

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stave Lake Developments Ltd. v. Ross*,
2026 BCSC 1445

Date: 20260731
Docket: S258930
Registry: Vancouver

Between:

**Stave Lake Developments Ltd., Morningside Projects Ltd., Balwinder Singh
Thind and Hudsons Horse Transportation Inc.**

Plaintiffs

And:

**Christopher Ross, Paul Butler, by his Litigation Guardian, Stephen Vernon and
Paul Butler Designs Inc.**

Defendants

Before: The Honourable Justice G.C. Weatherill

Reasons for Judgment

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(July 23, 2026)

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Place and Dates of Hearing:

Vancouver, B.C.
July 23–24, 2026

Place and Date of Judgment:

Vancouver, B.C.
July 31, 2026

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Introduction

[1] The plaintiff, Morningside Projects Ltd. (“Morningside”), applies for an interlocutory injunction granting it vacant possession of property and premises located at 7743 Stave Lake Street, Mission, British Columbia (the “Property”). Morningside also seeks a writ of possession in respect of the Property.

[2] The defendant, Christopher Ross (“Ross”), seeks an order pursuant to s. 58(4) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA] that the issue of his occupation of the Property be determined by the Director (the “Director”) of the Residential Tenancy Branch (the “RTB”) on the basis that the Director has exclusive jurisdiction in respect of the matter.

Background

[3] On March 29, 2017, Ross entered into a contract of purchase and sale (the “Contract of Purchase and Sale”) to purchase the Property with the intention of developing it with investors through entities to be incorporated.

[4] The Property comprises 1.6 acres of farmland in a residential neighbourhood in Mission, British Columbia. There is a six-bedroom house on the Property, as well as various outbuildings.

[5] On May 19, 2017, Ross caused Morningside to be incorporated with him as its sole director. All of the issued shares of Morningside were allotted to Jessica Carreiro, who I understand was a member of the law firm that incorporated Morningside.

[6] Shortly thereafter, Ross, his wife, Margaryta Puyda (“Puyda”), and a prospective investor named Boncorp Properties Ltd., through its directing mind Peter Herzig (“Herzig”), signed a document entitled “Morningside Projects Ltd. - Governing Agreement” dated May 22, 2017 (the “Governing Agreement”). The Governing Agreement stipulates, in relevant part:

MORNINGSIDE PROJECTS LTD. – GOVERNING AGREEMENT

In accordance with the business plan and objectives as outlined in the Christopher Ross email of **May 22, 2017**.

The signatories hereto agree to participate as shareholders, pro-rata, in the new corporate entity “**Morningside Projects Ltd.**” incorporated under the British Columbia Companies Act **BC1119754** to represent their interests and holdings.

We further agree to the following terms and conditions:

[...]

6. Christopher Ross shall receive \$1,000 per month professional consulting fee throughout the term of Phase I, plus free use and control over the house (both residences) and all outbuildings.

[...]

[7] The Governing Agreement does not define what was meant by “Phase I”. It references an “attached Shareholders Agreement” but no such document was attached or was put in evidence.

[8] One version of the Governing Agreement was signed twice by Ross and once by Herzig. Another version of the Governing Agreement was signed by each of Ross and Puyda. In the case of Ross’s signatures, there is no indication as to whether he signed in his personal capacity or in his capacity as the director of Morningside.

[9] At approximately the same time, Ross prepared a separate document entitled “Business Plan - Phase I” dated May 22, 2017 as an investment solicitation package (the “Business Plan”) that provided, in part:

Time Line: Phase I – Purchase of Site, OCP Amendment and Rezoning

I have generically slotted “**36 Months**” from the acquisition of this Property to the start of Construction of the designed, zoned product with Development Permit and Building Permit in hand. Part of the reason for this is the requirement to amend the OCP [Official Community Plan] as well as a Re-zoning. This would be done at the same time (jointly) but requires a careful and well planned approach to the Public Hearings required at 3rd reading. If this work can be accomplished at an earlier date and market conditions are favorable to proceed, then there will be savings from certain costs within the Phase I Budget (ie: interest on the Mortgage, etc.)

[10] On June 27, 2017, the plaintiff, Stave Lake Developments Ltd. (“SLDL”), was incorporated. All of the issued and outstanding shares of Morningside were

transferred from Ms. Carreiro to SLDL and thereupon, Morningside became a wholly-owned subsidiary of SLDL. Also on June 27, 2017, Ross, Puyda, and a number of other investors, including Herzig through Boncorp Properties Ltd. (collectively, the “Original Investors”), became shareholders of SLDL.

