

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Retire West Communities Ltd. v.*
Choiniere,
2026 BCCA 337

Date: 20260812
Docket: CA51221

Between:

Retire West Communities Ltd. and Sorrento Place Holdings Ltd.

Appellants
(Defendants)

And

Monica Ann Choiniere and Michael Joseph Susak

Respondents
(Plaintiffs)

Before: The Honourable Madam Justice Horsman
The Honourable Justice Fleming
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated
November 18, 2025 (*Choiniere v. Retire West Communities Ltd.*, 2025 BCSC 2260,
Vernon Docket S57804).

Counsel for the Appellants: D.J. Letkemann

Counsel for the Respondents: D.W. Draht

Place and Date of Hearing: Kamloops, British Columbia
June 24, 2026

Place and Date of Judgment: Vancouver, British Columbia
August 12, 2026

Written Reasons by:
The Honourable Justice Iyer

Concurred in by:
The Honourable Madam Justice Horsman
The Honourable Justice Fleming

Summary:

The appellants appeal from a summary trial decision granting the respondents a declaration of ownership over a manufactured home. The appellants argue the matter was not suitable for summary trial, there was no enforceable contract for purchase and sale of the home, and a declaration of ownership was not an available remedy. HELD: Appeal dismissed. The decision is subject to a deferential standard of review, and the appellants have identified no error that warrants appellate intervention.

Reasons for Judgment of the Honourable Justice Iyer:**Overview**

[1] The respondents, Monica Choiniere and Michael Susak, worked as resident property managers for one or both of the appellants, Retire West Communities Ltd. ("Retire West") and Sorrento Place Holdings Ltd. ("Sorrento"), who own and/or operate manufactured home parks. While the respondents were working at a manufactured home park called Sorrento Place on the Lake ("Sorrento Place"), the parties started negotiations for the respondents to purchase a manufactured home located at Sorrento Place and owned by Retire West ("Home"). The respondents made repairs to the Home and moved into it. Less than two months later, one or both appellants terminated their employment and sought to evict them from the Home.

[2] The respondents commenced an action against the appellants. They claimed they were the lawful owners of the Home, and their employment had been wrongfully terminated. The appellants counterclaimed, alleging the respondents breached their employment contracts, were liable in negligence, and owed occupational rent.

[3] The present appeal arises from the respondents' application for judgment on the issue of ownership of the Home on a summary trial against Retire West under Rule 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Specifically, the respondents sought a declaration that they are the owners of the Home, with Retire West being entitled to a registrable charge against the Home for the remaining balance of the purchase price.

[4] At the hearing of the application, the appellants argued (1) the matter was not suitable for summary determination, (2) there was no enforceable contract for purchase and sale of the Home, and (3) if the court found there was a binding contract, damages were the proper remedy not the declaratory relief sought by the respondents. The judge rejected these arguments and granted the declaration sought by the respondents with an additional term clarifying the respondents are liable for the pad rent owing from the date they moved into the Home.

[5] The appellants raise many of the same arguments on appeal as they advanced to the summary trial judge. However, the judge's conclusions on suitability, contract formation (absent an extricable question of law), and declaratory relief all attract a deferential standard of appellate review. In my view, the appellants have not demonstrated the judge made errors justifying appellate intervention and I would dismiss the appeal on that basis.

Background

[6] Retire West purchased the Home from its former owner in November 2021. The respondents expressed interest to Retire West in purchasing the Home. They communicated with the principal of Retire West, Aldo Venier, and his employee, Kim Sawchuk, about the purchase. As Mr. Venier was out of the country for most of the relevant period, most of these communications were with Ms. Sawchuk, acting on Mr. Venier's behalf.

[7] Retire West agreed to finance the purchase because the respondents could not obtain a conventional mortgage.

[8] On December 3, 2021, Ms. Sawchuk sent a draft contract dated December 1, 2021, to Ms. Choiniere. It fixed the purchase price at \$150,000, required a deposit of \$8,000, payable within 24 hours of execution of the contract, and named Ms. Choiniere and two other individuals—but not Mr. Susak—as the purchasers. The draft contract included a promissory note and a loan amortization schedule. A covering email provided instructions on how to complete the documents.

[9] Ms. Choiniere requested some changes to this draft contract: she wanted the deposit reduced to \$4,000 and the purchasers to be her and Mr. Susak. On December 29, she sent a certified cheque for \$4,000 to Retire West.

