

CANADA / JUDGMENT

Rumney v. Brownschlaigle

2025 BCSC 1626

COURT

Supreme Court of British Columbia

DECIDED

5 June 2025

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2025 BCSC 1626 Rumney v. Brownschlaigle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rumney v. Brownschlaigle,

2025 BCSC 1626

Date: 20250605

Docket: S239768

Registry: New Westminster

Between:

Judy Dianne Rumney

Plaintiff

And

Dawn Angela Brownschlaigle

and Vantage West Realty Inc.

Defendants

And

Dawn Angela Brownschlaigle

and Vantage West Realty Inc.

Third Parties

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

Counsel for the Defendant Dawn Angela Brownschlaigle:

R.N. Beckmann

Counsel for the Defendant Vantage West Realty Inc.:

M. Boulton

Place and Date of Trial/Hearing:

Vancouver, B.C.

June 5, 2025

Place and Date of Judgment:

Vancouver, B.C.

June 5, 2025

- [1] This is the written version of the judgment delivered orally on June 5, 2025. It has been edited to correct or improve grammar and style, and to add complete quotations from material only referred to when judgment was delivered. Nothing about the analysis or findings has been changed.
- [2] THE COURT: This is an application for summary trial in this action. The defendant Vantage West Realty Inc. ("Vantage") seeks certain declarations which would have the effect of enforcing an indemnity clause in a contract it has with the defendant Dawn Brownschlaigle. The plaintiff's claim against both these defendants has been settled.

Background

- [3] The action arises from a trip and fall that occurred September 19, 2019, at Ms. Brownschlaigle's home located in West Kelowna. She owns that home and, at the material times, the plaintiff was a tenant in a basement suite on her property. Vantage was the property management company retained by Ms. Brownschlaigle to handle rental of this suite.
- [4] The suite has two routes of access: a set of stairs and a sloped pathway. At the time, there was no railing on the stairs, and there was no stairs or railing on the sloped pathway.
- [5] As a result of her fall, the plaintiff filed a notice of civil claim starting this action in July 2021. In her notice of civil claim, she makes the following particulars of negligence against Vantage and Ms. Brownschlaigle:
- a) failing to ensure the property was safe for people using stairs;

- b) failing to take reasonable care to ensure that the plaintiff was safe while using stairs;
 - c) permitting the stairs to be installed in a negligent manner;
 - d) failing to correct the dangerous condition of the stairs when they knew or ought to have known about them;
 - e) failing to warn the plaintiff about the stairs; and,
 - f) failing to adhere to their duties under the Occupiers Liability Act, R.S.B.C. 1996, c. 337.
- [6] Ms. Brownschlaigle filed her response to civil claim in September 2021, and Vantage filed its response in June 2022.
- [7] About a month later, Vantage filed a third party notice against Ms. Brownschlaigle, and she filed a third party notice against Vantage in May 2023.
- [8] Both sides settled with the plaintiff in October 2023. Some time later, the healthcare costs recovery aspect of the claim was also settled.
- [9] Around July 2022, Vantage's counsel wrote to Ms. Brownschlaigle's counsel, drawing their attention to an indemnity clause in the management agreement between Vantage and Ms. Brownschlaigle. Vantage took the position that Ms. Brownschlaigle's counsel should assume conduct of its defence. There was some back and forth about that, but as of March 2023, Ms. Brownschlaigle's counsel took the opposite view, claiming that the indemnity clause was not applicable, so Ms. Brownschlaigle would not assume defence of the claim.
- [10] The sole issue before me is the interpretation and application of Clause 11 in the property management agreement, which is the indemnity clause as reproduced below:

The Owner shall, during and after the termination of this agreement, indemnify and save the Agent harmless from any damages or injuries to persons or property, or claims, costs, expenses and fees arising from any cause whatsoever (except if due to the gross negligence or willful misconduct of the agent), provided the Agent is carrying out the provisions of this agreement or is acting on the subsequent directions of the Owner. Under no circumstances shall the agent be liable to the Owner for the amount of any loss or damage to the premises or its' [sic] contents against with the Owner is insured and entitled to indemnification.

