

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Vorselaars v. Tracey Family Trust*,
2026 BCSC 959

Date: 20260527
Docket: S2510227
Registry: Victoria

Between:

Charles Vorselaars

Plaintiff

And:

**Tracey Family Trust and
Vortech Plumbing & Drainage (2022) Inc.**

Defendants

And:

Shoretech Contracting Inc.

Defendant by Counterclaim

Before: The Honourable Justice LeBlanc

Reasons for Judgment

The Plaintiff, appearing in person:

C. Vorselaars

Counsel for Defendants:

L. Babbitt

Place and Date of Hearing:

Victoria, B.C.
April 13, 2026

Place and Date of Judgment:

Victoria, B.C.
May 27, 2026

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Introduction

[1] The defendant, Tracey Family Trust (the “Tracey Trust”), applies to set aside a default judgment made on May 1, 2025 (the “Default Judgment”). The Default Judgment awarded the plaintiff damages to be assessed.

[2] The underlying claim arises from the 2022 sale of the assets of Vortech Plumbing & Drainage Inc., a plumbing business operated by the plaintiff.

[3] The plaintiff is opposing the relief sought by the Tracey Trust on the following grounds:

- a) the Tracey Trust deliberately did not file its response to civil claim on time;
- b) the Tracey Trust did not show an intent to file a response to civil claim within the prescribed time period;
- c) this application was not brought in a timely manner; and
- d) the Tracey Trust has no valid defence to the claims.

[4] For the reasons that follow, I find it just to exercise my discretion in favour of the Tracey Trust, by setting aside the Default Judgment.

Background Facts

The Asset Purchase Agreement and the Shareholders’ Agreement

[5] The dispute between the parties concerns the interpretation of an asset purchase agreement dated September 26, 2022, among Vortech Plumbing & Drainage Inc., as vendor (the “Original Co.”), Vortech Plumbing & Drainage (2022) Inc., as purchaser (the “NewCo”), the plaintiff, as covenantor, and David Tracey, as purchaser guarantor (the “APA”), and a September 26, 2022 shareholders agreement among the plaintiff, the Tracey Trust and NewCo (the “SA”).

[6] In simple terms, the dispute concerns whether the plaintiff devoted sufficient time and effort to the business and whether he was in a position to exercise a put option provided for in the SA.

[7] The plaintiff alleges that he was legally entitled to exercise the put option when and in the manner that he did, and the Tracey Trust has failed in its contractual duties to him.

[8] The Tracey Trust on the other hand argues that the plaintiff was in breach of the APA and SA and was not entitled to exercise the put option. Further, the Tracey Trust argues that if the plaintiff was entitled to exercise the put option, he did not do so in the manner required by the APA and SA.

[9] The APA provided, *inter alia*, that:

- a) NewCo would be incorporated to purchase the assets;
- b) NewCo would pay \$1,500,000 for the shares of Original Co. which was funded by Mr. Tracey through the Tracey Trust;
- c) the plaintiff would be issued shares in the NewCo representing 43% and the Tracey Trust would be issued shares representing 57%;
- d) the parties would enter into the SA, which granted the plaintiff a put option to sell his shares two years after closing of the asset purchase; and
- e) the plaintiff would enter into an employment agreement with NewCo.

[10] The plaintiff delivered notice of the put option on October 1, 2024. I make no findings on the merits of whether the plaintiff exercised the put option in accordance with the APA or the SA.

[11] The closing date for the put option was set by the plaintiff as November 30, 2024. The Tracey Trust alleges deficiencies in setting the closing date. Again, I make no findings on the merits of this issue.

[12] On or about November 29, 2024, the plaintiff's lawyer delivered to Mr. Tracey a promissory note and director's resolution to approve the share transfer.

[13] Nothing occurred between the parties on November 30, 2024, including transfer of the plaintiff's shares although the plaintiff asserts that he was ready, willing and able to complete. The Tracey Trust asserts that the closing documents were not delivered as required by the SA and submits that the promissory note delivered was deficient and anticipated a payment of \$10,599,999.84.

[14] Mr. Tracey says that he raised the issue of the promissory note and put option with the plaintiff who advised that he would investigate. A revised promissory note was delivered on December 17, 2024. The position of the Tracey Trust remained the same – that the plaintiff was not entitled to exercise the put option and that the financial standing of the NewCo had to improve before the put option could be exercised.

[15] On December 17, 2024, the plaintiff followed up with Mr. Tracey requesting an update on the first payment.

[16] Further discussions concerning operations of the NewCo and put option payment occurred through the end of 2024 and into 2025. Some discussions were facilitated with the assistance of the corporate solicitor.

