

CANADA / JUDGMENT

Zhang v. Davies

2020 BCSC 1301

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Supreme Court of British Columbia

DECIDED

2 September 2020

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2020 BCSC 1301 Zhang v. Davies

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Davies,

2020 BCSC 1301

Date: 20200902

Docket: S201843

Registry: Victoria

Between:

Li Zhang

Plaintiff

And

Benjamin Daniel Davies and Erin Naomi Richelle Davies

Defendants

And

Steven Kelly Melnick and Kerry Angelina Marshall

Defendants

Corrected Reasons: The cover and the text of paras. 3 and 54 of these reasons are corrected/ amended on October 22, 2020.

Before: The Honourable Madam Justice Tucker

Reasons for Judgment

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Written Submission of the Plaintiff Received:

July 24, 2020

Written Submissions of the Defendants Received:

July 20, 2020

Place and Date of Hearing:

Victoria, B.C.

July 13, 2020

Place and Date of Judgment:

Victoria, B.C.

September 2, 2020

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Introduction

- [1] On June 10, 2020, Benjamin and Erin Davies filed an application under Rule 9-5(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules] seeking to strike the May 28, 2020, notice of civil claim ("2020 claim") of Li Zhang.
- [2] The Davies assert the 2020 claim is res judicata or, alternatively, amounts to an abuse of process.
- [3] On June 24, 2020, Justice Power made an order adding Mr. Melnick and Ms. Marshall (the "Purchasers") as defendants.
- [4] At the close of the hearing, the parties were given leave to file written submissions addressing an authority raised late in the proceeding: *Chaudière Machine & Foundry Co. v. Canada Atlantic Railway Co.* (1902), 33 S.C.R. 11 [Chaudière].

Background

- [5] Ms. Zhang and the Davies owned houses on neighbouring properties. Ms. Zhang's house was built first. When the Davies built, their roof reduced Ms. Zhang's view and, as seen from Ms. Zhang's house, caused a glare.
- [6] On June 2, 2015, Ms. Zhang filed a notice of civil claim ("2015 claim") against the Davies alleging breach of a restrictive covenant and the tort of nuisance. The relief sought under the latter included an order requiring the Davies to replace or recover their roof with non-reflective material, and an award of damages for interference with enjoyment of property.

First Decision

- [7] The 2015 claim was determined on July 11, 2017: Zhang v. Davies, 2017 BCSC 1180 ("First Decision"). The trial judge found the glare amounted to a nuisance. She awarded damages under the nuisance claim, but denied the injunction sought:
- [89] The duration of the interference caused by the glare is unpredictable. On cloudy or overcast days, there is no interference. Even on sunny days in the summer, the interference is limited to morning hours, to about Noon. The interference also, based on the evidence, is seasonal, and so depends on the angle of the sun. On the evidence, it is not an issue in fall and winter, for example. Moreover, the glare does not affect all parts or all rooms of Ms. Zhang's home.
- [90] However, on the sunny mornings when the sun reflects off the metal roof of the Davies' house, the glare unreasonably and substantially interferes with the use of important rooms in Ms. Zhang's house. While the effects might be mitigated to some extent by window coverings, at best, that is a partial solution. Moreover, there were no issues with direct sunlight in the year that Ms. Zhang lived in her house before the Davies' house was built. Sunlight is not the problem; rather, it is sunlight reflecting off the Davies' roof. In my opinion, the social utility of the aesthetic choice of a metal roof must rate as low or very low, compared with the problems that choice have created for Ms. Zhang.
- [91] Mr. Hutchison submitted that general damages in the order of \$15,000 would be appropriate compensation for the nuisance, although Mr. Hutchison acknowledged making the assessment is difficult. Having regard to the quantum of damages awarded in Suzuki, I conclude that an appropriate award in this case is \$7,500.
- [92] In closing argument, Mr. Hutchison also sought an injunction on behalf of Ms. Zhang in these terms: requiring the Davies "to take reasonable steps to reduce the reflective capabilities and nature of their roof, presumptively treatment of the surface either by paint or other material that would stop or significantly reduce the reflective nature so apparent." However, there was no evidence at trial that any steps could be employed to "reduce the reflective capabilities and nature" of the Davies' roof, apart from anecdotal comments from Mr. Aberdeen about different roofing materials. But Mr. Aberdeen was not qualified as an expert on roofing material, or the reflective qualities of different types of roofing material. There was no evidence whether "treatment of the surface" by anything in particular would be effective to subdue the glare.
- [93] The request for an injunction is, therefore, refused.
- [8] The claim for breach of covenant was also allowed, and a separate award of damages was made in respect of the breach.

