

CANADA / JUDGMENT

Wu v. Murray

2025 BCSC 1872

COURT

Supreme Court of British Columbia

DECIDED

3 July 2025

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2025 BCSC 1872 Wu v. Murray

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wu v. Murray,

2025 BCSC 1872

Date: 20250703

Docket: S232483

Registry: Vancouver

Between:

Jiaqi Wu

Plaintiff

And

Collin Bruce Murray, Paulette Anne Nelson,

Katherine Perry and Jason Perry

Defendants

Before: The Honourable Mr. Justice Milman

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:

J. Wu

Counsel for the Defendants:

C.T. Hartnett

Place and Date of Summary Trial:

Chilliwack, B.C.

July 3, 2025

Place and Date of Judgment:

Chilliwack, B.C.

July 3, 2025

- [1] THE COURT: This is an application by the defendants in this action seeking judgment in their favour, dismissing the plaintiff's claim by way of a summary trial. The plaintiff, Ms. Wu, opposes the application, arguing that the matter does not lend itself to summary disposition, but if it does, then judgment should be granted in her favour, awarding her damages on the claim.
- [2] By way of background, the plaintiff originally brought this action seeking an award of specific performance on a real estate purchase, or alternatively, damages.
- [3] On January 19, 2023, she and the first two named defendants (the "sellers") entered into a contract that contemplated Ms. Wu purchasing the house that they then owned at 573 Orkney Court in Coquitlam (the "Orkney Property").
- [4] Unfortunately for Ms. Wu, her contract with the sellers was a back-up offer. It was expressly made subject to an earlier contract that the sellers had entered into on December 31, 2022 with the last two named defendants, the Perrys. Pursuant to that contract, the sellers had the right after January 13, 2023, to issue a notice to the Perrys requiring them to waive their conditions and commit to the purchase within 48 hours if the sellers received a back-up offer like the one they got from Ms. Wu. However, that obligation was qualified so that it did not apply if the Perrys had in hand an accepted offer for the sale of their home, which was located at 523 Ailsa Avenue in Port Moody (the "Ailsa Property").
- [5] At 7:19 a.m. on January 20, 2023, the day after Ms. Wu's back-up offer was accepted, the Perrys accepted an offer presented to them from a prospective purchaser, Mr. Erwin Tan Sy, contemplating Mr. Sy's purchase of the Ailsa Property.
- [6] The effect of this was that when later that evening at around 9 p.m. Ms. Wu removed her conditions and requested the sellers to give the 48-hour notice to the Perrys, the Perrys responded that the 48-hour notice clause was no longer in effect because of the accepted offer they had in relation to the Ailsa Property.

- [7] It turns out, however, that Mr. Sy was not destined to purchase the Ailsa Property in the end. In fact, he also made a second offer to purchase a different property. His offer to purchase the Ailsa Property was made subject to inspection. On January 24, 2023, Mr. Sy conducted that inspection. Two days later, on January 26, 2023, he informed the Perrys that he would not be waiving his conditions and would not be proceeding with the purchase of the Ailsa Property. One day later, on January 27, 2023, the Perrys removed their subjects in the contract they had with the sellers to purchase the Orkney Property, even though they had yet to sell the Ailsa Property.
- [8] When she was told of all this, Ms. Wu on February 3, 2023, asked for a refund of her deposit, which the sellers agreed to provide.
- [9] On March 27, 2023, Ms. Wu commenced this action and caused a certificate of pending litigation ("CPL") to be filed on title to the Orkney Property. On April 12, 2023, the parties were before me on the sellers' application to remove the CPL on the basis of hardship so that their sale of the Orkney Property to the Perrys could proceed as scheduled on the following day, which was April 13, 2023.
- [10] I allowed the application and ordered the CPL cancelled on terms that the sellers deposit in its stead the sum of \$50 as security into court. In brief, I found that Ms. Wu was not advancing a viable claim to an interest in land because she had no contractual right to enforce her purchase on those facts. Although Ms. Wu subsequently commenced an appeal from my order, she did not proceed with it. It was later dismissed as abandoned.
- [11] When the defendants attempted to proceed with the transaction the next day, the registrations in the land title office did not go through because Ms. Wu had caused a caveat to be filed on title on April 18, 2023. That caveat lapsed on July 18, 2023, but in the meantime, on June 21, 2023, Ms. Wu caused a second CPL to be filed on title, based on the same claim. The defendants successfully applied to have the second CPL cancelled. On January 14, 2025, Wilkinson J. granted that relief on the basis that no step had been taken in this action in over a year. In addition, she also granted the defendants special costs in any event of the cause, finding that the second CPL was a collateral attack on my order and, as such, an abuse of this court's process.
- [12] The matter is currently set to go to a conventional trial lasting three or four days, beginning on April 13, 2026.
- [13] I turn now to the application before me today.
- [14] The defendants seek by way of summary trial an order dismissing Ms. Wu's claim as devoid of merit. They say that the requisite findings of fact can be made summarily on the record before me on this application.

