

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Peterson v. Eigenbrood*,
2026 BCSC 1370

Date: 20260723
Docket: S33680
Registry: Cranbrook

Between:

Carrie Peterson and Marshall Peterson

Appellants

And

Maarten Eigenbrood and Francine Eigenbrood

Respondents

Before: The Honourable Justice Loo

On appeal from: An order of the Provincial Court of British Columbia,
dated May 7, 2025 (*Peterson v. Eigenbrood*, Creston Docket 32084)

Reasons for Judgment

Appearing on their own behalf:

C. Peterson
M. Peterson

Counsel for the Respondents:

K.D.D. Smith

Place and Date of Hearing:

Cranbrook, B.C.
July 8, 2026

Place and Date of Judgment:

Cranbrook, B.C.
July 23, 2026

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Introduction

[1] This is an appeal from the decision of a Provincial Court judge made following a trial under the *Small Claims Act*, R.S.B.C. 1996, c. 430 [SCA].

[2] On May 6, 2023, the appellants Carrie Peterson and Marshall Peterson purchased a 1997 Raider Montago Motorboat from the respondents Maarten Eigenbrood and Francine Eigenbrood for \$9,500. The contract of purchase and sale contained a description of the boat, the price, and the words “sold as is”. Six days after the purchase, and on the appellants’ first trip onto the lake, the boat’s engine failed.

[3] The appellants brought an action in Small Claims Court. They alleged fraudulent or deliberate misrepresentation, and they alleged breaches of the implied warranties under the *Sale of Goods Act*, R.S.B.C. 1996, c. 410 [SOGA].

[4] The alleged misrepresentations were that the boat was “well maintained” and that the boat was in “good working condition”.

[5] Although the appellants cited several subsections of s. 18 of the *SOGA*, the appellants’ arguments under the *SOGA* focussed on s. 18(c)—that the boat would be durable for a reasonable period of time having regard to the use to which it would normally be put and to all the surrounding circumstances of the sale.

[6] The parties conducted the small claims trial without counsel. After hearing evidence and submissions for parts of five days over more than eight months, the trial judge dismissed the appellants’ claims. In the course of doing so, the trial judge:

- a) accepted the respondents’ evidence regarding the maintenance of the boat and found that this evidence was consistent with the respondents’ representation that the boat was well maintained;
- b) found that there was no evidence that the boat was not in good working condition when sold;

- c) rejected the appellants' argument that the engine failure must have been the consequence of a pre-existing mechanical fault, or that the boat was not properly maintained or winterized; and
- d) concluded that the sections of the SOGA relied upon by the appellants were either inapplicable to the circumstances of this case or were overridden by a term of the contract which stated that the boat was being sold "as is".

Grounds for appeal

[7] The appellants allege that the trial judge made errors in procedure, errors in law, and errors of fact. I will address each category below.

Discussion and analysis

Alleged errors in procedure

[8] The test with respect to alleged errors in procedure is whether the trial judge's conduct and rulings denied the appellant a fair trial or gave rise to a reasonable apprehension of bias: *Petrick v. Lakeview Credit Union*, 2002 BCSC 672 at para. 107. In order to succeed on this aspect of the appeal, the appellants must demonstrate that there were procedural errors that made the trial process unfair.

[9] In answer to queries from the Court, the appellants identified six procedural errors upon which they rely on this appeal. I will address them in turn.

[10] First, the appellants submit that the trial judge erred by admitting evidence tendered by the respondents on the first day of trial, despite an earlier order that evidence and authorities be delivered 30 days in advance. However, in my view, the trial judge dealt with this issue appropriately by offering to adjourn the trial if the appellants wished. The appellants declined the adjournment and chose to proceed. In any event, the trial progressed over five days over the course of many months, and so it is unclear how the appellants were materially prejudiced by the late delivery of the materials.

[11] Second, the appellants submit that the trial judge erred by admitting a document among these late delivered materials—an MRI or Magnetic Resonance Imaging scan—that was irrelevant and was not referred to at trial. However, the admission of this irrelevant document did not make the trial process unfair as it had no bearing on the trial.

[12] Third, the appellants object to the fact that although the respondents had a lawyer acting for them and on record in the proceedings, the respondents chose to represent themselves at trial. However, this is not an issue that gives rise to trial unfairness.

[13] Fourth, the appellants take issue with the way that the trial was scheduled for parts of five days over more than eight months and in particular with a six month gap between trial days in October 2024 and April 2025. The delays in relation to this trial were unfortunate, but the appellants have not demonstrated that the delays affected their right to a fair trial. Both sides were subject to the same disadvantages and difficulties arising from the delays.

