

CANADA / JUDGMENT

TR3 Geothermal Services Inc. v. Mason

2025 BCSC 2390

COURT

Supreme Court of British Columbia

DECIDED

5 December 2025

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2025 BCSC 2390 TR3 Geothermal Services Inc. v. Mason

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

TR3 Geothermal Services Inc. v. Mason,

2025 BCSC 2390

Date: 20251205

Dockets: S50741

Registry: Penticton

Between:

TR3 Geothermal Services Inc. and Richard John Saari

Appellants

And

Jacqueline Rae Mason

Respondent

On appeal from: A decision of the Provincial Court of British Columbia, dated January 24, 2025
(Mason v. TR3 Geothermal Services Inc.)

(Princeton Docket C47925)

Before: The Honourable Justice Maisonville

Reasons for Judgment

Counsel for the Appellants:

E. Lund

Counsel for the Respondent:

D. Horvath

Place and Dates of Hearing:

Kelowna, B.C.

October 29-30, 2025

Place and Date of Judgment:

Penticton, B.C.

December 5, 2025

Table of Contents

introduction.. 3

facts. 3

Issues. 5

positions of the parties. 5

law.. 5

Principles of Statutory Interpretation. 5

Analysis. 6

Disposition.. 8

introduction

[1] The preliminary issue on this appeal is whether it is properly brought pursuant to s. 5 of the Small Claims Act, R.S.B.C. 1996, c. 430.

[2] For the reasons that follow, I find that the matter must proceed as a judicial review.

facts

[3] The appellants are TR3 Geothermal Services Inc. ("TR3") and its 67-year-old principal, Richard Saari. They have set out that this was an appeal of a Provincial Court decision piercing the corporate veil of TR3 and finding Mr. Saari personally liable for defective work performed by the company although at issue is the proper manner of proceeding.

- [4] The respondent successfully sued TR3 at the Princeton Registry of the Provincial Court of British Columbia for certain work performed at her home in connection with the installation of a piping and heating system. The notice of claim dated August 13, 2021, alleged breach of contract for failing to properly "complete the piping in [the] mechanics room to connect four radiators and two heated towel racks and regulate the hot water".
- [5] The matter proceeded to a ten-day trial before the judge in Small Claims Court. The trial proceeded in a disjointed fashion. It commenced on December 14, 2023 and concluded on August 9, 2024.
- [6] During the trial, the respondent applied to amend the notice of claim to have Mr. Saari and his wife, Ms. Beswick, added as defendants to the action on the theory that TR3's corporate veil should be pierced.
- [7] That application was dismissed with a finding by the Court that "the amendment of pleadings must be done before the commencement of trial, pursuant to Rule 8(1) of the Small Claims Rules, B.C. Reg. 261/93 and *Sampson v. Insurance Corporation of British Columbia*, 2006 BCPC 99".
- [8] The respondent then brought a second application, again attempting to pierce the corporate veil and hold Mr. Saari and Ms. Beswick personally liable. That application was dealt with in the trial reasons of the judge rendered on September 19, 2024 (indexed as 2024 BCPC 171). The judge refused the application stating:
- [59] While I find the conduct of the defendant and that of its director Mr. Saari reprehensible, I have concluded that it falls short of the standard to pierce the corporate veil at this time.
- []
- [61] [] TR3 is a legitimate company that has operated over many years and still operates today. While the mistakes Mr. Saari made resulted in damages to the claimant, I am not satisfied that the corporate veil should be lifted at this time. The claimant is now a creditor who will take steps to collect from the defendant, now debtor.
- [62] In addition, the claimant brought this application late in the proceedings and I did not hear or receive submissions from the defendant on this issue. It would be unfair to pierce the corporate veil at this time without giving the defendant a chance to respond. However, should the company's directors undertake wrongful acts to prevent the creditor from collecting on this judgment, a court may entertain an application of this sort.
- [9] The judge ultimately found against TR3 and pronounced a payment order requiring TR3 to pay the respondent a total of \$46,345.93 on account of the judgment, including expenses interest and the penalty.

- [10] On October 31, 2024, a payment hearing was held in Penticton and an application was brought by the respondent to have the judgment registered against Mr. Saari and Ms. Beswick personally by piercing the corporate veil. That application was adjourned to November 12, 2024.
- [11] The respondent then renewed the application on November 12, 2024 but it was adjourned again to be heard during the course of a payment hearing set for December 16, 2024. At that hearing in December, Mr. Saari gave evidence and written and oral submissions were made.
- [12] On January 24, 2025, the judge rendered a decision imposing personal liability on Mr. Saari. As noted above he had not been added as a defendant in the action. There was no application to re-open the trial and no order in respect of that was made.

Issues

- [13] The first question to be resolved is the correct procedure to overturn the January 24, 2025 order by the judge piercing the corporate veil of TR3. Given that the order was made following an application, the issue is whether it is procedurally correct to bring an appeal, pursuant to s. 5 of the Small Claims Act, or whether the correct procedure is by judicial review.

positions of the parties

- [14] Mr. Saari and TR3 argue that an appeal pursuant to s. 5 of the Small Claims Act is appropriate in the circumstances. As I understood the argument, it was on the basis that the decision stemmed from a trial decision.
- [15] The respondent argues that the orders made by the judge were made pursuant to an application filed by her and heard well after the trial and that the application was never converted into a trial.

law

Principles of Statutory Interpretation

- [16] As noted, the appellants bring this proceeding as an appeal under s. 5 of the Small Claims Act.
- [17] Section 5 of the Small Claims Act sets out:

Right of appeal

- 5 (1) Any party to a proceeding under this Act may appeal to the Supreme Court an order to allow or dismiss a claim if that order was made by a Provincial Court judge after a trial.
- (2) No appeal lies from any order of the Provincial Court made in a proceeding under this Act other than an order referred to in subsection (1).

