

CANADA / JUDGMENT

Nunn v. Mosley

2025 BCSC 1356

COURT

Supreme Court of British Columbia

DECIDED

16 July 2025

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2025 BCSC 1356 Nunn v. Mosley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nunn v. Mosley,

2025 BCSC 1356

Date: 20250716

Docket: S2117463

Registry: Williams Lake

Between:

Lana-Leigh Ingegerd Nunn

Plaintiff

And:

Lorne Glen Mosley

Defendant

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

K. Church

The Defendant, appearing in person:

L. Mosley

Place and Date of Hearing:

Williams Lake, B.C.

June 30, 2025

Place and Date of Judgment:

Williams Lake, B.C.

July 16, 2025

Introduction

- [1] The parties entered into a settlement agreement on February 13, 2023 to settle all disputes between them. A term of the settlement agreement required the defendant, Lorne Glen Mosley, to pay to the plaintiff, Lana-Leigh Ingegerd Nunn, the sum of \$45,000. This amount has not yet been paid.
- [2] Mr. Mosley has filed a series of applications that were scheduled for hearing before me on June 30, 2025 (the "Hearing").
- [3] The defendant filed an application seeking to dismiss the plaintiff's claim based on the expiry of a limitation period, or alternatively on the grounds of no genuine issue for trial. The same application was filed on November 17, 2022, April 22, 2025, June 16, 2025, and June 18, 2025. I ordered that this application be adjourned generally.
- [4] The defendant filed an application on June 17, 2025 seeking an order pursuant to s. 256 of the Land Title Act, R.S.B.C. 1996, c. 250, removing a certificate of pending litigation ("CPL") on the basis of hardship and inconvenience. I ordered that this application be adjourned generally.
- [5] On June 16, 2025, the defendant filed an application seeking to set aside and rescind the mutual release agreement entered into between the parties on February 13, 2023, on the grounds that the plaintiff has breached a fundamental term of the agreement. Additionally, the defendant sought to have the mutual release agreement set aside and rescinded on the grounds of duress ("Rescission Application").
- [6] At the Hearing, Mr. Mosely represented himself and leave was given for a friend of his, Nansi Olson, to appear with him to assist.
- [7] I will provide the relevant background, a summary of the relevant legal principles, the position of the parties, and finally, my analysis.

Relevant Background

- [8] In December 2014, Mr. Mosley was registered as the sole tenant on a property located at 2442 Clara Road, 150 Mile House, B.C. (the "Property"). The Property consists of 6.5 acres fronting on Rose Lake. It has a number of buildings including a log frame home, implement shed, and pole barn.
- [9] Ms. Nunn alleges that she and Mr. Mosley were in a relationship for several years and that she contributed funds and worked on the Property. Mr. Mosley agrees that the parties were in a "friendship relationship" but disputes that any funds were contributed to the Property and disputes the extent of the renovations the plaintiff provided to the Property.
- [10] On December 15, 2021, Ms. Nunn filed a notice of civil claim ("NOCC") seeking specific performance that she be treated as a tenant-in-common of the Property and, alternatively, seeking damages for breach of contract and unjust enrichment.
- [11] On January 5, 2022, Mr. Mosley filed a response to civil claim and a counterclaim in which he admitted that Ms. Nunn had loaned him \$18,000 but claimed the funds were completely repaid. He further agreed that some monies were loaned by Ms. Nunn for renovations but claimed that these funds were repaid as well. In the counterclaim, Mr. Mosley claimed for renovation work he says he did on property located on South Fork Road owned by Ms. Nunn ("South Fork Road Property").
- [12] On January 31, 2022, a response to counterclaim was filed claiming that any work performed on the South Fork Road Property was offered as a gift.
- [13] On March 10, 2022, the parties attended at a judicial case conference and a consent order was granted for a joint appraisal of the Property.
- [14] The Property was appraised by Richard Kohlen, who submitted his report as of September 15, 2022, and appraised the Property at \$645,000.00.
- [15] On February 7, 2023, the plaintiff filed an amended NOCC amending to include a trust claim.
- [16] On February 13, 2023, the parties entered into an agreement to settle all disputes between them, including the claims set out in the amended NOCC and counterclaim with an all-inclusive payment of \$45,000 by Mr. Mosley to Ms. Nunn. The negotiation of the agreement was conducted by counsel for both parties. The parties executed a mutual release agreement before their respective lawyers ("Mutual Release Agreement"). Of significance are the following clauses:

NON-DISPARAGEMENT:

- 8. Nunn and Mosley shall not disparage, criticize or otherwise negatively comment to any person or in any public manner about each other or on the subject matter of their dispute, the handling or conduct of their dispute, the Settlement Agreement or this Mutual Release.