Suitability

- [11] There is no dispute that the test set out at page 5, paragraph 2, of the amended notice of application is applicable, citing *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485 at para. 110.
- [12] Ms. Brownschlaigle says there is a credibility issue that cannot be resolved by way of a summary trial. That issue is whether she told Vantage's agent with whom she signed the contract, Trevor Glinsbockel, that the pathway was unsafe.

- [13] He deposed that she told him that when he did a walk-through with her at the property sometime around the time the contract was signed. He described the pathway as a slope with gravel and rocks with no stairs or railing. He deposed that based on both the information she gave him and what he saw during the walk-through, he considered the slope was a safety risk, especially when compared to the stairs on the other side. He accepted Ms. Brownschlaigle's evidence that when he showed the plaintiff the suite, he directed the plaintiff and her husband to use the stairs for access.
- [14] Ms. Brownschlaigle deposed that she did not say the pathway was unsafe. She added that she considered the pathway to be safe. She offered a dolly to the plaintiff to use when she moved in which would be useless on the stairs.
- [15] I agree with Vantage that this matter is suitable for several reasons. First, I find the issue as to whether Ms. Brownschlaigle told Mr. Glinsbockel the path was safe to be of marginal relevance, if any. It is certainly not a material fact to resolve in this case. For that reason, I find it unnecessary to make a finding about that fact. However, if I did have to make a finding, I find that there is enough other evidence surrounding the issue that I would have been able to do so by determining which version is more probably true on a balance of probabilities.
- [16] More importantly, I find that the cost of a conventional trial in relation to the amount at issue justifies a summary trial. Given the relative simplicity of the main issue, that factor favours this summary trial. Overall, considering everything, I am satisfied I can find all the necessary facts and it would not be unjust to decide this matter summarily.

Analysis

- [17] Vantage submits that the issue is straightforward and that a plain reading of Clause 11 supports its position that Ms. Brownschlaigle must indemnify Vantage for its costs of defending and settling the action brought by the plaintiff. Vantage points out that the plaintiff's notice of civil claim alleged the same particulars of negligence against both it and Ms. Brownschlaigle. It also says that a few of those particulars could only be made against her, including liability relating to the installation and repair of the stairs.
- [18] Vantage relies on the "pleadings rule" as set out in *Monenco Limited v. Commonwealth Insurance Co.*, 2001 SCC 49 at paras. 28-35, to say that the indemnity clause has been triggered.
- [19] Ms. Brownschlaigle submits that case is about the duty to defend and, in her view, irrelevant. I do not agree.
- [20] The case is helpful. The Supreme Court of Canada describes the pleading rule at para. 28:

28 The starting premise for assessing whether an insurer's duty to defend has been triggered rests in the traditional "pleadings rule". Whether an insurer is bound to defend a particular claim has been conventionally addressed by relying on the allegations made in the pleadings filed against the insured, usually in the form of a statement of claim. If the pleadings allege facts which, if true, would require the insurer to indemnify the insured for the claim, then the insurer is obliged to provide a defence.

[21] In *Monenco* at para. 29, there is reference made to *Nichols v. American Home Assurance Co.*, [1990] 1 S.C.R. 801:

29 McLachlin J. (as she then was) indicated that general principles regarding the construction of insurance contracts support the conclusion that the duty to defend arises where the pleadings raise claims which would be payable under the agreement to indemnify in the insurance contract. McLachlin J. further noted that it is not necessary to prove that the obligation to indemnify will in fact arise in order to trigger the duty to defend. The mere possibility that a claim falling within the policy may succeed will suffice. In this sense, the insurer's duty to defend is broader than the duty to indemnify

[22] So, while *Monenco* was mostly about the duty to defend, it is clear that there is a very close relationship between those two concepts.

[23] Ms. Brownschlaigle raises the following points to support her position that the indemnity clause should not apply, and the application should be dismissed:

- a) the clause cannot be invoked because Vantage did not carry out the provisions of the agreement, which is a precondition within the words of Clause 11 itself;
- b) in the alternative, Vantage's failure to fulfil provisions of the agreement amount to gross negligence thus vitiating the indemnity clause; and,
- c) the contra proferentem rule should be invoked based on the clause being ambiguous and confusing.

