IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Choiniere v. Retire West Communities Ltd.,* 2025 BCSC 2260

Date: 20251118
Docket: S57804
Registry: Vernon

Between:

Monica Ann Choiniere and Michael Joseph Susak

Plaintiffs

And

Retire West Communities Ltd. and Sorrento Place Holdings Ltd.

Defendants

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Plaintiffs:	D.W. Draht
Counsel for the Defendants:	D.J. Letkemann
Place and Date of Hearing:	Vernon, B.C. October 23 – 24, 2025
Place and Date of Judgment:	Vernon, B.C. November 18, 2025

[1] This is the plaintiffs' application for determination by way of summary trial that they have entered into a firm and binding contract of purchase and sale for ownership of a manufactured home at 37-2932 Buckley Rd., Sorrento, BC ("Unit 37").

Background

[2] The plaintiffs were property managers for the defendants at manufactured home parks owned by one or more the defendants. Although the precise date of the commencement of their employment is disputed, there is no question that they worked in such a capacity commencing no later than 2019, and were transferred to Sorrento Place on the Lake, the park where Unit 37 is located, in May 2021. The duration of their employment is not material to this application.

[3] Unit 37 was previously owned by a Mr. Popovich. Mr. Popovich died and, as such, ownership of Unit 37 was held in his estate.

[4] The plaintiffs argue that the plaintiff, Mr. Michael Susak, negotiated for a purchase of Unit 37 on behalf of the defendant Retire West Communities Ltd. ("Retire West") with the express authority of the defendants on the understanding that both he and the other plaintiff, Ms. Monica Choiniere, would purchase Unit 37 from the defendants for the purchase price paid by the defendants to Mr. Popovich's estate, plus $7,000 to account for the arrears of rent owed on Unit 37. They say there was a verbal contract reached no later than December 1, 2021. It is common ground that because Unit 37 is a chattel, a contract of purchase and sale need not be in writing to be enforceable.

[5] Regardless of whether Mr. Susak's evidence of a verbal contract is accepted, it is common ground that Retire West purchased Unit 37 from the Popovich estate for $150,000 in November 2021.

[6] On December 3, 2021, Retire West sent a draft of a written contract to the plaintiffs. The draft contract did not include Mr. Susak's name, but included Ms. Choiniere's name, along with two others, Mr. Cotterill and Ms. Taylor. However,

shortly after she received the draft contract, Ms. Choiniere requested a change in the parties such that the purchasers would be herself and Mr. Susak, together with a reduction in the initial deposit. Ms. Choiniere sent a certified cheque to Retire West in the amount of the deposit she was intending to pay.

[7] In January 2022, following a conversation by telephone between Mr. Susak and Mr. Arlo Venier, the principal of both defendants, the plaintiffs started renovating Unit 37. They cleaned up the home, replaced flooring, replaced several appliances and generally made improvements to both the interior and exterior.

[8] On February 8, 2022, a revised version of the contract was provided by Retire West to the plaintiffs that reflected, at least in part, the changes requested by Ms. Choiniere. That is, the plaintiffs were the only two purchasers and the deposit was reduced, albeit not to the extent Ms. Choiniere had requested (the "February Contract").

[9] The February Contract was sent from an employee at Retire West, Ms. Sawchuk. Ms. Sawchuk's accompanying email provided instructions for execution. The plaintiffs were to print two copies and return them to Retire West for the purposes of having Mr. Venier sign the contract on behalf of Retire West. Also accompanying the February Contract was a promissory note that contemplated Retire West providing financing to the plaintiffs. By the plaintiffs' own admission, they were not able to qualify for a conventional mortgage.

[10] Although the plaintiffs signed and returned two copies of the February Contract to Retire West, it was never signed by Mr. Venier on behalf of Retire West.

[11] Notwithstanding the lack of Mr. Venier's signature, the plaintiffs moved into Unit 37 on March 1, 2022. Less than two months later, however, the defendant Sorrento Place Holdings Ltd., terminated the plaintiffs' employment. Retire West took the position that the plaintiffs were not entitled to occupy Unit 37, nor was Retire West obligated to sell it to the plaintiffs.

[12] The primary issues on this summary trial application are (1) whether this matter is suitable for determination; and, if so, (2) whether the parties entered into a binding contract for the purchase of Unit 37.

Summary trial

[13] Rule 9-7 of the *Supreme Court Civil Rules* permits a party to apply for a final determination of a dispute summarily, and without the need for a full trial. While a summary trial is still a trial process, the evidence is generally tendered by way of affidavits, rather than with the witnesses testifying in person in the court room.

