

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Blue Green Solar Ltd. v. Lewis*,
2025 BCSC 1144

Date: 20250619
Docket: S19305
Registry: Smithers

Between:

Blue Green Solar Ltd.

Appellant

And

Chris Lewis and Denise Bauman

Respondents

Before: The Honourable Mr Justice Tindale

On appeal: An Order of the Provincial Court of British Columbia dated March 5,
2024 (File No. C-3671, Burns Lake Registry)

Reasons for Judgment

Appearing on his own behalf and
representing the Appellant:

M. Yearwood

Counsel for the Respondents:

H.S. Simak

Place and Date of Hearing:

Prince George, B.C.
January 8 & 9, 2025

Place and Date of Judgment:

Smithers, B.C.
June 19, 2025

[1] The appellant Blue Green Solar Ltd. appeals the Reasons for Judgment of Regional Administrative Judge C.A. Struyk of the Provincial Court of British Columbia made on March 5, 2024 (the “Reasons”) on Court file number C-3671 out of the Burns Lake Registry. The Reasons included the following orders:

- 1) The Court awards the Defendants their counterclaim in the amount of \$10,792.48.
- 2) The Court awards the Claimant their claim after reductions to \$7,122.62.
- 3) The Court declines to award either party filing and service fees due to mixed success.
- 4) On a set-off calculation the Defendants receive judgment against the Claimant in the amount of \$3,669.86.
- 5) The Court finds all other heads of claim are dismissed as not established to the requisite standard.

[2] The respondents Chris Lewis and Denise Bauman are opposed to the appeal.

Background

[3] The respondents contacted the appellant to assist them in installing and improving their off-grid solar electrical system. The appellant is owned by Michael Yearwood.

[4] The respondents paid the appellant \$20,000 as a deposit towards work and materials. The appellant invoiced the respondents for an outstanding amount payable of \$12,613.12. This amount was reduced to \$7,122.62 in the Reasons.

[5] The appellant filed a notice of claim in the Provincial Court of British Columbia on February 4, 2022 seeking \$10,449.27 from the respondents. On November 24, 2022 the appellant filed an amended notice of claim seeking \$12,613.12.

[6] The respondents filed a reply to the notice of claim on December 16, 2022 which included a counterclaim of \$42,828.83. The counterclaim included claims for incomplete work, damages to their home and improper billing.

[7] The appellant filed a reply to the counterclaim on December 30, 2022.

[8] The small claims trial of this matter was heard in the Provincial Court of British Columbia on November 14 - 16 2023 and January 3, 2024 (the “Small Claims Trial”).

Position of the Parties

Appellant

[9] The appellant argues that the counterclaim should be dismissed along with the corresponding set-off order.

[10] The appellant is also seeking costs of this appeal in the amount of \$18,000 which represents 180 hours of his time billed at \$100 per hour.

[11] The appellant says that at a settlement conference in the Provincial Court of British Columbia there was an order made that the parties disclose any documents they intended to rely upon and will say statements for any witnesses they intended to call at the Small Claims Trial no later than two weeks prior to the pre-trial conference that was held on April 18, 2023. The appellant argues that this was not done.

[12] The appellant argues that the respondents were permitted to introduce a video recording of an altercation between the parties at the Small Claims Trial which had not been previously disclosed to the appellant. The appellant argues that this video recording also contravened s. 162.1 (1) of the *Criminal Code of Canada*.

[13] The appellant further argues that the appellant was denied a fair trial because the respondents were permitted to call two witnesses namely Tim Neudorf and Eileen Michiel in addition to the respondents. The respondents had not provided witness will say statements for Mr. Neudorf or Ms. Michiel to the appellant.

[14] The appellant argues that Judge Struyk placed significant weight on the previously undisclosed video and the evidence of Mr. Neudorf.

[15] The appellant also argues that he did not receive a fair trial because two police officers the appellant wanted to call as witnesses were not present at the Small Claims Trial. The appellant argued that it was his understanding that the court was going to have the officers appear.

[16] The appellant argues that the reply to the counterclaim should have been accepted.