LEGAL ADVICE:

19. The parties each acknowledge that they have consulted with and have been advised by their respective solicitors regarding this Mutual Release and understand its meaning and effect.
- [17] Forming part of the Mutual Release Agreement is the correspondence between counsel dated February 7 and February 13, 2023.
- [18] The terms in the February 13, 2023 letter included:
 2. Upon execution of the Mutual Release, Ms. Nunn will take immediate steps to remove the CPL from title.
 3. Mr. Mosley will pay the \$45,000.00 to Ms. Nunn upon the successful refinance of the property and he will take immediate steps to gain approval for a refinance.
 4. If Mr. Mosley is unable to obtain approval for financing on or before March 15, 2023, Mr. Mosley will list the property for sale and pay the \$45,000.00 to MS. Nunn from the sale proceeds.
- [19] On February 16, 2023, counsel for Ms. Nunn provided a copy of the executed Mutual Release Agreement and a release of the CPL registered against the Property. The documents were provided upon the following undertakings:
 1. To not use the executed Release in any way other than to assist your client in securing funding to pay out our client as per the term of the Release until such time as the \$45,000.00 has been sent as per the terms of this correspondence, and to return the Release to us if he is unable to meet the funding conditions contained therein;
 2. To not register the Release of CPL until your client has the funds arranged to pay out the amounts contemplated in the Release. I recognize that this undertaking is not exactly what we discussed where I would remove the CPL when you advised that your client had funding arranged, but this proposed course will allow the process to occur more expediently;
 3. To pay the settlement funds contemplated in the Release to Morelli Chertkow In Trust forthwith after the CPL release is used; and
 4. To return the Release and the release of CPL to our offices unused if your client is not able to arrange for the payment of the settlement amount on or before March 31, 2023.
- [20] On February 17, 2023, Mr. Koch, counsel for Mr. Mosley, advised by letter to Mr. Church, that Mr. Mosley had not been approved for refinancing the Property. As a result, the settlement funds would have to be paid out of the sale proceeds from the Property. As such, Mr. Koch advised he would not be able to comply with the undertakings set out in the February 16, 2023 letter, but proposed the following revised undertakings:

1. I undertake to not use the executed Mutual Release Agreement (the "Release") in any way other than to assist my client in securing funding to pay out your client as per the terms of the Release and until such time as the \$45,000.00 has been sent as per the terms of this correspondence.
 2. I undertake to pay the settlement funds to 'Morelli Chertkow In Trust' forthwith from the proceeds of the sale prior to any funds being released to my client.
- [21] Mr. Koch also raised an issue about having the CPL released while Mr. Mosley was trying to sell the Property.
- [22] On March 24, 2023, Mr. Koch advised in a letter to Mr. Church that the parties' agreement was:
1. Mr. Mosley will pay to Ms. Nunn the sum of \$45,000.00 (in addition to any money that has been exchanged between the parties to date) (the "Settlement Funds") as full and final settlement for all claims arising from the Notice of Civil Claim, Amended Notice of Civil Claim, and Counterclaim. The Settlement Funds will be paid to counsel for Ms. Nunn in trust from the sale proceeds of the Property. The amount of the Settlement Funds will not vary, regardless of the final sale price of the Property.
 2. The parties agree to a date of sale on or before July 31, 2023. If there is an accepted offer which takes longer to complete than July 31, 2023, Ms. Nunn will consent to the extension as required. If there is not an accepted offer, Ms. Nunn will not deny a reasonable extension if it proves necessary given the current state of the market.
 3. Counsel for Mr. Mosely will maintain the Mutual Release that has been signed by both parties in his file on the undertaking to not use the Mutual Release or provide the fully executed copy to either party unless it is for the purpose of obtaining the Settlement Funds, or until such time that the Settlement Funds have been paid to Ms. Nunn's counsel's trust account.
 4. The Mutual Release that has been signed by both parties constitutes a final and non-variable release of all matters between the parties and neither party will be at liberty to pursue further court action against one another unless it relates to the enforcement of the terms included in the Mutual Release.
 5. The CPL will remain on title as security for Ms. Nunn until such time that it is required to be released for the successful conveyance of the Property. Counsel for Mr. Mosley will maintain the Release of the CPL letter provided by Ms. Nunn's counsel on the undertaking to not use that letter until it is required for the conveyance of the Property.
 6. Upon the payment of the Settlement Funds, both parties will withdraw their respective Amended Notice of Civil Claim and Counterclaim with no costs payable to either party.