Appeal Decision

- [9] The Davies appealed the First Decision, and Ms. Zhang cross-appealed: Zhang v. Davies, 2018 BCCA 99 ("Appeal Decision").

- [10] Among other things, Ms. Zhang's cross-appeal asserted the trial judge erred in refusing injunctive relief and, alternatively, in failing to award a higher amount as damages for nuisance given the injunction was denied.
- [11] The Court of Appeal's reasons on the issues are brief:
- [64] Ms. Zhang acknowledges that the decision whether to grant or refuse an injunction is discretionary.
- [65] In my opinion, the order suggested by Ms. Zhang is so vague as to be unenforceable and would invariably lead to further litigation. In my opinion, the judge was correct to reject the application for an injunction: see *Liu v. Hampton's Golf Course*, 2017 ABCA 303 at para. 24.
- [66] Nor am I persuaded that, in the absence of an injunction, the damages for the nuisance should be increased. In my view, it cannot be said that the nuisance award was so inordinately low that it deserves appellate interference.

Post Litigation Events

- [12] In November 2019, the Davies painted parts of their roof. It is unclear whether the paint was intended to reduce glare. Ms. Zhang attests that the paint did not abate the glare.
- [13] On May 21, 2020, the Davies informed Ms. Zhang they were selling their property and a sale was set to close at the end of June 2020.
- [14] On May 28, 2020, Ms. Zhang filed the 2020 claim.
- [15] The 2020 claim asserts the glare continues as a nuisance, as does its interference with her enjoyment of property. The 2020 claim seeks damages for nuisance from the date of the First Decision (i.e. July 11, 2017) forward. It also seeks a mandatory injunction requiring the defendants to remove the parts of the roof that create the glare and replace them with non-reflective materials, to the reasonable satisfaction of the plaintiff.
- [16] The Davies' sale to the Purchasers completed at the end of June as planned.

The Application to Strike

- [17] Rule 9-5(1)(b) and (d) read:
- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that:
- (b) it is unnecessary, scandalous, frivolous or vexatious, [or]
- (d) it is otherwise an abuse of the process of the court,
- and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[18] External facts and evidence may be considered on an application to strike under Rule 9-5(1)(b) and (d): *Krist v. British Columbia*, 2017 BCCA 78 at para. 24.

[19] An application to strike a claim as *res judicata* can be brought under Rule 9-5(1)(d): *Boyd v. Cook*, 2016 BCCA 424 at para. 16; or under Rule 9-5(1)(b): *Stoneman v. Denman Island Local Trust Committee*, 2015 BCSC 264 at para. 60.

Parties' Positions

The Davies

[20] The Davies submit the 2020 claim is *res judicata* in its entirety, including by virtue of cause of action estoppel, as a result of the First Decision.

[21] They say the trial judge found the glare sufficiently substantial to amount to a nuisance, but not substantial enough to warrant an injunction. They say the trial judge looked to the degree of interference caused by the glare and to the amounts awarded in *Suzuki v. Munroe*, 2009 BCSC 1403, and arrived at a quantum of damages that also covered future harm. They submit that Ms. Zhang's cross-appeal implicitly acknowledged that the damages award did include compensation for future harm.

[22] The Davies submit that even if the damages awarded in the First Decision did not include compensation for future harm, cause of action estoppel would apply nonetheless. They assert the 2015 claim was Ms. Zhang's opportunity to seek all possible relief, and that an explicit claim for damages for future harm could and should have been raised there.

[23] The Davies seek special costs under Rule 9-5, on the basis that the 2020 claim was an abuse of process, and further asserting that it was filed to pressure the Davies to make concessions to the plaintiff - over and above the remedies awarded under the 2015 claim - in order to enable their sale to complete.

The Purchasers

[24] The Purchasers support the Davies' position on *res judicata* and regarding special costs.

[25] They submit that the 2015 claim and First Decision equally foreclose Ms. Zhang from bringing any claim in nuisance against them regarding the glare.

