COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *MBW Canada Holding Inc. v Canstar Restorations Limited Partnership,* 2026 BCCA 455

Date: 20261118
Docket: CA51446

Between:

MBW Canada Holding Inc.

Appellant
(Defendant)

And

Canstar Restorations Limited Partnership

Respondent
(Plaintiff)

Before: The Honourable Chief Justice Marchand
The Honourable Madam Justice Fisher
The Honourable Justice Brundrett

On appeal from: An order of the Supreme Court of British Columbia, dated March 19, 2026 (*Canstar Restorations Limited Partnership v MBW Canada Holding Inc.*, 2026 BCSC 472, Vancouver Docket S218371)

Counsel for the Appellant:	A. MacKay, KC G. Martz
Counsel for the Respondent:	S.T. Robertson
Place and Date of Hearing:	Vancouver, British Columbia October 6, 2026
Place and Date of Judgment:	Vancouver, British Columbia November 18, 2026

Written Reasons by:
The Honourable Chief Justice Marchand

Concurred in by:
The Honourable Madam Justice Fisher
The Honourable Justice Brundrett

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Summary:

The appellant appeals from a summary trial decision finding the appellant breached a contract and ordering the appellant to pay the respondent an outstanding invoiced amount plus interest. The appellant submits the trial judge erred by finding the action suitable for summary trial. The appellant argues the judge erred in his analysis by: (a) giving no weight to the appellant's plea for equitable set-off, and (b) giving insufficient weight to the appellant's defence of poor work quality.

Held: Appeal dismissed. The judge did not err in determining the matter was suitable for summary trial. The decision to proceed by summary trial is discretionary. The judge identified the correct legal principles, weighed relevant competing factors, and justifiably concluded on the record before him that deciding the issue summarily was expedient, fair, and appropriate.

Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

[1] The appellant, MBW Canada Holding Inc. ("MBW"), appeals from a summary trial order granting the respondent, Canstar Restorations Limited Partnership ("Canstar"), judgment on a breach of contract claim. The trial judge's reasons for judgment are indexed as *Canstar Restorations Limited Partnership v MBW Canada Holding Inc*., 2026 BCSC 472 ("RFJ").

[2] The claim arises out of emergency restoration services provided by Canstar to MBW following a major fire that caused severe damage to MBW's commercial premises in Maple Ridge (the "Property") on December 31, 2020. Canstar's work was performed under a work authorization entered into between the parties on January 7, 2021 (the "Work Authorization") and as directed by an insurance adjuster acting for MBW's insurer, Gore Mutual Insurance Company ("Gore").

[3] The claim was fully insured by Gore, and Gore paid MBW the full amount of Canstar's invoices. Under the Work Authorization, MBW was obliged to pay Canstar on receipt of these funds. However, MBW refused to do so.

[4] In allowing Canstar's action against MBW, the judge found MBW breached the Work Authorization by failing to pay Canstar the invoiced amounts. He awarded Canstar the full amount of its unpaid invoices (totalling $1,038,549.15), plus interest.

[5] MBW was self-represented at trial by its owner, Li Zhi Luo. Mr. Luo initiated and advanced MBW's appeal without counsel. However, MBW retained counsel for the hearing of its appeal. At the hearing of the appeal, counsel for MBW helpfully and appropriately narrowed the issues. MBW formally abandoned all grounds of appeal except one. It argues the judge erred in determining Canstar's action was suitable for summary trial.

[6] For the reasons that follow, I disagree and would dismiss the appeal.

Background

[7] The judge's reasons for judgment set out the circumstances in some detail. Below, I highlight only those aspects necessary to dispose of the appeal.

[8] Canstar is a restoration company that provides services to clients who have experienced property damage. Following the fire, it was engaged by Gore to undertake emergency repairs at the Property. Due to the urgency of the situation and with the knowledge of MBW, Canstar's work on the Property began on January 3, 2021, several days prior to MBW signing the Work Authorization.

[9] The Work Authorization is a one-page standard form contract. The key terms on the form were:

- Canstar would provide "Emergency/Environmental Services" but not "Structural Repairs &/or Reconstruction".
- Canstar would perform its work "as soon as reasonably practicable and shall do so in a good and workmanlike manner in accordance with industry standards and as may be directed by the Adjuster/Insurer".
- Canstar would be paid for performing its work based on its standard labour and material charges including applicable contractor's fees plus GST/HST as and when invoiced by Canstar.

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- Any cheques issued by the insurer in respect of the work would be endorsed by MBW to Canstar.

- MBW was obliged to pay Canstar within 30 days of the date of an invoice failing which interest would be paid at a rate of 24% per annum.