[18] It is settled law that "the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament", known as the modern rule: *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Directrice de la protection de la jeunesse du CISSS A*, 2024 SCC 43 at para. 23; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26.

[19] Justice Newbury set out the modern rule in *Pasquill v. British Columbia (Securities Commission)*, 2021 BCCA 424 at para. 35:

[35] Both parties referred to and relied on the "modern rule" of statutory interpretation as formulated by Professor Sullivan in *Sullivan on the Construction of Statutes* (6th ed., 2014):

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament ... [At 7.]

Professor Sullivan went on to state:

Even if the ordinary meaning is plain, courts must also take into account the full range of relevant contextual considerations including purpose, related provisions in the same and other Acts, legislative drafting conventions, presumptions of legislative intent, absurdities to be avoided and the like.

and added that:

Most often ... ordinary meaning refers to the reader's first impression meaning, the understanding that spontaneously comes to mind when words are read in their immediate context -- in the words of Gonthier J., 'the natural meaning which appears when the provision is simply read through'. [At 28, 30.]

[Emphasis in original.]

[20] The ordinary meaning rule presumes that the words in a statute should be given their ordinary meaning unless the alternative interpretation is plausible and there are sufficient reasons to justify departing from it: *Director of Civil Forfeiture v. Cunliffe*, 2025 BCSC 25 at para. 27.

Analysis

[21] On a plain reading of ss. 5(1) and (2) of the Small Claims Act, it is clear that any appeal of "an order to allow or dismiss a claim" to the Supreme Court is to be by an appeal "after a trial".

[22] Section 5(2) clearly prohibits an appeal from any other order. In the matter before this Court, it is clear that the order was made on an application following a trial. Different evidence was heard and a different application had been brought.

- [23] The Small Claims Act does not include an exception for an application related to the original trial proceedings following trial. The absence of such an exception is logical given that the trial processes are different. Notice is given by pleadings. At trial each party is entitled to call evidence and cross examine the witnesses of the opposing party. The same does not occur in an application.
- [24] Furthermore, in *Andrews v. Clay*, 2018 BCCA 50 at para. 25, our Court of Appeal held that the appropriate method to challenge a judgment made by the Provincial Court is by an application for judicial review, unless the order was made after a trial, per s. 5 of the Small Claims Act.
- [25] In *Andrews*, the appellant appealed an order dismissing his application to set aside a default judgment entered in Small Claims Court pursuant to the Small Claims Act. Justice Hunter, writing for the Court, held:
- [25] I note at the outset that Mr. Andrews could challenge the Provincial Court judgment only by an application for judicial review. No appeal can be taken from any order of the Provincial Court unless the order was made after a trial: Small Claims Act, R.S.B.C. c. 430, s. 5.
- [26] This principle was recently reaffirmed in *Tang v. Goldmanis*, 2024 BCSC 351, which followed *Andrews*:
- [30] This matter was properly brought as a petition for judicial review. Under s. 5(1) of the Small Claims Act, R.S.B.C. 1996, c. 430 [SCA], a litigant has the right to appeal an order only if it was made after a trial:
- 5 (1) Any party to a proceeding under this Act may appeal to the Supreme Court an order to allow or dismiss a claim if that order was made by a Provincial Court judge after a trial.
- [31] Otherwise, there is no right of appeal from any other order: SCA, s. 5(2). While an appeal to this Court is not permitted, a litigant can bring an application for judicial review: *Hart v. Laird Cruickshank Personal Corporation*, 2022 BCSC 569 at para. 19; *Andrews v. Clay*, 2018 BCCA 50 at para. 25. As set out in the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, s. 2, a judicial review application must be brought as a petition.
- [32] For instance, In *Hart*, Chief Justice Hinkson noted that a petition for judicial review was the correct procedure for a party to seek review of a judge's decision to refuse to set aside a default judgment in a small claims proceeding:
- [20] In this case, the petitioners seek judicial review of Judge Dhillon's refusal to set aside default judgment. Section 5 of the SCA provides no right of appeal from a decision to refuse to set aside a default judgment: *Andrews v. Clay*, 2018 BCCA 50 [Andrews]. The respondents concede that the petitioners were entitled to proceed with their application for judicial review, subject the Court's discretion.

[27] Section 5 of the Small Claims Act provides a right of appeal from a Provincial Court order to the Supreme Court only if that order was made after a trial. The order which the appellants seek to overturn was made on an application, not a trial. It proceeded by way of affidavit evidence, financial documents provided in a binder, and viva voce evidence from Mr. Saari following discussion with the Court. No pleadings were brought in respect of that hearing; it was not a reopening of the trial that the judge had already rendered judgment on. Rather, it was a decision brought following a trial.

Disposition

[28] I find that this matter is improperly brought by way of an appeal to this Court, given it was a decision following an application, and should be brought by way of a petition for judicial review.

"Maisonville J."

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