
CANADA / JUDGMENT

McHugh v. Cameron

2022 BCSC 2405

COURT

Supreme Court of British Columbia

DECIDED

7 October 2022

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

2022 BCSC 2405 McHugh v. Cameron

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McHugh v. Cameron,

2022 BCSC 2405

Date: 20221007

Docket: S219882

Registry: Vancouver

Between:

Debbie McHugh

Plaintiff

And

Shawn Glen Cameron, Michelle Lynn Cameron,

also known as Michelle Lynn Ordowski, and

Your Tiny Homes Inc.

Defendants

Before: The Honourable Justice Gaul

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

N. Jones

Counsel for the Defendants:

D. Ball

Place and Date of Hearing:

Vancouver, B.C.

October 6, 2022

Place and Date of Judgment:

Vancouver, B.C.

October 7, 2022

- [1] THE COURT: The plaintiff, Debbie McHugh, started this litigation when she filed her notice of civil claim on 12 November 2021. Her claims against the defendants include breach of contract, fraudulent or negligent misrepresentation, and unjust enrichment.
- [2] An amended notice of civil claim was filed 3 December 2021. The amended notice of civil claim was served on all three defendants in December 2021.
- [3] None of the defendants filed a response to Ms. McHugh's action and, consequently, on 31 May 2022 the court granted default judgment against them, with damages and costs to be assessed.
- [4] By notice of application filed 23 September 2022, Ms. McHugh now seeks to have her damages summarily assessed.

Background Facts

- [5] I begin by noting that in failing to file a response to Ms. McHugh's action and, thus, having default judgment taken against them, the defendants are deemed to have admitted the facts pleaded in the amended notice of civil claim (see: *E. Sands and Associates v. Dextras Engineering*, 2008 BCSC 1809; and *Lang v. Lapp*, 2015 BCSC 1838).
- [6] Ms. McHugh is a member of the Squamish First Nation and a resident of Squamish, British Columbia. For over 25 years she was employed with the Squamish First Nation. She retired in 2018 following an accident in which she suffered a shoulder injury.
- [7] After she received a payout of a portion of her pension, Ms. McHugh set out to purchase a small home for herself that would accommodate her physical needs.

- [8] Your Tiny Homes Inc. ("YTH") is a company incorporated in British Columbia that is in the business of constructing, selling, and installing small or micro-sized homes commonly called "tiny homes". The individual defendants, Mr. and Mrs. Cameron, are the principals of YTH.
- [9] In November 2019, Ms. McHugh contacted YTH about the possibility of purchasing one of its tiny homes. Ms. McHugh spoke with Mr. Cameron. He advised her that a partially constructed tiny home was available for purchase and that it would be completed and ready for delivery in January of 2020.
- [10] On 7 November 2019, Ms. McHugh received an email from Mrs. Cameron that included the following:

Hello Dee,

My name is Michelle - I am Shawn's wife. Him and I spoke about your need for a Tiny Home asap. Please find enclosed a copy of your estimate I have written for you based on the information he gathered. I have given you a discount of \$6,196.00 which is valid until Monday, November 11th, 2019. The estimate is valid until then as well. The prices listed on the quote are based on the sale's (sic) and wood product at today's lumber prices.

As an added note *** We currently have the perfect trailer for you on our property waiting to be built, if you are happy with this estimate - please let either of us know right away and we will set that trailer aside for you (smiley emoji) and I can send you our service agreement for you to read over and return with signatures.

Also, I have attached a few floor plans I think you may like. Let me know your thoughts.

