

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Synergaze Inc. v. Royal Canadian Marine
Search and Rescue Inc.*,
2026 BCSC 1322

Date: 20260715
Docket: S259011
Registry: Vancouver

Between:

Synergaze Inc.

Petitioner

And

Royal Canadian Marine Search and Rescue Inc.

Respondent

Before: The Honourable Madam Justice Burke

Reasons for Judgment

Counsel for the Petitioner:

E.W. Hulshof

Counsel for the Respondent:

C.A. Siver
S. Constantine

Place and Date of Hearing:

Vancouver, B.C.
February 9-11 and 13, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 15, 2026

Introduction

[1] The petitioner, Synergaze Inc. (“Synergaze”), entered into a lease agreement dated May 1, 2021 (the “Lease”) with the respondent, Royal Canadian Marine Search and Rescue Inc. (“RCM Search and Rescue”), for commercial property in Sooke, British Columbia, on which Synergaze operates a seaweed aquaculture facility.

[2] While initially this agreement proceeded smoothly, in 2025, the parties appeared before the Court after RCM Search and Rescue purported to terminate the Lease. The Court in that case concluded the Lease was in full force and effect, granted the petitioner quiet enjoyment of the leased property and awarded the petitioner costs of the proceeding.

[3] Matters did not however improve. Following the initial litigation, RCM Search and Rescue attempted once more to terminate the Lease, citing nonpayment of rent. The parties are again before the Court. Synergaze brings the current petition to maintain what it says is the “commercially sensible interpretation” of the Lease, and to prevent RCM Search and Rescue from compromising its business operations. It says RCM Search and Rescue’s most recent attempt to terminate the Lease is improperly based on an interpretation which the Court rejected in 2025.

[4] The petitioner again seeks a declaration that the Lease remains in full force and effect; a declaration that the monthly rate of rent owed by Synergaze to RCM Search and Rescue under the Lease from the period of May 1, 2024, to the present inclusive is \$1,000 per month plus applicable taxes; and a declaration that Synergaze’s costs awarded in the previous matter be applied against any rent owed by Synergaze to RCM Search and Rescue.

[5] In addition, Synergaze seeks orders that it be granted a right of first refusal to purchase the leased property; an order that Synergaze be granted quiet enjoyment of the leased property; and costs of this proceeding.

[6] The background is summarized in part as follows.

Background

[7] The owner-operator of Synergaze, Ms. Tamara Loiselle, attested to the fact the company has developed a seaweed-based feed supplement that when added to cattle feed, significantly reduces enteric methane in cattle. Its business requires a land-based seaweed aquaculture facility for growing, processing and researching seaweeds as well as for marine waterlines that will draw water from the ocean into the aquaculture facility.

[8] RCM Search and Rescue is a volunteer-based non-profit marine search and rescue organization operating out of thirty coastal communities throughout the province. It owns property located at 6040 East Sooke Road, Sooke, British Columbia (the “Leased Property”), which as noted above is leased to Synergaze for its business operations.

[9] The Leased Property is located in T’Sou-ke First Nation traditional territory and is also in the agricultural land reserve. T’Sou-ke First Nation holds an aquaculture tenure that runs along the shoreline of the property. The nation has entered into a partnership with Synergaze as part of the nation exercising those rights and it is a shareholder in Synergaze.

[10] Ms. Loiselle attested that after a years-long search for suitable oceanfront land that was located in the agricultural land reserve and available for lease, Synergaze and the T’Sou-ke First Nation identified the Leased Property as desirable and communicated to RCM Search and Rescue that Synergaze wished to lease 10 to 12 acres of the property as well as a building on the premises (the “Seascape Cottage”), for the purpose of developing Synergaze’s land-based seaweed aquaculture facility.

[11] As noted, the parties entered the Lease on May 1, 2021, which was drafted by RCM Search and Rescue’s then solicitor. The Lease separated the term into three stages: Stage 1 Term, Stage 2 Term, and Stage 3 Term, and permitted the petitioner to graduate up the stages on conditions expressed in the Lease. The portion of the property leased to Synergaze increased with each term, starting with

a specified amount in Stage 1 which increased to three acres in Stage 2 and the full 10–12 acres in Stage 3. The rent owed under each stage also increased accordingly, with a base rent of \$1,000 per month plus taxes for Stage 1, \$3,000 per month plus taxes for Stage 2, and \$6,000 per month plus taxes for Stage 3.

[12] The parties' relationship began to sour, culminating in an attempt by RCM Search and Rescue to terminate the Lease in March 2024. Prior to that, Synergaze alleged RCM Search and Rescue had continually interfered with its use and quiet enjoyment of the Leased Property, while RCM Search and Rescue complained that Synergaze failed to renew the Lease in the manner prescribed by their agreement. These disagreements ultimately led Synergaze to bring a petition before this Court which was heard and granted by Justice LeBlanc in reasons indexed at 2025 BCSC 1213. Some additional facts leading up to the first petition were set out by the Court as follows:

[8] The Stage 1 Term of the Lease commenced on May 1, 2021, and ended on April 30, 2024.

