

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *1114136 B.C. Ltd. v. Grewal*,
2026 BCSC 914

Date: 20260430
Docket: S07064
Registry: Abbotsford

Between:

1114136 B.C. Ltd.

Appellant

And

Avninder Grewal

Respondent

Before: The Honourable Justice Fowler

On appeal from: An order of the Provincial Court of British Columbia dated
March 4, 2025 (Abbotsford Registry, File Number ABB-P-C-24447).

Oral Reasons for Judgment

(In Chambers)

Counsel for the Appellant: M. Nied

Counsel for the Respondent: M. Cedrone

Place and Date of Hearing: Abbotsford, B.C.
April 30, 2026

Place and Date of Judgment: Abbotsford, B.C.
April 30, 2026

[1] **THE COURT:** The appellant, 1114136 B.C. Ltd., appeals a small claims court decision ordering the company to pay the respondent, Mr. Grewal, "the amount sought with respect to the removal and reconstruction of a retaining wall. The appropriate amount of money owed is currently secured with the Court." I understand that amount is \$25,380.28.

[2] The claim of Mr. Grewal was originally filed in small claims court on January 8, 2021. It essentially pleads that the seller of a lot failed to disclose that a retaining wall and fence encroached onto the property. The notice of claim ("NOC") was amended twice, ultimately providing particulars of the claim in a schedule attached to the NOC.

[3] The schedule reiterates that the claim is about the appellant representing to the City of Abbotsford that a retaining wall was built in the correct location when, in fact, the retaining wall, constructed by the appellant, was encroaching on the claimant's property and interfering with footings of his prospective home.

[4] The essential claim of Mr. Grewal is as follows -- albeit that it was set out in the schedule to the NOC under the heading "Damages": as a result of his reasonable reliance on the defendant's misrepresentations, Mr. Grewal purchased the property, and then paid for the entire cost of relocating the retaining wall to the correct location. Mr. Grewal pleaded that he would not have sustained such losses but for the misrepresentations made by the appellant.

[5] When the matter came on for trial in January 2025, Mr. Grewal's case had changed from an allegation that a retaining wall was encroaching onto the subject property to an allegation that the appellant had misrepresented to Mr. Grewal that the "lot line setback in the contract of purchase and sale had been changed from 1.2 to 1.79 metres."

[6] Mr. Grewal argued that the appellant had represented that the property was zoned RS-5, zoning which requires a minimum setback of 1.2 metres pursuant to s. 370 of the City of Abbotsford zoning bylaw. I understand Mr. Grewal testified that

no one had disclosed to him that the setback for this property, although properly referred to as "zone RS-5", had changed from 1.2 metres to 1.79 metres. Mr. Grewal submitted that the appellant knew this and failed to disclose it to him.

Small Claims Court - Reasons for Judgment

[7] After two days of evidence, the Honourable Judge P. Nijjar (the "Trial Judge") made the following findings of fact:

1. The claimant made attempts to contact the defendant and that the defendant did not respond before the proceeding was initiated and before the claimant took down and then reconstructed the retaining wall at his expense. This is despite evidence that the defendant was aware that the wall had been taken down and that the claimant was raising concerns about the lot and the location of the retaining wall;
2. The lot purchased by the claimant in the subject of the contract and purchase of sale and this litigation zoned RS-5 and should have included a setback of 1.2 metres approximately;
3. The amended grading plan provided to the claimant in November 2020, has measurements consistent with a setback of approximately 1.8 metres. The defendant should have been aware of these measurements and of the actual setback for this and had a duty to disclose this information to the claimant;
4. I also find as fact that the claimant exercised sufficient due diligence.

[8] The Trial Judge did not apply these findings to the elements of any tort or assess damages. The Trial Judge simply concluded that "the defendant is responsible for paying the claimant the amount sought with respect to the removal of the retaining wall."