- [11] I pause here to note that the discount being offered by Mrs. Cameron left Ms. McHugh with very little time to consider her options. It is unclear why Mrs. Cameron stipulated such a short time frame for acceptance of the offer and I can only infer that it was a means of applying pressure to Ms. McHugh and to induce her into purchasing a tiny home from the defendants.
- [12] Because of the representations Mr. and Mrs. Cameron made to Ms. McHugh about YTH's ability to build a tiny home and deliver it to her by January 2020; the time-sensitive price incentive the defendants offered her; and her urgent need to obtain a home, Ms. McHugh entered into an agreement for services with YTH dated 8 November 2020 for the purchase of a tiny home (the "First Agreement").
- [13] The price for Ms. McHugh's YTH tiny home was \$54,755 (the "Purchase Price"). The terms of the First Agreement required that this amount be paid in the following instalments:

- a) The "First Payment" of \$27,377.50, representing 50 percent of the Purchase Price, within 48 hours of executing the agreement. This sum was to pay for "costs of material, trailer, ordering materials, purchase of building supplies, and reserving your spot for work and delivery date";
 - b) The "Second Payment" of \$19,164.25, representing 35 percent of the Purchase Price. This payment would be used for "upon mid-point of construction - (within 48 hours) once all exterior siding, roofing, flashings, window & exterior door(s) installed. Fair warning will be given to client at mid-point";
 - c) The third payment entitled the "Delivery Payment" of \$5,475.50, representing 10 percent of the Purchase Price, to be paid within 48 hours of substantial completion of the work at the shop prior to delivery; and
 - d) The "Final Payment" of \$2,737.75, representing 5 percent of the Purchase Price, to be paid within 48 hours of completing delivery and set-up of the tiny home at Ms. McHugh's residence in Squamish, B.C.
- [14] Additionally, the First Agreement stipulated that Ms. McHugh's tiny home would be completed in January 2020. This is critical.
- [15] Pursuant to the terms of the First Agreement, Ms. McHugh paid to YTH \$28,000 on 12 November 2019. This represented the First Payment and a portion of the Second Payment.
- [16] In mid-December 2019, the defendants informed Ms. McHugh that they had reached the midpoint in the construction of her tiny home and, consequently, the Second Payment was due. Accepting what the defendants had told her and wanting to comply with the terms of the agreement she had with the defendants, on 13 December 2019 Ms. McHugh provided the defendants with a further \$20,284.25, representing the balance of the Second Payment plus the costs associated with the installation of a skylight in the tiny home that was being built for her.
- [17] On or about 17 December 2019, after having spoken with Mr. Cameron, Ms. McHugh purchased a washer and dryer as well as a refrigerator from The Brick, for installation in her tiny home (the "Brick Appliances"). These appliances cost Ms. McHugh \$3,496.95 and they were delivered to Kamloops where Mr. Cameron agreed to retrieve them and take them to YTH's workshop in Vavenby, B.C.
- [18] In January 2020, again following discussions with Mr. Cameron, Ms. McHugh purchased a sink and stove for installation in her tiny home (the "Kitchen Appliances"). Ms. McHugh paid \$1,000 for these appliances. Like the Brick Appliances, these items were shipped to Kamloops where Mr. Cameron retrieved them and took them to the YTH workshop for eventual installation in the tiny home that was being built for Ms. McHugh.