[9] On December 3, 2021, Bill Riggs in his capacity as CEO of the respondent, wrote to the BC Ministry of Forests, Lands, National Resource Operations and Rural Development confirming it has signed the Lease, that the Lease will be extended as needed and that the respondent is fully supportive of the petitioner's water pipe utility application.

[10] On June 2, 2023, Mr. Riggs wrote to Tamara Loiselle, advising that the Lease will end on May 1, 2024 and proposed a licensing agreement in its place. Mr. Riggs expressed concern that the Lease was not compliant with the Land Title Act.

[11] On June 7, 2023, Ms. Loiselle responded to Mr. Riggs advising that the petitioner does not wish to surrender the Lease.

[12] Mr. Riggs responded on June 9, 2023 advising that he was not suggesting a renegotiation of the Lease; however, he stated there is a need to move to a licensing agreement to ensure that the arrangement is permissible under the Land Title Act.

[13] On June 9, 2023, Ms. Loiselle responded advising legal advice confirmed the Lease is legal and enforceable and there was no requirement to change to a licensing agreement.

[14] On November 27, 2023, counsel for the respondent wrote to Ms. Loiselle attaching a draft licensing agreement citing concerns that the Lease violates s. 73(1) of the Land Title Act and asking for a response no later than December 15, 2023.

[15] On March 11, 2024, counsel for the respondent wrote a further letter to Ms. Loiselle advising that the Lease will expire on April 30, 2024 as notice of a renewal was not delivered at least 3 months prior to the expiry of the Lease. RCM Search and Rescue then demanded vacant possession of the Leased Property by May 1, 2024.

[16] On March 15, 2024, Tamara Loiselle, on behalf of the petitioner, emailed representatives of the respondent providing notice to graduate to the Stage 2 Term of the Lease. The relevant portions of that email are as follows:

...

Synergraze is now exercising its rights pursuant to Sections 1.3 and 1.5 of the executed lease to graduate to Stage 2 of the lease. The next stage clearly outlines the lease rate per month, and that the first term is for 5 years, with two renewal 5 year term options. We suggest that the first date of the Stage 2 term begin on May 1, 2024. Please advise if that date will not work for RCMSAR.

...

[17] A further notice was sent to the respondent by the petitioner on March 28, 2024. It read, in part, as follows:

...

The Tenant hereby provides notice to the Landlord of its intention to exercise, and hereby exercises, their option to graduate to Stage 2 of the Lease for the Stage 2 Term, commencing on May 1, 2024 and expiring April 30, 2029.

[18] On April 11, 2024, counsel for the respondent confirms its position that the Lease is terminated on April 30, 2024 and states its position with respect to notice as follows:

...

In your client's March 28, 2024 letter, Synergraze purports to be delivering notice of an intent to move to "Stage 2" of the agreement. The underlying agreement to rent access to our client's property is separate from the concept of stages. The stages are with regard to the intensity of the use your client wishes to put the rented property. The notice to move from Stage 1 to Stage 2 or from Stage 2 to Stage 3 requires an underlying agreement in order to be effective. As your client failed to renew the underlying agreement pursuant to clause 1.6, any notice with regard to a move to Stage 2 is void.

We further notice that at clause 8.3, your client promised it would enter into a new agreement or addendum to the current agreement to allow for additional access but no proposal regarding your client's activities in Stage 2 has been delivered to our client.

Notwithstanding your client's failure to renew the agreement and the lack of clarity from your client regarding their needs, the Royal Canadian Marine Search and Rescue remains willing to consider a proposal from your client to enter into a new licensing agreement.

In conclusion, the May 1, 2021 agreement is lawfully terminated. The Royal Canadian Marine Search and Rescue is willing to negotiate a new agreement and the Royal Canadian Marine Search and Rescue wish to be advised on your client's plan for Stage 2, which plan must include remediation and deposits to guarantee same.

[19] On July 3, 2024, counsel for the respondent wrote to the petitioner requesting removal of a trailer on the Leased Property no later than August 31, 2024.

[20] A further letter was sent by counsel for the petitioner to the respondent on July 12, 2024 demanding that the respondent cease interference with the petitioner's rights under the Lease and confirming the petitioner's position that 30 days' notice was required pursuant to s. 1.5 of the Lease.

[21] Counsel for the respondent wrote back on July 18, 2024 taking the position that there is no Lease and the only rights provided to the petitioner were for access and takes the following position on renewal:

... While we do not deny there has been some evidence of your client's use of the property from time to time, and that sporadic attendance at the property would likely qualify as regular and continuous use, such an assertion is without legal effect. Your client failed to deliver its intention to renew by the deadline, if it had the right to do so, which conclusion is denied. ...

[13] The Court ultimately concluded the Lease was in full force and effect, the petitioner was entitled to quiet enjoyment, and that the petitioner had graduated to the Stage 2 Term as of May 1, 2024.