Events Surrounding the Default Judgment

[17] On March 13, 2025, the plaintiff emailed Mr. Tracey to put him on notice that he has instructed his lawyer to file a claim against the Tracey Trust. In his email, the plaintiff confirmed that he remained open to a constructive resolution and would like to avoid shared legal costs.

[18] On April 2, 2025, the plaintiff emailed Mr. Tracey outlining a number of proposals for resolving the dispute and closes by advising Mr. Tracey that "the claim will still be presented and filed to ensure we're in the queue, but it can be modified or withdrawn at any time if we reach an agreement".

[19] On April 3, 2025, Mr. Tracey says he had a conversation with the plaintiff and was advised by the plaintiff that he was filing the claim to protect his interests and that he did not intend to push things along expeditiously. During this same meeting, Mr. Tracey says he advised the plaintiff that he would need some time to hire a lawyer and respond to the claim and the plaintiff did not object to this. Mr. Tracey's position is that he communicated to the plaintiff that he opposed the relief sought in the notice of civil claim and would file a response once he was able to retain a lawyer.

[20] On April 7, 2025, Mr. Tracey, as representative of the Tracey Trust, was served with the notice of civil claim. The evidence supports that Mr. Tracey was working on financing at this time so that he could provide a retainer for a lawyer.

[21] Between April and July 2025, email messages exchanged between the plaintiff and Mr. Tracey evidence an ongoing discussion concerning the future of NewCo, and an exit strategy for the plaintiff including the possibility of refinancing. During these discussions, the plaintiff does not advise Mr. Tracey that he intends to take default proceedings or that a response to civil claim would be required.

Mr. Tracey's attempts to retain legal counsel and default judgment

[22] Mr. Tracey has put into evidence his attempts to obtain a home equity line of credit or a reverse mortgage to finance the litigation. The communication starts in early April 2025. By June 2025, Mr. Tracey had obtained financing with RBC.

[23] On or around May 16, 2025, Mr. Tracey received a copy of the default judgment in the mail. He submits that he did not understand it or what he needed to do and intended to discuss it with legal counsel, once retained. Mr. Tracey was not given notice that the plaintiff or the plaintiff's legal counsel that default was going to be taken out against him.

[24] Between June and July 2025, Mr. Tracey reached out to five law firms seeking representation. The first four firms were unable to assist.

[25] On July 21, 2025, Mr. Tracey, on behalf of the Tracey Trust, retained legal counsel.

Setting down this application

[26] Once retained, counsel for the Tracey Trust engaged counsel for the plaintiff wherein they discussed the Default Judgment, and the intention to apply to set it aside. The parties then entered into further discussions concerning a global resolution. When those discussions fell apart, the Tracey Trust proceeded to set down this application, which was further delayed accommodating party/counsel availability.

Response to Civil Claim, Counterclaim and Response to Counterclaim

[27] On February 6, 2026, Vortech Plumbing & Drainage (2022) Inc. filed its response to civil claim and Vortech Plumbing & Drainage (2022) Inc. and the Tracey Trust filed a counterclaim against Shoretech Contracting Inc. and the plaintiff, although the filed Counterclaim appears to omit the plaintiff in the style of cause as a defendant by counterclaim.

[28] On March 2, 2026, the plaintiff and Shoretech Contracting Inc. filed their response to counterclaim.

Applicable Legal Principles

[29] Pursuant to Rule 3-8(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, a plaintiff may seek a default judgment where the time for filing a response to a notice of civil claim has expired. A party may seek default judgment with an assessment of damages to occur pursuant to Rule 3-8(5).

[30] There is no dispute that the plaintiff obtained default judgment pursuant to Rule 3-8(5).

[31] Rule 3-8(11) provides the court with the jurisdiction to set aside a default judgment.

[32] *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58, provides the following non-exhaustive factors which may be considered in setting aside a default judgment:

- a) whether a defendant willfully or deliberately failed to enter an appearance or file a defence to a plaintiff's claim;
- b) whether the defendant applied to set aside the default judgment as soon as reasonably possible after obtaining knowledge of the default judgment, or provided an explanation for any delay in doing so; and
- c) whether the defendant has a meritorious defence or at least a defence worthy of investigation.

[33] The foregoing factors are to be established to the satisfaction of the court through affidavit material filed on behalf of the defendant. Furthermore, it is not necessary to apply each factor in considering an application to set aside a default judgment, although in most cases they provide appropriate indicators of whether it is in the interests of justice to set aside a default judgment: *Robinson Estate v. Wolsey*, 2018 BCSC 2287 at para. 21, referring to *Andrews v. Clay*, 2018 BCCA 50 at para. 29.

Discussion

Did the Tracey Trust willfully or deliberately fail to file a response to civil claim?