[14] Fifth, the appellants allege that the respondent lied to the Court about their unavailability on certain dates which were proposed for the continuation of the trial. They argue that the trial judge erred by refusing to allow them to present evidence in this regard. However, it was within the trial judge's authority to refuse to try this collateral issue. This was not an issue directly relevant to the purchase and sale of the boat.

[15] Finally, the appellants argue that the judge erred by limiting the time to be taken by them in relation to various steps during the course of the trial. They submit that the trial judge repeatedly remarked that the trial was taking too long.

[16] However, in my view, the trial judge was justified in trying to complete the trial as efficiently as possible, because trial time must be proportionate to the interests and amounts at stake. Parties are not entitled to unlimited court time, and a dispute over the sale of a boat for \$9,500 did not warrant parts of five days. Under s. 2(1) of

the SCA, it is open to a trial judge to limit the time a party takes in presenting their case so that these proceedings can be determined in a just and speedy fashion. Further, it is clear that a trial judge has the responsibility and authority to manage the trial, to ensure not only a fair trial but also an efficient process: *R. v. Sipes*, 2008 BCSC 1257 at para. 20.

[17] In summary, I am unable to find that the procedural errors alleged by the appellants denied them a fair trial or gave rise to a reasonable apprehension of bias, and I am therefore unable to accede to these grounds of appeal.

[18] I should note that the appellants repeatedly sought to argue during the appeal hearing that the trial judge also erred by failing to allow an affidavit of an engine mechanic to be entered into evidence. The trial judge made this decision in answer to a query from the appellants about whether they could read in affidavit evidence. She held that the appellants were not permitted to do so, because the affiant was not in court to testify and to be cross-examined.

[19] This argument was not in the notice of appeal, and I did not permit the appellants to advance it. That is a complete answer to the point but, in any event, the affidavit would not have assisted the appellants' case. The affiant deposes:

In all likelihood, the catastrophic engine failure was the result of a pre-existing mechanical fault in the motor, for example: cracked engine block from not being properly winterized.

[20] The affiant states his bald conclusion regarding the cause of the engine failure without any explanation or elaboration, and without any reference to an assessment of the engine block in this case. Further, he does not say that the failure of the engine block in this case resulted from the engine not being properly winterized. In my view, even if this affidavit were admitted, it would have been of no assistance to the trial judge.

Alleged errors in law

[21] Where an issue on appeal is based on a question of law, the standard of review is correctness: *Northern Thunderbird Air Inc. v. Van Haren*, 2011 BCSC 837.

[22] There are two legal issues to be addressed on this appeal, both arising from the trial judge's conclusion that the "as is" clause in the contract of purchase and sale took precedence over the implied warranty under s. 18(c) of the SOGA.

[23] The first issue is whether an "as is" clause overrides the statutory warranties set out the SOGA.

[24] The appellants cite the Provincial Court's decision in *O'Shaughnessy v. Sidhu* 2016 BCPC 308 at para. 115 which refers to a 1976 decision of the Newfoundland District Court, in which a judge of that Court stated:

...I do not feel that the finding that there was a bill of sale containing the expression "as is, where is," is a critical finding of fact. That term is in common usage in such private transactions though its legal significance is somewhat dubious.

[25] However, later in this same passage, the Newfoundland judge stated:

...The expression however is not without some significance in that it surely indicates an understanding between the seller and the buyer that the seller is making no representations and giving no warranties or guarantees and that the buyer takes the chattel with all its defects-both latent and patent.

[26] In *Conners v. McMillan*, 2020 BCPC 230 at paras 61–72, the Court held that the implied conditions in the SOGA may be excluded by contract when the goods in question are used. In other words, the seller of used goods can exclude the implied conditions contained in s. 18 by way of a term in the contract of sale. The Court in *Conners* further held that in private sales, the term "as is" conveys that the buyer is purchasing goods without any attached conditions respecting the quality, durability or fitness of those goods, including those conditions set out in the SOGA.

[27] Similarly, in *Mah Estate v. Lawrence*, 2023 BCSC 411, this Court held:

[84] ... in the case of a private sale of used goods, the parties may contract out of the implied warranty of the fitness of the goods, as long as the language used in the contract is clear and unambiguous. As I will now discuss, I find that the phrase, "as is, where is" provides clear and unambiguous language that the seller is making no guarantee as to the durability of the used goods for sale.