[10] On January 1, 2022, Mr. Susak telephoned Mr. Venier, who was in Hawaii. Mr. Susak asked if he could start work on repairing the Home. Mr. Venier encouraged him to do so, telling him and Ms. Choiniere to “treat it as [y]our own”, and that he would “sort out the paperwork” when he returned to Canada.

[11] Ms. Choiniere and Mr. Susak purchased materials and started repairing and renovating the Home at their own expense. Among other things, they replaced flooring and installed new appliances.

[12] On February 8, 2022, Ms. Sawchuk sent the respondents a revised draft contract. It was backdated to January 1, 2022. The revised draft contract changed the purchasers’ names as Ms. Choiniere had requested. It reduced the deposit amount to \$5,000, not \$4,000. It set the purchase price at \$157,000, reflecting some uncontroversial rental arrears for the pad on which the Home is situated.

[13] The revised draft contract also included a promissory note dated January 1, 2022, and a loan amortization schedule. Ms. Sawchuk’s accompanying email instructed the respondents to print two copies, sign both, and mail the originals to Retire West’s office. She wrote that she would “have [Mr. Venier] put his signature on them” and provide the respondents with one original.

[14] The respondents signed and returned the documents as instructed. They moved into the Home on March 1, 2022, and provided Retire West with post-dated cheques in amounts reflecting the payment amounts on the promissory note and for pad rental.

[15] One or both appellants terminated the respondents’ employment on April 25 or 26, 2022. Shortly after, Retire West returned the certified cheque for \$4,000 and the post-dated cheques to the respondents.

Summary Trial Judgment: 2025 BCSC 2260

[16] The parties agreed the Home was a chattel, and the judge proceeded on that basis. He identified the two principal issues as (1) whether the matter was suitable for summary determination and (2) if so, whether the parties had entered a binding contract: at para. 12. There is no dispute that he correctly stated the governing law.

[17] With respect to suitability, Retire West argued the respondents were impermissibly splitting their case because the application only sought judgment on the ownership issue against Retire West, the necessary facts could not be found because of conflicting evidence and credibility issues, and the appellants would be deprived of the opportunity to fully cross-examine Ms. Choiniere.

[18] The judge rejected these arguments, finding the claim against Retire West as to who owned the Home was discrete from the wrongful dismissal claim, the discrepancies in the evidence were relatively minor, and the appellants had already discovered Ms. Choiniere and their application for further discovery had been denied. He emphasized the proportionality principle, noting that the entire amount in dispute was under \$150,000, and a conventional trial would take 13 days: at paras. 20–27.

[19] With respect to contract formation, the judge reviewed the parties' communications about the Home. He concluded the "only reasonable interpretation" of the revised draft contract emailed to the respondents on February 8 with the promissory note and completion instructions "when viewed by the objective bystander" was that Retire West was offering to sell the Home on those terms. He found the respondents accepted the offer when they executed the documents and returned them to Retire West as instructed, creating a binding contract for purchase and sale of the Home: at paras. 50–55, 61, 65.

[20] The judge also rejected the appellants' alternative argument that, if there was a contract, the respondents had breached it because they had not complied with the "time of the essence" clause requiring the respondents, within 24 hours of the completion date, to pay a \$5,000 deposit (they had only paid \$4,000) and deliver the

necessary registration documents to Retire West. The judge found the appellants could not rely on the “time of the essence” clause because the parties contemplated there would be a delay in Mr. Venier signing the contract as he was in Hawaii, and because the contract stipulated a completion date of January 1, 2022, but was only provided to the respondents on February 8: at paras. 71–73.

[21] With respect to remedy, the judge rejected the appellants’ submission that a damages award was a more appropriate remedy, finding the evidence was insufficient to quantify damages: at paras. 75–78. He noted the primary relief sought by the respondents was a declaration of ownership. While he observed that an order for specific performance is often appropriate in cases of contract enforcement, he exercised his discretion to make a declaratory order in this case, reasoning as follows:

[80] ... Because the manufactured home is a chattel as opposed to real property, and it is not apparent to the Court that further documentation or further actions are required to give effect to the contract that I have found to be in effect between the parties.

[22] Accordingly, the judge issued a declaration that the respondents were the owners of the Home, and that Retire West was entitled to a registered charge against the Home for the balance of the purchase price. Incidental to the declaration of ownership, the judge determined that the respondents had to pay the pad rent from the date they occupied the Home: at para. 81.