[17] The appellant argues that Judge Struyk erred by declining to conclude that a contract was achieved between the parties. The appellant says that there was an estimate provided along with a \$20,000 deposit which shows that a contract was reached.

[18] The appellant argues that Judge Struyk erred in not referring to the decision of *Zettl v. Roger Garside Construction Ltd.* 2016 BCSC 2307 in the Reasons. The appellant argues that as a contractor the appellant is not liable for work done on the respondents' property if they were asked to leave the property which was the case here.

[19] The appellant argues that Judge Struyk's decision surrounding the witness' credibility was based on race because he accepted the evidence of the witnesses who were white but did not accept the evidence of Michael Yearwood who is black.

Respondents

[20] The respondents argue that there was no contract between the parties but rather they were only provided a quoted estimate by Mr. Yearwood.

[21] The respondents argue that the appellant's work was not done to their satisfaction and solar panels that were delivered to their residence were not in their original packaging and were not new.

[22] The respondents argue that the appellant caused damage to their residence and Mr. Neudorf estimated that the repairs to their residence would cost over \$10,000.

[23] The respondents argue that Judge Struyk had discretionary powers to proceed with a small claims trial even if one party has not complied with the disclosure order pursuant to Rule 7 (15) of the *Small Claim Rules* B.C. Reg 261/93 (the “*Rules*”). Further Rule 10 (1) allows a judge to conduct the trial without complying with the formal rules of procedure and evidence.

[24] The respondents argue that Judge Struyk inquired with both parties during the trial as to whether there were any surprises and Mr. Yearwood said that he wanted to proceed with the Small Claims Trial.

[25] The respondents argue that with regard to the video recording Mr. Yearwood was present when the video was made and Judge Struyk found that there was no new information contained in the video. Mr. Yearwood was given the opportunity to review the video overnight and he declined to do that. Further the respondents argue that the video pertained to an altercation at their residence involving Mr. Yearwood and was not relevant to the issue of whether or not an invoice was paid but was relevant to the credibility of the witnesses.

[26] The respondents argue that any evidence from the two police officers related to the same incident as the video recording and there was no prejudice to the appellant because those witnesses did not testify.

[27] The respondents argue that the appellant received a fair trial.

Decision

[28] The appellant says that Judge Struyk erred by allowing the respondents to call witnesses who were not on the respondents’ witness list. As well the respondents were allowed to introduce a video into evidence without producing that

video prior to the Small Claims Trial. The appellant says that admitting the video into evidence contravened s. 162.1 of the *Criminal Code of Canada*.

[29] The appellant says the Small Claims Trial was unfair because two police officers who the appellant wanted to call did not attend.

[30] In addition the appellant argues that Judge Struyk did not refer to the *Zettl* case in the Reasons and Judge Struyk's credibility assessment was based on race.

[31] In *Housen v. Nikolaisen*, 2002 SCC 33 the Supreme Court of Canada in discussing the role of a court of appeal stated the following at paras. 1 and 3:

(1) A proposition that should be unnecessary to state is that a court of appeal should not interfere with a trial judge's reasons unless there is a palpable and overriding error. This same proposition is sometimes stated as prohibiting an appellate court from reviewing a trial judge's decision if there was some evidence upon which he or she could have relied to reach that conclusion.

...

(3) The role of the appellate court was aptly defined in *Underwood v. Ocean City Realty Ltd.* (1987), 1987 CanLII 2733 (BCCA), 12 B.C.L.R. (2d) 199 (C.A.), at p. 204, where it was stated:

The appellate court must not retry a case and must not substitute its views for the views of the trial judge according to what the appellate court thinks the evidence establishes on its view of the balance of probabilities.

[32] The Supreme Court of Canada in *Housen v. Nikolaisen* went on to discuss the definition of palpable error at para. 5:

(5) What is palpable error? The *New Oxford Dictionary of English* (1998) defines "palpable" as "clear to the mind or plain to see" (p. 1337). The *Cambridge International Dictionary of English* (1996) describes it as "so obvious that it can easily be seen or known" (p. 1020). The *Random House Dictionary of the English Language* (2nd ed. 1987) defined it as "readily or plainly seen" (p. 1399).