Grounds of Appeal

[9] The appellant has raised several grounds of appeal. The most significant ground is that the Trial Judge erred in law in concluding that the cause of action of negligent misrepresentation was met in the absence of any factual findings to support it.

Analysis

[10] Despite being represented by counsel, the claimant, Mr. Grewal, did not place before the small claims court any case law setting out the elements of the tort of negligent misrepresentation.

[11] The tort of negligent misrepresentation has long been an established principle of Canadian tort law. In *Queen v. Cognos Inc.*, [1993] 1 S.C.R 87, 1993 CanLII 146 (S.C.C.) at page 108, Justice Iacobucci reaffirmed the elements of this tort:

[...] (1) there must be a duty of care based on a "special relationship" between the representor and the representee; (2) the representation in question must be untrue, inaccurate, or misleading; (3) the representor must have acted negligently in making the misrepresentation; (4) the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

[12] As I said earlier, the Trial Judge did not analyze the facts with reference to any of the elements of this tort. I recognize that the challenge for the Trial Judge was significant. The exact nature of the alleged misrepresentation was never clear. It was first pleaded to be about the location of a retaining wall and ultimately argued to be about the appellant's knowledge of the specific building setback required by RS-5 zoning for the lot. Without knowing with precision what was alleged to have been misrepresented by the appellant, the Trial Judge was never in the position of being able to assess whether the appellant's representations were untrue, inaccurate, or misleading, or that the appellant had acted negligently in making any such representations.

[13] As pointed out by the appellant, it was also a live issue as to whether the appellant owed the claimant Mr. Grewal a duty of care in the circumstances of a complex contract of purchase and sale. It is noteworthy that Mr. Grewal and the appellant specifically agreed that "there are no representations, warranties, guarantees, promises, or agreements," other than those set out in the contract. For example, Mr. Grewal agreed that he would investigate, to his own satisfaction prior to all buyer's subject clauses being fulfilled or removed, any questions or concerns regarding property size, property boundaries, zoning, usage, or environmental restrictions.

[14] It is very likely, in my view, that the disclaimer clause referred to above was a complete defence to Mr. Grewal's claim: *Kokanee Mortgage M.I.C. Ltd. v. Burrell*, 2018 BCCA 151, at paras. 40 and 41.

[15] The most difficult issue for Mr. Grewal was establishing that he reasonably relied upon any misrepresentations made by the appellant about the setback requirements on the property. During the trial, Mr. Grewal relied upon the decision in *Ball v. Gutschenritter*, [1925] S.C.R 68, 1924 CanLII 40 (S.C.C.) for the following legal principle at page 72:

The general principle is that the vendor, who is presumed to know the state of his title, must inform the purchaser of all material defects in his title which are within his exclusive knowledge, and which the purchaser could not be expected to discover for himself with the care commonly used in such transactions and with the opportunities of investigation available to him.

[16] The lot being purchased by Mr. Grewal had attached to its title an instrument referred to as a "lot grading control covenant," which prohibits construction on the land in any manner whatsoever, "unless it is consistent with the approved as-built lot grading plan of Wedler Engineering, that was acceptable to the city's general manager of engineering and available for viewing on the city's internet website or during regular business hours".

[17] I understand from reviewing the evidence at the trial that the nub of the dispute between the parties was whether or not the appellant knew that the Wedler

Engineering plan, attached to the lot grading control covenant, required a 1.79 metre setback, even though the property was zoned RS-5 and usually required a 1.2 metre setback, and whether the appellant negligently misrepresented the setback to the claimant, who then relied upon it to his detriment.

[18] Leaving aside the issue of whether there was any misrepresentation and/or whether it was negligent, and whether or not the applicable law is the elements of the tort of negligent misrepresentation or the principles set out in *Ball* that a vendor must disclose to the purchaser defects in his title which he is presumed to know, in the face of the ease with which the purchaser, Mr. Grewal, could have discovered the Wedler Engineering grading plan referred to in the lot grading covenant which was filed in October 2018, before the contract of purchase and sale was signed, and the terms of the contract of purchase and sale that specifically directed the purchaser to satisfy himself as to all zoning regulations and all charges against the title of the property, I am satisfied that any reliance by Mr. Grewal on representations of the appellant was not reasonable.