[14] Unfortunately, the resolution of the first petition did not assist the parties' relationship. Synergaze says that despite LeBlanc J.'s finding that Synergaze had graduated to the Stage 2 Term of the Lease, RCM Search and Rescue has since refused to grant Synergaze access to the additional three acres of the Leased Property it became entitled to upon entering that stage. At the same time, RCM Search and Rescue has insisted that Synergaze pay rent at the \$3,000 per month rate under Stage 2, which demand Synergaze has refused. Synergaze instead takes the position that, despite being in Stage 2 of the Lease, rent continues to be owed at the \$1,000 per month (Stage 1) rate, retroactive to May 1, 2024, and will remain so until Synergaze can access the additional three acres of the Leased Property under Stage 2.

[15] On November 1, 2025, RCM Search and Rescue delivered notice to Synergaze of its intention to terminate the Lease for nonpayment of rent. Synergaze filed the current petition on December 1, 2025, seeking to fix the amount of rent owed under the Lease, among other relief.

Issues

[16] In brief, the issues to be decided are:

1. What is the rent presently owing in accordance with the Lease?

Synergaze argues that it does not owe RCM Search and Rescue the \$3,000 monthly rent required under the Stage 2 Term until RCM Search and Rescue provides it with access to approximately three acres of land under the Lease. Synergaze says the landlord is not entitled to a monthly rate of rent where it has functionally frustrated the Lease by refusing the tenant access to the land to which it is entitled.

2. Does Synergaze have a right of first refusal to purchase the Leased Property? Alternatively, does proprietary estoppel apply to provide a right to the property, in exchange for the considerable capital and effort which the tenant expended to uphold its end of the bargain?

Analysis

Issue #1 – What is the rent presently owing in accordance with the Lease?

[17] This first issue concerns two competing interpretations of the Lease. Justice LeBlanc at para. 22 of her reasons helpfully summarized the general principles of contractual interpretation relevant to the first petition, and which continue to govern here:

- a) The goal of contract interpretation is to ascertain the objective intentions of the parties at the time of formation of the contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at paras. 47 & 55.
- b) The contract must be read as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances: *Sattva* at para. 47.

- c) Evidence of subjective intention or understanding is inadmissible to support the existence of, to add to, to subtract from, to vary, or to contradict a contract that is in writing: *Sattva* at para. 59.
- d) The exercise of contractual interpretation begins with a reading of the actual words used by the parties and a legitimate interpretation will be consistent with the language that the parties employed to express their agreement. A meaning that strays too far from the actual words fails to give effect to the way in which the parties chose to define their obligations: *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60 [*Resolute*] at para. 76.
- e) An interpretation that ignores context in which the contract was formed will not accurately discern what the parties intended to achieve, even if the interpretation is “literally correct”: *Resolute* at para. 77.
- f) The court may only imply terms to the extent that it gives context and accuracy to the words used; however, the court is not free to imply a term that goes beyond or is inconsistent with the words of the contract, particularly to improve the bargain favour of any party: *Toronto (City) v. Toronto Terminals Railway Co.*, 1999 CanLII 9291 (ON CA), [1999] O.J. No. 3734 at para. 29.
- g) In a commercial context, commercial reasonableness and efficacy is a “central consideration” in the interpretation of contracts: *Blackmore Management Inc. v. Carmanah Management Corp.*, 2022 BCCA 117 at para. 42. Commercial reasonableness has also been described as a “crucial” consideration, in that the courts will seek a commercially sensible interpretation since that is more likely than not to give effect to the intentions of the parties: *Resolute* at paras. 79, 142 – 144.

[18] Relying on these principles, Synergaze argues that RCM Search and Rescue’s interpretation of the Lease is unreasonable and untenable, and that its “commercially sensible interpretation” should instead prevail. The petitioner maintains the first issue for the Court is whether a landlord under a commercial lease agreement is entitled to a monthly rate of rent even though it has functionally frustrated the lease by refusing the tenant access to the land it is entitled to. A related issue is whether the landlord can then subsequently legally terminate the lease when the tenant refuses to pay the amount of rent the landlord demands.

[19] The parties fundamentally disagree on the interpretation of clauses 1.3 and 2.1 of the Lease with respect to this issue, which read:

1.3 Stage 2 Term. Subject to section 1.6 and 1.7 hereof, the Landlord hereby agrees to lease the Leased Property to the Tenant for a term (the “Term”) of five (5) years, renewable for two successive five (5) year periods, commencing on the date that both parties agree in writing and estimated to

be July of 2022 (the “Stage 2 Term”). The Stage 2 Lease will be for approximately 3 acres and the exact location is to be mutually agreed to by the parties hereto as set forth in revisions to Schedule “A” hereto.

...

