

CANADA / JUDGMENT

Newton v. Dyrland

2025 BCSC 1324

COURT

Supreme Court of British Columbia

DECIDED

25 June 2025

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2025 BCSC 1324 Newton v. Dyrland

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Newton v. Dyrland,

2025 BCSC 1324

Date: 20250625

Docket: S33335

Registry: Cranbrook

Between:

David Aden Newton and Wendy Annette Newton

Petitioners

And

Jody Dyrland

Respondent

Before: The Honourable Madam Justice Lyster

in Chambers

Oral Reasons for Judgment

Counsel for the Petitioners:

P.A. Beug

(as Agent for J.A. Bird)

For the Respondent:

No appearance

Place and Date of Trial/Hearing:

Nelson, B.C.

June 2, 2025

Place and Date of Judgment:

Nelson, B.C.

June 25, 2025

- [1] THE COURT: The petitioners, David Aden Newton and Wendy Annette Newton, seek to have a mortgage on their property discharged as unenforceable and statute-barred. The respondent, Jody Dyrland, did not file a response or participate in these proceedings.

Facts

- [2] The facts of this matter are somewhat unusual. In 2010, Mr. and Mrs. Newton granted a \$50,000 mortgage on their property (the "Newton Property"), to Mr. Dyrland.
- [3] The mortgage was registered in connection with an agreement regarding another property (the "Undeveloped Acre"). The Undeveloped Acre consisted of one acre located on undeveloped lands which had yet to be subdivided (the "Undeveloped Lands").
- [4] According to the petition, in 2009 and 2010 Jeannie Argatoff promised to transfer the Undeveloped Acre to Mr. Newton in exchange for work he completed for her. The transfer was contingent on subdivision of the Undeveloped Lands, which were owned by Ms. Argatoff's company, 530799 B.C. Ltd. (the "Corporation").
- [5] Mr. Newton, in turn, agreed to sell the Undeveloped Acre to Mr. Dyrland for \$50,000. Mr. Newton, Mr. Dyrland and the Corporation entered into a written agreement for this transaction. The written agreement was dated for reference April 1, 2010.
- [6] Mr. Newton has not provided a copy of the agreement signed by Mr. Dyrland. In his affidavit, he says that he remembers Mr. Dyrland signing the agreement and has searched his files, but cannot find a copy signed by Mr. Dyrland. I find that Mr. Dyrland did sign the agreement. That is Mr. Newton's uncontradicted evidence and it is consistent with the manner in which the parties conducted themselves; that is, with Mr. Dyrland paying the \$50,000 and Mr. Newton and Mrs. Newton granting a mortgage to Mr. Dyrland on the Newton Property.

- [7] Like the transfer of the Undeveloped Acre from the Corporation to Mr. Newton, any transfer of the Undeveloped Acre from the Newtons to Mr. Dyrland depended on subdivision of the Undeveloped Lands. Mr. Dyrland paid the Newtons the \$50,000 purchase price. Mr. Newton agreed to refund this payment if the Undeveloped Lands were not subdivided within five years of signing the agreement, that is, by 2015. At the same time, the Newtons granted Mr. Dyrland a \$50,000 mortgage on the Newton property. In his affidavit Mr. Newton states that he and his wife executed the mortgage on March 29, 2010.
- [8] The Undeveloped Lands were not subdivided by 2015. When they were eventually subdivided, it was into two larger parcels of lands. In other words, the Undeveloped Acre never materialized.
- [9] As a result, neither Mr. Newton, nor in turn Mr. Dyrland, ever actually received the Undeveloped Acre. Despite this, Mr. Newton has never refunded Mr. Dyrland the \$50,000. Mr. Dyrland has never commenced proceedings to collect his refund or to enforce the mortgage.
- [10] The petitioners say that it is now too late for Mr. Dyrland to do so. In their petition, filed February 20, 2025, they say that the limitation period for enforcing the mortgage has run out. Alternatively, they argue that the limitation period for collecting any underlying debt has elapsed.

