

CANADA / JUDGMENT

Sewell v. Abadian

2025 BCCA 158

COURT

British Columbia Court of Appeal

DECIDED

20 May 2025

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

2025 BCCA 158 Sewell v. Abadian COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Sewell v. Abadian, 2025 BCCA 158 Date: 20250520 Docket: CA50039 Between: Carolyn Eileen Sewell Appellant (Plaintiff) And Ehsan Abadian Respondent (Defendant) Before: The Honourable Madam Justice Fenlon The Honourable Justice Griffin The Honourable Justice Winteringham On appeal from: An order of the Supreme Court of British Columbia, dated June 26, 2024 (Sewell v. Abadian, 2024 BCSC 1116, Vancouver Docket S220518). Counsel for the Appellant: S.K. Boyle P.J. Palmer Counsel for the Respondent: M.L. Drouillard B. Love Place and Date of Hearing: Vancouver, British Columbia April 29, 2025 Place and Date of Judgment: Vancouver, British Columbia May 20, 2025 Written Reasons by: The Honourable Justice Griffin Concurred in by: The Honourable Madam Justice Fenlon The Honourable Justice Winteringham Summary: The appellant signed a purchase agreement to purchase a home from the respondent. As part of the agreement, the respondent delivered a disclosure form, with a line through all the questions, including the question of whether there was an unpermitted addition. In additional comments, the respondent wrote "Tenanted Property, Owner has never occupied". In fact, the respondent was aware of an unpermitted addition, which was disclosed when he purchased the home. After paying one of two deposits, the appellant became aware of the addition and decided not to move forward with the sale. She sued the respondent for return of her initial deposit based on a negligent or fraudulent misrepresentation in the disclosure statement; the respondent counterclaimed for delivery of the second deposit. At trial, the judge found that the respondent had made no representations in drawing a line through the disclosure form, dismissing the appellant's claim and allowing the counterclaim. HELD: Appeal allowed. The judge overlooked material evidence in his reasoning, namely that the respondent was previously a licensed realtor and knew the importance of accurately completing disclosure forms; the disclosure form received by the respondent when he bought the house did disclose the addition; the form itself certified that it was complete and accurate and changes to the information provided would be communicated; the comments provided by the respondent that the property was tenanted and never occupied by him were not responsive apart from suggesting that he did not know the answers to the form's questions. When the form is interpreted in light of this evidence, it is a representation that the respondent was not aware of unpermitted additions. This was a misrepresentation. Reasons for Judgment of the Honourable Justice Griffin:

- [1] Ms. Sewell appeals from an order granting judgment against her in the amount of an unpaid second deposit of \$200,000 on a residential real estate contract that did not close, and from dismissal of her claim for recovery of the first deposit of \$300,000 paid toward the purchase. Ms. Sewell was the buyer. Mr. Abadian was the seller who was successful in the action, determined after a summary trial.
- [2] Mr. Abadian knew that the property had an addition to it built without a building permit, but he did not disclose it in a property disclosure statement that he provided to Ms. Sewell prior to them entering the purchase and sale contract. Mr. Abadian drew a diagonal line through the disclosure statement, did not fill out any boxes on it, and wrote in the additional comments section: "Tenanted Property, Owner has never occupied".
- [3] Subsequent to the parties entering the purchase and sale contract, Ms. Sewell discovered through her own efforts that there was an unpermitted addition to the home, and refused to close the transaction. She sued Mr. Abadian for return of her initial deposit; and he counterclaimed for delivery of the second deposit. One basis of her claim was that Mr. Abadian made a negligent or fraudulent misrepresentation in the disclosure statement.
- [4] The judge found that Mr. Abadian did not make a misrepresentation. The judge relied on another decision in which a crossed-out disclosure statement was found to be a refusal to make any representation, *Smith v. Reder*, 2005 BCSC 635 [Smith]. However, the Smith decision was factually distinguishable as in that case, the seller wrote additional comments: "Buyer to satisfy themselves. Property sold AS IS". That was not the message written by Mr. Abadian in his additional comments.
- [5] Nevertheless, the judge reasoned:
- [94] In the present case, of course, Mr. Abadian wrote: "Tenanted Property, Owner has never occupied." This comment must be read together with the refusal to answer any of the standard questions. It cannot imply a representation that Mr. Abadian did not know the answer to any of the questions, when Mr. Abadian had not answered any of those questions with "Do not know." The Disclosure Statement cannot contradict itself.
- [95] The only reasonable interpretation of the additional comment in the context of the Disclosure Statement as whole is simply that the Property was tenanted and Mr. Abadian had never occupied it.
- [96] The fact that Ms. Sewell was concerned about the "total lack of information" is evidence that she understood Mr. Abadian did not provide any information in response to the questions in the Disclosure Statement. [Emphasis added.]
- [6] Respectfully, the judge overlooked material evidence in his reasoning that there was no misrepresentation by Mr. Abadian. Specifically, the judge failed to take into account the following facts:

- a) Mr. Abadian was experienced in real estate sales, including as a prior licensed realtor, and knew the importance of filling out a disclosure statement accurately.
- b) Mr. Abadian knew that the disclosure statement he received from the prior seller of the property disclosed the unpermitted addition in two places on the form. The prior seller initialled the box "yes" to the express question "Are you aware of any additions or alterations made without a required permit "; and the seller disclosed in handwriting under the box for "additional comments and/or explanations" that the back garden room area was enclosed without a permit.
- c) Mr. Abadian had a choice of not providing a disclosure statement and saying nothing but chose to provide one and to agree that it would be incorporated into the contract of purchase and sale. The disclosure statement instructed the seller, at the top of the form: THE SELLER IS RESPONSIBLE for the accuracy of the answers on this property disclosure statement and where uncertain should reply "Do Not Know"[.] This property disclosure statement constitutes a representation under any Contract of Purchase and Sale if so agreed, in writing, by the seller and the buyer.
- d) The disclosure statement also stated: The seller states that the information provided is true, based on the seller's current actual knowledge as of the date on page 1. Any important changes to this information made known to the seller will be disclosed by the seller to the buyer prior to closing
- e) The instructions accompanying the disclosure statement emphasized the importance of the seller providing complete disclosure of all relevant information: ANSWERS MUST BE COMPLETE AND ACCURATE The Property Disclosure Statement is designed, in part, to protect the seller by establishing that all relevant information concerning the premises has been provided to the buyer. It is important that the seller not answer "do not know" or "does not apply" if, in fact, the seller knows the answer. An answer must provide all relevant information known to the seller
- 1. The seller is legally responsible for the accuracy of the information which appears on the Property Disclosure Statement. Not only must the answers be correct, but they must be complete. The buyer will rely on this information when the buyer contracts to purchase the premises
- f) The additional comments provided by Mr. Abadian "Tenanted Property, Owner has never occupied", were not responsive to the questions on the form asking for information about the property, unless intended to suggest that Mr. Abadian did not know the answers to the questions on the form because he had not lived at the property.
- [7] The above evidence ought to have been considered by the judge when he was considering whether Mr. Abadian made a misrepresentation on the form. In light of this evidence, and contrary to the judge's conclusion, it is not reasonable to interpret the form as simply a representation that it was tenanted and Mr. Abadian had not occupied it. Since Mr. Abadian

chose to provide the form and add his comments to it, he was required to be responsive to the duties it required of complete disclosure, knowing that the buyer, Ms. Sewell, would rely on the form.

- [8] The fact that Mr. Abadian did not specifically fill out boxes on the form "Do Not Know" does not, in the above context of all the evidence, mean he was not claiming he did not know the answers to relevant questions. In the above context, he was representing by the whole of the form that he did not know there were any unpermitted additions. This was a misrepresentation, whether negligent or fraudulent does not matter in this case.
- [9] As for the question of whether Ms. Sewell relied on the form, Ms. Sewell did not learn about the unauthorized addition before entering into the contract. She pleaded that she relied on it, and gave evidence that she did, before entering the contract. Mr. Abadian agreed she could rely on the disclosure statement by incorporation of it into the contract. In my view, it is not open to Mr. Abadian to say she did not rely on it.
- [10] While the judge seemed concerned that Ms. Sewell described the disclosure statement as containing a "total lack of information", that does not mean she did not rely on it. As she explained when cross-examined on examination for discovery, forming part of the record before the judge, she relied on Mr. Abadian to disclose everything he knew about the property, honestly, and by crossing out the disclosure statement she thought he was indicating he was unaware of the answers to the questions.
- [11] The evidence was that Ms. Sewell would not have entered into the contract if Mr. Abadian had not misrepresented his knowledge about the unpermitted addition. She was entitled to and did rely on him being accurate and complete in the disclosure statement, and he was not.
- [12] For these reasons, I would allow the appeal. The judge's order is set aside; Ms. Sewell is entitled to judgment against Mr. Abadian for the amount of the initial deposit, \$300,000; and Mr. Abadian's counterclaim is dismissed.
- [13] Ms. Sewell asks for an additional order that Mr. Abadian held the initial deposit in trust for her. However, the judge made no findings in that regard, as it would serve no purpose based on his other conclusions. I would remit to the trial court any question about whether the initial deposit was held in trust by Mr. Abadian. "The Honourable Justice Griffin" I AGREE: "The Honourable Madam Justice Fenlon" I AGREE: "The Honourable Justice Winteringham"

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/ca/25/01/2025BCCA0158.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sewell-v-abadian-2025>

Prepared on 26 October 2026 · Esheria