2.1 The Tenant covenants and agrees to pay the Landlord \$1,000 per month plus applicable taxes as rent for the Stage 1 Term. The Tenant covenants and agrees to pay to the Landlord \$3,000 per month plus applicable taxes as rent for the initial Stage 2 Term. The Tenant covenants and agrees to pay the Landlord \$6,000 per month plus applicable taxes as rent for the initial Stage 3 Term.

[Emphasis added.]

[20] Synergaze argues that the interplay between clauses 1.3 and 2.1 of the Lease is obvious. The payment of more money occurs with access to more land. \$1,000 per month in rent plus taxes is applicable to Stage 1 in which the petitioner has access to an agreed upon small area. The rent of \$3,000 per month plus applicable taxes is applicable at Stage 2 which includes access to and the use of approximately three acres. The rent of \$6,000 per month plus applicable taxes is applicable and payable at Stage 3 which provides the petitioner access to and the use of approximately 10 to 12 acres.

[21] RCM Search and Rescue however takes the position that because LeBlanc J. declared Synergaze to be in Stage 2 of the Lease effective May 1, 2024, Synergaze must pay the \$3,000 monthly rent from May 1, 2024 to the present. Synergaze says however if it is not provided access to and use of the three acres of land in Stage 2, Synergaze does not owe \$3,000 per month in rent. If Synergaze is only permitted access to and use of the small amount of Stage 1 lands, the applicable rent is \$1,000 per month.

[22] Synergaze maintains the Lease contemplates that it will pay more in rent when it graduates up the ladder of Lease stages. The amount of rent is commensurate with the intensity of Synergaze’s land use. This is the only sensible and commercially reasonable interpretation of the Lease—one that is “consistent with the language that the parties employed to express their agreement.”

[23] Synergaze says RCM Search and Rescue is using LeBlanc J.'s order to sever the connection between clauses 1.3 and 2.1. It also relies upon the long-standing principle in contract law that a party cannot insist on performance of an obligation where the party prevented the fulfillment of the conditions on which the obligation depends, as per *Turney v. Zhilka*, [1959] S.C.R. 578, 1959 CanLII 12 (SCC). Where a contractual condition is not met due to the conduct of the party seeking to rely on it, that party cannot enforce the resulting obligation. RCM Search and Rescue's position is therefore unreasonable and untenable and offends the principles of contract interpretation.

[24] Further, Synergaze argues that as set out in *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60 at para. 144, this Court should reject RCM Search and Rescue's interpretation of the Lease as it should not "sanction interpretations disconnected from economic reality, much less from a contracting party's obligation to act honestly and in good faith".

[25] In response, RCM Search and Rescue maintains the Lease is clear that the base rent owing from May 1, 2024 to present is \$3,000 plus tax per month. There is no legal basis for a declaration that Stage 2 rent is \$1,000 plus tax per month and no factual basis to seek an equitable declaration.

[26] RCM Search and Rescue submits the only sensible and commercially reasonable interpretation of the Lease is that Synergaze must pay \$3,000 plus tax at Stage 2 base rent for the period starting May 1, 2024 which is the Stage 2 start date ordered by LeBlanc J. in her reasons.

[27] RCM Search and Rescue also submits Synergaze is estopped from seeking this order as in its first petition it sought a declaration that it had graduated to Stage 2 of the Lease. It obtains precisely that declaration at para. 64(b) of the reasons with the concomitant obligations.

[28] RCM Search and Rescue relies on the relevant principles of contractual interpretation set out in *BG Checo International Ltd. v. British Columbia Hydro and Power Authority*, [1993] 1 S.C.R. 12, 1993 CanLII 145 (SCC) at 23:

It is a cardinal rule of the construction of contracts that the various parts of the contract are to be interpreted in the context of the intentions of the parties as evident from the contract as a whole ... Where there are apparent inconsistencies between different terms of a contract, the court should attempt to find an interpretation which can reasonably give meaning to each of the terms in question. Only if an interpretation giving reasonable consistency to the terms in question cannot be found will the court rule one clause or the other ineffective ...

[29] RCM Search and Rescue says although Synergaze asserts otherwise, there is no true ambiguity or inconsistency in the amount of rent payable for the Stage 2 Term. The plain language interpretation of the relevant Lease clauses, read together and in light of the contract as a whole, is that the \$3,000 per month base rent plus applicable taxes is a floor, not a ceiling, for the Stage 2 Term.

[30] The Lease is clear that the Stage 2 base rent is \$3,000 per month, whereas the Stage 1 base rent is \$1,000 per month. Synergaze sought and obtained a declaration in the recent judgment that it had graduated to Stage 2. It cannot now reverse course and seek an entirely inconsistent declaration that the \$1,000 Stage 1 base rent is applicable to the entirety of the Stage 2 Term that it itself asked the Court to delineate.

[31] RCM Search and Rescue submits clauses 1.3 and 2.1 must be read consistently without resorting to more advanced principles of contractual interpretation as there is no ambiguity to resolve.