7. By way of separate correspondence, counsel for Ms. Nunn will confirm that this letter and the responding correspondence will be included as Schedule "B" to the Mutual Release.
- [23] By an email dated April 10, 2023, Mr. Church replied as follows:
1. Agreed. For greater clarity that amount will be paid to our client and through our offices without deduction for any amounts for costs, expenses or the like;
 2. Agreed. Also, if there is not an accepted offer for the property by July 31, 2023 our client may consider a reasonable extension but is not obligated to do so;
 3. Agreed;
 4. Agreed;
 5. Agree save and except that if all listings expire and the property has not been sold after reasonable exposure to the market, Ms. Nunn may request the return of the CPL release;
 6. Agreed;
 7. Not agreed. This correspondence will not form a Schedule. It will remain as correspondence between counsel.
- [24] On April 25, 2023, Mr. Church emailed Mr. Koch noting that the Property had been listed for \$999,000.
- [25] In February 2024, there was correspondence exchanged between counsel respecting the listing of the Property and the time it was taking to secure a sale.
- [26] On January 23, 2025, Mr. Church emailed Mr. Koch expressing concern that Mr. Mosley was taking no steps to pay Ms. Nunn. He noted his understanding that the Property had not been shown in months. He advised that if there was no "meaningful response" by January 31, 2025, he would seek to have the Release and Agreement enforced by the courts and would also seek sole conduct of sale of the Property.
- [27] On January 31, 2025, Mr. Koch wrote to Mr. Church advising that Mr. Mosley was still working hard to sell the Property and was eager to resolve the matter. He raised an issue with the tenants in the Property and the need for an application to the Residential Tenancy Branch ("RTB") to have them removed. He attached a letter from Ms. Nunn dated August 9, 2024 to the RTB that stated that Mr. Mosley was attempting to deceive the tenancy board. The RTB ultimately made an order for the eviction of the tenants. In Mr. Koch's letter he confirmed that the listing price had been reduced to \$799,000 from \$850,000. A request for an extension to complete the sale and payout of the settlement funds to April 15, 2025, was made.
- [28] On February 13, 2025, Mr. Koch advised that he was no longer solicitor of record for Mr. Mosley, although he agreed to continue to hold the CPL release and the Mutual Release Agreement until receipt of further instructions from Mr. Church.

- [29] On April 3, 2025, Mr. Mosley wrote to Mr. Church specifically raising that the letter written to the RTB by Ms. Nunn, in which she asserted that Mr. Mosley was fraudulently representing documents, was a direct violation of the Mutual Release Agreement. Mr. Mosley took the position that the specific terms of the Mutual Release Agreement and performance obligations were not met and that he was giving notice that he was cancelling the Mutual Release Agreement.

Legal Principles

Setting aside settlement agreements

- [30] The kinds of grounds on which any contract, including a settlement agreement, may be set aside are fraud, undue influence, duress, or coercion: *Pond v. Pond*, 2017 BCCA 243 at para. 2. There is a strong public interest in favour of resolving disputes through agreement, and it is the policy of the courts to promote and enforce settlement agreements: *Turcotte v. Godine*, 2022 BCCA 24 at para. 52; *Kuo v. Kuo*, 2017 BCCA 245 at para. 37.
- [31] A claim of inadequate legal advice or representation from one's own counsel is not grounds to set aside a binding settlement: *Gaida v. McLeod*, 2013 BCSC 1168 at para. 94.
- [32] For economic duress, (a) there must be the required amount of coercion, and (b) the pressure exerted must be regarded by the law as not legitimate: *Stott v. Merit Investment Corp.* (1988), 48 D.L.R. (4th) 288 at 308 (Ont. C.A.), leave to appeal to S.C.C. refused (1988), 49 D.L.R. (4th) viii (S.C.C.).

Fundamental breach and repudiation

- [33] Where a party to a contract commits a fundamental breach of a core obligation or repudiates the agreement by refusing or failing to perform, the innocent party is entitled to treat the contract as terminated. The question to ask is whether the breach is sufficiently substantial to justify non-performance by the innocent party: S.A. Waddams, *The Law of Contracts*, 6th ed. (Toronto: Canada Law Book, 2010), at 442.
- [34] As set out in *Kuo*, a fundamental breach of a primary obligation may also constitute a repudiation because it deprives the other party of substantially the whole mutually intended benefit of the agreement and thus amounts to a refusal to perform: at para. 39.

Position of the Parties

- [35] Mr. Mosley asserts that Ms. Nunn's letter to the RTB dated August 9, 2024, in which she states that the tenancy agreement supplied by Mr. Mosley was not the original tenancy agreement and the handwritten one supplied by Mr. Mosley is "a deliberate fraudulent attempt" to deceive the RTB, amounts to a breach of clause 8 of the Mutual Release Agreement.