[11] SLDL and Morningside are collectively referred to as the “Companies” in these reasons.

[12] Ross was appointed a director of SLDL on July 27, 2017.

[13] After an assignment of the Contract of Purchase and Sale from Ross to Morningside, the funds invested by the Original Investors together with additional funding provided by Boncorp Properties Ltd. secured by a mortgage over the Property (the “Boncorp Mortgage”), were used by Morningside to purchase the Property on July 31, 2017. Morningside purported to hold the Property as nominee, agent, and bare trustee for the sole benefit and account of SLDL as principal and beneficial owner.

[14] Ross has resided on the Property with his family since it was purchased by Morningside.

[15] The timeline for the redevelopment of the Property did not go as planned. Rezoning of the Property was delayed due in large part to overwhelming community opposition. Foreclosure proceedings were threatened. The Original Investors became disillusioned. Ross needed to find new investors and new lenders.

[16] In May 2021, Ross secured mortgage financing from a new lender (the “Gibli Mortgage”) and the Boncorp Mortgage was paid off.

[17] The redevelopment continued to experience difficulties and, on July 25, 2022, foreclosure proceedings were commenced under the Gibli Mortgage.

[18] In September 2022, the plaintiffs, Balwinder Singh Thind (“Thind”) and Hudsons Horse Transportation Inc. (“HHTI”), agreed to buy out the Gibli Mortgage

and purchase the shares of SLDL (the “plaintiffs’ SLDL Shares”) other than those held by Ross, Puyda, and Herzig.

[19] On October 3, 2022, the City of Mission granted Third Reading in respect of the rezoning of the Property.

[20] On October 12, 2022, Thind and HHTI purchased the plaintiffs’ SLDL Shares.

[21] On October 20, 2022, Thind became a director of SLDL, alongside Ross. Thind also became a director of Morningside.

[22] On August 10, 2023, HHTI’s directing mind, Rupinder Pannu (“Pannu”), was appointed as a director of the Companies.

[23] During the SLDL annual general meeting on August 10, 2023, Ross proposed a resolution to allow him and his family to continue occupying the Property. Voting on the resolution was deferred. Ross informed the meeting that he would purchase a home for his family and move from the Property.

[24] On November 27, 2023, Ross sent an email to Thind and Pannu stating, *inter alia* (in part):

My Deal to purchase a House for my Family has fallen through, so I will stay in [the Property] and sign a 1 yr Lease effective as of Jan 01. 2024 to Dec 31st 2025 [*sic*]. If we sell before this I can cancel and vacate. I will fill out a Residential Lease and send it to you by the end of this week. Consideration has to be given for the savings in us not having to purchase a Fridge, Stove, Clothes Washer/Dryer, plus Dishwasher (upstairs) [...]

[25] Ross did not send the “Residential Lease” document he referenced in that email.

[26] Effective January 1, 2024, Ross ceased providing any services to the Companies and since then has taken no steps to assist in the redevelopment of the Property.

[27] Ross resigned as a director of the Companies effective January 15, 2024. Currently, Thind and Pannu are the sole directors of the Companies. Together, Thind and HHTI hold 70% of the issued and outstanding shares of SLDL.

[28] In order to continue with the redevelopment process, the Companies must obtain a demolition permit in respect of the house on the Property. To do so, a hazardous materials assessment must be completed, which necessitates destructive sampling of a vacant building. Accordingly, the Property must be vacant.

[29] On November 23, 2025, Morningside served Ross with a formal notice to immediately vacate the Property on the basis that he was trespassing and for the purpose of completing the hazardous materials assessment. Ross has, to date, refused to leave. However, he continues to pay all utility bills related to the Property.

[30] On July 23, 2026, on the morning of the commencement of the hearing of these applications, Ross applied under the provisions of the *RTA* for dispute resolution by the RTB regarding whether he has a continued right to occupy the Property.

Discussion

Does this Court have Jurisdiction Over the Occupancy Dispute?

[31] The *RTA* is remedial legislation designed to confer substantive protections to tenants. It must be interpreted broadly and liberally in furtherance of that purpose. The *RTA* is a complete statutory regime governing residential occupation and assigning primary jurisdiction to the RTB over disputes concerning the possession, use, and occupation of property. Any ambiguity in scope is to be resolved in favour of tenant protection: *Barosso v. Fraser Plaza Ltd.*, 2011 BCSC 1448 at para. 11; *Berry and Kloet v. British Columbia (Residential Tenancy Act, Arbitrator)*, 2007 BCSC 257 at para. 11; *Shuster v. British Columbia (Residential Tenancy Branch)*, 2024 BCCA 282 at para. 46; *Tan v. British Columbia (Housing Management Commission)*, 2025 BCSC 49 at paras. 12–13.

