

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Der Caloustian v. Black Top Cabs Ltd.*,
2025 BCSC 2207

Date: 20251107
Docket: S241675
Registry: Vancouver

Between:

John Der Caloustian

Plaintiff

And

Black Tops Cabs Ltd.

Defendant

Before: The Honourable Justice Hewson

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.
August 29, 2025

Place and Date of Judgment:

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November 7, 2025

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Introduction

[1] John Der Caloustian has brought an action against Black Top Cabs Ltd. (“Black Top” or “BTC”). The claim was filed on March 12, 2024. He seeks damages for breach of contract, and for the torts of negligent misrepresentation and slander of title. In addition, or in the alternative, he seeks a declaration that the affairs of Black Top are being managed in a manner that is oppressive to him.

[2] Black Top has filed a response to Mr. Der Caloustian’s claim. Among other defences, Black Top says that all of Mr. Der Caloustian’s claims are barred by the operation of the *Limitation Act*, S.B.C. 2012, c. 13 [*Limitation Act*].

[3] Black Top now brings a summary judgment application on the issue of whether the plaintiff’s claims in this action are barred by the passage of time, or in the alternative by issue estoppel.

Background

[4] Mr. Der Caloustian was a taxi driver. He was a shareholder in Black Top Cabs Ltd.

[5] Black Top issued two common shares in the capital of the company for every cab in its fleet. The two shares represented a daytime share and a nighttime share, which reflected the industry practice of dividing licenses to operate cabs into a day shift and night shift.

[6] Mr. Der Caloustian purchased his share from Mr. Pehlivanian in 1990. Mr. Pehlivanian was his uncle. At the time, Mr. Pehlivanian owned both the day share and the night share for Cab #72. According to agreement of purchase and sale (the “1990 Purchase and Sale Agreement”), Mr. Der Caloustian purchased the night share and was entitled to operate the taxicab between 4:00 p.m. and 4:00 a.m.

[7] In 2013, Mr. Der Caloustian’s uncle sold the day share to Jaswinder Randhawa. The agreement of purchase and sale (the “2013 Purchase and Sale Agreement”) between Mr. Pehlivanian and Mr. Randhawa was similar to the

agreement executed by Mr. Der Caloustian, but it contained an error. It stated incorrectly that Mr. Randhawa's share entitled him to operate the taxicab between 6:00 a.m. and 6:00 p.m. The last two hours conflicted with the night share that Mr. Der Caloustian already owned.

[8] This mistake was significant to both shareholders. The afternoon hours between 4:00 p.m. and 6:00 p.m. are valuable to a cabdriver, as they cover the end of the working day when business picks up because many passengers call for cabs.

[9] To resolve the conflict, Mr. Der Caloustian and Mr. Randhawa signed a document which provided Cab #72 would be a "6-6" cab, not a "4-4" cab. The parties referred to this document as the "Working Partnership Agreement". Mr. Der Caloustian says that he signed the document under duress, because he felt threatened and had no other choice.

[10] Shortly after Mr. Randhawa purchased the day share and Mr. Randhawa and Mr. Der Caloustian signed the "Working Partnership Agreement", Mr. Der Caloustian approached the company's general manager. The general manager allegedly told Mr. Der Caloustian that the "Working Partnership Agreement" was binding, and Cab #72 was a "6-6" cab. Mr. Der Caloustian was unable to have the times adjusted and was instead suspended for a weekend.

[11] Later in 2013, Mr. Der Caloustian approached the board of directors. At a meeting, they told him that he would have to prove that his shareholding was 4:00 p.m. to 4:00 a.m., yet they denied him access to a copy of the 1990 Purchase and Sale Agreement. A director or agent of Black Top, identified as Mr. Majjil, allegedly told him to hire a lawyer and to "sue us". According to his testimony at the examination for discovery, Mr. Der Caloustian knew what his shareholding entitled him to, that something was wrong and that it was a problem.

[12] In May 2014, Mr. Der Caloustian sent a letter to Black Top attempting to prove that his share entitled him to operate Cab #72 from 4:00 p.m. to 4:00 a.m., enclosing evidence about the terms of the 1990 Purchase and Sale Agreement. At

his request, his uncle Mr. Pehlivanian also wrote a letter to Black Top to state that he had sold Mr. Der Caloustian the 4:00 p.m. to 4:00 a.m. share.