[10] At the request of Mr. Luo, a handwritten term was added to the Work Authorization providing that “MBW can cancel this Work Authorization anytime with a 24-hour written notice”.

[11] At the direction of Gore’s adjuster, Canstar performed extensive work at the Property. Canstar’s invoices were provided to the adjuster and audited by an engineering consultant. They were then paid by Gore to MBW. As noted, MBW subsequently refused to pay Canstar.

[12] Canstar commenced this action on September 23, 2021 to recover payment of its unpaid invoices. In its amended response to civil claim, MBW alleged Canstar breached the Work Authorization and was negligent including by:

- performing work prior to receiving authorization to do so;

- performing work outside the scope of the Work Authorization;

- performing unnecessary work;

- not complying with “applicable codes, bylaws, regulations, enactments and established industry standards”;

- not performing its work in a good and workmanlike manner; and

- causing damage to the Property.

[13] MBW also alleged Canstar failed to invoice MBW in such a way that would entitle Canstar to interest under the Work Authorization.

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[14] Under the heading “Additional Facts”, MBW pleaded the cost to repair deficiencies and damage caused by Canstar “should be set off against any amount found to be owed to Canstar.” This pleading was not repeated under the “Legal Basis” of the amended response.

[15] MBW also filed a counterclaim. In its amended counterclaim, MBW repeats and relies on the facts set out in its amended response to civil claim and seeks damages from Canstar for breach of contract and negligence.

[16] On May 29, 2024, Canstar filed its application for summary trial, seeking determination of its breach of contract claim. By my count, Canstar’s application was scheduled for hearing eight times. On three occasions, Canstar consented to an adjournment because MBW either required or had just retained new counsel. On three occasions, Canstar’s application was bumped because no judge was available to hear it. On one occasion, Canstar’s application was adjourned to address an application brought by MBW to disqualify Canstar’s counsel (an application that was dismissed on November 19, 2025). Despite an order prohibiting MBW from bringing further applications prior to the hearing of Canstar’s summary trial application, MBW also applied to adjourn the hearing that resulted in the order under appeal (an application that was also dismissed).

[17] Canstar’s summary trial application was finally heard on March 5-6, 2026. The judge’s reasons for judgment followed soon after on March 19, 2026.

The Chambers Judgment

[18] After setting out the factual and procedural background in considerable detail, the judge decided Canstar’s action was suitable for summary trial under Rule 9-7 of the *Supreme Court Civil Rules,* BC Reg 168/2009 [*Rules*].

[19] The judge began his analysis by outlining the well-known legal principles at play. He cited *Gichuru v Pallai*, 2013 BCCA 60 at paras 30-31 for its non-exclusive list of factors to determine whether it would be unjust to decide the issues summarily: RFJ at para 58.

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[20] Relying on *Shannon v Dhaliwal*, 2015 BCCA 402 at paras 7-8, he noted "the existence of a counterclaim, or an allegation of negligence, do not prevent proceeding by way of a summary trial unless the claims are inextricably interwoven with the issues that must be determined at the trial of the counterclaim": RFJ at para 59.

[21] The judge cautioned himself that "[w]here a summary trial application will not resolve the entire dispute, the court should consider whether the application will amount to 'litigating in slices'": RFJ at para 60. However, citing *Ferrer v 589557 B.C. Ltd.*, 2020 BCCA 83 at paras 23-37, he held "[w]here a discrete issue is not inextricably interwoven with the remaining issues, provided that there are sufficient facts before the court to make the necessary factual findings, and an assessment of the other factors favour a summary trial, the concern about 'litigating in slices' does not arise": RFJ at para 60.

[22] Finally, at para 61, he set out the following passage from *Arbutus Investment Management Ltd. v Russell*, 2022 BCSC 72, aff'd 2023 BCCA 9 explaining the nature of a summary trial:

> [48] This is a trial. The parties need to treat it as a trial: *Bayview Construction Ltd. v. Warner*, 2018 BCSC 2576 at paras. 19 and 27. There is no tomorrow. Each party must put their best foot forward: *Council of Canadians with Disabilities v. British Columbia (Attorney General)*, 2020 BCCA 241 at para. 64; *Gichuru v. Pallai*, 2013 BCCA 60 at para. 32; *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275 [*Everest Canadian Properties*] at para. 34; *1050017 B.C. Ltd. v. Lee*, 2019 BCSC 1512 at para. 8; *Player v. Janssen-Ortho Inc.*, 2014 BCSC 1122 at para. 165.
>
> [49] Its adjournment application having failed, AIM was required to put all its cards on the table. At a summary trial, evidence can be weighed: *The Bank of Nova Scotia v. Robertson*, 2001 BCCA 580 at para. 11. Conflicts in the evidence can be resolved: *Zhao* at para. 6. At that point, there was no time left for AIM to collect further evidence or further documents. As the court stated in *Canadian Western Bank Leasing Inc. v. SSC Ventures (No. 98) Ltd.*, 2016 BCSC 223, "where a respondent fails to make use of pre-trial procedures and frustrates the proper functioning of the summary trial, they take a serious risk that the court will grant judgment relying upon the evidence it does have": para. 36. Where an application is brought by one party, the other may not simply insist on a full trial in the hopes that, with the benefit of viva voce evidence, "something might turn up": *Everest Canadian Properties* at para. 34

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[23] In concluding Canstar's contractual claim was suitable for summary determination, the judge held:

- Canstar's contractual claim was straightforward, and the salient facts were not seriously disputed by MBW (RFJ at paras 62-63);
- MBW's disagreements with the evidence related to its negligence counterclaim (RFJ at para 62);
- the significant amount of the claim alone was not a reason to require a full, lengthy and expensive trial (RFJ at para 63);
- the issues raised in MBW's counterclaim were not inextricably interwoven with Canstar's contract claim (RFJ para 64);
- no factual findings in the summary trial would prejudice MBW's negligence claim (RFJ at para 64);
- the judge hearing MBW's counterclaim would not be bound by any of his factual findings (RFJ at para 64);
- the procedural history favoured proceeding summarily, as it appeared MBW was attempting to avoid answering Canstar's claim and resolving Canstar's contractual claim would "to a degree streamline the proceedings" (RFJ at para 65); and
- MBW had not applied to cross-examine Gore's insurance adjuster, nor had MBW diligently pursued a document production application, served an appointment to discover Canstar's representative, or adduced evidence in support of its allegations that Canstar's work extended beyond what was necessary or that MBW had been defrauded (RFJ at paras 66-70).

[24] The judge concluded his suitability analysis as follows:

> [71] Canstar's action is suitable for resolution by summary trial. The facts related to Canstar's claim are not seriously disputed and are sufficient to

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> allow for summary determination. It would not be unjust to decide the issues on this application, the matter is not complex, the issues raised in the counterclaim are not inextricably interwoven with Canstar's breach of contract claim, the costs of proceeding to a conventional trial taking into account the proceedings to date, favour summary determination. Resolving the contractual claim will streamline the proceedings and not in any way complicate or prejudice the advancement of MBW's counterclaim.

[25] Turning to the merits, the judge noted MBW did not dispute that the Work Authorization was an enforceable contract, that MBW received payment for Canstar's work or that MBW did not pay Canstar: RFJ at para 73.

[26] MBW's main argument was that Canstar failed to perform its work in a "good and workmanlike manner in accordance with industry standards": RFJ at para 74. Ultimately, MBW submitted it should not have to pay Canstar's bills because (a) Canstar exceeded the scope of the contract by performing reconstruction work when it was only authorized to conduct emergency and environmental services; (b) Canstar conducted demolition work before the Work Authorization was executed; (c) Canstar breached laws while completing the work, thereby making Canstar's bills illegal; and (d) the work Canstar performed caused damage: RFJ at paras 74-76.

[27] While MBW appeared to accept the contract allowed Canstar to take direction from the adjuster, MBW submitted such direction was not unlimited, and MBW's consent was required to perform certain work: RFJ at para 73. MBW also argued the decision of what work was required had to be made by an engineer and was not: RFJ at para 74. As a result, MBW argued it should not have to pay for either work conducted before or after the Work Authorization was executed: RFJ at para 76.

[28] The judge had credibility concerns with Mr. Luo's submissions, many of which were contradicted by the evidentiary record or made without any evidentiary basis: RFJ at paras 80, 84.

[29] The judge denied MBW's request to rely, as expert evidence, on a "Declaration" by Ron Scott, who identified himself as a certified fire investigator. In the judge's view, Mr. Scott's opinions were "clearly not admissible": RFJ at paras 81-82. The judge explained Mr. Scott's qualifications were not set out,

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the Declaration did not conform with Rule 11-2 of the *Rules*, there was no indication as to what information Mr. Scott relied on in coming to his conclusion, the facts the Declaration appeared to rely on were contradicted by the evidence, and Mr. Scott's conclusory opinion appeared to advocate for MBW's position: RFJ at para 82. The judge further noted Mr. Scott's Declaration appeared to relate only to MBW's counterclaim and did not assist in responding to Canstar's allegation that MBW breached the contract: RFJ at para 83.