Zettl Decision

[33] The appellant did not clearly develop his argument as to why Judge Struyk should have referred to the decision in *Zettl* other than to say the appellant is not

liable for any work on the respondent's property because the appellant was asked to leave.

[34] In *Zettl* the Court stated the following at para. 91:

Again, work that was yet to be completed cannot be taken as a failure or breach of contract by RGC because Mr. Garside was never given the opportunity to finish. He remained willing to advise any successor who asked about the work. However, except for the leak over the solarium, he was never contacted for assistance or information.

[35] The situation in the case at bar is not the same as in *Zettl*. Judge Struyk found that there were numerous deficiencies and safety hazards in the system that was installed by the appellant as well as a number of difficulties with the accounting for the appellant's labour. The issue during the Small Claims Trial was not whether the appellant was given an opportunity to finish the job but rather that there were numerous deficiencies and safety hazards left by the appellant.

[36] I do not accede to the appellant's argument in this regard.

Bias Based on Race

[37] The appellant also argues that Judge Struyk's credibility assessment of the witnesses was based on race because Mr. Yearwood who is black was not believed and the witnesses for the respondent who were white were believed.

[38] There is no evidence in the Reasons or the transcripts of the Small Claims Trial which give any weight to this argument.

[39] Judge Struyk with regard to the credibility of Mr. Yearwood stated the following at para. 39 of the Reasons:

... I would just say that the court lost confidence in Mr. Yearwood's credibility after he alleged Mr. Lewis brandished a firearm on January 3, 2022. The video, Exhibit 13, and his partner, who were present for the incident, in my view do not support that version of events....

[40] Judge Struyk provided clear reasons as to why he did not accept all of Mr. Yearwood's evidence.

[41] I would not accede to the appellant's argument in this regard.

Disclosure and Witnesses

[42] The appellant argues that the Small Claims Trial was not fair because he was not provided with a list of witnesses that the respondents intended to call prior to the trial. In addition he was not provided a copy of the video prior to the trial and the police officers who he wanted to give evidence did not attend.

[43] On November 14, 2023 Judge Struyk took a considerable amount of time to explain the rules surrounding document disclosure and the procedures for the Small Claims Trial.

[44] There is no question that the respondents did not provide all of their document disclosure including the video until the day of trial. This was discussed between the parties and Judge Struyk.

[45] After a discussion with Mr. Yearwood about disclosure Judge Struyk stated the following on November 14, 2023 which can be found at page 27 lines 25-28 of the transcript:

Okay. All right. Okay. Then as far as I know, you -- we've got -- the disclosure exchange has occurred as best it can, and I think we should start with our hearing. Are you ready to proceed?

[46] Mr. Yearwood replied "Yes, sir."

[47] With regard to the video the respondent Chris Lewis stated the following on November 14, 2023 which can be found at page 24 lines 22-29 of the transcript:

Because it was literally at the trial-- sorry, when we were told the witnesses that he was bringing, we went to the Burns Lake Police Department. We then met with the Burns Lake Police Department. They said, again, if he tries to call them, "we'll deal with that". We then stumbled across this video. We didn't know we had this video. It wasn't part of the case.

[48] Ultimately Judge Struyk allowed the video to form part of the evidence at the Small Claims Trial. Judge Struyk on November 15, 2023 made the following ruling which can be found at page 145 lines 33-43 of the transcript:

I'm going to allow it because both parties were present so I -- it's like-- it's like a recorded conversation. Both parties are part of the conversation. So you -- you know, it's not -- or -- or like a -- I just—I-- I realize there's a disclosure issue, but I think that does not -- that in this circumstance because the parties were both present then that makes it information that was available to you already except it was in the video. You didn't know it was a video, but you were present when it happened.

[49] Judge Struyk then made the following ruling on November 15, 2023 which can be found at page 146 lines 38-47:

Right now, my -- Mr. -- I've heard enough, Mr. Yearwood.