- [19] Later in January 2020, following repeated inquiries from Ms. McHugh, Mr. Cameron informed her that her tiny home would not be ready by the end of the month, as agreed to in the First Agreement.
- [20] Over the course of the next seven months, that is, between January and July 2020, Ms. McHugh made numerous attempts to find out from the defendants when she would receive her YTH tiny home. When she was able to speak with either Mr. or Mrs. Cameron, the results were disheartening and troublesome:
- a) In January 2020, Ms. McHugh was told her tiny home would be ready in February 2020;
 - b) In February 2020, she was told her tiny home would be ready in March 2020;
 - c) In April 2020, she was told her tiny home would be ready in June 2020; and
 - d) In July 2020, she was told her home would be ready in August 2020.
- [21] The defendants offered multiple excuses for their failure to comply with the First Agreement to provide Ms. McHugh with her tiny home. Those excuses included:
- a) Mr. and Mrs. Cameron had been invited to a friend's home for dinner;
 - b) Mr. and Mrs. Cameron had visitors with them;
 - c) Mr. and Mrs. Cameron had failed to obtain the necessary supplies or workers; and
 - d) Mr. and Mrs. Cameron had other projects to complete.
- [22] Suffice it to say, these excuses were ridiculous and entirely unacceptable.
- [23] In order to assuage Ms. McHugh's concerns and doubts about the veracity of the defendants' claims that her tiny home was nearing completion, Mr. Cameron sent Ms. McHugh images of what was said to be the interior of her tiny home. I would note parenthetically that the terms of the First Agreement required the defendants to communicate with Ms. McHugh and to provide her with updates on a regular basis.
- [24] Ms. McHugh accepted the images that Mr. Cameron had sent her as proof that her home was actually in the process of being built.
- [25] On or about 22 July 2020, the defendants sent Ms. McHugh an addendum to the First Agreement (the "Addendum"). Amongst other things, the Addendum amended the First Agreement by changing the completion date for the delivery of Ms. McHugh's tiny home from January 2020 to 1 September 2020. Concerned that she would not get her YTH tiny home unless she agreed to the revised completion date, Ms. McHugh signed the Addendum.
- [26] Between August and October 2020, Ms. McHugh continuously attempted to contact the defendants to inquire about the status of her tiny home and to obtain the progress reports that she was entitled to under the agreement she had with them. The communications between the defendants and Ms. McHugh continued to be troublesome. For example:

- a) On or about 2 September 2020, Ms. McHugh was told that there was only two more weeks of work required for her tiny home;
- b) On or about 23 September 2020, Ms. McHugh was told there were "a few more touches" to complete on her tiny home and it would be ready in two-and-a-half weeks;
- c) In the first part of October 2020, Ms. McHugh was told that her home would be ready for delivery on or about 17 October 2020; and
- d) On 16 October 2020, Ms. McHugh was told that her tiny home would not be ready for October 17, 2020.

[27] Again, some of the excuses that both Mr. and Mrs. Cameron offered for these delays included:

- a) It was summertime;
- b) They had attended a wedding; and
- c) Their children had sporting events.

[28] During the months of October and November 2020, Ms. McHugh continued her attempts to find out from the defendants when her tiny home would be finished. In a late November 2020 telephone conversation with Ms. McHugh, Mr. Cameron became irate when she asked him for a discount on the price of her tiny home given the excessive delay in getting it completed and delivered to her. He ended the conversation and then ceased communicating with her for an extended period of time.

[29] Ms. McHugh was able to re-establish communication with Mr. Cameron in February of 2021. During a conversation in which Ms. McHugh asked about the state of her tiny home, Mr. Cameron explained that he had stopped construction of it. He also asked Ms. McHugh to confirm that she had sufficient funds to make the Delivery Payment and the Final Payment. Ms. McHugh had those funds, as she had withdrawn a portion of her pension. Ms. McHugh confirmed with Mr. Cameron that she had sufficient funds available to her to make the necessary payments and asked him to send her images and progress reports of the construction of her tiny home, as the defendants had agreed to do under the terms of their agreement.

[30] From late February to early June 2021, Ms. McHugh received no communications from any of the defendants, notwithstanding her attempts to contact them. She received no images and no progress reports.

[31] On 4 June 2021, Ms. McHugh travelled from Squamish to the YTH workshop in Vavenby, B.C. to see for herself the state of her tiny home. Upon introducing herself to Mr. Cameron, he informed her that he had sold her tiny home along with the Kitchen Appliances that he had installed in the home.