- [15] Ms. Wu disagrees. She says that there are too many conflicts in the evidence on fundamental issues that can only be resolved by way of a conventional trial. In the alternative, if the requisite findings of fact can be made, then she seeks to have judgment pronounced in her favour.
- [16] The test to be applied in determining whether an action can properly be resolved by way of summary trial was recently summarized by Matthews J. in *Saran v. Cartonio, Inc.*, 2020 BCSC 556, aff'd 2020 BCCA 252. I will just summarize what it says.
- [17] First, there is reference to Rule 9-7(15)(a) of the Supreme Court Civil Rules, which states that a matter will not be suitable for summary trial if the court is unable to find the facts necessary to decide the issues of fact or law or if it would be unjust to decide the issues summarily.
- [18] Justice Matthews goes on after citing that rule to state as follows:
- [31] Whether the necessary facts can be found and whether it would be unjust to decide the issues raised are separate but related questions. In some circumstances it may be unjust to decide a case summarily even if on the whole of the evidence it is possible to find the necessary facts. See *Placer Development Ltd. v. Skyline Explorations Ltd.*, 1985 67 BCLR 366, at 385-386, Court of Appeal; *Foreman v. Foster*, 2001 BCCA 26, at para. 19; and *Creyke v. Creyke*, 2016 BCCA 499, at para. 45.
- [32] The onus is on the party who asserts that the matter is not suitable for a determination by a summary trial to demonstrate unsuitability: *Ekins v. Davey*, 2007 BCSC 1630, at para. 24. A party facing a summary trial is obliged to bring forward all of its case or risk having judgment go against it: *Spring Hill Farms Limited Partnership v. Nose*, 2014 BCCA 66.
- [33] Conflicting evidence is not necessarily fatal to proceeding summarily. If the conflicting evidence does not prevent the court from making the necessary factual determinations, the court may proceed. In some circumstances despite conflicting evidence, there is enough objective or corroborating evidence for one version of events to permit the court to confidently make findings of fact. See, for example, *Wei v. Mei*, 2018 BCSC 1057, affirmed on other grounds: *Wei v. Li*, 2019 BCCA 114. Where there is a conflict in evidence that cannot be resolved by reference to objective or corroborating evidence, a chambers judge has the option to adjourn the application and order that cross-examination take place or order cross-examination at the summary trial: *Spring Hill Farms Limited Partnership v. Nose*; and *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 1989 36 B.C.L.R. (2d) 202 (C.A.) at para. 72.
- [19] At para. 37, Matthews J. summarizes from *Gichuru v. Pallai*, the leading case in this area, the factors that are to be considered in determining whether it would be unjust to proceed summarily and may include the following:
- a) the amount involved;

- b) the complexity of the matter;
- c) its urgency;
- d) any prejudice likely to arise by reason of delay;
- e) the cost of taking the case forward to a conventional trial in relation to the amount involved;
- f) the course of the proceedings;
- g) the cost of litigation and the time of the summary trial management conference;
- h) whether credibility is a critical factor in the determination of the dispute;
- i) whether the summary trial may create unnecessary complexity in the resolution of the dispute;
- j) whether the application would result in litigating in slices; and
- k) any other matters which may be relevant in the particular case.

[20] Justice Matthews then goes on to comment as follows:

[38] None of these factors are determinative on their own. For example, a case that is not straightforward or has some complexity is not by virtue of that feature automatically unsuitable for summary trial determination: *River Colony Estates General Partnership v. Hee*, 2003 BCSC 1327.