Analysis

- [11] The petitioners rely on s. 6 of the Limitation Act, S.B.C. 2012, c. 13 [LA], which sets out the basic limitation period, requiring that claims be brought not more than two years after the day on which the claim is discovered.
- [12] The day on which the claim is discovered depends on the nature of the claim.
- [13] Pursuant to s. 15 of the LA, the discovery period for the right to realize or redeem security begins on the first day that the right to redeem arises. It states:

Discovery rule for claims to realize or redeem security

15 A claim to realize or redeem security is discovered on the first day that the right to enforce the security arises.

- [14] This provision applies when security is realizable or redeemable "upon default":
Leatherman v. 0969708 B.C. Ltd., 2018 BCCA 33, at para. 33.
- [15] Under s. 14 of the LA, on the other hand, the limitation period for a claim for demand obligations begins on the first day there has been a failure to perform the obligation after a demand has been made. Section 14 reads:

Discovery rule for claims for demand obligations

14 A claim for a demand obligation is discovered on the first day that there is a failure to perform the obligation after a demand for the performance has been made.

- [16] In *Leatherman*, the Court of Appeal described s. 14 as "designed to address the difficulties arising from the application of the limitation period to pure demand obligations", including unfairness that sometimes arises when unsophisticated parties loan money. Section 14 may even apply to secured loans if the security is redeemable on demand.
- [17] The petitioners here rely on two authorities: *Chan v 0975713 B.C. Ltd.*, 2018 BCSC 872 and *Raiwal Holdings Ltd. v. Fraser Valley Packers Inc.*, 2024 BCCA 145.
- [18] In *Chan*, the court found the mortgage at issue was granted in the place of a security deposit for a lease agreement. As such, it was not a true demand obligation for the purposes of determining the limitation period. This meant that s. 14 did not apply. Instead, under s. 15 of the LA, the limitation period began running as soon as a claim to redeem the security arose.
- [19] *Chan* concerned a commercial rental agreement. Mr. Chan granted a \$40,000 mortgage on his own residence as a security deposit for the rental agreement. The court found that the mortgage stood directly in place of the \$40,000 cash security deposit that would have usually been required under the terms of the lease. In other words, the landlord held the deposit in the event the tenant breached their rental contract or caused damage to the units.
- [20] For limitation purposes, the claim to redeem the security deposit was discovered upon breach of the rental agreement. The court found that the tenants had likely breached the lease agreement when they left the units after a matter of months, instead of remaining for the full term of the lease and paying their rent throughout. This breach gave rise to the landlord's right to enforce the lease and the mortgage, but the landlord failed to do so within the limitation period. As a result, the court made a declaration that mortgage was unenforceable and barred by statute.
- [21] In *Chan*, the mortgagor had paid the amount of the mortgage into court and sought payment of the monies out of court if successful in the petition. Ms. Chan, who was the executor of Mr. Chan's estate, obtained that order and the monies were paid out of court. The payment of the monies into court is the process contemplated under s. 243 of the Land Title Act, R.S.B.C. 1996, c. 250 [LTA], which is incorporated by reference into s. 244 of the LTA, which the petitioners here rely on. They say that they were not required to pay the amount of the mortgage into court because no money is due, due to the limitation period having tolled.
- [22] I agree with the petitioners that if the limitation period has expired no money is due and, therefore, it was not necessary for any money to be tendered or to be paid into court.

- [23] Raiwal was an appeal with respect to whether the trial judge had erred by failing to distinguish between the limitation period applicable to the debt claim and the limitation period applicable to the mortgage. The Court of Appeal dismissed the appeal. It found that, even though the mortgage was granted three years after the initial debt arose, the parties formed a new debt agreement at the time the mortgage was granted; thus, the date for discovering a claim for both the debt and security obligations was the same.
- [24] At trial in Raiwal, the appellant argued that the respondent did not bring their claim in time because the limitation period for the underlying debt had expired. The Court of Appeal found that the evidence did not support the appellant's position that there was an antecedent debt agreement that existed as of March 2015. It also rejected the appellant's position that the trial judge had concluded the mortgage was collateral to an antecedent debt agreement for which the limitation period had expired. Rather, in Raiwal, the parties formed a new agreement when the mortgage was granted and the respondent brought its claim within the limitation for enforcing that agreement.
- [25] In the case at bar, I must determine which section of the LA applies.
- [26] The petitioners characterize the mortgage as collateral security for Mr. Dyrland's payment of \$50,000. They say that s. 15 applies. Thus, they say that the limitation period for Mr. Dyrland to bring a claim began automatically as soon as the right to enforce the security arose, and that the limitation period subsequently expired in 2017. In other words, they say that the clock began ticking even in the absence of any formal demand from Mr. Dyrland.
- [27] I agree with the petitioners that s. 15 is the applicable provision. The timing, circumstances and contents of the written agreement strongly support a finding that the mortgage for the Newton property was provided as collateral to an existing agreement and is thus analogous to the mortgage in Chan.
- [28] In Chan, the mortgagor provided the mortgage in the place of security deposit. The mortgage was described as "entirely contingent on the underlying obligation to pay the security deposit under the leases and 097's right to apply the security deposit to any valid claims", at para. 49. As such, it was not a demand obligation.
- [29] While the mortgage on the Newton property was not given as a security deposit to a lease, the evidence suggests that it was granted to provide security to Mr. Dyrland in the event that (a) the Undeveloped Lands were never subdivided, and (b) Mr. Newton failed to provide a refund.
- [30] In my view, the text of the agreement supports this finding. The written agreement refers to Mr. Newton as the vendor and Mr. Dyrland as the purchaser. It contains the following article at 3.1:

3.1 The Vendor acknowledges receipt of the Purchase Price from the Vendor, subject to the Vendor securing the Purchase price by way of a second mortgage against the Vendor's residence, until such time as the Property subdivided and the Land is transferred to the Purchaser.

[31] In the petition, the petitioner described this article as "nonsensical". However, it appears to me that the clause likely merely contains a typographical error. The second mention of "Vendor" was likely meant to refer to the "Purchaser". If read in that manner, the article is not nonsensical.

[32] The agreement further states at Article 3.3:

3.3 The Purchase Price will be refunded to the Purchaser if the Property is not subdivided within 5 years from the date hereof.

[33] Despite the apparent typographical error, when read as a whole, the contract is best interpreted as providing that the mortgage was given as security for the purchase price. It describes the mortgage as securing the purchase price. It states that the mortgage will remain in place until the Undeveloped Lands are subdivided and the Undeveloped Acre is transferred to Mr. Dyrland. Lastly, it states that the purchase price will be refunded in the event the subdivision does not occur. Unlike in *Leatherman*, the agreement does not state that the mortgage was due on demand. Additionally, as the petitioners note, the mortgage is for the same value as the agreed-upon purchase price.

[34] Therefore, just as the mortgage in *Chan* was entirely contingent on the lease agreement, the mortgage here is entirely contingent on the agreement regarding the Undeveloped Acre.

[35] This is distinguishable from *Raiwal*, where the court found that the parties formed a new agreement for the repayment of debt when the mortgage was granted approximately three years after the debt first arose. The timing and circumstances are different in the case at bar. Here, the agreement and mortgage are essentially contemporaneous, the underlying agreement governs both the \$50,000 payment and the mortgage, and the mortgage is described in the agreement as securing the \$50,000 purchase price.

[36] Therefore, as in *Chan*, the case at bar does not involve a true demand obligation for the purposes of determining the limitation period. I, therefore, conclude that s. 15 of the LA applies.

[37] The limitation period has long since expired. Under s. 15 of the LA, the claim to realize or redeem security is discovered on the first day that the right to enforce the security arises. Mr. Dyrland's right to repayment or to enforce the mortgage arose when Mr. Newton failed to refund the \$50,000 purchase price as required under Article 3.3 of the agreement.

- [38] The agreement does not set any other deadline for Mr. Newton to repay the purchase price. For example, it does not state that Mr. Newton will refund the purchase price to Mr. Dyrland within X amount of time or by Y date if the property is not subdivided within five years from the date hereof. Therefore, Mr. Dyrland's right to seek repayment arose upon the expiration of the five years. This was also the time when his right to enforce the mortgage arose.
- [39] Thus, the date the claim to redeem the security was discovered was five years and one day from the signing of the written agreement. The limitation period expired two years later, on or about April 1, 2017.
- [40] This petition was filed well after the expiration of the limitation period. Mr. Dyrland has not responded to it. I conclude that the mortgage is unenforceable and barred by statute.
- [41] For these reasons, I grant the order sought declaring the mortgage to be unenforceable and of no force and effect, and order that it be discharged from the title to the Newton property.
- [42] The Registrar of Land Titles is hereby directed to discharge the mortgage upon being provided with a court certified copy of this order.
- [43] The petitioners are entitled to their costs at Scale B.

"L.M. Lyster J."

LYSTER J.

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