[13] Later in 2014, Mr. Der Caloustian sought to sell his share. He says that Black Top said they would only allow the share to be sold as a 6:00 p.m. to 6:00 a.m. share, and he decided not to sell because that was not what he was selling.

[14] Several years after that, in July 2017, Mr. Der Caloustian sent another letter to Black Top seeking to sell his share. He sent the letter by registered mail. At his examination for discovery, he explained that he used registered mail in case he ever had to file a claim and take Black Top to court. Around the same time, he attended another board meeting. As a result of the way his issue was dealt with at that time, he believed that his rights as a shareholder in the company were being abused.

[15] In paragraph 40 of his affidavit filed June 10, 2025, Mr. Der Caloustian swore that:

40. Over the period of 2014 to 2019, I had multiple issues and workplace related disputes. Each time I would try and seek assistance or relief from the BTC board of directors, they would belittle and dismiss me. During this time, I felt like an outcast and did not feel that my rights as a shareholder were respected. I was never able to get any assistance or relief from the BTC board of directors.

[16] In October 2019, the shareholders of Black Top elected a new board of directors. On January 2, 2020, Mr. Der Caloustian wrote to the new general manager, Mr. Nijjar. Mr. Nijjar provided him with a copy of the 1990 Purchase and Sale Agreement. In March 2020, the new board of directors addressed his complaints and changed the shift time for Cab #72 back to 4:00 p.m. to 4:00 a.m.

[17] In December 2019 Mr. Der Caloustian suffered injuries in a motor vehicle accident and has not been able to work as a taxicab driver since.

[18] Mr. Randhawa was unhappy with the change in the shift time for Cab #72. On January 6, 2021 he filed a claim in the British Columbia Provincial Court for breach of contract against Mr. Der Caloustian and Black Top Cabs Ltd. That matter went to

trial on August 16 and 17, 2022. In her decision filed September 1, 2022, the Honourable Judge Senniwi wrote:

[15] As a result, Mr. Randhawa could not acquire better title to the day share of taxicab number 72 than that which Mr. Pehlivanian owned. At the time of transferring the day share Mr. Pehlivanian owned and offered for sale the 4 a.m. to 4 p.m. shift for taxicab 72. That is all he could transfer to Mr. Randhawa.

[19] In paragraph 51 of his affidavit filed June 10, 2025, Mr. Der Caloustian explained the significance to him of Judge Senniwi's ruling. He swore that:

51. After the Randhawa Lawsuit concluded in February of 2023, I suddenly realized that BTC's interpretation of the Working Partnership Agreement – that it was a legally binding document that somehow changed the nature of my shareholding title in Cab #72 – was wrong. I realized that the many years I laboured under and [sic] the Misrepresentation and Reliance were incorrect, because a court made a judgment saying that the Working Partnership Agreement was just an informal arrangement between me and Randhawa.

52. It was only after the Randhawa Lawsuit concluded that I realized I needed to take BTC to court.

[20] Mr. Der Caloustian filed his original notice of civil claim against Black Top on March 12, 2024. The original notice was amended, and an amended notice of civil claim was filed January 6, 2025.

Issues

[21] The issues are:

- a) Suitability for summary trial: Are the limitation and estoppel issues suitable for determination under R. 9-7 of the *Supreme Court Civil Rules*?
- b) Limitation Defence: Are Mr. Der Caloustian's claims in contract and tort barred under ss. 6 and 8 of the *Limitation Act*? Is his claim for relief under the *Business Corporations Act*, S.B.C. 2002, c. 57 [*Business Corporations Act*], similarly barred by the *Limitation Act*?
- c) Cause of Action Estoppel: Do the small claims court proceedings commenced by Mr. Randhawa in 2021 preclude the present claim?

- d) Oppression Remedy: Has the respondent established a viable claim for relief under the *Business Corporations Act*, notwithstanding limitation or estoppel bars?

Suitability for Summary Trial

[22] Both Mr. Der Caloustian and Black Top Cabs Ltd. seek to have this matter determined summarily, as a summary judgment under R. 9-6 or as a summary trial under R. 9-7.