[39] When deciding whether to proceed summarily, a court must interpret the summary trial rule broadly and favourably, consider proportionality, affordability and the timely and just adjudication of claims: *Crest Realty Westside Ltd. v. W & W Parker Enterprises Ltd.*, 2015 BCCA 447, at para. 30.

[21] In this case, I am satisfied that I can make the requisite findings of fact and that it would not be unjust to pronounce judgment today.

[22] First, contrary to Ms. Wu's submission, there is no real conflict in the evidence. Ms. Wu relies on the fact that Mr. Sy had made a second offer to purchase a different property at or around the same time that he made the offer to purchase the Ailsa Property. She says that his conduct in doing so is indicative of a lack of any serious intention on his part to proceed with the purchase of the Ailsa Property and that somehow some or all of the defendants were complicit in this behaviour or failed to keep her adequately informed of his true intentions. She says that their lack of good faith was inconsistent with the sellers' obligation to her, entitling her at least to damages, now that specific performance is no longer available to her as a remedy.

[23] Further, she says that a trial is necessary because the court needs to hear from Mr. Sy as to why he made that offer when he did and why the signatures on two of his offers do not match. She also wants the court to hear oral testimony from Louisa Baker (the Perrys'

realtor, who admittedly made an error in her first affidavit in describing the time that Mr. Sy's offer was made, an error she later corrected in her second affidavit, and that I am satisfied was, in any event, inconsequential) and the Perrys themselves. With regard to the Perrys, she says that Mr. Perry must be lying when he said, in response to her written interrogatories, that he was not made aware of her back-up offer until the 48-hour notice was sent. She also complains that her realtor was told on January 14, incorrectly, that the Ailsa Property was not yet on the market. I note as an aside that this error too is inconsequential because the realtor was subsequently advised on January 18 that it was, in fact, on the market by then and that interest in it was high, a remark which appears to have induced Ms. Wu to make the back-up offer when she did.

- [24] Overall, I agree with the defendants that there is no genuine factual issue in dispute and, indeed, that there is simply no evidentiary support for Ms. Wu's claims generally. On the contrary, I am satisfied, based on the uncontroverted facts in the record, supported by the documents that are before me, that there are no grounds to question the good faith of the defendants or to support an inference that they acted improperly in any way. Rather, I am satisfied that they acted properly, in conformity with their obligations under the contracts to which they were privy, including the contract with Ms. Wu, and not for any improper purpose.
- [25] It was incumbent on Ms. Wu to put her best foot forward in order to defeat this application. In the end, she has not shown any reason why this claim should not be dismissed. Having arrived at that conclusion, I am allowing the defendants' application and dismissing the claim.

[26] All right. Mr. Hartnett, you wanted to speak to costs.

[SUBMISSIONS ON COSTS]

- [27] I am going to grant the defendants their costs but at the ordinary tariff until the initial hearing before me -- the conclusion of the hearing before me. After that, I will award the defendants their costs at the special costs level.
- [28] The reason for that is two-fold. First, I am satisfied that once I conveyed my views of the case in the first CPL decision, it should have been apparent that there were serious problems with the claim as it was brought. There was what appears to have been repeated attempts to maintain the same position and to reinstate a charge on title to support a claim that I found not to justify such relief. That behaviour has already been the subject of comment by Justice Wilkinson, and an award of special costs has been made in that respect.
- [29] But in addition to that, what also troubles me is the tenor of the allegations that have been made against the defendants. While the word "fraud" is not used, it is clear that the plaintiff has been alleging serious misconduct and dishonesty vis-à-vis the defendants, and those allegations appear now to have been entirely unsubstantiated and unwarranted.

[30] And so, for those two reasons, it will be special costs from the conclusion of the first hearing before me and including today's hearing.

[31] All right. Is there anything else we need to do before we adjourn?

[SUBMISSIONS]

[32] Costs are awarded at Scale B for the April 12, 2023 hearing and special costs thereafter, except for the application in relation to the caveat, for which the parties will bear their own costs. I think we should just leave it at that. The parties will bear their own costs on that because there may have been some basis to maintain the caveat to support the appeal, and Ms. Wu was unrepresented at the time. I am a little bit concerned about her ability to obtain discovery. I don't have a lot of information about that, but I think the censure that I believe is appropriately placed here is adequate in the order that I am making.

"Milman J."

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