- [32] Ms. McHugh demanded repayment of all of the funds she had advanced to the defendants for the tiny home as well as \$1,000 for the Kitchen Appliances that she had purchased. She also demanded the return of the Brick Appliances that she had purchased and that were stored in the YTH workshop.
- [33] Mr. Cameron agreed that the defendants would refund Ms. McHugh all of the monies she had paid for her tiny home and would reimburse her as well for the Kitchen Appliances. He also confirmed that she could take with her the Brick Appliances that were stored on site.
- [34] Shortly after Ms. McHugh left Mr. Cameron and the YTH premises, he contacted her and offered to build her another tiny home on the same terms and at the same price as her original home. He also represented that the new home, like her earlier home, would include the appliances that she had purchased and, most importantly, it would be ready by 21 August 2021.
- [35] Relying upon these representations of Mr. Cameron, and desperately needing a tiny home, Ms. McHugh agreed to this offer.
- [36] The defendants failed to provide Ms. McHugh with the plans for the new tiny home and, consistent with their earlier conduct, they also failed to provide progress reports on the construction of this home, when Ms. McHugh made inquiries.
- [37] When she was able to speak with either Mr. or Mrs. Cameron, she was told that the reasons for them not communicating with her included that:
- a) Mr. Cameron was tired;
 - b) They had been at their children's sporting events; and
 - c) Mr. Cameron had suffered an injury.
- [38] These explanations or excuses are, like the others, entirely unconvincing.
- [39] In late June 2021, Ms. McHugh informed Mr. Cameron that she would again be attending the premises of YTH in order to confirm for herself that her tiny home was actually being built. Understandably, she was skeptical and worried. She continued to be in a desperate situation and in need of a home. She was bordering on homelessness. Shortly after this conversation, and without any explanation or forewarning, the defendants sent Ms. McHugh a new service agreement. The terms and contract price was the same as the First Agreement and the instalment payments and timing were the same as well. What was new, however, was the following provision: "All on-site visits require 48 hours approval by Your Tiny Homes Ltd."
- [40] The reason for this additional term was never explained to Ms. McHugh and she never signed the agreement. One can only infer the new term was prompted by Ms. McHugh's indication that she would be attending once again at YTH's workshop to confirm that her new tiny home was being built, which as it turns out, it was not. Although she did not sign this new proposed agreement, she relied upon the earlier agreement as well as the oral

agreement that she had reached with Mr. Cameron on 4 June 2021 in order to secure her new YTH tiny home.

- [41] Between July and August 2021, Ms. McHugh repeatedly asked Mr. and Mrs. Cameron for updates, images, and progress reports, as she was entitled to do, and as the defendants were required to provide, and to confirm that her tiny home was being built and the completion and delivery date of 21 August 2021 would be met. This was critical for her. Neither Mr. nor Mrs. Cameron responded to Ms. McHugh's inquiries. Moreover, Mr. Cameron again ceased communicating with Ms. McHugh. No further completion dates were offered to Ms. McHugh.
- [42] In September 2021, Ms. McHugh contacted the RCMP with a complaint about the defendants' behaviour and their failure to honour the agreement that they had reached for the purchase and delivery of her tiny home.
- [43] On or about 8 September 2021, RCMP officers attended at the premises of YTH and spoke with Mr. Cameron. During this conversation, he confirmed that he would be returning to Ms. McHugh all of the monies that she had paid to YTH.
- [44] Notwithstanding this representation to the police, none of the defendants have returned any of the funds Ms. McHugh paid for her tiny home; nor have they returned the appliances that Ms. McHugh had purchased for installation in her tiny home.

Proceeding summarily to assess damages

- [45] Pursuant to Rule 3-8(3) of the Supreme Court Civil Rules, where a plaintiff has obtained a default judgment with damages to be assessed, the plaintiff may apply to the court to have the assessment conducted summarily on affidavit evidence.
- [46] The predecessor to Rule 3-8(3) was Rule 25-16. The two rules are virtually identical, although there are some linguistic differences that are important.
- [47] The former Rule 25-16 was considered in *Rutherford et al v. Knutsson*, 2004 BCSC 1021. In his reasons for judgment, Mr. Justice Ralph noted:
- [14] The considerations to be taken into account when deciding whether to proceed summarily upon affidavit were considered in *Baldissera Construction Ltd. v. 2021 Enterprises Ltd.* (1979), 12 C.P.C. 100 (B.C. Co. Ct.). In that case the court was considering the present r. 17(13) but the considerations are similar under r. 25(16). Three factors identified are:
 - 1) the amount of damages involved is relatively small;
 - 2) the matter can be deposed to by the principal of the plaintiff;
 - 3) the affidavit material in support of the motion has been served upon the defendant and he has not appeared to contest the matter.