[23] If it is possible to find the facts on a summary trial, a chambers judge must give judgment unless it would be unjust to do so for any proper juridical reason. A judge must consider whether the evidence is sufficient for adjudication and is not obliged to remit a case to the trial list just because there are conflicting affidavits. See: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) at paras. 53 and 55-56.

[24] In deciding whether it is just to proceed by summary trial, a judge may consider the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of proceeding with a conventional trial in relation to the amount at stake, and the course of the proceedings. The judge may also consider any other matters which might arise including the cost of the litigation, whether credibility is a critical factor and whether a summary trial would create unnecessary complexity or result in litigation in slices.

[25] I am satisfied that I can find the facts necessary to decide the issues based on the record provided and that it would be just to do so. I am satisfied that it is appropriate to determine this matter as a summary trial, under R. 9-7.

Limitation Defence

[26] The next issue is whether Mr. Der Caloustian's claims in contract, tort and oppression are barred by the operation of ss. 6 and 8 of the *Limitation Act*.

[27] I will deal with the contract and tort claims first.

Are the tort and contract claims barred by the *Limitation Act*?

[28] Black Top argues that the limitation period for the contract and tort claims was two years after discovery of the cause of action, and that it began to run in 2014 when Mr. Der Caloustian says that Black Top told him he could not sell his share as a 4:00 p.m. to 4:00 a.m. share, or alternatively, in 2017 when the company took a similar position and Mr. Der Caloustian mailed the registered letter. Black Top says that the limitation period for the oppression claim began in March 2020, and that Mr. Der Caloustian has not pled any oppressive conduct after that date.

[29] Mr. Der Caloustian says that he did not discover the cause of action until September 1, 2022 when Judge Senniw dismissed Mr. Randhawa's small claims action, and explained to the parties that the Working Partnership Agreement was simply an arrangement between the two cab drivers that had no bearing on the rights associated with his share, regardless of how Black Top interpreted it.

[30] As Mr. Der Caloustian put it in his written argument,

40. Prior to the conclusion of the Rhandawa Lawsuit, a fog existed over the factual circumstances of this case. All the requisite parties laboured under BTC's interpretation of the Working Partnership Agreement. BTC hid behind John's signing of that document to say that his shareholding, at least for a time, somehow changed in its title. It was only due to the determinations made by the Provincial Court of British Columbia that such fog lifted.

Law

[31] Section 6 of the *Limitation Act* provides for the two-year basic limitation period in these terms:

6 (1) Subject to this Act, a court proceeding in respect of a claim must not be commenced more than 2 years after the day on which the claim is discovered.

(2) The 2 year limitation period established under subsection (1) of this section does not apply to a court proceeding referred to in section 7.

[32] Section 8 of the *Limitation Act* defines when claim is discovered:

8 Except for those special situations referred to in sections 9 to 11, a claim is discovered by a person on the first day on which the person knew or reasonably ought to have known all of the following:

- (a) that injury, loss or damage had occurred;
- (b) that the injury, loss or damage was caused by or contributed to by an act or omission;
- (c) that the act or omission was that of the person against whom the claim is or may be made;
- (d) that, having regard to the nature of the injury, loss or damage, a court proceeding would be an appropriate means to seek to remedy the injury, loss or damage.

[33] The original notice of civil claim was filed on March 12, 2024. If the claim was discovered before March 12, 2022, it would be barred by operation of the *Limitation Act*.

Analysis

[34] There is little dispute between the parties that the first three branches of the test for discovery of a claim under s. 8 were satisfied well before March 12, 2022. The issue falls to be determined by whether Mr. Der Caloustian knew, or reasonably ought to have known, before March 12, 2022, that having regard to the nature of the loss or damage, a court proceeding would be an appropriate means to seek remedy.

[35] Mr. Der Caloustian says that he was misled by Black Top’s insistence that the “Working Partnership Agreement” was binding and relies on the decision of the Alberta Court of Appeal in *Eberle v. Terroco Drilling Ltd.*, 2022 ABCA 8. He says that that *per curiam* decision stands for the proposition that a defendant in a proceeding cannot rely on their own misinterpretation of a contractual provision to later try and shelter behind a statute of limitations.