[28] In my view, based on these authorities, the law is clear that an “as is” clause will override the warranty as to durability in s. 18(c) of the SOGA.

[29] The second legal issue to be dealt with on this appeal is whether a fundamental breach can overcome the “as is” clause in a contract of purchase of sale. In this regard, the appellants rely on the decision in *Meyer v. Denning*, 2003 ABPC 95, wherein a boat was sold with both a defective motor and a rotten transom, which is the structural wall that connects the two sides of the hull.

[30] In that case, the Court found that the foundation of the contract had been undermined and the very thing bargained for had not been provided, stating: “the Plaintiffs bargained for a boat. A boat which will not float without repair, the cost of which exceeds the purchase price, is not a boat.”

[31] The Court concluded that the phrase “as is” in the Bill of Sale did not exclude liability for the fundamental breach. It held that the words “as is” must be viewed in the context of the defendant’s representation as to the fitness of the boat’s hull, and that while the plaintiffs were aware they were taking the motor “as is”, that was not the case for the hull.

[32] In this case, the trial judge addressed and distinguished *Meyer* on the basis that the respondents did not refuse to take the appellants on a trial run as in *Meyer*. She further observed that there was no evidence that the boat was not in good working condition when sold, while in *Meyer* the boat was not usable as a boat. I am unable to find that the trial judge was in error in reaching these conclusions.

[33] Although the trial judge concluded that the words “as is” were sufficient to exclude liability even for a fundamental breach, I would prefer to state the conclusions flowing from the judge’s observations and remarks differently: in my view there was no fundamental breach in the circumstances of this case.

Alleged errors of fact

[34] In *R. v. Clark*, 2005 SCC 2, Justice Fish stated:

[9] ... Appellate courts may not interfere with the findings of fact made and the factual inferences drawn by the trial judge, unless they are clearly wrong, unsupported by the evidence or otherwise unreasonable. The imputed error must, moreover, be plainly identified. And it must be shown to have affected the result. "Palpable and overriding error" is a resonant and compendious expression of this well-established norm ...

[35] On this appeal, the appellants allege that the trial judge made several factual errors.

[36] First, the appellants argue that the trial judge erred in finding that the boat was well maintained. They submit that the only way for the failure of the engine to have occurred was by improper winterization that would have caused a crack in the engine block. However, the trial judge specifically addressed this issue and found there was no direct evidence to support the appellants' theory. Further, the trial judge addressed the disputes in the evidence on this point in detail (between paras. 29, 35 of her reasons), ultimately finding that the boat was well maintained. I have been shown no palpable and overriding error in relation to these findings.

[37] Second, in relation to the argument under s. 18(c) of the *SOGA*, the appellants argue that the judge failed to properly deal with whether the boat was durable for a reasonable period of time. The trial judge concluded that there was no evidence to support the appellants' suggestion that the boat in this case ought to have been durable for five years, but the appellants submit that she did not grapple with whether the 30 minutes of use in this case before the motor failed was a reasonable amount of time under s. 18(c).

[38] In my view, there may be some merit to the appellants' argument in this regard, but it is unnecessary to decide the point, because this argument could not have ultimately affected the result. As I have concluded above, the implied durability warranty under the *SOGA* is overcome by the "as is" clause in the contract of purchase and sale.

[39] Third, the appellants refer to a finding in *O'Shaughnessy* that the defendant in that case was engaged in a "grab, dump and run" strategy, by which he "grabbed" the sale price to quickly rid himself of possession of the van in question before the deficiencies known to the defendant became apparent to the claimant, and then sought to avoid having to deal with the claimant about the defects. The appellants submit that the respondents in this case were engaged in a similar strategy. In my view, however, this argument is no more than an attempt to reargue the facts of the case. The trial judge found that the respondents did not know of any defects in the engine, and no palpable and overriding error has been demonstrated in relation to that finding.

[40] Fourth, the appellants sought to attack the credibility of Mr. Eigenbrood in several different ways. However, at paras. 16–50 of her decision, the trial judge addressed at length the arguments advanced by the appellants regarding the respondents' credibility. It has not been demonstrated to me that there is any palpable and overriding error in her conclusions. The trial judge's assessment of credibility is owed deference because she was in the best position after hearing all of the evidence to make findings as to the veracity of the parties' evidence.

Conclusion and costs

[41] For the reasons stated above, the appeal is dismissed.

[42] Costs shall be payable by the appellants to the respondents at scale B. Any funds which have been paid into Court in accordance with s. 8 of the SCA shall be paid out to the respondents or counsel for the respondents on account of costs.

"Loo J."