[30] The judge accepted Canstar's interpretation of the Work Authorization, finding Canstar was entitled to take direction from the adjuster and be compensated for its work, as its work fell within the scope of the contract: RFJ at para 85. The judge rejected MBW's argument Canstar required MBW's approval for each step it took to restore the Property, as an insurance adjuster can be an agent for an insured and, in this case, an agency arrangement was clearly provided for in the Work Authorization: RFJ at para 91. There was also no evidence Canstar's work exceeded the scope of what the adjuster directed, and in fact, there was evidence to the contrary: RFJ at para 91.

[31] The judge also rejected MBW's suggestion that any work performed by Canstar before the Work Authorization was executed was not subject to the conditions in the Work Authorization. The judge found MBW knew Canstar was working on the Property and implicitly, if not explicitly, consented to it: RFJ at para 92.

[32] The judge found several problems with MBW's allegation of the illegality of Canstar's work, including there was no evidence the work was illegal and, even if it was, it was difficult to see how MBW would be entitled to retain funds advanced by the insurance company for the purpose of paying Canstar for work Canstar clearly performed: RFJ at para 93. The judge also found no evidence that Canstar's demolition went beyond what was needed. Rather, the evidence showed Canstar acted on instructions from the adjuster, who deposed Canstar's work was

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reasonable, and Canstar's invoices were audited by an engineer who scrutinized the work performed: RFJ at para 94.

[33] The judge further noted MBW had not invoked the 24-hour cancellation term it added to the Work Authorization and there was no evidence MBW had any concerns with Canstar's work before Gore advanced funds to MBW: RFJ at para 96.

[34] Finally, the judge rejected MBW's argument it was provided with insufficient documents to justify the quantum of the invoices. The judge held MBW breached the Work Authorization by failing to pay Canstar and found MBW liable to pay the invoiced amounts plus interest of 24% per annum calculated from the date the invoiced amounts were due and payable: RFJ at paras 99-102.

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On appeal

[35] On appeal, MBW submits the judge erred by finding the action suitable for summary trial. It advances two arguments:

1. the court erred in giving no weight to MBW's plea for equitable set-off; and
2. the court erred in giving insufficient weight to MBW's defence of poor work quality.

[36] On the first argument, MBW says in determining suitability for summary trial, the court is to have regard to both the pleadings and the evidence. Here, there were both pleadings and evidence addressing its plea for equitable set-off, but the judge did not consider either.

[37] MBW notes its equitable set-off plea is included in both its amended response to civil claim and its amended counterclaim. It claims the cost of repairing the deficiencies and resulting damage caused by Canstar should be set off against any amount found owing to Canstar. MBW submits the plea for set-off sounds in both contract and tort.

[38] According to MBW, the authorities are clear the judge was required to conduct a contextual analysis, having regard to the legal principles. The overarching concern is whether Canstar's claim and MBW's counterclaim for equitable set-off are inextricably linked.

[39] MBW submits while the judge addressed the question of whether Canstar's claim and MBW's counterclaim were inextricably linked, he framed MBW's counterclaim as purely a negligence claim and did not address the question of whether Canstar's claim and MBW's request for equitable set-off were inextricably linked.

[40] MBW argues the judge gave no consideration to the facts or law on the issue of equitable set-off. In particular, MBW says the judge: (a) did not seem to be aware MBW had a plea for equitable set-off; (b) did not consider whether MBW's plea for equitable set-off meant Canstar's claim and MBW's counterclaim were inextricably linked; and (c) did not consider any of the applicable legal authorities on the impact of a plea for equitable set-off on the issue of suitability.

[41] MBW submits the judge erred in stating once Canstar's claim had been addressed, all that remained was MBW's negligence claim. As its equitable set-off claim formed part of both its defence and its counterclaim, and sounded in both contract and negligence, MBW argues the court would still have to consider MBW's breach of contract and negligence claims in its defence as well as its breach of contract counterclaim.

[42] Finally, MBW acknowledges Mr. Scott's Declaration would be inadmissible as expert evidence in a summary trial once the Court had determined the case was suitable for summary disposition. However, MBW submits the judge may have been able to consider the report in its suitability analysis as an indication MBW was attempting to tender evidence to support its plea for equitable set-off.

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[43] On the second argument, MBW submits the judge erred by failing to give sufficient weight to its "quality" plea as a defence, rather than merely as part of its negligence counterclaim. MBW's quality plea includes its plea that Canstar did not perform its work in a good and workmanlike manner. It points to the judge's finding he was unable to place any weight on MBW's inadmissible expert report, "which in any event appears only to relate to MBW's counterclaim, and does not assist in responding to Canstar's allegation that MBW breached the contract": RFJ at para 83. Further, the judge could have acknowledged MBW was attempting to tender evidence via the inadmissible expert report that Canstar failed to perform its work in a "good and workmanlike manner."