[32] The law is clear that an agreement between sophisticated parties should be enforced in accordance with its terms in all but the most exceptional circumstances: *MacMillan v. Kaiser Equipment Ltd.*, 2004 BCCA 270 at para. 45.

[33] RCM Search and Rescue says to allow Synergaze to continue to pay the Stage 1 base rent while in the judicially ordered Stage 2 Term is an absurd result. This would contravene the principle set out in *Guarantee Co. of North America v. Gordon Capital Corp.*, [1999] 3 S.C.R. 423, 1999 CanLII 664 (SCC), that if a given construction of a contract would lead to an absurd result, the assumption is that this

result could not have been intended by rational commercial actors in making their bargain, absent some explanation to the contrary: at para. 61.

Discussion

[34] I will first deal with the question of the rent owing under the Lease. In the Court's view, RCM Search and Rescue seeks to isolate the pertinent clauses from each other and the rest of the agreement.

[35] Clause 2.1 states that "[t]he Tenant covenants and agrees to pay to the Landlord \$3,000 per month plus applicable taxes as rent for the initial Stage 2 Term".

[36] As indicated by RCM Search and Rescue however, interpretations that would lead to an absurd result are assumed not to be intended by rational commercial actors. It accordingly argues to allow Synergraze to continue to pay Stage 1 base rent, despite the Lease being in the Stage 2 Term is an absurd result. In doing so however RCM Search and Rescue isolates the connection between clauses 1.3 and 2.1 and the corresponding impact on the interpretation of the terms of the Lease.

[37] While the prior Court concluded Synergraze was in Stage 2, this was in the midst of a contractual interpretation battle in which RCM Search and Rescue sought termination of the Lease. As the Court concluded Synergraze was in Stage 2, a reasonable interpretation of the Lease and the intent of the parties leads to the conclusion the full contractual obligations of Stage 2 are in place. While that included the rent of \$3,000, it also included access to the additional three acres of the Leased Property as set out in the terms of the Lease.

[38] In this case, RCM Search and Rescue takes an artificial approach based on the prior judgment that ruled against its position. While LeBlanc J. concluded Synergraze had graduated to the Stage 2 Term, *all* the obligations of Stage 2 are in place, including access to the three acres, which obligation RCM Search and Rescue has not fulfilled. RCM Search and Rescue essentially argues that while Synergraze must perform its obligation under Stage 2 to pay a higher rate of rent, it

is somehow excused from performing its corresponding obligation to provide a greater portion of the Leased Property, for which the higher rate of rent is compensation for. No reasonable interpretation of LeBlanc J.'s reasons or the Lease could support this position.

[39] While RCM Search and Rescue said it attempted to perform its obligations the record belies this proposition. It says it repeatedly invited Synergraze to present a "serious proposal" regarding a plan and area for the Stage 2 Term. RCM Search and Rescue's actions however show in doing so, it imposed or requested the fulfilment of specific conditions or actions from Synergraze. RCM Search and Rescue maintained a "serious proposal" from Synergraze would at a minimum identify "precise proposed boundaries" of the Stage 2 area; identify specific structures or improvements Synergraze intended to construct; where those structures would be constructed; what activities Synergraze intended to conduct in that area; and a timeline for implementation." None of these conditions however are set out in the Stage 2 Term clauses or elsewhere in the Lease.

[40] Synergraze's plans for the Leased Property are set out in Recital B of the Lease and RCM Search and Rescue is already aware of those plans which reference erecting inland tanks for use in growing algae.

[41] While clause 1.3 requires the exact location of the three acres to be mutually agreed upon, as the petitioner says, RCM Search and Rescue's requests for a number of items including proof of the authority of Mr. Planes, former Chief of the T'Sou-ke First Nation; a letter indicating the land is in the agricultural land commission; a copy or details of the plans of Synergraze and credit card details inject conditions into the rental clause which do not exist.

[42] Furthermore, RCM Search and Rescue is aware that T'Sou-ke First Nation is in a partnership with Synergraze as reflected in an email from Mr. Planes on April 17, 2024, where he clearly references this partnership and says:

As you know, T'Sou-ke Nation owns the aquaculture rights on the property, and we have partnered with Synergraze as part of exercising these aquaculture rights. I believe that Synergraze and its focus on growing and

harvesting local seaweeds for the purpose of reducing methane in cattle has the potential to make a significant impact in reducing green house gas emissions and global warming. I think this company and this particular project offers tremendous benefits to our community and country.

[43] Indeed, an earlier email from Mr. Riggs, Chief Executive Officer of RCM Search and Rescue, of March 1, 2021 to Mr. Planes and Ms. Loiselle reinforces this knowledge. It is addressed to both individuals and says “I briefed my Board this past Sat on the Kelp facility and the Jetty. The Board members were very enthusiastic about both project [*sic*] and I have the authority to continue moving forward along the direction the three of us have spoken about.”