[32] The *RTA* expressly contemplates that a tenancy agreement may arise “whether written or oral, express or implied”: *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183 at para. 36; *Tan* at para. 16.

[33] In *Jestadt*, the Court of Appeal considered the context of the *RTA* as a whole, including the privative clause at s. 84.1, and found (at paras. 30–32, 40) that the Legislature intended to give exclusive jurisdiction to the Director of the RTB over common law issues relating to the formation of tenancy agreements.

[34] However, where it is plain and obvious that no tenancy agreement or landlord-tenant relationship exists, this Court has overarching jurisdiction to decide the issue—it need not be referred to the RTB for determination. If the plain and obvious test is not met, the determination of the issue is within the exclusive jurisdiction of the Director: *Lady Minto Hospital Foundation v. Salt Spring and Southern Gulf Islands Community Services Society*, 2023 BCSC 1067 at paras. 23–25 [*Lady Minto*]; *Charbonneau Estate v. Charbonneau*, 2021 BCCA 206 at para. 50.

[35] Some decisions of this Court post-*Jestadt* have been interpreted as having concluded that what constitutes occupation and whether it falls within the jurisdiction of the *RTA* is within this Court’s jurisdiction to decide: *Willow Beach Developments Ltd. v. Silverstone*, 2017 BCSC 2562 at paras. 19–20 [*Willow Beach*]; *Landmark Shawn Oaks Development Ltd. v. Fallis*, 2021 BCSC 883 at paras. 36–37 [*Landmark*]. However, upon a close reading of those cases, it is my view that that the proposition is not supported.

[36] The Court in *Willow Beach* effectively found that it was manifest that there was no basis for a finding that a tenancy agreement existed and that there was no genuine issue to be determined: para. 21. The plain and obvious test was met.

[37] The Court in *Landmark* relied on the decision in *Willow Beach* for the proposition that the RTB does not have exclusive jurisdiction to determine whether or not the relationship between the parties is that of landlord and tenant: para. 46.

The Court did not turn its mind to whether the Court in *Landmark* had applied the plain and obvious test as the basis for its decision.

[38] Regardless, *Willow Beach* and *Landmark* were decided before decisions of our Court of Appeal that stated, expressly or implicitly, that the RTB has exclusive jurisdiction to determine whether an occupancy is a tenancy over which it has jurisdiction: *Charbonneau Estate* at paras. 50, 53–54; *Choi v. Westbank Projects Corp.*, 2024 BCCA 410 at para. 12; *Knight v. Sunshine Coast Campground Group Ltd.*, 2024 BCCA 121 at para. 30. This Court has followed suit in several decisions: see for example, *Lady Minto* at paras. 23–24; *Tan* at para. 16.

[39] I note that in the case of *Strookow v. Sobey*, 2024 BCSC 175, Justice MacNaughton (as she then was) held at para. 49 that the Court of Appeal in *Charbonneau Estate* “did not find that only the RTB had jurisdiction to decide whether a tenancy existed”. However, at that time, MacNaughton J. did not have the benefit of the decisions of the Court of Appeal in *Knight* and *Choi* which were both decided subsequently.

[40] In my view, the decisions of the Court of Appeal in *Charbonneau Estate*, *Choi*, and *Knight* have decisively concluded that, absent it being plain and obvious on the facts that no tenancy agreement or landlord-tenant relationship exists, the Director has exclusive jurisdiction to decide the issue.

Has the Plain and Obvious Test Been Met?

[41] Counsel for Ross submits that exclusive possession coupled with rent, in any form, gives rise to the presumption of a tenancy, even where the arrangement is informal or atypical: *McDonald v. Creekside Campgrounds and RV Park*, 2020 BCSC 2095 at para. 53; *Wiebe v. Olsen*, 2019 BCSC 1740 at paras. 36, 40. He points to the fact that Ross and his family have exclusively and continuously occupied the Property for the past nine years and have paid for all of the utilities. He submits that the occupation must have been either pursuant to the terms of the Governing Agreement or, alternatively, an oral agreement with Morningside. Either way, he asserts that there is a fair issue to be determined as to whether there is a

tenancy agreement in place and that the plain and obvious threshold is not met in this case.