[15] Wetmore Co. Ct. J., noted additional considerations at s. 7, 8 and 11:

I think it is...incumbent upon the Court to be satisfied that judgment of the Court will not be patently unjust.

In matters where calculation of damage is largely arithmetic, that assessment can of course be readily done by affidavits. In matters, however, where future profits are by their very nature speculative and uncertain, a good deal more caution should be exercised by the Court.

...

It is always dangerous to formulate specific tests, however, some guide posts as to when the discretion under R. 17(12) are useful. In my opinion, where matters of opinion and judgment are deposited to, and the obvious position of the deponent is one of self interest, that evidence should be given viva voce. It is only then the Court can be satisfied that reasonable efforts have been made to have the judgment of the Court a just one.

[48] In my opinion, there is no justifiable reason to order that the issue of damages Ms. McHugh is entitled to be determined at trial. The amounts in question, while significant to Ms. McHugh, do not constitute an enormous sum. The evidence relating to the damages sought is clear and simple. It is a question in large part that calls for a mathematical calculation. There is, in my view, no vagueness as to the heads of damages, and the amounts being sought are clear and reasonable.

[49] Finally, there is a question of whether the defendants were entitled to receive notice of the present application, given their failure to respond to the amended notice of civil claim and the resulting default judgment that was taken against them.

[50] The observations of Justice Ralph in Rutherford suggest they are. However, that decision was reached applying the former rule. As Mr. Justice Riley noted in *National Home Warranty Group Inc. v. Red Rose Appliances & Plumbing Ltd.*, 2018 BCSC 234, the nuanced amendments that have been made to the present rule and those associated with it, have changed the landscape. Most importantly, a plaintiff seeking an assessment of damages following the granting of a default judgment is no longer required to provide the defaulting defendant with notice of the application.

[51] The issue is not one that is particularly germane to these proceedings because, as a cautionary measure, counsel for Ms. McHugh did provide the defendants with notice of the application to assess damages.

[52] I am entirely satisfied that the defendants had sufficient notice of Ms. McHugh's application to assess damages, but for reasons that are unexplained, chose to essentially remain silent and ignore the situation until, at the last minute, they retained counsel in an attempt to address the application.

[53] Mr. Ball, on behalf of the defendants, has done all he can to express their positions, but the fact remains there is nothing before me from the defendants that would justify not proceeding in a summary manner.

Nature and quantum of damages sought

[54] Ms. McHugh claims the following identifiable and quantifiable special damages as against the defendants:

- a) \$48,284.25, being the First and Second payments she made to the defendants for her original tiny home, that were to be applied and used to pay for the second tiny home that the defendants had agreed to build for her;
- b) \$1,000 for the Kitchen Appliances that she purchased and provided to Mr. Cameron for installation in her tiny home. Mr. Cameron admitted that the items had been installed in the tiny home that he had sold to another purchaser. He further admitted that he would reimburse Ms. McHugh for this expense;
- c) \$3,496.95 for the Brick Appliances that Ms. McHugh had purchased, and which were stored at the YTH workshop for eventual installation in her tiny home. Those appliances remain in the care and control of the defendants. They are now definitely no longer new appliances.

[55] In my opinion, these are justifiable damages that can and should be awarded to Ms. McHugh on account of the defendants' willful breach of the contractual relationship they had with her, as well as for them having been unjustly enriched. On this latter point, I note that it is undeniable that the elements of unjust enrichment are present in this case. The defendants have been enriched by the fact that they have had Ms. McHugh's money for an extended period of time; Ms. McHugh has been correspondingly deprived of these funds; and there is no juristic reason for the enrichment.

[56] Ms. McHugh also claims that she is entitled to be reimbursed for the rent she had to pay from the first month after the date when her first tiny home was due, that is, February 2020, until the present. Factoring in a rental subsidy that she started to receive in March of 2021, she claims she's entitled to another \$14,800 in special damages.