[36] In that case, the plaintiff Mr. Eberle brought a claim against the defendant Terroco Drilling for the payment of performance bonuses Mr. Eberle thought he had earned under a services agreement between them. The bonus structure included provision for deductions for workplace safety incidents, and time had passed while

the parties were waiting for the conclusion of a workplace safety proceeding into an accident that occurred under Mr. Eberle's supervision.

[37] On application by Terroco, a Master had summarily dismissed the entire claim. Mr. Eberle filed an appeal which was heard by a judge in chambers. The judge allowed the appeal in part and directed that Mr. Eberle could continue the action for bonuses alleged to have accrued after 2010, when the parties were waiting for the conclusion of the workplace safety proceeding.

[38] Terroco appealed to the Alberta Court of Appeal. That Court of Appeal upheld the decision of the chambers judge, deferring to that judge's interpretation of the contract between Mr. Eberle and Terroco. The chambers judge found that the limitation period began to run in 2015 after the workplace safety proceeding had concluded and Terroco told Mr. Eberle that no bonus would be paid. The Court of Appeal quoted from a paragraph of the ruling of the chambers judge, in which the judge had said:

... I find that a plaintiff is entitled to rely on the defendant's own characterization of the operation of the disputed contract as it relates to the triggering of the limitation period. The plaintiff is entitled to argue that a limitation period only began at the point where it would run on the defendant's own asserted interpretation of the contract, irrespective of whether the defendant was advancing that interpretation insincerely and with fraudulent intent.

[39] However, the facts in that case were different from the facts in the case at bar in at least one respect. Terroco had not denied that it was liable to pay bonuses to Mr. Eberle. It had deferred the decision until the conclusion of the workplace safety proceeding. By contrast in the case at bar, from 2013 or 2014 until 2020 Black Top took the position that the Working Partnership Agreement somehow changed Mr. Der Caloustian's shareholder rights and had withheld its assistance in resolving Mr. Der Caloustian's dispute with Mr. Randhawa or in selling his share. As Mr. Der Caloustian put it, Black Top told him "sue us" in late 2013. Black Top's decision was never deferred and was in fact clear and unambiguous.

[40] Mr. Der Caloustian points to the release of the decision of Judge Senniw as the date on which he knew or reasonably should have known that a court proceeding would be an appropriate means to seek to remedy the damages he suffered. He says that it was not until then that any party came to understand that the only governing contract that set out his shareholding title was the 1990 Purchase and Sale Agreement.

[41] I cannot accept that argument. First, the facts support an inference that Mr. Der Caloustian subjectively knew that a court proceeding would be an appropriate means to seek his remedy as early as 2014. After an agent or director of Black Top told him “sue us”, he took steps to present evidence of the terms of the 1990 Purchase and Sale Agreement” including the letter from his uncle Mr. Pehlivanian. The inference becomes even stronger after 2017, when Mr. Der Caloustian used registered mail to communicate with Black Top, in case he had to make a claim against the company.

[42] Second, even if he did not have subjective knowledge of it until the release of Judge Senniw’s ruling, long before that the circumstances were sufficient that he reasonably ought to have known that a court case was an appropriate means to seek a remedy.

[43] Finally, the fact that Mr. Randhawa brought a claim to a court relating to the same general body of facts suggests that Randhawa recognized that a court claim was an appropriate means of resolving this dispute. Mr. Der Caloustian probably ought to have, as well.

Conclusion on Tort and Contract Claims

[44] Mr. Der Caloustian’s tort and contract claims were discoverable, at the latest, by July 2017 when he sent the registered letter. Those claims are barred by the *Limitation Act*.

[45] I will turn next to his claim for a remedy for oppression under the *Business Corporations Act* and Black Top's argument that that claim is also barred by the passage of time.

Is the Oppression Claim Barred by the *Limitation Act*?

[46] Mr. Der Caloustian seeks a declaration that the affairs of Black Top are being managed in a manner oppressive to him; remedial orders pursuant to s. 227(3) of the *Business Corporations Act*, including but not limited to an order appointing a valuator to determine the value of the Mr. Der Caloustian's share in October 2013, or a finding of the same as determined from evidence at trial; and an order directing that Black Top redeem Mr. Der Caloustian's shares for the amount determined to be their value in October 2013.