- [36] Mr. Mosley, in his oral submissions, says that he was threatened with a \$45,000 legal bill to take the matter to court. He explained that he is on a pension and does not have any savings. He says he felt he was under duress as his lawyer told him this was the cheapest way to deal with this matter and that he could not afford a prolonged court case. He explained that his bills were mounting, and he felt squeezed into a corner.
- [37] Mr. Mosley relied on the *Krawchuk v. Scherbak*, 2011 ONCA 352 decision in support of the proposition that where there is evidence of undue pressure and no reasonable alternative, the Court may set aside an agreement.
- [38] Ms. Nunn submits that there was no duress and that the content of the settlement offer made in the February 7, 2023 letter set out what Ms. Nunn was prepared to accept to resolve the claim that she had. There was no duress on the part of Ms. Nunn. Mr. Mosley had a choice: he could accept the offer, or he could proceed with the application he had set down to try and strike the claim. He chose to settle.
- [39] Relying on the *Kuo* decision, Ms. Nunn argues that any breach of the non-disparagement clause is not a fundamental breach as it does not go to the primary obligation or the fundamental heart of the settlement.

Analysis

Rescission due to duress

- [40] I will first deal with the assertion by Mr. Mosley that he was under duress when he entered into the Mutual Release Agreement.
- [41] Mr. Mosley relied on the *Krawchuk* decision, taking the position that this case affirmed where there is evidence of undue pressure and no reasonable alternative, the Court may set aside an agreement. I was not able to find this statement of legal principles in this case.
- [42] Mr. Mosley further referenced the decision of *Gotaverken v. Cariboo Pulp & Paper Co.*, 1997 BCCA 257, for the proposition that duress can vitiate consent and render an agreement unenforceable. The citation provided is not correct and there is no such decision with the citation provided.
- [43] The type of duress that Mr. Mosley is referring to is economic duress since there is no evidence to support any duress to his person. The type of economic pressure that is required is one where a party has no practical alternative but to submit to the arrangement. In this case, Mr. Mosley had a choice: he could settle the action or proceed with defending the action, including his application to strike the claim based on a limitation defence. The second component requires that there be illegitimacy of the threat. There is no evidence to support that the information provided in the settlement offer of the plaintiff, as set out in the letter dated February 7, 2023, was illegitimate. The plaintiff had every right to point out to the defendant the potential costs of proceeding with the action and setting out what the plaintiff would accept to resolve the matter. There is no evidence of any illegitimate

coercion that occurred.

- [44] Based on the evidentiary record before me, there was no evidence of any fraud, duress, or undue influence by the plaintiff. Mr. Mosley was represented by competent counsel at the time the terms of the settlement were negotiated. He says that his lawyer advised him of the cost of taking the matter to trial. This advice is advice that any competent lawyer would advise their client on. This does not amount to an allegation of duress that Ms. Nunn had placed on Mr. Mosley.
- [45] If Mr. Mosley was under pressure due to the advice given by his lawyer, that does not provide a foundation for a claim to set aside a settlement entered into.
- [46] There was no evidence from Mr. Mosley setting out any circumstances that amounted to duress.
- [47] I find that Mr. Mosley has failed to establish any grounds known to law to rescind or set aside the binding settlement based on duress. As such, I dismiss paragraph 2 of the Rescission Application.

Rescission due to a breach of fundamental term

- [48] Mr. Mosley seeks to have the Mutual Release Agreement set aside on the basis that Ms. Nunn has breached clause 8, the non-disparagement clause, because of her letter to the RTB.
- [49] For the purposes of my analysis, I will assume that what Ms. Nunn did in sending a letter to the RTB was a breach of the non-disparagement clause. I am making this assumption since I have no sworn evidence from either party on the circumstances of the RTB hearing and what role, if any, the letter Ms. Nunn sent had.
- [50] I am not persuaded that the non-disparagement clause went to the root of the contract such that a breach of it would entitle the defendant to have the Mutual Release Agreement declared ended.
- [51] The breach of this clause was not such a fundamental breach, nor of the character, that Mr. Mosley has been substantially deprived of the whole benefit of the contract. At most, the breach was a failure to fulfil one obligation imposed on the plaintiff.
- [52] There is no legal basis to find that there has been a breach of a fundamental term of the contract such that Mr. Mosley is entitled to have the agreement ended. As such, I dismiss paragraph 1 of the Rescission Application.

Orders Made

- [53] The following orders are made:

1. The notice of application of the defendant filed June 16, 2025 is dismissed.
2. The defendant's signature on the form of the order is dispensed with.

- [54] I request that counsel for the plaintiff prepare and file the order. He will also serve the filed order on Mr. Mosley.
- [55] The plaintiff sought leave to make costs submissions after my decision had been rendered. The parties have leave to make written costs submissions to be received by the Court within 60 days of these reasons being released. If no written submissions are received, then there will be no costs order made.

"Forth J."

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