. The first instance is when the defendant signed the Contract. The second instance is when the defendant signed the Extension.

Analysis - Duress

- [55] The fundamental requirement for establishing duress is that there must be a coercion of the will of the victim so as to vitiate consent: *Byle v. Byle*, 1990 CarswellBC 348 at para. 26 (C.A.).
- [56] The classic form of duress involves threats of physical violence. However, the law recognizes that economic duress may also vitiate consent: *Bell v. Levy*, 2011 BCCA 417.
- [57] In *Bell*, the dissenting opinion of Justice D. Smith discussed the law of duress and whether economic duress is sufficient to vitiate consent. In that discussion, Justice Smith cited *Pao On v. Lau Yiu Long*, [1979] 3 All E.R. 65 (P.C.) and applied the test for economic duress stated by Lord Scarman. In considering that test, Smith J. found that the trial judge erred in deciding the case on a summary trial and would have remitted the matter back to the trial court for a new trial.
- [58] The majority decision in *Bell* did not take issue with Smith J.'s analysis of the law, but reached a different conclusion on whether the trial judge should have decided the issue of economic distress on a summary trial. The majority found that the trial judge could do so and dismissed the appeal.

[59] The statement of economic duress pronounced by Lord Scarman in *Pao* and referred to by Smith J. in *Bell* at para. 51 is:

Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observations of Kerr J. in *Occidental Worldwide Investment Corporation v. Skibs A/S Avanti*, [1976] 1 Lloyd's Rep. 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor "which could in law be regarded as a coercion of his will so as to vitiate his consent." This conception is in line with what was said in this Board's decision in *Barton v. Armstrong*, [1976] A.C. 104, 121 by Lord Wilberforce and Lord Simon of Glaisdale - observations with which the majority judgment appears to be in agreement. In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it. All these matters are, as was recognised in *Maskell v. Horner*, [1915] 3 K.B. 106, relevant in determining whether he acted voluntary or not.

[Emphasis in original]

[60] In this case, the form of coercion raised by the evidence is the economic duress arising from the threat of litigation to recover compensation.

[61] In my view, the defendant has failed to satisfy the onus on her to establish duress in the signing of the Contract for the following reasons:

- a) After executing the Contract on May 23, 2023, there is no evidence that the defendant took steps to avoid the Contract until she refused to execute the closing documents; and
- b) It is not reasonable for the defendant to feel threatened by the suggestion that she would have to pay the plaintiff's expenses with respect to the Property, when the defendant had no obligation to sell her interest in the Property.

[62] As stated in *Pao*, commercial pressure is not enough. There must be some factor which could, in law, be regarded as a coercion of the defendant's will so as to vitiate her consent. I cannot find any such factor in the evidence of this case.

[63] Therefore, the defendant cannot avoid the terms of the Contract on the basis of duress.

[64] With respect to extending the completion date, having executed the Contract, it is understandable that the defendant may have thought she had a legal obligation to cooperate with the plaintiff by signing the Extension. The defendant was unaware that the plaintiff had failed to satisfy or waive the Contract conditions by the deadline for doing so.

- [65] When the original completion date passed without having received closing documents from the plaintiff, the defendant must have understood that the plaintiff would require an extension. The defendant testified that when the sale did not complete on July 5, 2023, she presumed that Douglas Gilbert would be looking for her. Instead of seeking legal advice when the sale did not complete on time, the defendant asked Byron Gilbert to come and be with her when Douglas Gilbert came for her consent to extend the completion date.
- [66] Shortly after the telephone discussion on July 6, 2023, Douglas Gilbert presented the Extension to the defendant for signature. The defendant signed the agreement and then immediately sought legal advice and later refused to execute the closing documents. The defendant testified that she signed the Extension because she did not want to end up in court, she had already signed the Contract and she just wanted it to be done.
- [67] Even though the defendant received threats of litigation and adverse financial consequences, the circumstances leading to the signing of the Extension and the defendant's state of mind are not sufficient to establish that the defendant's consent to extend the completion date was ineffective. The defendant had an option to consent to the Extension or not. There is no evidence that she was unable, by the plaintiff's actions, to exercise the option of her choice.
- [68] The defendant knew that the completion date had passed. She should have obtained legal advice before she signed the Extension or she could have simply refused to consent, but she chose not to do so because she just wanted it to be done.
- [69] Therefore, the defendant cannot avoid the Extension on the basis of duress.