Ms. Zhang

[26] Ms. Zhang says the \$7500 awarded under the 2015 claim was for the interference she experienced up to the date of the First Decision. She says the present claim is a different cause of action - based on subsequent interference - and that she is entitled to seek relief under it.

- [27] Ms. Zhang says the absence of an injunction does not equate to a right to continue the nuisance. The trial judge declined to dictate how abatement should be achieved, thus leaving it up to the Davies to determine how to abate, but also leaving them open to further claims if the nuisance was permitted to continue.
- [28] Ms. Zhang relies on authorities, developed in the context of statutory limitation periods, holding that a continuing nuisance gives rise to a new cause of action each day it continues: see *Gautam v. South Coast British Columbia Transportation Authority*, 2020 BCCA 135 at paras. 45-56; *Roberts v. City of Portage La Prairie*, [1971] S.C.R. 481, 17 D.L.R. (3d) 722.
- [29] In *Gautam*, the Court stated:
- [47] Courts have, on many occasions, had to apply statutory limitation periods to civil wrongs of a continuing nature. They have been faced with arguments from defendants that the limitation period should be measured from the day that the civil wrong commenced, and arguments from plaintiffs that the limitation period should be measured from the day that the civil wrong ceased to be committed. They have, uniformly, rejected both positions. Instead, they have treated each day on which a civil wrong continues as the starting point for a limitation period applying to damages suffered on that day. A few examples will suffice to illustrate the principle.
- [30] Ms. Zhang also relies on *Peace Portal Properties Ltd. v. Surrey (District)*, 70 D.L.R. (4th) 525, [1990] B.C.J. No. 1113 (CA) [Peace Portal], which refers to the possibility of periodic actions in nuisance. The relevant passage (Macdonald J.A., for the Court) reads:

The appellant submits that erosion of the flume was due to poor construction or design. Counsel pointed out that there was evidence that it should have lasted about fifty years whereas, after twenty-five years, serious erosion was occurring. However I agree with the respondent that poor design or construction of the flume is not a defence. The nuisance was the repeated flow of excess peak waters beyond the capacity of the creek to contain them in its original channel. The respondent was under no obligation to abate the nuisance or even to mitigate his damages by constructing the flume in the first place. The twenty-five years to which the flume lasted in good repair was a period during which the municipality benefited by being relieved of a duty to abate the nuisance. The golf club could, instead of constructing a flume, have repaired the bed of the creek each time there was an excess flow. In the case of a continuing nuisance a new cause of action arises each time the nuisance occurs. The respondent could have sued and recovered the costs of its work periodically.

[Emphasis added.]

- [31] Ms. Zhang thus argues that a continuing nuisance can be sued upon periodically as a new cause of action, just as she is doing under the 2020 claim. She notes that she has never given the Davies a release.

[32] Ms. Zhang also argues that the Purchasers are not privies of the Davies, and that even if *res judicata* could be relied upon by the Davies, it would not extend to the Purchasers.

DECISION

The 2020 Claim and the Doctrines Precluding Re-litigation

[33] A concise overview of the concepts of *res judicata*, cause of action estoppel, issue estoppel and abuse of process is found in Justice Gerow's decision in *Stoneman*, at paras. 60-69 and, in particular, at paras. 61-63. The Davies submit that a number of the doctrines discussed there, all of which aim to prevent re-litigation, apply on the facts of this case.

[34] The Davies' submissions, however, focussed on cause of action estoppel. In *Erschbamer v. Wallster*, 2013 BCCA 76, the court outlined the requirements for cause of action estoppel (at para. 15):

1. There must be a final decision of a court of competent jurisdiction in the prior action;
2. The parties to the subsequent litigation must have been parties to or in privy with the parties to the prior action;
3. The cause of action in the prior action must not be separate and distinct; and
4. The basis of the cause of action and the subsequent action was argued in the prior action (or could have been argued in the prior action if the parties had exercised reasonable diligence).

[35] I am satisfied that the requirements for cause of action estoppel are met here. However, in my view, the doctrine of merger is the more apt construct. As explained in *Sherwood Steel Ltd. v. Odyssey Construction Inc.*, 2014 ABCA 320, while the requirements are the same, the two doctrines differ somewhat in rationale:

[16] The point is that the doctrine of merger prevents a claimant from re-litigating a cause of action that has already been adjudicated. Although the nomenclature "merger" captures the notion of the claim having been merged into the original judgment, a more apt description of the effect of the doctrine is "exhaustion"; that is, upon adjudication, the cause of action is exhausted such that it ceases to exist and cannot support re-litigation.