[57] While I accept that the rental expenses Ms. McHugh had to incur on account of the defendants' breach of contract are quantifiable and justifiable in the circumstances of this case, I do not find that they date back to February 2020. Whether it was a provident decision or not, Ms. McHugh agreed to the Addendum which extended the completion and delivery date of her tiny home to 1 September 2020. Furthermore, she reached an oral agreement with the defendants in June 2021 wherein she agreed that the defendants could deliver her tiny home by August 2021.

[58] In my opinion, Ms. McHugh's quantifiable damages for the rental expenses that she had to incur on account of the defendants' willful breach of the contractual relationship that they had with her, allows her to claim those expenses from September 2021 until the present.

- [59] Ms. McHugh has been paying \$400 per month in rent. September 2021 to October 2022 is 14 months. That amount comes out to \$5,600.
- [60] Before leaving this topic, I will add that Ms. McHugh's claim against the defendants for misrepresentation is equally convincing and that she would be entitled to an award of comparable damages for the numerous and obvious deliberate misrepresentations that the defendants made to her over the course of their dealings, relating to the construction of the first and then the second tiny home and the delivery dates for these homes.
- [61] In my opinion, the lies and deceitful misrepresentations that the defendants, and especially Mr. Cameron, told Ms. McHugh about the progress that was being made constructing her tiny homes constitute constructive fraud, and if not that, then gross negligence entitling her to an award of damages.

Punitive damages

- [62] Ms. McHugh seeks an award of \$4,000 in punitive damages as against the defendants. Punitive damages are intended to punish a wrongdoer for egregious conduct. They are also designed to deter others who might consider acting in a similar manner: *Silva v. Sharma*, 2019 BCSC 460; *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30.
- [63] In my opinion, there is a well-founded and justifiable basis to make an award of punitive damages in this case.
- [64] I am satisfied the defendants and, in particular, Mrs. Cameron, offered a time sensitive price discount for the original tiny home as an intentional inducement to get Ms. McHugh to sign the First Agreement when she, Mrs. Cameron, knew or ought to have known that she and the other defendants could not and would not meet the deadline for delivery of the tiny home in question.
- [65] Moreover, the facts in evidence before the court convince me that the defendants and, in particular, Mr. Cameron, repeatedly and intentionally lied to Ms. McHugh about the progress being made on the construction of her YTH tiny home.
- [66] Ms. McHugh is a senior citizen. She is also an Indigenous person who is struggling to secure a stable home for herself. The defendants knew this, yet they continuously misled her about the construction of her tiny home. The fact of the matter is, the defendants took Ms. McHugh's money, the Kitchen Appliances, and the Brick appliances, held on to everything for an extended period of time and delivered nothing to her in return.
- [67] This is outrageous behaviour and mistreatment of a senior member of the community and it calls for an award of punitive damages.
- [68] After having considered the jurisprudence that has been provided to me, I accept that Ms. McHugh is entitled to an award of punitive damages as against the defendants in the amount of \$4,000.