[14] Rule 9-7(15) permits the court to grant judgment in summary trial applications unless:

a) the issues raised by the summary trial application are not suitable for disposition under the Rule; or

b) the summary trial application will not assist in the efficient resolution of the proceedings.

[15] Whether a proceeding can be decided by summary trial will frequently depend on whether the court is in a position to make the factual determinations necessary in order to resolve the dispute. The fact that there is contradictory evidence does not necessarily mean that the court cannot make the necessary factual findings.

[16] Even if the chambers judge can find the necessary facts, the court must still consider whether or not it is in the interests of justice to decide the matter summarily. Factors considered at this stage were set out in the leading authority on summary trials in this province, *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (B.C.C.A), and include: the amount involved; the complexity of the matter; the urgency of the prejudice likely to arise by reason of delay; the costs of taking the case forward in relation to the amount involved; the course of the proceedings; whether credibility is an issue; whether the application would result in litigating in slices; and any other factor appropriate in the

circumstances (*Cadwell Estate v. Martin*, 2020 BCSC 2091 at para. 33; *Gichuru v. Pallai*, 2013 BCCA 60, at para. 31).

[17] Circumstances where the evidence is directly conflicting such that the court will need to make findings of credibility are generally not suitable for summary trial. However, the mere fact of a conflict in the evidence does not automatically render the matter unsuitable. The court may consider the surrounding circumstances and events, including contemporaneous documents, communications between the parties and other factors in determining whether or not it is possible to resolve the evidentiary conflicts. In other circumstances, it may not be possible to resolve a conflict in the evidence, but the conflict may not be material to the matters that need to be decided.

[18] Parties are obligated to put their best foot forward at the summary trial, and this includes taking such steps as may be required in order to marshal evidence. It is no defence to a summary trial application to say that the matter should go to a full trial in case something comes up: *Everest Canadian Properties Ltd. v. Mallmann*, 2008 BCCA 275 at para. 34.

Suitability

[19] The defendants say the matter is not suitable for summary trial for four reasons:

a) the plaintiffs are seeking judgment on some, but not all of the issues in their claim, and in so doing they are splitting their case, or engaging in “litigation in slices”;

b) the facts the court will be required to find cannot be found on the affidavit evidence, as much of the plaintiffs’ evidence is denied by the defendants and credibility is a key issue;

c) the defendants will be prejudiced based on their inability to fully cross-examine the plaintiff, Monica Choiniere, on her evidence; and

d) judgment is sought only against one of the defendants, Retire West.

[20] I do not accept that the matter is unsuitable for summary trial simply because it does not deal with all matters in the litigation, although one of the defendants will remain in litigation. In this case, the plaintiffs have two discrete claims:

a) they seek a declaration that they are the owners of Unit 37; and

b) both plaintiffs have brought wrongful dismissal claims.

[21] The former claim is only as against Retire West, whereas the latter is solely as against Sorrento Park.

[22] The fact that the defendants have a counterclaim on a related subject matter, namely a claim for occupational rent, is similarly no bar to summary determination. The plaintiffs' summary trial application has been outstanding for a long time. If the defendants wished to seek judgment, they have had ample time to do so and cannot rely on their own failure or preference as a reason to render the matter unsuitable. Moreover, if the plaintiffs' argument is accepted, the arrangement regarding Unit 37 is one of vendor and purchaser, not landlord and tenant.

[23] As for the need to further cross-examine the plaintiff, Ms. Choiniere, the defendants had two days of examinations for discovery, and an application to resume the discovery was dismissed. The question of whether the defendants are entitled to further cross-examine Ms. Choiniere prior to trial has already been decided.

[24] This leaves the concern as to whether the Court is in a position to make the findings of fact necessary to determine this matter summarily.

Determination

[25] For the reasons that follow, I have concluded that this matter is suitable for summary trial and that the plaintiffs are entitled to a declaration that they are the

owners of Unit 37. While I accept there are discrepancies in the evidence, I do not find them to be such that the material facts cannot be found.

[26] I do note that the evidence surrounding the plaintiffs' allegation of an enforceable oral contract in November or December 2021 would likely be such that it could not be resolved summarily. However, I find that Retire West offered to sell Unit 37 to the plaintiffs when it sent the email of February 8, 2022, that included both the February Contract and the promissory note, and that the plaintiffs accepted that offer when they printed and signed the documents and returned them to Retire West.