[17] So understood, merger is closely related to cause of action estoppel. Indeed, that doctrine has been stated in precisely the same terms as merger:

. While their elements are identical, however, cause of action estoppel and merger each have different underlying rationales. The objective of cause of action estoppel is to prevent contradictory findings of fact or law, while the purpose of applying merger is to prevent a litigant reasserting a claim for relief. In brief, while cause of action estoppel prevents contradiction, merger prevents reassertion.

[18] Several interests or objectives underlie the doctrine of merger. First, the public interest is served by finally resolving disputes. Secondly, litigants' interests are served by a final resolution of their disputes. While these two rationales also support the contradiction-prevention purpose of cause of action estoppel, a third rationale is exclusive to the reassertion-prevention purpose of merger: saving public time and resources which would otherwise be expended in re-litigating matters for no good reason.

[Citations omitted; emphasis added]

Finality

[36] The Appeal Decision was not subject to further appeal. The 2015 claim was disposed of by final decision of a court of competent jurisdiction.

Parties

[37] The parties in the 2015 and 2020 claims are the same - Ms. Zhang and the Davies.

Separate and Distinct Cause of Action

[38] The 2020 claim is expressly framed as a continuation of the same nuisance arising out of the same set of facts - the only difference between the claims is that the sun has continued to rise and set following the First Decision, resulting in further harm.

[39] Ms. Zhang's position assumes not only that each day of sunshine after the First Decision gave rise to a cause of action, but that it gave rise to a cause of action separate and distinct from the cause of action litigated under the 2015 claim.

[40] It is true that a continuing nuisance remains an actionable cause of action notwithstanding delay in bringing it to litigation. However, it does not follow that bringing and concluding litigation based on a continuing nuisance is without consequence for future litigation. "Unexpired" does not mean "inexhaustible", just as "not dead" does not mean "immortal".

[41] A continuing cause of action can be exhausted by litigation. Determining whether it was exhausted by earlier litigation, requires consideration of the earlier claim, decision and award.

[42] Injunctions are not invariably awarded for nuisances, as noted by Gregory S. Pun, Margaret I. Hall & Ian M. Knapp, in *The Law of Nuisance in Canada*, 2nd ed. (Toronto: LexisNexis, 2015) at 6.321-32:

6.31 There is no categorical or automatic right to an injunction for nuisance; rather, the essential nature of nuisance as a continuing interference with property rights, that may or may not give rise to tangible damage, creates the kinds of circumstances in which an injunction is most likely to be granted where requested, unless interference is trivial in nature or an injunction cannot be justified on the balance of inconvenience.

6.32 Once interference with a plaintiff's legal rights has been established, an injunction to prevent the continuing violation of those rights is not dependent on actual damage, although the interference must be substantial and not trivial, even in the case of a trespass. Damages, where capable of assessment, will often be the more appropriate remedy where the interference or harm in question is not substantial. The determination of "substantial and unreasonable" interference for this purpose will include factors relevant to the determination of the nuisance itself, such as the character of the locale.

- [43] It is possible for an interference to constitute a nuisance, and yet not merit an injunction preventing its continuation. Thus, an injunction may or may not be sought in a given nuisance claim and, where sought, may or may not be granted.
- [44] Further, as recognized in *Sutherland v. Attorney General of Canada*, 2001 BCSC 1024 (overturned on another point: 2002 BCCA 416), a damages award made with respect to a nuisance may include damages for future harm (i.e., future interference) (at para. 312):
- [312] An appropriate measure for damages where the nuisance has interfered with the use and enjoyment of land, and is not to be enjoined, is to award damages, reflecting the past and future harm, which dispose of the matter while having the effect of legalizing the continuation of the nuisance. *Rombough v. Crestbrook Timber Ltd.* (1966), 57 D.L.R. (2d) 49 at 68, Bull J.A. held:

In the result the equitable jurisdiction allows awards as to the future, giving compensation for permanent injury once and for all. What the Court is doing, where such damages are awarded in lieu of an injunction, is making the defendant pay for a licence to commit the wrong by in effect legalizing his act. See *Mayne & McGregor on Damages*, 12th ed., para. 198; *Salmond on Torts*, 11th ed., p. 184.