[24] I will address each of these in turn, but first, I will comment on a theme of Ms. Brownschlaigle's submissions and her evidence. She submits that she is unsophisticated. She relies on what she claims is her lack of knowledge about a number of things, specifically that the stairs needed railings. As a starting point, being unsophisticated in this context is not that relevant. I agree with Vantage that this is a commercial contract for services. It is not the type of contract where there is a huge or obvious power imbalance nor does it have the qualities like a contract of adhesion since, presumably, Ms. Brownschlaigle could have chosen any property management company she wanted.

[25] She deposed in her first affidavit that she was not aware that railings on stairs may have been required to comply with safety or housing standards. She also stated that she was unaware of any statutory duties she may have under residential tenancy legislation and only became aware of those later. I accept she may not have understood her responsibilities under

residential tenancy legislation, which is part of the reason she may have gotten a property management company, but the requirement for railings on stairs is hardly unique to that context nor is it limited to one's responsibilities as a landlord. She is a homeowner and has responsibilities as such regardless of whether she rents her suite out. Apart from anything else, I would suggest it is plain common sense that to be safe, stairs should have railings. It surprises me that as a homeowner, she was unaware of that.

- [26] I also find some of her evidence to have the air of convenience to it. For instance, she specifically mentions a number of times her understanding or expectations regarding her contract with Vantage. It is not clear to me that these are relevant to the interpretation of the contract. Also, there is at least some difficulty reconciling some of those statements with some of her examination for discovery evidence. For instance, at para. 10 in her first affidavit, she stated that with the property management, she did not have to worry about details, including ensuring the rental of her suite was legal and safe. However, at her examination for discovery, she confirmed that she ensured the City of Kelowna inspected and approved of her suite (Questions 131 and 132 and their answers). She called out the City herself to get that inspection. That is not the action of someone who is unsophisticated. It also makes clear that she relied on the City, not Vantage, about the legality of her suite.
- [27] In any event, I turn, then, to the substantive submissions.
- [28] Turning to the first argument, Ms. Brownschlaigle emphasizes the following phrase in Clause 11, "provided the agent is carrying out the provisions of this agreement or is acting on the subsequent directions of the owner". She also points to other portions of the contract, including the appendix, which is titled "What to Expect as a Client". One of the bullets listed there is "fully disclose relevant information", referring to the real estate professional. It also states that "[t]hey must give you all the facts they know that might affect your decisions".
- [29] There is no dispute that the contract imposed a duty on Vantage to inspect the property. Ms. Brownschlaigle submits that, having done so, it was incumbent upon Vantage to tell her the lack of a railing was a safety hazard. She claims that Vantage had a duty to detect a non-compliant hazard and a duty to warn her about that.
- [30] I do not agree. I was not shown any language in the contract that imposes a duty to warn of that type. Indeed, her argument is that these duties are implied. She says the duty to inspect has no purpose unless it is accompanied by the duty to warn. Together with Vantage representing itself as having expertise on rentals, she submits that Vantage ought to have pointed out the lack of a railing and suggested either to delay the tenancy or fix it before the tenant moved in.

- [31] Vantage contends that Ms. Brownschlaigle told its agent about the upcoming renovations and, therefore, there was no need to mention the issue about the railing because the agent assumed the railing would be fixed. Its point is that having been advised of renovations, it was reasonable for the agent to come to a conclusion that he did not need to address the stairs.
- [32] The evidence on that point is not quite as clear as that. I will refer to the discovery, Questions 164, 165, 166 and 168, and the answers, which I will not read out, but which counsel did read out during the hearing. It is not entirely clear to me that Ms. Brownschlaigle specifically told the agent about railings being installed at that time. Moreover, in his affidavit, Vantage's agent does not depose that he turned his mind to that at the time.
- [33] What I do find to be more relevant is paras. 12-13 of his affidavit where he says that he does not have expertise in building codes because that is a municipal matter, and he did not say that he had such expertise. He sets out his standard practice which is to ask the property owner about the zoning with regard to the legality of the suite and compliance with the Building Code, and if somebody tells him it is not legal, he then advises them of the risk associated with that. He specifically recalled asking Ms. Brownschlaigle those questions and she said everything was done to code. This is consistent with her examination for discovery evidence. She did not deny this conversation in her second affidavit.
- [34] This evidence has two implications. First, it belies the notion of her being unsophisticated. Second, it is at the very least somewhat inconsistent with her position that she relied on Vantage with regard to safety issues given that he specifically asked her about compliance with building codes.
- [35] I add that it is clear that this argument is only being raised as a defence to the claim of indemnity. In other words, I find it difficult to accept that Ms. Brownschlaigle believed in her mind that Vantage was not performing its duties until she was faced with the indemnity clause. On the examination for discovery, she confirmed this by saying there were no "major issues" with Vantage:

202: Q. And in your view had there ever been any issues with Vantage kind of carrying out their end of the bargain in this contract?