Aggravated damages

- [69] Aggravated damages are designed to compensate a plaintiff for mental injury arising from the conduct of the defendants and can include conduct connected with a breach of contract. As Mr. Justice Jenkins noted in *Silva*:
- [32] The plaintiff is entitled to damages for mental distress for breach of contract where the evidence shows that such damage was within the reasonable contemplation of the parties at the time the contract was made: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 at paras. 47. Mental distress is compensable under general contract principles: *Fidler* at paras. 48-49. This court in *Gulston v. Aldred*, 2011 BCSC 1051 at para. 16 said that "[c]ommon sense says that [the defendant] knew or ought to have known that [the plaintiff] would suffer stress and be distressed as a result" of a house purchase agreement falling through.
- [70] In the present case, the defendants knew they were in a much stronger position than Ms. McHugh when it came to their contractual relationship. They knew Ms. McHugh was in a desperate situation and eager to purchase a tiny home. They knew she was of limited financial means, that she was a retiree, and that she was drawing on her pension funds to finance the purchase of her YTH tiny home. They also knew that she suffered from physical ailments which explained why she was asking for special conditions or special modifications to the home. Notwithstanding knowing all of this, the defendants intentionally misled Ms. McHugh as to the status of her home. Not only did they mislead her, they strung her along, offering her false hopes that the home would be ready and delivered, only to dash those hopes every time a completion date came and went, unfulfilled.
- [71] While there is no medical evidence before me, I accept the evidence of Ms. McHugh that the stress and anxiety that the defendants' conduct caused her also resulted in her suffering physical ailments. In her affidavit sworn 16 September 2022 and filed in this application, Ms. McHugh explains:
- [59] On May 31, 2022, I obtained an order for default judgment against the defendants with damages and costs to be assessed.
- [60] That same month I had to give back the car that I had purchased in or about December 2017 as I was unable to make the payments due to the need to pay rent each month. I purchased a used car, which has not been as reliable and has caused me further inconvenience and stress.
- [61] In an email dated July 28, 2022 to my then legal counsel, Shawn Cameron stated that he was going to seek to set aside the default judgment and that he would bring a counterclaim. I am not aware of any applications having been filed to set aside the default judgment. Further, I am not aware of any basis the defendants would have for a counterclaim against me.

- [62] The first years of my retirement have been marred by this unfortunate experience. I have experienced a great deal of distress due to the housing insecurity and the stress of having to deal with the defendants. I have had to pay a significant portion of my income towards rent and I am still living in a rental unit to date.
- [72] In my opinion, the circumstances of the present case are quite similar to those in *Silva*. In each case the plaintiff had contracted to purchase a new home for themselves. In each case the defendants failed to hold up their end of the agreement. In awarding \$20,000 in aggravated damages to the plaintiff in *Silva*, Mr. Justice Jenkins concluded:
- [34] Aggravated damages are compensatory, designed to make the plaintiff whole in light of additional or aggravated harms caused by the defendant's callous, malicious or high-handed conduct. "Aggravated damages", as defined by Waddams (*The Law of Damages* (2nd ed. 1983), at pp. 562-63), and adopted in *Fidler* at para. 51, "describ[e] an award that aims at compensation, but takes full account of the intangible injuries, such as distress and humiliation, that may have been caused by the defendant's insulting behaviour".
- [35] In *A. (T.W.N.) v. Clarke*, 2003 BCCA 670 at para. 101, the Court of Appeal wrote:
- [101] Aggravated damages are awarded to compensate for intangible emotional injury: see *Hill v. Church of Scientology of Toronto*, [1995] 2 S.C.R. 1130 (S.C.C.) 188-189 and *Huff v. Price* (1990), 51 B.C.L.R. (2d) 282 (B.C. C.A.), where this Court said, at 299:
- ...aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. They are designed to compensate the plaintiff, and they are measured by the plaintiff's suffering. Such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of the defendant; that are of the type that the defendant should reasonably have foreseen in tort cases or had in contemplation in contract cases; that cannot be said to be fully compensated for in an award for pecuniary losses; and that are sufficiently significant in depth, or duration, or both, that they represent a significant influence on the plaintiff's life, can properly be the basis for the making of an award for non-pecuniary losses or for the augmentation of such an award. An award of that kind is frequently referred to as aggravated damages. It is, of course, not the damages that are aggravated but the injury. The damage award is for aggravation of the injury by the defendant's highhanded conduct.
- [102] Aggravated damages are not a separate head of damages. Rather, they are an augmentation of general damages to compensate for aggravated injury: see *Norberg v. Wynrib*, [1992] 2 S.C.R. 226 (S.C.C.) at 263 and *Y. (S.) v. C. (F.G.)* (1996), 26 B.C.L.R. (3d) 155 (B.C. C.A.) at 36.

