

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Synergaze Inc. v. Royal Canadian Marine
Search and Rescue Inc.*,
2025 BCSC 1213

Date: 20250627
Docket: S247594
Registry: Victoria

2025 BCSC 1213 (CanLII)

Between:

Synergaze Inc.

Petitioner

And:

Royal Canadian Marine Search and Rescue Inc.

Respondent

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for Petitioner:

E. W. Hulshof

Counsel for Respondent:

C. A. Siver
R. J. Tenta

Place and Dates of Hearing:

Victoria, B.C.
June 2 – 3, 2025

Place and Date of Judgment:

Victoria, B.C.
June 27, 2025

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Introduction

[1] The petitioner, as tenant, entered into a lease agreement (the “Lease”) with the respondent, as landlord, for the purpose of erecting inland tanks for use in the tenant’s business of growing algae on the leased property in Sooke, B.C. (the “Leased Property”).

[2] The Lease was prepared by the respondent’s solicitor. The Lease can best be described as a Frankenstein’s monster of defined terms and clauses leading to the dispute that brings the parties before the court. I note that the Lease was not prepared by counsel of record at this hearing.

[3] The Lease separated the term into three stages: Stage 1 Term, Stage 2 Term and Stage 3 Term and permitted the tenant to graduate up the stages on conditions that are expressed in the Lease.

[4] T’Sou-ke First Nation owns the aquaculture rights on the Leased Property and has entered into a partnership with the petitioner as part of the Nation exercising those rights. Although not a party to this proceeding, T’Sou-ke First Nation has an interest in the outcome.

[5] The petitioner seeks an order that the Lease is in full force and effect, that it has graduated from the Stage 1 Term to the Stage 2 Term, and it is entitled to quiet enjoyment without interference from the respondent. The respondent says that the lease has been terminated and is no longer in force and effect.

[6] On August 29, 2024, an interim injunction was granted restraining the respondent from using the Leased Property in accordance with the Lease until the petition was heard. At the hearing of the petition, I extended the interim injunction until these reasons are released.

Issues

[7] The following issues are to be decided:

- a) Did the petitioner provide adequate notice in accordance with the Lease?
- b) If the petitioner provided adequate notice, did the petitioner have a right pursuant to the Lease to graduate from the Stage 1 Term to the Stage 2 Term?
- c) Was the petitioner's quiet enjoyment of the Leased Property interfered with?

Timeline

[8] The Stage 1 Term of the Lease commenced on May 1, 2021 and ended on April 30, 2024.

[9] On December 3, 2021, Bill Riggs in his capacity as CEO of the respondent, writes to the BC Ministry of Forests, Lands, National Resource Operations and Rural Development confirming it has signed the Lease, that the Lease will be extended as needed and that the respondent is fully supportive of the petitioner's water pipe utility application.

[10] On June 2, 2023, Mr. Riggs writes to Tamara Loiselle, advising that the Lease will end on May 1, 2024 and proposes a licensing agreement in its place. Mr. Riggs expresses concern that the Lease is not compliant with the *Land Title Act*.

[11] On June 7, 2023, Ms. Loiselle responds to Mr. Riggs advising that the petitioner does not wish to surrender the Lease.

[12] Mr. Riggs responds on June 9, 2023 advising that he is not suggesting a renegotiation of the Lease; however, states there is a need to move to a licensing agreement to ensure that the arrangement is permissible under the *Land Title Act*.

[13] On June 9, 2023, Ms. Loiselle further responds advising that she has sought legal advice confirming the Lease is legal and enforceable and that there is no requirement to change to a licensing agreement.

[14] On November 27, 2023, counsel for the respondent writes to Ms. Loiselle attaching a draft licensing agreement citing concerns that the Lease violates s. 73(1) of the *Land Title Act* and asking for a response no later than December 15, 2023.

[15] On March 11, 2024, counsel for the respondent writes a further letter to Ms. Loiselle advising that the Lease will expire on April 30, 2024 as notice of a renewal was not delivered at least 3 months prior to the expiry of the Lease. Vacant possession of the Leased Property was demanded no later than May 1, 2024.