- [45] The absence of an order enjoining a nuisance is not telling in and of itself. However, where an injunction was sought and denied, it can be concluded that the issue of future harm was raised before the court as an issue. Thus, it may be more readily inferred that a damages award included damages in lieu of an injunction, where an injunction was expressly sought. However, it may also be evident from the reasons or order in the earlier litigation that the damages included an award for future harm.
- [46] Where it can be concluded that the damages awarded included damages for future harm, the cause of action is exhausted and the nuisance's continuation has, in the words of Justice Bull, been effectively "licenced". Where future harm was addressed in a prior claim, the eventual occurrence of that harm cannot found a "separate and distinct" cause of action; to conclude otherwise would enable a plaintiff to sue for the same compensation twice.

Whether Addressed in First Decision

- [47] I conclude that the damages award for nuisance in the First Decision did include compensation for future interference. The trial judge specifically referenced Suzuki in determining the quantum awarded in nuisance. Notably, in Suzuki, Justice Verhoeven stated:
- [108] I will award \$4,000 to Mrs. Suzuki and \$2,000 to Mr. Suzuki as damages for nuisance. If I were not granting an injunction, the damages awarded would be significantly higher.
- [48] In Suzuki, the primary nuisance was the neighbours' noisy air conditioning unit, although the neighbours subsequently put up surveillance cameras as well. The impact was significant: the Suzukis (both avid gardeners) stopped using their yard; Mr. Suzuki slept in the far corner of the Suzuki's basement, and the nuisance was the major contributing factor in Mrs. Suzuki's development of a chronic stress disorder. The nuisance was enjoined, but the court also awarded Mrs. Suzuki (\$4000) and Mr. Suzuki (\$2000) damages in relation to the nuisance.
- [49] Here, the trial judge noted the limited, seasonal and intermittent interference caused by the glare, and awarded Ms. Zhang \$7500 in damages. She expressly noted that she had looked to the amounts awarded in Suzuki as a reference point. The glare had dramatically less impact on Ms. Zhang, than the nuisance had on Mrs. Suzuki in Suzuki. I accept that the trial judge could not have awarded \$7500 to Ms. Zhang without having included in that award an amount for future harm.
- [50] In my view, the Court of Appeal reached the same conclusion. The Court's conclusion that \$7500 was a reasonable award in the absence of an injunction implicitly acknowledged that the amount awarded did include compensation for future harm.
- [51] With respect to Peace Portal, the court there was speaking theoretically about what the plaintiff might have done back in the 1950s and 1960s, as opposed to what the plaintiff actually did. The decision does not provide any details or analysis regarding the type of periodic claims in contemplation. Arguably, the court was contemplating intermittent suits involving discrete claims for past damage. In any event, the court did not address whether these hypothetical suits would have included claims for, or resulted in awards including, damages for future harm.
- [52] Here, the 2015 claim expressly sought an injunction and the reasons indicate an award of damages for future harm was made in lieu. The plaintiff's cause of action in nuisance based on the glare has been exhausted.

Chaudière

[53] The Purchasers and the Davies rely on Chaudière to argue that the glare does not arise from continuous (i.e., repetitive) acts, and thus the facts here involve continuing harm as opposed to continuing nuisance. I find it unnecessary to address these arguments. Assuming, without deciding, that the roof glare is a continuing nuisance, the 2020 claim is struck in any event.

Purchasers and Privity

[54] The question of whether the Purchasers are privies of the Davies for purposes of *res judicata* and similar doctrines is not before me. The Purchasers are participating here as interested parties to Ms. Zhang's claim against the Davies: see the Supplementary Reasons for Judgment attached as Schedule "A" to these Reasons.

[55] That said, I note that my conclusion regarding the damages award made in the First Decision is that Ms. Zhang has already been compensated for the harm caused by the glare now emanating from the Purchasers' property.

Disposition

[56] The application to strike the 2020 claim is allowed under Rule 9-5(1)(d), on the basis that merger in the judgment, or alternatively, cause of action estoppel, render the claim an abuse of process. The 2020 claim is struck in its entirety.

[57] I am not satisfied that Ms. Zhang filed the 2020 claim to extract concessions from the Davies and/or the Purchasers in order to complete the sale. Notably, Ms. Zhang did not withdraw her claim after the sale, and defended it on its merits at this application.