Analysis - Undue Influence

- [70] Justice Gomery, as he then was, in *Davy v. Davy*, 2019 BCSC 1826 succinctly summarized the doctrine of undue influence in the following passage:
- [52] Undue influence is an equitable doctrine to save people from being victimized by other people. A transaction induced by undue influence may be set aside. There are two classes of case. The first class arises where the party seeking to set aside the transaction proves that the defendant engaged in improper conduct that dominated the will of the victim. That is not the plaintiff's claim in this case.
- [53] The second class of case arises where the defendant and the supposed victim were in a relationship of dependency involving a potential for domination of the victim by the defendant. In these cases, if the transaction involved a gift or bequest, as opposed to a commercial transaction, undue influence is presumed and the burden lies on the defendant to show that the victim entered into the transaction as a result of his or her own full, free and informed thought. In the case of a commercial transaction, there is a further requirement: the plaintiff must also show that the contract in question worked unfairness by conferring undue disadvantage on the victim or undue advantage on the defendant.

- [71] On the first class of cases referred to by Gomery J., I find that the defendant has not made out her plea of undue influence with respect to the signing of the Contract. There is no improper conduct on the part of the plaintiff disclosed in the evidence that dominated the will of the defendant.
- [72] However, with respect to the defendant's consent to extending the completion date, I find that the conduct of the plaintiff, in concert with her father, unduly influenced the defendant to give her consent. The plaintiff, with the assistance of her father, dominated the will of the defendant by suggesting that the plaintiff would sue the defendant for breach of contract if the defendant did not sign the Extension.
- [73] The threat to sue the defendant for breach of contract had no legal basis because the Contract had terminated as of June 15, 2023, when the plaintiff failed to remove the Contract conditions. The Contract had also expired on July 5, 2023, when the plaintiff was not ready, willing and able to complete the purchase. The threat to sue for breach of contract subjected the defendant to undue influence because it had no legal basis.
- [74] The defendant did not wish to proceed with the Contract, but agreed to the Extension because of the undue influence exerted upon her by the threat of litigation. These circumstances establish that the threat of litigation rendered the defendant incapable of consenting to the Extension of her own "full, free and informed thought."
- [75] Accordingly, the defendant's agreement to the Extension must be set aside. The effect of doing so returns the completion date for the Contract to July 5, 2023. The plaintiff was not ready, willing and able to complete the Contract by July 5, 2023. Therefore, the plaintiff's claim for specific performance cannot succeed, nor can her alternative claim for damages for breach of contract.
- [76] The defendant also claims that this case falls into the second class of cases referred to by Gomery J. Those cases are ones in which a presumption of undue influence arises from the relationship between the parties.
- [77] I am not satisfied that the nature of the relationship between the defendant and the plaintiff, or the plaintiff's father, gives rise to a presumption of undue influence. I accept the evidence that Douglas Gilbert is a strong personality who may seek to dominate others who disagree with him. However, he was not in a position of trust with respect to the defendant. He was not in a position of authority over the defendant and he was not fulfilling the role of adviser to the defendant in this transaction. Therefore, I find that the circumstances in this relationship do not give rise to the presumption of undue influence.
- [78] Further, the nature of the transaction involved in this case is a "commercial transaction" as opposed to a gift or bequest. Therefore, in order to establish undue influence based on the presumption, the defendant must show that the Contract worked an unfairness by conferring undue disadvantage on her or undue advantage on the plaintiff.

- [79] The defendant has tendered no reports or other statements of market value for the Property that are admissible for the truth of their contents. Absent market value evidence, I am unable to decide whether the Contract worked an unfairness on the defendant.
- [80] Therefore, I find that the defendant has not established undue influence on the basis of the presumption of a relationship of dependency, but has established it on the basis of improper conduct that dominated her will.

Final Conclusion

- [81] The plaintiff failed to remove the conditions set out in Schedule A of the Contract by the deadline of June 15, 2023. As a result, and in accordance with the terms of the Contract, the Contract terminated as of June 15, 2023.
- [82] Even if the Contract did not terminate as of June 15, 2023, the plaintiff was not ready, willing and able to complete the Contract on the completion date of July 5, 2023, and the defendant's agreement to extend the completion date is set aside as it was obtained by undue influence.
- [83] Therefore, the plaintiff's action is dismissed.

Costs

- [84] The defendant was successful in defending this action. Therefore, the costs of the action should be awarded to the defendant. However, if there are costs factors of which I am not aware and the parties wish to make submissions on costs, they have leave to do so.
- [85] If the parties wish to make submissions on costs, they will schedule a hearing within the next 60 days.

"D.K. Hori J."

HORI J.

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