[16] On March 15, 2024, Tamara Loiselle, on behalf of the petitioner, emails representatives of the respondent providing notice to graduate to the Stage 2 Term of the Lease. The relevant portions of that email are as follows:

...

Synergaze is now exercising its rights pursuant to Sections 1.3 and 1.5 of the executed lease to graduate to Stage 2 of the lease. The next stage clearly outlines the lease rate per month, and that the first term is for 5 years, with two renewal 5 year term options. We suggest that the first date of the Stage 2 term begin on May 1, 2024. Please advise if that date will not work for RCMSAR.

...

[17] A further notice was sent to the respondent by the petitioner on March 28, 2024. It read, in part, as follows:

...

The Tenant hereby provides notice to the Landlord of its intention to exercise, and hereby exercises, their option to graduate to Stage 2 of the Lease for the Stage 2 Term, commencing on May 1, 2024 and expiring April 30, 2029.

[18] On April 11, 2024, counsel for the respondent confirms its position that the Lease is terminated on April 30, 2024 and states its position with respect to notice as follows:

...

In your client's March 28, 2024 letter, Synergaze purports to be delivering notice of an intent to move to "Stage 2" of the agreement. The underlying agreement to rent access to our client's property is separate from the concept of stages. The stages are with regard to the intensity of the use your client wishes to put the rented property. The notice to move from Stage 1 to

Stage 2 or from Stage 2 to Stage 3 requires an underlying agreement in order to be effective. As your client failed to renew the underlying agreement pursuant to clause 1.6, any notice with regard to a move to Stage 2 is void.

We further notice that at clause 8.3, your client promised it would enter into a new agreement or addendum to the current agreement to allow for additional access but no proposal regarding your client's activities in Stage 2 has been delivered to our client.

Notwithstanding your client's failure to renew the agreement and the lack of clarity from your client regarding their needs, the Royal Canadian Marine Search and Rescue remains willing to consider a proposal from your client to enter into a new licensing agreement.

In conclusion, the May 1, 2021 agreement is lawfully terminated. The Royal Canadian Marine Search and Rescue is willing to negotiate a new agreement and the Royal Canadian Marine Search and Rescue wish to be advised on your client's plan for Stage 2, which plan must include remediation and deposits to guarantee same.

[19] On July 3, 2024, counsel for the respondent writes to the petitioner requesting removal of the trailer on the Leased Property no later than August 31, 2024.

[20] A further letter is sent by counsel for the petitioner to the respondent on July 12, 2024 demanding that the respondent cease interference with the petitioner's rights under the Lease and confirming the petitioner's position that 30 days' notice was required pursuant to s. 1.5 of the Lease.

[21] Counsel for the respondent writes back on July 18, 2024 taking the position that there is no Lease and the only rights provided to the petitioner were for access and takes the following position on renewal:

... While we do not deny there has been some evidence of your client's use of the property from time to time, and that sporadic attendance at the property would likely qualify as regular and continuous use, such an assertion is without legal effect. Your client failed to deliver its intention to renew by the deadline, if it had the right to do so, which conclusion is denied. ...

General Principles of Contractual Interpretation

[22] The modern principles of contract interpretation can be summarized as follows:

- a) The goal of contract interpretation is to ascertain the objective intentions of the parties at the time of formation of the contract: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] at paras. 47 & 55.
- b) The contract must be read as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances: *Sattva* at para. 47.
- c) Evidence of subjective intention or understanding is inadmissible to support the existence of, to add to, to subtract from, to vary, or to contradict a contract that is in writing: *Sattva* at para. 59.
- d) The exercise of contractual interpretation begins with a reading of the actual words used by the parties and a legitimate interpretation will be consistent with the language that the parties employed to express their agreement. A meaning that strays too far from the actual words fails to give effect to the way in which the parties chose to define their obligations: *Resolute FP Canada Inc. v. Ontario (Attorney General)*, 2019 SCC 60 [*Resolute*] at para. 76.
- e) An interpretation that ignores context in which the contract was formed will not accurately discern what the parties intended to achieve, even if the interpretation is “literally correct”: *Resolute* at para. 77.
- f) The court may only imply terms to the extent that it gives context and accuracy to the words used; however, the court is not free to imply a term that goes beyond or is inconsistent with the words of the contract, particularly to improve the bargain favour of any party: *Toronto (City) v. Toronto Terminals Railway Co.*, [1999] O.J. No. 3734 at para. 29.
- g) In a commercial context, commercial reasonableness and efficacy is a “central consideration” in the interpretation of contracts: *Blackmore Management Inc. v. Carmanah Management Corp.*, 2022 BCCA 117 at