Issues

[23] The parties offer different formulations of the issues. I would frame them as follows:

- a) Did the judge err in finding the matter was suitable for summary trial;
- b) Did the judge err in finding there was an enforceable contract for purchase and sale of the Home; and
- c) Did the judge err in exercising his discretion to award declaratory relief?

[24] As noted, the standard of review for all these issues is deferential. The first and third issues involved an exercise of discretion. This Court will intervene only if the discretion has not been exercised judicially or was exercised on a wrong principle, such as failing to give weight to relevant considerations: *Hewson v. Peter Kiewit Infrastructure Co.*, 2017 BCCA 143 at para. 4; *Cinnabar Brown Holdings Ltd. v. The Owners, Strata Plan VIS 1549*, 2025 BCCA 341 at para. 11. As the second issue involves a question of mixed fact and law, the standard of review is palpable and overriding error: *Oswald v. Start Up SRL*, 2021 BCCA 352 at para. 31.

Suitability for Summary Trial

[25] The judge addressed each of the appellants' arguments on suitability and gave reasons for rejecting them. On appeal, the appellants say the judge erred in characterizing the wrongful dismissal claim as only against Sorrento, when it was against both appellants. It is true the respondents advanced the wrongful dismissal claim and sought aggravated and punitive damages against both appellants. However, that does not detract from the judge's conclusion that the home ownership claim against Retire West was discrete from the other claims. The appellants have not pointed to any potentially inconsistent outcomes that could arise from summarily deciding the home ownership claim, nor have they addressed the proportionality principle.

[26] The appellants have not identified any error in principle by the judge. Instead, they effectively seek to reargue suitability. I would not accede to this ground of appeal.

Contract Formation

[27] The appellants argue the judge misapprehended the facts in concluding that the revised draft contract Retire West sent to the respondents on February 8, 2022, was an offer, acceptance of which would create an enforceable contract. However, these arguments simply reiterate their position in the court below about how the judge should interpret the evidence.

[28] An appeal is not an opportunity to reargue the case. Absent an extricable error of law—and none has been identified here—the appellants must identify obvious and material factual errors in the judge’s findings. In my view, the appellants have failed to point to any factual error that meets the standard for appellate intervention.

Declaratory Relief

[29] The appellants advance two arguments in support of their position that the judge made a reviewable error in granting declaratory relief. First, they say he did not consider relevant cases they relied on before exercising his discretion. Second, they say he erred in suggesting that no further actions were required to give effect to the contract.

[30] I would not accede to the first argument. A judge is not required to cite or discuss cases because they have been cited by a party. There is no question that a declaration is a discretionary remedy. The judge’s reasons explain why he granted this remedy. First, the judge found that a damages award was not appropriate because the evidence did not permit quantification of damages. Second, the judge recognized that specific performance may be ordered as a remedy for breach of contract in these circumstances, but he granted a declaration instead because the record was not clear as to whether further actions might be required to give effect to the contract.

[31] The appellants’ second argument is that the judge overlooked the further steps that were in fact required to give effect to the contract and transfer ownership of the Home to the respondents. They point to the registration requirements in the *Manufactured Home Act*, S.B.C. 2003, c. 75 and the *Manufactured Home Regulation*, B.C. Reg. 441/2003. These provisions set out the process that must be followed to complete a transfer of ownership for a manufactured home that has been registered with the manufactured home registry. As the Home had been registered, these steps were necessary to give effect to the contract.

[32] However, as the appellants conceded at the hearing of the appeal, they did not advance this argument before the judge. During closing submissions, the judge asked counsel for the appellants whether anything more was needed to effect a change in ownership of the Home, pointing out that further steps are needed when the contract involves the purchase and sale of real property. Counsel responded that he was “not clear” whether more was needed and characterized the question as “a side issue”.

[33] I agree with the respondents that in these circumstances, it is not open to the appellants to now seek to overturn the declaratory order on this ground. On appeal, the appellants did not say they anticipated any difficulty in effecting a transfer of the Home from Retire West to the respondents. If any difficulty in the practical implementation of the declaration arises, it will be open to the parties to seek further specific direction from the summary trial judge.

Disposition

[34] In conclusion, I would dismiss the appeal.

“The Honourable Justice Iyer”

I AGREE:

“The Honourable Madam Justice Horsman”

I AGREE:

“The Honourable Justice Fleming”