[34] In *Tiamzon v. Vandt*, 2020 BCSC 587, Justice Sharma summarized general conditions of when the court may or may not infer willfully or deliberate conduct:

[21] When a defendant decides not to defend an action or chooses to simply ignore it, the court will generally infer that the party willfully and deliberately failed to enter an appearance or file a defence. However, if there is evidence of steps taken during the time limit for filing a statement of defence, which are inconsistent with the inference that the party was simply ignoring their obligation, then the court need not draw such an inference: *Daum v. Elko*, 2009 BCSC 349 at para. 6.

[35] With respect to the question of whether the Tracey Trust willfully or deliberately failed to file a response to the notice of civil claim, in the circumstances, I do not find that to be the case. The evidence establishes that the plaintiff was aware that the Tracey Trust was planning to file a response to civil claim and was working on obtaining financing to retain legal counsel. Further, I am satisfied on the evidence that the plaintiff communicated to Mr. Tracey that he was content to continue discussing a resolution to the dispute and was not going to pursue his claim with expediency. In my view, in those circumstances, it was reasonable for Mr. Tracey to believe that the plaintiff would not seek to take default judgment against the Tracey Trust, while active discussions were ongoing.

[36] Further, when the Default Judgment was issued, the plaintiff was represented by counsel, whereas the Tracey Trust was not. For reasons not explained, no notice was sent to Mr. Tracey that the plaintiff intended to take default if a response to civil claim was not filed by a certain period of time.

[37] The Court of Appeal in *Forgotten Treasures International Inc. v. Lloyd's Underwriters*, [2020] B.C.J. No. 1943 at para. 17 quoted the authors of *McLachlin & Taylor, British Columbia Practice*, 3d ed., loose-leaf (consulted on November 9, 2020), (Markham: LexisNexis Canada Inc., 2006) at 3-138:

As a matter of professional courtesy, counsel for a plaintiff should not take out default judgment without warning the defendant or defendant's counsel of his intention to do so unless a notice of response is filed and served within a statement time.

[38] In the absence of notice, I find Mr. Tracey's belief that a response to civil claim was not required while discussions were occurring was a reasonable one and does not constitute willful or deliberate conduct.

Did the Tracey Trust apply to set aside the default judgment as soon as reasonably possible or explain the delay?

[39] The Tracey Trust was served with the default notice on May 16, 2025, and the application to assess damages was scheduled to be heard on June 26, 2025.

[40] There was some delay in bringing this application, but I find the delay to be reasonably explained.

[41] Between May and July 2025, Mr. Tracey was actively involved in obtaining financing so that he could retain legal counsel on behalf of the Tracey Trust. This was communicated to the plaintiff without the plaintiff objecting.

[42] In July 2025, counsel for the Tracey Trust reached out to counsel for the plaintiff and further without prejudice discussions occurred. While the plaintiff submits that the court should not endorse this delay, it was apparent that the plaintiff was aware that the Tracey Trust intended to apply to set aside the Default Judgment if a settlement was not reached.

[43] I do not find that there was inordinate delay between the time Tracey Trust became aware of the Default Judgment and the time it took to communicate that it would apply to set it aside. The evidence establishes that approximately two months elapsed between the date the Tracey Trust was served with the Default Judgment and the date counsel for the Tracey Trust reached out to counsel for the plaintiff to discuss an application to set aside it aside. While this application took much longer to schedule, that delay was to accommodate counsel and court availability, and is not attributable to delay on the part of the Tracey Trust.

Does the Tracey Trust have a meritorious defence?

[44] An applicant who seeks to set aside a default judgment must show that it has a defence that is “worthy of investigation”. This means that a defendant who seeks to set aside a default judgment must file some evidence that supports the defence it wishes to advance: *Forgotten Treasures* at para. 29.

[45] The chambers judge is not to engage in a searching, extending, or detailed weighing of the evidence and the threshold is not onerous: *Forgotten Treasures* at para. 30.

[46] Mr. Tracey has filed a lengthy affidavit in support of his application to set aside the Default Judgment. The affidavit addresses in sufficient detail the defence sought to be advanced. It outlines Tracey Trust's position on interpretation of the APA and the SA and the plaintiff's unavailability to exercise the put option.

[47] The APA is a 182-page document, and the SA is a 58-page document. While I was directed to portions of the document to support the respective parties' positions, determination of the issues between the parties will require interpretation of the APA and SA within the context of the evidence, which each party should be afforded an opportunity to test through examinations for discovery or cross-examination. I am not to engage in a weighing of the evidence at this time.

[48] I find that the Tracey Trust has established it has a defence worthy of investigation which supports setting aside the Default Judgment.

Conclusion

[49] In all of the circumstances, I do not find that it is in the interests of justice to allow the Default Order to stand and I would set it aside.

[50] Costs of this application will be to the Tracey Trust as costs in the cause.

LeBlanc, J.