para. 42. Commercial reasonableness has also been described as a “crucial” consideration, in that the courts will seek a commercially sensible interpretation since that is more likely than not to give effect to the intentions of the parties: *Resolute* at paras. 79, 142 – 144.

Analysis

Issue #1 – Was adequate notice provided by the petitioner?

[23] The end of the Stage 1 Term was April 30, 2024 and the petitioner provided notice of its intention to graduate from Stage 1 Term to Stage 2 Term of the Lease on March 15, 2024 and again on March 28, 2024.

[24] The petitioner submits that 30 days’ notice is required to graduate from the Stage 1 Term to the Stage 2 Term and that adequate notice was provided.

[25] The respondent submits that 90 days’ notice was required and that the Lease expired on April 30, 2024, at the end of the Stage 1 Term.

[26] The petitioner relies on section 1.5 of the Lease:

1.5 Lease Stage. The Tenant shall provide the Landlord with thirty (30) days’ notice in writing of its intentions to graduate to a different lease stage as noted above.

[27] The petitioner submits that section 1.5 allowed the petitioner to give 30 days written notice to graduate from Stage 1 to Stage 2 of the Lease and that it was permissible for the notice to correspond with the end of the Stage 1 Term. The petitioner further submits that on a plain reading of the Lease, the three-month notice referred to in section 1.6 is reserved for the options to renew following the Stage 2 Term and the Stage 3 Term.

[28] The respondent relies on section 1.6 of the Lease:

1.6 Renewal. Subject to section 1.7 hereof if the Tenant duly and regularly pays the rent herein reserved for the Stage 1 Term and performs all and every covenant and proviso and agreement herein, and provided the tenant continues to carry on its inland kelp operation, the Tenant has the option to enter into the Stage 2 Term or Stage 3 Term lease and any

renewals thereto. Provided the Lease has not otherwise been terminated the option to renew is to be exercised in written notice to be served on the Landlord not later than three (3) months before the expiry of the existing Term, to grant to the tenant a lease renewal of the Leased Property for rent to be agreed upon between the parties with reference to then prevailing market rates for the Leased Property and negotiated in good faith (disregarding any improvements by the Tenant) and failing such agreement, then by such dispute resolution process as the parties may agree upon, but in any event the renewal term's rent shall be no less than the rent applicable to the last year of the immediately preceding term.

[29] The respondent submits that graduating between stages is separate from giving notice to exercise a right of renewal and the commencement of the Stage 2 Lease is an option to renew as defined by section 1.6 of the Lease. Further, the respondent submits that the respondent did not agree to a commencement date for the Stage 2 and that the date cannot be unilaterally set by the petitioner.

[30] Helpful to the analysis is a review of sections 1.1 and 1.3 of the Lease:

1.1 Stage 1 Term. The Landlord hereby leases the Leased Property, as identified in Schedule "A" hereto, to the Tenant for a term of THIRTY-SIX (36) months (the "Stage 1 Term") commencing on the 1st day of May, 2021 (the "Commencement Date") and ending on 30th day of April, 2024.

...

1.3 Stage 2 Term. Subject to section 1.6 and 1.7 hereof, the Landlord hereby agrees to lease the Leased Property to the Tenant for a term (the "Term") of five (5) years, renewable for two successive five (5) year periods, commencing on the date that both parties agree in writing and estimated to be July of 2022 (the "Stage 2 Term"). The Stage 2 Lease will be for approximately 3 acres and the exact location is to be mutually agreed by the parties hereto as set forth in revisions to Schedule "A" hereto.