[44] As reflected in an affidavit of August 15, 2024 filed in the first petition, Mr. Planes indicated he had been the elected Chief of the T’Sou-ke First Nation on Southern Vancouver Island from 2007 to February 2024 and that there was a longstanding business partnership with Synergaze and the T’Sou-ke First Nation. This is also reflected in LeBlanc J.’s reasons at para. 4.

[45] Much of the information RCM Search and Rescue sought, was already known to them. Its insistence on precise details about what Synergaze’s plans in this context does not support its position that it sought to fulfill its obligation at the Stage 2 level of the contract, and Synergaze must pay a rent of \$3,000.00.

[46] Ultimately, it is clear that the interplay between the relevant clauses of the Lease, when having regard to the overall context of the parties’ agreement, is that Synergaze’s rent would increase as it graduated through the stages because of the additional land it became entitled to use at each stage. This is the only sensible commercial interpretation. Synergaze did not have access to that land and therefore it is only required to pay \$1,000 in rent until RCM Search and Rescue provide proper access.

[47] As the petitioner points out, an interim injunction was in place from August 2024 to June 2025 to preserve the status quo until LeBlanc J.’s judgment was rendered. The status quo at that time was that Synergaze remained in Stage 1 with access only to the Stage 1 land and buildings. RCM Search and Rescue now seeks

retroactive rent based on Stage 2 along with certain additional conditions, despite it not providing Synergaze access to the three acres required under Stage 2 as set out in the Lease.

[48] Importantly, as argued by Synergaze, a party cannot insist on performance of an obligation where that party has prevented the fulfillment of the condition on which the obligation depends. Where a contractual condition is not met due to the conduct of the party relying on it, that party cannot enforce the resulting obligation, as per *Turney*, referenced earlier.

[49] As noted, RCM Search and Rescue is imposing conditions not required by the Lease and thereby frustrating the process of determining the exact location of the Stage 2 areas and functionally frustrating the Lease. As Synergaze has argued, the amount of rent is commensurate with the amount of land provided to Synergaze for its use. Synergaze is still only permitted access to and use of the Stage 1 lands. The rent obligation is therefore \$1,000 per month plus taxes retroactive to May 1, 2024 and until the additional three acres of the Leased Property is made available to Synergaze. Upon RCM Search and Rescue fulfilling its obligation to provide proper access and use to Synergaze of the three acres of land in Stage 2, the rate of rent owed by Synergaze will then increase to \$3,000 per month plus taxes.

Issue #2 – Does Synergaze have a right of first refusal to purchase the land? Alternatively does proprietary estoppel establish a right in the property?

[50] The second significant issue between the parties is whether RCM Search and Rescue granted a right of first refusal to Synergaze to purchase the lands. Alternatively, Synergaze invokes the equitable doctrine of proprietary estoppel to establish a right in the property.

[51] Synergaze seeks recognition and enforcement of a right of first refusal that it says RCM Search and Rescue promised. It maintains while the Lease does not expressly provide a right of first refusal, the evidence supports such a right was promised by RCM Search and Rescue prior to the execution of the Lease. Synergaze says this right of first refusal induced Synergaze to enter the Lease.

[52] Ms. Loiselle in her third affidavit attested to an August 15, 2025, meeting during which she and Mr. Planes allegedly discussed the right of first refusal with representatives of RCM Search and Rescue:

8. Also at the August Meeting, Mr. Planes and I raised the Right of First Opportunity ("ROFO") for the T'Souke First Nation to purchase the property at 6040 East Sooke Road when RCMSAR wished to sell the property, and that should the T'Souke First Nation choose not to purchase the 6040 East Sooke Road property, then Synergaze had a Right of First Refusal ("ROFR") to purchase the property.

9. During the August Meeting, Mr. Riggs did not deny the ROFO and ROFR discussions. On the contrary, he acknowledged that those discussions had occurred but that he did not seek RCMSAR Board approval therefore it could not be binding upon RCMSAR. Both Mr. Planes and I reiterated that the ROFO/ROFRs not only indicated the long-term intentions between the Parties for Synergaze's use of the property but that that promise was relied upon, that Synergaze had a reasonable expectation of long-term use of the land and the benefits flowing from the large investment Synergaze was going to make into the land for its operations. Without the reasonable expectation of long-term use of the land and the ability to realize the significant investment being made into the land Synergaze would not have (1) entered into the Lease, (2) spent hundreds of thousands of dollars for permitting and environmental assessments necessary for its operations, (3) and made plans for waterlines for the aquaculture facility to run underneath the dock.

[53] Synergaze maintains it reasonably relied on RCM Search and Rescue's representation when deciding whether or not to enter into the Lease and when it made significant improvements to and investments in the Leased Property for its operations. Those improvements and investments include \$200,000 for permitting and marine habitat assessments and the development of plans for waterlines for the aquaculture facility to run under the dock. Synergaze points out based on the evidence set out above that T'Sou-ke First nation, Synergaze's business partner, provided its support for the dock desired by RCM Search and Rescue on the basis of the right of first refusal.