A. There were some subtle things, but nothing that was major.

203: Q. And when you say "some subtle things, nothing major", is it fair to say that none of those subtle things would have related to the stairs in question?

A. Correct.

- [36] She is not precluded from raising this issue in this application, but it is of some relevance that she did not identify herself any issue with Vantage performing the contract before the question of indemnity was raised.

[37] Regardless of that, I agree with Vantage that even if there was an implied duty to warn about a railing (and I have explicitly found there was not), failure to warn her in this case would amount at most to negligence simpliciter. Therefore, the indemnity clause would still kick in.

[38] In the alternative, Ms. Brownschlaigle claims that Vantage is guilty of gross negligence and/or wilful misconduct. In para. 42 of her application response, Ms. Brownschlaigle submits that Vantage did the following things which she says viewed together amounts to gross negligence:

- a) failed to point out the indemnity clause to its client;
- b) failed in its duty to adequately inspect;
- c) failed to detect the non-compliant hazard;
- d) failed to warn the client or prospective tenant of a potential hazard in a timely manner;
- e) directed the plaintiff to use the stairs without a railing when there was an alternate route;
- f) contractually committed to putting client's interests before its own; and,
- g) relied on the indemnity clause when it knew of the foregoing.

[39] I do not agree that these amount to "gross negligence" as that term is used in the case law. I rely on the *Kallenbach v. Vantage Property Services*, 2015 BCSC 423 at para. 27, for meaning of phrase "gross negligence":

[T]he Claimants must show evidence which establishes a marked departure or significant deviation from the ordinary standards by which a reasonable and competent property manager would behave in similar circumstances. Negligence simpliciter is not sufficient to establish liability under the terms of the contract.

[40] I find that those words apply here.

[41] I also refer by way of contrast to *Said v. Meadow Ridge Realty*, 2014 BCPC 129, where gross negligence was found. That case involved the failure to do a basic background check as well as infrequent inspections, which resulted in the property becoming uninhabitable. Also, the facts in *Aville Enterprises Ltd. v. Colliers Macaulay Nicolls Inc.*, 2011 BCPC 334, were more extreme, and yet the court did not find the facts amounted to gross negligence.

[42] Therefore, for all those reasons, I am not satisfied that even if I had found a breach, it would have amounted to gross negligence, even taking into account all the alleged deficiencies identified in Ms. Brownschlaigle's argument.

[43] Finally, she argues that the clause should not be enforced because it is internally inconsistent. That position is based on the following reasoning, set out in her application response at paras. 45-46:

45. Broken down to its constituent parts, the clause provides that the owner shall indemnify and save the agent harmless from claims arising from any cause unless caused by gross negligence or wilful misconduct of the agent and provided the agent is carrying out the provisions of the agreement or is acting on subsequent directions of the owner.
46. Articulated another way, and combined with the words preceding this condition, one could read the clause as saying: Owner shall indemnify the agent unless the agent is grossly negligent, and as long as the agent is not negligent. This is internally inconsistent, confusing, and ambiguous.

[Emphasis in original.]

[44] In part, this argument also rests on Ms. Brownschlaigle's assertion that she is unsophisticated and could not understand the clause when she signed the contract. I have already rejected that notion. I also point out that she specifically stated at her examination for discovery that she read over the contract and understood it.

[45] In any event, I do not agree with her interpretation. The phrase, "and provided the agent is carrying out provisions of the agreement" refers not to a duty at common law in the sense that they are not being negligent, but rather their contractual duties. The route of reasoning that she has put forward does not fit. In any event, the interpretation itself leads to an absurdity, and that is not how we interpret contract terms. We try to avoid absurdities. I do not find the term to be ambiguous or confusing.

[46] For all those reasons, I find that the clause is enforceable against Ms. Brownschlaigle, and the application is allowed.

"Sharma J."

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Prepared on 27 October 2026 · Esheria