[31] With respect to interpreting the applicable notice period, I have been advised that there is no extrinsic evidence available to assist with understanding the intention of the parties.

[32] The parties agree that if the notice to graduate from Stage 1 to Stage 2 had been provided at any time earlier than 3 months prior to the end of the Stage 1 Term, there would be no dispute that the notice period required would be 30 days. The dispute arises because the notice was provided less than 3 months from the end of the Stage 1 Term.

[33] The Lease uses the definition of “Term” in sections 1.3 and 1.4 to define the initial 5 years of the Stage 2 Term and the Stage 3 Term. Section 1.6 provides that 3 months notice is required before the expiry of the existing “Term”. The definition of “Term” was not used in section 1.1 when defining the Stage 1 Term.

[34] Although the parties anticipated that the Stage 2 Term of the Lease would commence by July 2022, that was not a requirement and the petitioner remained in Stage 1 until the end of the Stage 1 Term. Reading the Lease as a whole, I am unable to conclude that the parties intended a longer notice period to graduate from Stage 1 to Stage 2 where notice was sent less than 3 months from the end of the Stage 1 Term. On a plain reading of the Lease, the 3 months notice period was applicable to exercising the options to renew provided for in sections 1.3 and 1.4 of the Lease.

[35] This interpretation is consistent with the principle that the Lease must be read as a whole. The respondent’s interpretation would devoid section 1.5 of the Lease of any meaning and create an illogical situation where 30 days’ notice applies in all situations except where the parties are within 3 months of the expiry of the Stage 1 Term.

[36] I find that it was the intention of the parties to require 30 days’ notice to graduate from the Stage 1 Term to the Stage 2 Term and that petitioner provided adequate notice pursuant to the Lease.

[37] The respondent submits that the petitioner ought not be permitted to graduate to Stage 2 as a commencement date has not been agreed upon and that absent such agreement, it is afforded a veto such that the petitioner cannot graduate to Stage 2. Such interpretation is contrary to the extrinsic evidence available, including statements of the respondent that the Lease would be extended as necessary, the respondent was fully supportive of the petitioner’s plans for the Leased Property, and the petitioner would be investing in the Leased Property within Stage 1 on the expectation of staying a tenant on the Leased Property.

[38] As the Stage 1 Term expired on April 30, 2024 and the 30-day notice was first given on March 15, 2024, there is only a window of 15 days (April 16, 2024 to May 1, 2024) for the parties to negotiate the commencement of the Stage 1 Term. If the respondent takes issue with Stage 2 commencing on a date other than May 1, 2024, it shall provide to the petitioner an alternative date within 14 days of these reasons and the petitioner shall provide its response within 7 days of receipt. If the parties are unable to resolve the commencement date, they may seek leave to appear before me to settle the same.

Issue #2 – Does the petitioner have a contractual right to graduate from Stage 1 to Stage 2?

[39] The respondent submits that the petitioner is not permitted to graduate to the Stage 2 Term as the petitioner did not satisfy the pre-conditions of doing so as prescribed by the Lease. The respondent argues that (i) the petitioner is not carrying on inland kelp operation on the Leased Property; (ii) the parties have not agreed on the area to be used for Stage 2; and (c) the petitioner has failed to satisfy the conditions of section 8.3 of the Lease, which provides as follows:

8.3 Additional Documents. The parties hereto agree to execute such additional documents as may be reasonably necessary to give effect to this Agreement such as more detailed lease terms for the Stage 2 Term or the Stage 3 Term and any renewal thereof, including an additional access route to the Leased Property and a possible deposit based on industry standards for potential remediation costs of the Leased Property commensurate with the Tenant's proposed activities on the Leased Property.

Is there an inland kelp operation on the Leased Property?

[40] The Lease provides that that the petitioner can enter into the Stage 2 Term provided it has continued to “carry on its inland kelp operation”.