I'm ruling that video can go in at this point subject to any -- if something overnight -- sometimes it's best if I think about this overnight and-- but I don't see any reason right now why the video should not go in. I wish it had been disclosed properly, but I have already said why I think this fits an exception. And I'm-- so I'm granting that...

[50] Finally the appellant argues that distributing copies of the video without permission is technically copyright infringement. In support of that argument the appellant relies on s. 162.1 (1) of the Criminal Code. Section 162.1 can be found in Part V of the *Criminal Code* which is the Sexual Offenses, Public Morals part of the *Criminal Code*.

[51] Section 162.1 deals with the publication or distribution of intimate images which is not the subject matter of the video which was entered as evidence on the Small Claims Trial. There is no merit to this argument.

[52] The appellant also objected to Mr. Tim Neudorf being called as an expert witness. The appellant was concerned because he did not receive a witness list or will say statement which included Mr. Neudorf on it.

[53] Judge Struyk asked Mr. Yearwood if Mr. Neudorf's report had been disclosed to him and Mr. Yearwood stated "It may have been disclosed to me, sir": transcript of November 15, 2023 page 102 line 20.

[54] Judge Struyk then made the following ruling on November 15, 2023 which can be found at page 102 lines 40-43 of the transcript:

No, but what I'm told is that the witness's evidence is essentially what's in those reports, and that is, in my view, sufficient for these purposes.

[55] The appellant makes the same argument with regard to the witness Eileen Michiel who was called by the respondents because the appellant was not provided a list of witnesses or a witness will say statement as had been earlier directed by the court. Ultimately Judge Struyk allowed the respondents to call Ms. Michiel because she was the partner of Mr. Yearwood and came to the jobsite with him.

[56] Rule 7 reads:

(15) If a party does not comply with an order under sub rule (14) (f), (g) or (j), a judge may at any time do one or more of the following:

- (a) adjourn a settlement conference or trial and order that party to pay all the reasonable expenses incurred by any other parties as a result of the adjournment;
- (b) order a trial to proceed without permitting that party to produce as evidence of any information, document or records withheld as a result of the non-compliance;
- (c) dismiss the claim, counterclaim, reply or third party notice.

[57] Rule 10 reads:

- 1) A judge may conduct the trial without complying with the formal rules of procedure and evidence, and in doing so may
 - a) asked the parties to explain their cases, to respond to each other and to call witnesses (see Rules 7 (15) (b) and 7.5 (15) (b)), or
 - b) received evidence in any other way the judge thinks is appropriate (see Rules 7 (15) (b) and 7.5 (15) (b)).

[58] Judge Struyk heard arguments from both parties regarding document disclosure and the various witnesses that the respondent's intended to call. Small Claims Trials are meant to be an expedient cost-efficient way for parties to resolve their disputes. The respondents did not comply with some of the pretrial directions that were given with regard to document disclosure and witness will say statements

however both parties were given an opportunity to explain their positions to Judge Struyk who made rulings on these issues.

[59] Rule 7(15) and 10 (1) allow for considerable latitude with regard to procedures on the part of a judge conducting a Small Claims Trial. It is clear after a review of the record on this appeal that Mr. Yearwood on behalf of the appellant was heard with regard to his objections and it is also clear that the appellant wanted to proceed with the trial and did not ask for an adjournment.

[60] In my view it was open to Judge Struyk to conduct the Small Claims Trial as he did and there was nothing unfair about it. Judge Struyk did not make any palpable or overriding errors in the manner that he conducted the Small Claims Trial.

[61] The appellant also argues that the trial was unfair because the two police officers he wished to call did not appear. It is also clear that the appellant did not subpoena these police officers nor did the appellant ask for an adjournment because they were not present. I would not accede to this argument by the appellant

[62] I would not accede to any of the arguments that the appellant has made with regard to irregularities with document disclosure, the production of witness lists and will say statements, or the witnesses that were allowed to give evidence at the Small Claims Trial.

Conclusion

[63] For all of the above noted reasons the appeal is dismissed.

[64] The respondents are entitled to their costs of the appeal.

“The Honourable Mr. Justice Tindale”