[54] Synergaze relies on s. 59(3)(c) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, and jurisprudence to argue that a contract respecting land or a disposition of land is not enforceable unless the person alleging the contract has, in reasonable reliance on it, so changed the person's position that an inequitable result can be

avoided only by enforcing the contract. A party must be prevented from failing to honour an oral promise which the other party has relied upon to its detriment, it says.

[55] A promise of a right of first refusal should not be vague and should clearly outline when it is triggered along with the terms on which it is to be exercised; Synergaze says these requirements were met as it was clear to it that if RCM Search and Rescue wished to sell the property, Synergaze would have a right of first refusal. In discussions pertaining to the eventual sale of the property, Synergaze says RCM Search and Rescue purportedly represented to Synergaze that the property was valued at \$5 million.

[56] Synergaze says it relied on RCM Search and Rescue's representation and, in the circumstances, it would be inequitable to permit RCM Search and Rescue to deny the existence of the right of first refusal after having received the benefits flowing from Synergaze's reliance on it.

[57] In response to RCM Search and Rescue's assertion that clause 8.2 of the Lease contains an entire agreement clause, which excludes such representations, Synergaze says a general exclusion clause will not override a specific representation of substance that is intended to induce the making of an agreement unless the intended effect of the exclusion clause can be shown to have been brought to the attention of the party and the party fully understood the consequences of that clause: *Zippy Print Enterprises Ltd. v. Pawliuk*, 52 A.C.W.S. (3d) 51, 1994 CanLII 1756 (BC CA) at para. 45.

[58] Furthermore, the courts have established the effect of an entire agreement clause on an oral collateral agreement depends primarily on the party's reasonable intentions: *Grewal v. Grewal*, 2017 BCSC 573. There are circumstances in which an entire agreement clause is in a standard form that offers no ability to negotiate. In such circumstances, courts have held the parties' intentions were to be bound by the terms of the collateral agreement in spite of the wording that might suggest otherwise in the entire agreement clause: *Graham v. Sable Developments Inc.*, 2019 BCSC 1157 at paras. 44–45.

[59] Synergaze also maintains it has a right to the property on the basis of proprietary estoppel. Proprietary estoppel is an equitable doctrine that can be invoked to establish a right in property and the court has discretion to fashion an appropriate remedy if proven.

[60] An equity sufficient to ground a claim for proprietary estoppel arises when a representation or assurance is made to the claimant, on the basis of which he or she expects to enjoy some right or benefit over the property; the claimant relies on that expectation by doing or refraining from doing something and that reliance is reasonable; and the claimant suffers a detriment as a result of his or her reasonable reliance such that it would be unfair or unjust to permit the promising party to renege.

[61] In this case, Synergaze says if it lost entitlement to purchase the property, it would face immense detriment. It would have to source a new location for its operation; it will lose the investment it has made into the Leased Property; the environmental assessments and permits obtained for the implementation of the land-based seaweed aquaculture facility and waterlines will be worthless; and it will be delayed in its commercialization plans, prejudicing its competitive position while increasing the advantage of its competitors.

[62] In response, RCM Search and Rescue maintains it did not grant a right of first refusal to Synergaze. It points out such a right is not articulated anywhere in the Lease nor was it promised orally by RCM Search and Rescue or any of its representatives. RCM Search and Rescue also maintains equity does not permit such a right to be read into the Lease.

[63] RCM Search and Rescue points out as per *ADESA v. Southern Railway*, 2001 BCSC 1421 at para. 26, the starting point for the analysis of the right of first refusal claims must be the construction of the document creating or granting the right. Rights of first refusal are to be “strictly enforced in accordance with their terms”.

[64] RCM Search and Rescue maintains the law is clear that any purported right of first refusal must meet certain minimum requirements. These include mechanisms to fix the price; how an offer is to be made and accepted; and the time within which an offer must be accepted, as per *Baykey v. North West Office Furniture Ltd.*, [1992] B.C.J. No. 485, 1992 CanLII 568 (BC SC) at para. 18.

[65] As explained in that case, without terms which will set the mechanism by which the price will be determined, and the mechanism by which the offer can be made along with the time within which it must be accepted, a vendor cannot know what his obligations are. The court cannot therefore decide what obligations to enforce: at para. 20.

[66] RCM Search and Rescue maintains discussions regarding the possible sale of the property in the future do not create an enforceable right of first refusal. RCM Search and Rescue says there was no meeting of the minds with respect to the right of first refusal and/or the minimum terms of any sale price fixing mechanism or mechanism for making and accepting an offer.

[67] RCM Search and Rescue points out that Synergaze's assertions of a right of first refusal rest on assertions in affidavits, none of which support the existence of any agreement, written or oral, by RCM Search and Rescue to grant any right of first refusal to either Synergaze or the T'Sou-ke First Nation.

[68] While Synergaze relies on Mr. Planes' affidavit from the first petition, RCM Search and Rescue says this affidavit simply provides a wish list. This evidence indicates Synergaze may have communicated certain things it wished for, but RCM Search and Rescue did not agree to grant any of these wishes. This is a one-sided list with no meeting of the minds or enforceable right.