[41] “Inland kelp operation” is not defined in the Lease. The recitals to the Lease state that the Lease is to allow the Tenant to “erect inland tanks for use in growing algae”. The evidence available at the time the Lease was entered into provide that the parties anticipated that the inland tanks would be erected at some time in Stage 2 of the Lease.

[42] Ms. Loiselle's undisputed evidence concerning the petitioner's business operations on the Leased Property is summarized as follows:

- a) the petitioner has invested in excess of \$250,000 in capital and other resources to prepare the Leased Property for the aquaculture facility;
- b) the petitioner is conducting kelp and seaweed research work on the Leased Property;
- c) the petitioner has conducted environmental assessments of the Leased Property in consultation with T'Sou-ke First Nation;
- d) the petitioner has applied for permits to construct infrastructure on the Leased Property, including a Licence of Occupation; and
- e) the petitioner has obtained permitting for infrastructure, including required marine intake waterlines;

[43] Ms. Loiselle's description of activities is consistent with those that were contemplated by the parties and supported by the historical evidence. The parties discussed the need to obtain permits and approvals before the inland tanks could be constructed and the petitioner has demonstrated that it was obtaining the same. I note here that had the petitioner moved forward with constructing the inland tanks prior to obtaining all necessary permits, it would have found itself to be in breach of the Lease for non-compliance with applicable laws.

[44] Although moving from the Stage 1 Term to the Stage 2 Term was at the end of the timeline contemplated, it was still within the range the parties contemplated.

[45] Accordingly, when the petitioner delivered notice to graduate to the Stage 2 Term, it had satisfied the condition to maintain its inland kelp operations.

Agreement on 3 acres comprising the Stage 2 Leased Property?

[46] The Lease provides as follows: “The Stage 2 Lease will be for approximately 3 acres and the exact location is to mutually agreed to by the parties hereto as set forth in revisions to Schedule “A” hereto”.

[47] There have been no discussions between the parties concerning where these 3 acres will be located. The respondent has taken the position that the Lease is at an end so it need not entertain those discussions.

[48] The respondent does agree that if notice had been delivered in time they were required to negotiate in good faith the area for Stage 2 of the Lease (and the commencement of the Stage 2 Term).

[49] As the respondent has not engaged in good faith discussions, it cannot rely on that lack of agreement to justify ending the Lease with the petitioner.

[50] There is no evidence that the petitioner has conducted itself in a way that would suggest it has attempted to frustrate agreement on the area of the Leased Property for Stage 2.

[51] The respondent has failed to demonstrate any basis upon which the petitioner should be denied its contractual right to graduate to the Stage 2 Term as a consequence of the respondent’s failure to meet its contractual terms.

Section 8.3 of the Lease

[52] Section 8.3 of the Lease reads as follows:

8.3 Additional Documents. The parties hereto agree to execute such additional documents as may be reasonably necessary to give effect to this Agreement such as more detailed lease terms of the Stage 2 Term or the Stage 3 Term and any renewal thereof, including an additional access route to the Leased Property and a possible deposit based on industry standards for potential remediation costs of the Leased Property commensurate with the Tenant’s proposed activities on the Leased Property.

[53] The respondent submits that the petitioner has failed to pay the deposit and execute “further documents”. Although the respondent argues there is a breach by

the petitioner, it has not requested a deposit or asked the petitioner to consider more detailed lease terms. Similarly, the respondent has not engaged in discussions concerning an additional access route.

[54] For the reasons expressed above, the respondent cannot rely on section 8.3 to base its argument that the petitioner was not entitled to graduate to the Stage 2 Term. If the respondent seeks additional documents from the petitioner pursuant to section 8.3, it must first request the same from the petitioner.

Issue #3 – Was the petitioner’s use and enjoyment of the Leased Property interfered with?