- [36] Do the circumstances in which the Silvas found themselves justify an award of aggravated damages? Most definitely so. Without repeating all details of the consequences of the failure of the transaction to complete leaving the Silvas homeless, yet having paid for a new home, exacerbated by the lack of action on the part of the Sharmas to mitigate the consequences, the stress and uncertainty which was imposed upon the Silvas justify an award of aggravated damages.
- [73] When I ask myself the same question in this case that Justice Jenkins posed in Silva, I reach the same conclusion. The intentional conduct of the defendants and the negative consequences it has had on Ms. McHugh justifies an award of \$20,000 in aggravated damages.

Conclusion

- [74] Subject to any errors that counsel identify in my mathematics, I find Ms. McHugh is entitled to \$58,381.20 in special damages. I have arrived at this sum by adding together the following amounts:
- a) \$28,000 Ms. McHugh paid the defendants as the First Payment;
 - b) \$20,284.25 Ms. McHugh paid the defendants as the Second Payment;
 - c) \$1,000 Ms. McHugh paid for the Kitchen Appliances;
 - d) \$3,496.95 Ms. McHugh paid for the Brick; and
 - e) \$5,600 Ms. McHugh paid in rental expenses.
- [75] Additionally, I find Ms. McHugh is entitled to \$4,000 in punitive damages and \$20,000 in aggravated damages.
- [76] Again, subject to mathematical corrections for any errors in my arithmetic, I find the total award is \$82,381.20.
- [77] THE COURT: Ms. McHugh has sought pre-judgment interest on some of the amounts outstanding. Mr. Jones, I did not hear any submissions on behalf of Ms. McHugh in that regard. Did you wish to say anything about that?
- [78] [SUBMISSIONS BY CNSL N. JONES]
- [79] THE COURT: I will award pre-judgment interest. I leave it to counsel to calculate, and if you cannot come to an agreement you have leave to apply.
- [80] CNSL N. JONES: Thank you, Mr. Justice. And -- and we're also seeking post-judgment interest, to the extent that needs to be accounted for in an order.
- [81] THE COURT: There will be post-judgment interest, again at the rate established by the Court Order Interest Act.

- [82] CNSL N. JONES: Thank you, Mr. Justice. And then the final issue is costs. This was for an assessment of damages and costs, and so included in that same affidavit was a bill of costs. I have a copy of the bill of costs that I can hand up to you, Mr. Justice, if we could quickly go through it. And I have provided --
- [83] THE COURT: I am going to award costs on Scale B, and you can work that out with your friend. If not, you will have to have your costs assessed. Ms. McHugh is entitled to her ordinary costs on Scale B for the default judgment and for the assessment of damages that I have conducted.
- [84] CNSL N. JONES: Okay. Thank you, Justice. For -- for the default judgment I understand that it's -- it's pursuant to Schedule 1 as opposed to Scale B. So, they are in fixed amounts, so just so that that's clear.
- [85] THE COURT: Then I will correct that. She is entitled to her Schedule 1 costs for the default judgment and on this assessment before me she is entitled to her ordinary costs at Scale B.
- [86] CNSL N. JONES: Thank you, Justice. The final piece then is just costs of the adjournment application. So, I would seek costs in a fixed amount. I think \$250 would be reasonable for that application, the oral application made by my friend yesterday. And so that would be -- I would be seeking that and I will let my friend speak to that.
- [87] THE COURT: Mr. Ball, on any of the issues -- I did not ask you about post-judgment interest, but if you wish to make submissions on post-judgment interest, costs, or anything of that matter, I will hear you.
- [88] CNSL D. BALL: Justice, I have no submissions on any of the matters, post-judgment, for costs of the underlying proceedings. And in regard to the costs for yesterday's adjournment application, I would suggest \$100 is appropriate.
- [89] THE COURT: Mr. Jones.
- [90] CNSL N. JONES: I think \$250 is quite reasonable, so I am going to stick with that position.
- [91] THE COURT: All right. You are saying \$100; you are saying \$250. I am going to saw it off in the middle at \$175.

"G.R.J. Gaul, 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/22/24/2022BCSC2405.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mchugh-v-cameron-2022>

Prepared on 29 October 2026 · Esheria