[69] The key evidence is at para. 18 of that affidavit in which Mr. Planes says:

18. During our meetings with Mr. Riggs, Mr. Riggs communicated to us that RCMSAR wished to build a dock to moor boats that RCMSAR uses for training exercises and operations. I communicated to Mr. Riggs that the T'Sou-ke First Nation would support the construction of a dock if: (1) the permanent Synergaze aquaculture facility could be situated on the 10-12 acres of land to the left of the shared access road, and the marine intake and

discharge waterlines (discussed further below) Synergize required for the aquaculture facility could run where needed on the RCMSAR side of the Property and alongside or underneath the area Mr. Riggs wanted to situate the dock; (2) the dock would be shared between the T'Sou-ke First Nation, RCMSAR and Synergize; (3) the T'Sou-ke First Nation could use the dock to moor vessels it uses to survey marine habitats in the area; and (4) the T'Sou-ke First Nation is given the first opportunity to purchase the Property in the event RCMSAR wished to sell it and that Synergize would be given a right of first refusal if the T'Sou-ke First Nation chose not to purchase it.

[70] RCM Search and Rescue also takes issue with Ms. Loisel's similarly bare assertions about the right of first refusal in her first affidavit at paras. 14 and 15.

[71] RCM Search and Rescue points out that none of this evidence communicates any agreement by RCM Search and Rescue to grant any such right of first refusal.

[72] In response to Synergize's argument, RCM Search and Rescue says the petitioner fails to establish an equitable remedy. No representation or assurance was made to the petitioner or T'Sou-ke First Nation that RCM Search and Rescue would grant a right of first refusal to either. New communications of the parties' wishes are not sufficient to find a representation or assurance if the other party does not agree to these wishes. Reliance would therefore not be reasonable if the petitioner did indeed rely on what it believed was a right of first refusal in the absence of RCM Search and Rescue's agreement.

[73] The detriment, if the petitioner suffered any, is therefore not a result of the petitioner's reasonable reliance and is unsupported by the evidence.

Discussion

[74] This is an important matter and a difficult issue to determine on the basis of the affidavit evidence. The parties essentially contradict each other in their affidavits on key points.

[75] The court concludes however even accepting everything the petitioner says, the right of first refusal cannot be established. The most the affidavit evidence demonstrates is that the prospect of a right of first refusal may have been or was raised at the August 15, 2025 meeting. The petitioner's own affidavits however attest

to the fact that Mr. Riggs then told them that he would need Board approval and couldn't make any binding promise. There is no additional evidence that Mr. Riggs obtained Board approval or that it was discussed again after this August meeting.

[76] The evidence suggests the parties had some initial discussions about this issue. That evidence does not however set out with clarity the specific representation relied upon. In addition, there is confusion on the evidence as to whether the allegation of the right of first refusal was granted to the T'Sou-ke or Synergaze or both. I note that T'Sou-ke is not a party to this petition and this is difficult to determine.

[77] The jurisprudence on the right of first refusal requires, in addition to the promise/agreement to provide a ROFR, that the parties must have agreed to the mechanics to enforce the right of first refusal such as when it can be triggered, how to determine the price, and other such terms as outlined in the *Baykey* case. The petitioners gave no evidence that the parties agreed to such a mechanism and accordingly a right of first refusal cannot be established without this necessary evidence.

[78] While as Synergaze says it will suffer detriment and relies upon proprietary estoppel in the alternative, the affidavit evidence again does not establish the necessary representation or assurance with sufficient specificity to found such a claim.

Conclusion

[79] In summary, the court concludes as Synergaze has argued, the amount of rent owed is commensurate with the amount of the Leased Property provided to Synergaze for its use under the Lease. At present, Synergaze is still only permitted access to and use of the Stage 1 lands. The rent obligation is therefore \$1,000 per month plus taxes retroactive to May 1, 2024. As RCM Search and Rescue has not fulfilled its obligation to provide Synergaze access to and use of the three acres of land under Stage 2, Synergaze does not owe \$3,000 per month plus taxes in rent until that condition is fulfilled.

[80] The Lease continues to be in full force and effect and remains in the Stage 2 Term, with the above qualification. The rent continues to be payable at the Stage 1 rate until RCM Search and Rescue fulfills its obligation under Stage 2 to provide the additional three acres of land to Synergaze.

[81] As requested the court grants a declaration that Synergaze's costs awarded in the previous matter be applied against any rent owed by Synergaze to RCM Search and Rescue.

[82] Finally, the court concludes Synergaze's right of first refusal has not been established on the evidence due, amongst other factors, the lack of specificity in the alleged representation. Synergaze's alternative claim in proprietary estoppel suffers from the same defect. It is accordingly also not established in this context.

[83] Given the divided success in this matter, each party shall bear their own costs.

"Burke J."