[55] This Lease, as with most leases, grants to the petitioner quiet enjoyment of the Leased Property:

5.1 Quiet Enjoyment. The Landlord agrees that so long as the Tenant pays the rent and performs and observes the Tenant’s covenants contained herein, the Tenant may peaceably possess and enjoy and have access to the Leased Property throughout the term without any interruption or disturbance from the Landlord.

[56] A covenant for quiet enjoyment will be breached when the ordinary and lawful enjoyment of the premises is substantially interfered with by the act of the landlord or those lawfully claiming under it: *Firth v. B.D. Management Ltd.*, 1990 CanLII 2110 (BC CA).

[57] The petitioner argues that its quiet enjoyment has been breached by the following activities:

- a) the respondent initiating earth works adjacent to the Seascope Cottage causing a diversion of water without notice;
- b) interrogating a research scientist while on the Leased Property;
- c) changing the locks on the Seascope Cottage on multiple occasions preventing access;
- d) entering the Seascope Cottage on false pretenses;

- e) falling a tree on the only access road to the Leased Property preventing access; and
- f) parking a car on the only access road to the Leased Property preventing access.

[58] The respondent denies it has interfered with the petitioner's quiet enjoyment and provides the following responses:

- a) the earth works alleged were the result of digging for septic work that was required as a septic pump needed to be replaced;
- b) there was no interrogation and it was a casual conversation between the respondent's employees and the research scientist with the respondent's employees asking what the petitioner's future plans were;
- c) the locks were first changed as a safety precaution as an employee of the respondent was terminated and then changed as the lock had been damaged — the respondent says when it learned the petitioner did not have a key, instructions were given to provide one;
- d) the Seascope Cottage was entered to inspect the fire extinguishers;
- e) the tree was uprooted during a wind storm and it took a few days to have it removed; and
- f) the car was parked by another tenant and not by the respondent.

[59] The evidence shows that the respondent enters and conducts works on the Leased Property without notice or explanation to the petitioner. Although the petitioner does not have exclusive rights to use the Leased Property which includes the Seascope Cottage, the petitioner's use is to be without disturbance. Had the respondent provided notice to the petitioner, it is likely that many of the petitioner's concerns would have been dealt with in a normal businesslike manner.

[60] Now that the respondent has provided details for the events complained of by the petitioner, I find that the respondent did not interfere with the petitioner's use and enjoyment except where the respondent changed the locks and entered into the Seascope Cottage to inspect the fire equipment.

[61] The locks were changed in March 2024 when the respondent was taking the position that the petitioner no longer had rights to the Leased Property. The respondent did not advise the petitioner it was changing the locks and did not provide alternative keys to the petitioner. The explanation that the lock was damaged suggests that the respondent was entering without knowledge of the petitioner. Until the petitioner was provided with a new set of keys its use and enjoyment of the Leased Property was restricted and interfered with.

[62] Police were called on July 4, 2024 by the petitioner when individuals entered the Seascope Cottage and at that time Mr. Riggs advised police that the petitioner had been evicted as of May 1, 2024 and the women were there to inspect the fire equipment. Again, this was done without the knowledge of the petitioner and interfered with its quiet enjoyment. While the respondent is not restricted from undertaking necessary safety inspections, they ought to be done with notice to the petitioner so that any disturbance can be minimized.

[63] I find that the respondent did interfere with the petitioner's quiet enjoyment of the Leased Property.

Summary of Declarations and Orders Made

[64] As sought by the petitioner, the following declarations will be granted:

- a) The Lease is in full force and effect.
- b) The petitioner has graduated to the Stage 2 Term of the Lease.

[65] In addition, the petitioner sought the following orders which I will make:

- a) The petitioner is granted quiet enjoyment of the Leased Property.

b) The petitioner is awarded its costs of this proceeding.

[66] Lastly, I make the following additional order:

a) If the respondent takes issue with Stage 2 Term commencing on a date other than May 1, 2024, it shall provide to the petitioner an alternative date within 14 days of these reasons and the petitioner shall provide its response within 7 days of receipt. If the parties are unable to resolve the commencement date, they may seek leave to appear before me to settle the same within 30 days of these reasons.

“LeBlanc, J.”