[44] As a result of these errors, MBW maintains the decision to summarily decide Canstar's contract claim will result in an injustice, including through "litigation in slices". MBW argues it will be prejudiced because the decision on Canstar's claim amounts to a decision Canstar did the work they were supposed to do and should be paid. MBW says it will now run into *res judicata* issues in respect of both its contract and negligence claims because they are concurrent causes of action

[45] For all of these reasons, MBW submits this Court can conclude the judge's discretion to conduct a summary trial was wrongly exercised.

Standard of Review

[46] A deferential standard of review applies to a judge's discretionary decision to proceed by summary trial: *Retire West Communities Ltd. v Choiniere*, 2026 BCCA 337 at para 24. 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, or it appears the decision itself is clearly wrong and may result in an injustice: *Hewson v Peter Kiewit Infrastructure Co.*, 2017 BCCA 143 at para 4 [*Hewson*]; *Cinnabar Brown Holdings Ltd. v The Owners, Strata Plan VIS 1549*, 2025 BCCA 341 at para 11; *T.G.T. v L.K.M.*, 2025 BCCA 251 at para 69.

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[47] As Madam Justice Stromberg-Stein stated in *Tassone v Cardinal*, 2014 BCCA 149 at para 39, the suitability question is whether the judge can find the facts necessary to decide the factual or legal issues, and whether it would be unjust to do so in the circumstances: *Hewson* at para 4.

Analysis

[48] Respectfully, I see no error in the judge's analysis and conclusion Canstar's claim was suitable for summary determination. In his analysis, the judge identified the correct legal principles, weighed relevant competing factors and justifiably concluded on the record before him that deciding Canstar's breach of contract claim summarily was expedient, fair and appropriate.

[49] Reading the judge's reasons for judgment contextually, functionally and generously, as an appellate court must, it is clear the judge only decided Canstar's invoices were approved and paid for by Gore and MBW was contractually obliged to pay those amounts to Canstar.

[50] The judge exercised his discretion judicially to conclude that summarily determining this narrow issue would not be unjust or prejudice MBW's counterclaim. In doing so, he considered and weighed the fact that the issues in Canstar's claim were straightforward, largely undisputed, and not inextricably interwoven with the issues raised in MBW's counterclaim in a manner that would render the summary disposition unjust. He also noted the procedural history favoured granting the summary trial application as it appeared MBW was attempting to avoid answering Canstar's claim, and resolving Canstar's contractual claim would streamline the proceedings.

[51] The judge's discretionary weighing of relevant factors and conclusion was supported by the fact MBW did not argue the plea for equitable set-off before the judge and did not adduce any evidence at trial to engage the issue.

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[52] In my view, explicit consideration of MBW's plea for equitable set-off and additional weight given to its defence of poor work quality would not have affected the outcome.

[53] Canstar concedes it remains open to MBW to argue all pleaded grounds at the hearing of its counterclaim. In other words, it remains open to MBW to argue Canstar breached the terms of the Work Authorization or was negligent, including by not performing its work in a good and workmanlike manner, exceeding the scope of the Work Authorization, and causing damage to the Property.

[54] Far from MBW being affected by issues of *res judicata*, it is Canstar that is estopped from arguing the judge made any binding determinations in relation to MBW's counterclaim. The judge explicitly stated his factual findings will not bind a judge hearing MBW's counterclaim.

[55] In effect, the parties are now in the position they would have been in had Gore paid Canstar directly, with MBW seeking damages from Canstar for breach of contract and negligence. MBW is free to pursue all the issues it wished to raise in its defence of Canstar's claim at the hearing of its amended counterclaim.

[56] While MBW will be unable to set off any damages awarded to it against the amounts invoiced by Canstar, there is no evidence to suggest collecting any such amounts will be difficult. And, given MBW's (1) delaying conduct, (2) inaction, (3) failure to adduce evidence and (4) ability to pursue its counterclaim, in my view the judge's conclusion on suitability cannot be said to be clearly wrong or to result in an injustice.

[57] As I see no error in the judge's reasons or conclusion, there is no basis to interfere with the judge's determination on suitability.

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Conclusion and Disposition

[58] With thanks to counsel for their helpful assistance, I would dismiss the appeal.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Madam Justice Fisher"

I AGREE:

"The Honourable Justice Brundrett"

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