[58] Rule 9-5 provides the court "may order the costs of the application [to strike] to be paid as special costs". I am of the view that Ms. Zhang has done nothing reprehensible: *Gulf Coast Materials Ltd. v. British Columbia (Minister of Jobs, Tourism and Skills Training)*, 2016 BCSC 980 at paras. 55-59. She advanced a legal argument in support of the 2020 claim that was rejected, but which was grounded in an established line of authority. Neither the Davies nor the Purchasers put before the court binding case law indicating Ms. Zhang's position was so clearly without merit that she ought not to have pursued it.

[59] The Davies will have their costs, but the order for special costs is denied.

[60] The Purchasers will bear their own costs.

"Tucker, J."

Schedule "A"

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Zhang v. Davies,

2020 BCSC 1549

Date: 20201022

Docket: S201843

Registry: Victoria

Between:

Li Zhang

Plaintiff

And

Benjamin Daniel Davies and Erin Naomi Richelle Davies

Defendants

And

Steven Kelly Melnick and Kerry Angelina Marshall

Defendants

Supplementary Reasons to Zhang v. Davies, 2020 BCSC 1301

Before: The Honourable Madam Justice Tucker

Supplementary Reasons for Judgment

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K. Hamilton

D. Melnick

Place and Dates of Correspondence received from Counsel:

Victoria, B.C.

September 11 and

October 16, 2020

Place and Date of Supplementary Judgment:

Victoria, B.C.

October 22, 2020

- [1] Following issuance of my reasons for judgment indexed as 2020 BCSC 1301 (the "decision") on September 2, 2020, counsel for Mr. Melnick and Ms. Marshall (collectively, the "Purchasers") wrote to Supreme Court Scheduling indicating that the parties agreed that there were errors in the decision and that these should be corrected.
- [2] As the Purchasers were added to the existing claim on their own motion, I assumed they were joined as "interested parties". In fact, they were added as "defendants" to this action (the order adding them was not entered until after the hearing).
- [3] The style of cause, appearances, and paragraphs 3 and 54 of the decision all refer to the Purchasers as interested parties. The style of cause, appearances, and paragraph 3 are corrected accordingly. Also, Ms. Marshall's name in the style of cause is corrected by removing "Erin" as her first name.
- [4] At paragraph 54, however, the error forms part of the legal reasoning. In that paragraph, I declined to determine whether the Davies and the Purchasers were privies for purposes of res judicata because the Purchasers were only interested parties.
- [5] I sent a memorandum to the parties advising that the error in paragraph 54 would require supplementary reasons to be issued and raising the issue of further submissions. Counsel for the Purchasers wrote advising that none of the parties wished to make further submissions.
- [6] At the hearing, the Davies and the Purchasers submitted that the plaintiff, Ms. Zhang's 2020 claim was res judicata, and the Purchasers further submitted they were privies of the Davies for purposes of res judicata.
- [7] I concluded that the doctrine of merger applied to foreclose Ms. Zhang's 2020 claim against the Davies as the damages awarded to Ms. Zhang in 2017 included compensation for future harm. The unaddressed question is what, if any, impact those findings have with respect to the Purchasers as defendants.
- [8] Ms. Zhang received compensation for future glare in 2017. Claiming against the Purchasers in nuisance under the 2020 claim is seeking to be compensated twice over for the same glare over the same period of time. A plaintiff is not entitled to seek tort damages twice for the same injury. The 2020 claim is effectively identical to the 2017 claim. The First Decision is a final decision. Ms. Zhang has already been fully compensated for the glare.

- [9] The 2020 claim as against the Purchasers is vexatious and allowing it to proceed would bring the administration of justice into disrepute. I am satisfied that the claim as against the Purchasers constitutes a clear abuse of process by way of re-litigation in accordance with the law as outlined by Justice Voith (as he then was) in *British Columbia (Director of Civil Forfeiture) v Sanghera*, 2017 BCSC 1519 at paras. 74-86.
- [10] Accordingly, the 2020 claim as against the Purchasers is struck as an abuse of process. As abuse of process does not require privity, it remains unnecessary to determine whether the Davies and the Purchasers are privies.
- [11] Although the Purchasers are defendants, they were added as such on their own motion. In my view, it remains appropriate for them to bear their own costs.

"Tucker J."

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Prepared on 26 October 2026 · Esheria