[47] Mr. Der Caloustian's oppression claim is based on Black Top's conduct beginning in 2013 while he was attempting to clarify whether the rights he held as a shareholder included the right to operate the cab beginning at 4:00 p.m., rather than at 6:00 p.m.

[48] Mr. Der Caloustian says that the limitation period did not begin to run until January 30, 2024, when the Black Top board of directors denied his request for compensation for Black Top's conduct before the election of a new slate of directors in 2020.

[49] Black Top says that the limitation period began to run much earlier. The company's position is that the limitation period applicable to the oppression claim began to run in March 2020, when the board of directors voted to recognize his right to operate the cab between 4:00 p.m. and 4:00 a.m., in accordance with the night share he had purchased many years earlier. Mr. Der Caloustian has not pled any oppressive conduct after that date. Adding an extra year for the temporary suspension of limitation periods during the pandemic, Black Top says that the limitation period expired in March 2023, about a year before Mr. Der Caloustian originally filed his claim.

Law

[50] “Oppressive conduct” has been interpreted by the courts to mean conduct that is burdensome, harsh, wrongful, lacking in probity or fair dealing, or has been done in bad faith.

[51] In *Brockman v. Valmont Industries Holland B.V.*, 2022 BCCA 80, the Court of Appeal held that the two-year limitation period applied to continuous and ongoing conduct, and that a claim for a remedy for oppressive conduct was statute barred in respect of conduct occurring more than two years before the proceeding was started. The Court held:

[27] The occurrence of oppressive conduct is a necessary but not sufficient condition to trigger the running of the limitation period. The oppressive conduct must also be discovered, as per s. 8 of the current *Act*. Again, those circumstances will arise at a certain point in time, and will depend on the facts. For example, by a definite date a stakeholder might come to know, or reasonably ought to know, that his or her reasonable expectations are being injurious sleep breached by those controlling a corporation, and that commencing a proceeding by way of petition is an appropriate means to seek a remedy. At that point, the claim is discovered and the limitation period will start to run. The fact that discovered oppression is continuing does not mean the necessary and sufficient conditions to trigger the running of the limitation period are not in place. The language of section 6 of the current *Act* is express; the running of the limitation period starts on the day the claim is discovered. Nothing in the statute suggests the limitation period does not start running until ongoing oppression stops or is remedied.

Analysis

[52] Mr. Der Caloustian argues that the oppressive conduct with which he is concerned included the decision to deny his request for compensation, which occurred at a meeting of the board of directors on January 30, 2024. However, that position is inconsistent with his pleadings. The particulars of the oppressive conduct set out in the amended notice of civil claim merely say that the directors of Black Top operated the company and manner oppressive to Mr. Der Caloustian, as set out in the statement of facts. The final paragraph of the statement of facts asserts that at the meeting on January 30, 2024, the board told Mr. Der Caloustian they would not provide compensation for having told him his share had a shift time starting at 6:00 p.m.

[53] There is no evidence that that decision on January 30, 2024 was made or communicated in a manner that was oppressive, in the sense of being harsh, wrongful or done in bad faith. The conduct under consideration had actually occurred, and stopped, at least by 2020. The decision on January 30, 2024 was a confirmation that the company was not admitting fault.

[54] Mr. Der Caloustian argues that whether what happened on January 30, 2024 was “oppressive conduct” is not at issue on this application. I cannot accept that argument. What is at issue is when the limitation period for the claim for a remedy for oppressive conduct began to run, which necessarily requires a determination about what conduct was oppressive conduct. On the affidavit record before the Court on this R. 9-7 summary trial application, I conclude that the denial of compensation on January 30, 2024 was not oppressive conduct, and that the applicable limitation period began to run in 2020.

[55] Mr. Der Caloustian’s application for a remedy for oppressive conduct is barred by the passage of time.

Remaining Issues

[56] Given my conclusion that all of Mr. Der Caloustian’s claims are statute barred, there is no need for me to analyse the issues of estoppel and the viability of his claims for relief under the *Business Corporations Act*.

Conclusion

[57] Mr. Der Caloustian’s claims are dismissed.

[58] Black Top Cabs Ltd. is entitled to costs.

“Hewson J.”