[19] In addition, subparagraph (I) of the contract of purchase and sale indicates that Mr. Grewal was satisfied with the size, dimensions, suitability, and layout of the property, and he acknowledged that the measurements of the property as shown on an attachment to the contract were approximate and subject to change. Mr. Grewal further acknowledged to being satisfied with the location of the property and how the “property may be affected by influences not readily noted, such as flood plain, municipal, and transportation infrastructure, agricultural land reserve, green zone, current and future zoning, or other influences that may affect the property's use or value”.

[19] The contract was also subject to Mr. Grewal obtaining legal and/or professional advice concerning all aspects of the contract of purchase and sale. There are other specific subject clauses all to the benefit of the purchaser, Mr. Grewal, including, for example, grading.

[20] In all the circumstances, any reliance by Mr. Grewal on the appellant's representations or misrepresentations would not have been reasonable.

[21] I am satisfied that the Trial Judge did not consider the elements of the tort of negligent misrepresentation or make findings of fact that could have satisfied all the elements of the tort. For example, it is entirely unclear from the Trial Judge's reasons what the appellant is alleged to have misrepresented to the claimant or how the appellant made any misrepresentations negligently.

[22] It is also unclear how a finding that Mr. Grewal acted with due diligence, considered in the face of the subjects and other clauses in the contract of purchase and sale, established that he reasonably relied on representations by the vendor.

[23] The comments of the Ontario Court of Appeal in *Martin-Vandenhende v. Myslik*, 2012 ONCA 53, at para. 15, are apposite:

A trial judge has an obligation to make factual findings on conflicting evidence with respect to material facts that were essential to a proper determination of the issues before him or her. As Denning L.J. observed, in *Jones v. National Coal Board* [...] it is the judge's role "at the end to make up his mind where the truth lies." This Court expressed a similar sentiment a year earlier when it said that a trial judge "must make the findings of fact that enable the Court to say whether or not there is liability involved" [...] The fact-finding exercise in itself brings a certain discipline and rigour to a trial judge's analysis of the evidence and guards against imprecise thinking and the risk of a case being decided on the basis of facts that were not actually found.

Conclusion

[24] I am satisfied that the appeal must be allowed. The Trial Judge erred in law by failing to apply any findings of fact to the legal elements of any known tort. I accept the respondent's argument that small claims court proceedings are intended to be informal and efficient and that reasons are not to be judged to a standard of perfection. However, parties are still entitled to a trial which conforms to principles of law. Remedies and damages are not granted unless a valid claim in law has been proven.

[25] The next issue is remedy. The appellant says that the claim should be dismissed. The respondent says a new trial should be ordered, a new trial which

would have to take place in the Supreme Court: *Gaboury v. Ansell*, 2022 BCSC 2079.

[26] I am satisfied having reviewed the evidence from the trial that it is not in the interests of the parties to order a new trial. The claim is for \$25,000. The pleadings are deficient in many respects. Most importantly, I am satisfied that given the terms of the contract of purchase and sale and the ready availability of information in the covenant governing lot grading and, therefore, the setback required for this particular lot, Mr. Grewal would not be able establish that his reliance on anything said or done by the appellant was reasonable. I dismiss the claim.

[SUBMISSIONS RE COSTS]

[27] THE COURT: The traditional rule is the successful party receives their costs and disbursements. This is not a situation in which in any respects success has been divided. I think the appellant is entitled to costs and the disbursements, and, of course, the disbursements involve the preparation of the transcript, so there will be an order for costs and disbursements to the appellant.

“The Honourable Justice Fowler”