[42] Counsel for the plaintiffs points to the following:

- a) The Governing Agreement stipulates that the “signatories hereto agree to participate as shareholders” in Morningside. Therefore, it makes no sense that the second Ross signature was in his capacity as a director of Morningside;
- b) The Business Plan indicates that the term of Ross’s occupation of the Property was to be approximately three years. It makes no sense that he would be entitled to occupy the Property for the more than nine years he has to date;
- c) On August 10, 2023, during the annual general meeting of SLDL, Ross proposed a resolution to allow him and his family to continue residing on the Property; and
- d) On November 27, 2023, Ross advised Thind and Pannu that he would remain occupying the Property and would enter into a one-year lease effective January 1, 2024, which he would prepare and send to them.

[43] Plaintiffs’ counsel submits that the foregoing is inconsistent with there being any form of ongoing entitlement for Ross to occupy the Property.

[44] Plaintiffs’ counsel submits that, regardless, this Court has jurisdiction to consider whether this dispute arises out of a tenancy relationship (in which case, the RTB has jurisdiction) or out of a licence or other arrangement (in which case, this Court has jurisdiction): *Landmark* at para. 46 and *Strookow* at paras. 46–49.

[45] I have concluded that it is arguable that an agreement existed between Ross and Morningside regarding his occupation of the Property. It is arguable that when Ross signed the Governing Agreement more than once—he did so once in his personal capacity and once in his capacity as the sole director of Morningside.

Although the Governing Agreement is vague and uncertain as to the meaning of “Phase I”, it is arguable that the Governing Agreement granted Ross “free use and control” of the Property during Phase I as described in the Business Plan, namely until the “start of Construction of the designed, zoned product with Development Permit and Building Permit in hand”.

[46] I also find that it is arguable that, whatever the arrangement was between Morningside and Ross, it was at most a licence permitting Ross to occupy the Property in exchange for him providing services and that the parties had no intention of creating an interest in land in favour of Ross, as would have been the case had a tenancy agreement been contemplated.

[47] Regardless, in my view, the law is clear that the question of whether a tenancy agreement exists under the *RTA* should first be considered by the RTB within the scheme contemplated by the *RTA*. In the circumstances, it is appropriate to refer the dispute to the Director of the RTB under the *RTA*.

Procedural Issue Raised During Reply

[48] During her reply, counsel for the plaintiffs submitted that, because Ross has brought an application for an order that the matter be resolved by the Director pursuant to s. 58(3) of the *RTA*, he is effectively seeking:

- a) to strike the plaintiffs’ pleadings under Rule 9-5 of the *Supreme Court Civil Rules*; or
- b) summary judgment under Rule 9-6.

[49] Counsel for the plaintiffs submits that, in either case, Ross must meet the onus of demonstrating that the plaintiffs’ application discloses no reasonable claim (under Rule 9-5) or that there is no genuine issue to be tried (under Rule 9-6). She submits that, in either case, Ross has failed to meet his onus.

[50] She points to the following passage in *Choi*:

[36] In short, the procedural steps prescribe in *Gates* [v. *Sahota*, 2018 BCCA 375] continue to apply. If the moving party wishes to raise an *RTA* dispute in Supreme Court that falls within one of the exceptions listed in s. 58(2), they must invoke the jurisdiction of the court under s. 58(4) by way of petition on notice to the opposing party and the Director, in accordance with Rules 2-1(2)(b) and 16-1(3). If they fail to do so the responding party may apply under s. 58(4), again on notice, to have the matter heard by the Director.

[51] Morningside applied by way of notice of application for an injunction granting it vacant possession of the Property and a writ of possession in respect of it. Ross's application response opposed the orders sought on the basis that the matter was properly within the jurisdiction of the RTB.

[52] In his separate notice of application, Ross sought an order pursuant to s. 58(3) of the *RTA* that the matter be resolved by the Director of the RTB. That section provides as follows:

Determining disputes

58 [...]

(3) Except as provided in subsection (4) or (4.1), a court does not have and must not exercise any jurisdiction in respect of a matter that must be submitted to the director for dispute resolution under this Act.

[53] Subsections 58(4) and (4.1) of the *RTA* are not applicable.

[54] I am not persuaded that any additional procedural steps were applicable or necessary to be taken by Ross in this case.

Conclusion

[55] I am ordering that the Director of the RTB hear and determine the dispute between the parties as to whether a tenancy relationship exists between Morningside and Ross. If so, the matter is within the exclusive jurisdiction of the RTB. If not, Ross must provide vacant possession of the Property immediately.

Costs

[56] The parties did not speak to costs. Since the question of whether Ross is entitled to continue to occupy the Property has not yet been determined, it is my view that costs should be in the cause.

[57] However, if they wish to do so, the parties have liberty to make submissions as to costs by making arrangements through Supreme Court Trial Scheduling to appear before me.

“G.C. Weatherill J.”