[27] The entire dispute between these parties is worth less than $150,000. The two wrongful dismissal claims as against Sorrento Place Holdings Ltd. are worth $24,000 each, at most, and the increase in value in Unit 37 is between $65,000 and $80,000. Based on the most recent pre-trial conference, 13 days would be required if the matter proceeded to conventional trial. Proportionality dictates that an alternative to full trial should be utilized if at all possible.

[28] The plaintiffs suggest that the summary trial application was essentially a cross-application to the defendants' application in which they sought a declaration for payment of occupational rent on an ongoing basis. While I accept that declaratory relief is necessarily in the nature of a final order, I do not read the defendants' application as one that necessarily contemplated a final determination by the court but rather sought some form of payment on an interim basis.

[29] I do accept, however, that for a significant period of time, the two applications, being the defendants' application for the declaration and payment of occupational rent, and the plaintiffs' summary trial application, were running together. As such, the defendants cannot now complain that the court is put in a position of possibly having to adjudicate the defendants' counterclaim for occupational rent when that is precisely what the defendants were seeking concurrently for the majority of the past two years.

Legal test for formation of a contract

[30] The test for whether parties entered a binding and enforceable contract was summarized by the British Columbia Court of Appeal in *Oswald v. Start Up SRL*, 2021 BCCA 352, as follows at paras. 33 and 34:

> **Finding of a Binding and Enforceable Contract**
>
> [33] On a fair reading of the judgment, it is apparent the judge applied the correct legal test to determine whether the parties entered into a binding and enforceable contract. As the Supreme Court of Canada has recently confirmed, a contract is formed when the parties "have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract", and the surrounding circumstances may be considered: G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Toronto: Carswell, 2011) at 15; *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v. Aga*, 2021 SCC 22 at paras. 36–37 [*Ethiopian Orthodox*]. The court must consider "how each party's conduct would appear to a reasonable person in the position of the other party": *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, at para. 33. "The question in every case is what intention is objectively manifest in the parties' conduct": *Ethiopian Orthodox* at para. 38.
>
> [34] The applicable legal principles to determine whether an enforceable contract has been formed were succinctly set out in Mr. Mhamunkar's factum at para. 67 as follows:
>
> > (a) there must be an intention to contract;
> >
> > (b) the essential terms must be agreed to [by] the parties;
> >
> > (c) the essential terms must be sufficiently certain;
> >
> > (d) whether the requirements of a binding contract are met must be determined from the perspective of an objective reasonable bystander, not the subjective intentions of the parties; and
> >
> > (e) the determination is contextual and must take into account all material facts, including the communications between the parties and the conduct of the parties both before and after the agreement is made.

[31] The focus of the analysis is therefore not the subjective intentions of the parties, but rather "whether parties have indicated to the outside world, in the form of the objective reasonable bystander, their intention to contract and the terms of such contract": *Berthin v. Berthin*, 2016 BCCA 104 at para. 46, citing G.H.L. Fridman, *The Law of Contract in Canada* (6th ed, 2011) and cited in *Oswald* above.

Did the parties enter into a binding contract?

[32] The plaintiffs' primary position, according to the notice of civil claim is that the parties had a valid and binding oral contract as of November 2021. They argue that they had a verbal agreement with Mr. Venier on behalf of Retire West that they would purchase Unit 37 for whatever price Mr. Susak could negotiate with the Popovich estate, plus the $7000 of pad rent arrears.

[33] While I do accept that the parties had already had conversations surrounding the possibility of the plaintiffs buying Unit 37 after Retire West bought it from the estate, I do not agree that the evidence is sufficient to prove the parties had a binding contract at this point.

[34] The first version of the contract that was provided by the defendants to the plaintiff Ms. Choiniere included two other purchasers, Steve Cotterill and Sylvie Taylor, but it did not include Mr. Susak. Ms. Choiniere subsequently requested that the amount of the deposit be reduced from $8000 to $5000 and requested also that Mr. Susak's name be included in the contract in place of Mr. Cotterill and Ms. Taylor. It is not clear from the evidence who Mr. Cotterill and Ms. Taylor are, but I can only assume that their names were included initially at the request of one or both of the plaintiffs.

[35] The plaintiffs suggest that from an overall review of the circumstances, the parties already had a deal and that the change of the parties and subsequent production of the deposit were not important.

[36] I accept that those matters may have been minor, but that is not the test on whether a contract is valid and enforceable. In order for a contract to be enforceable, it must be enforceable by both parties. The minimum requirements for a binding contract for the purchase and sale of land are agreement as to the parties, the property and the price: *Eaton Properties Ltd. v. British Columbia* (1990), 53 B.C.L.R. (2d) 272 (B.C.C.A.) at p. 276. In this case, Unit 37 is a manufactured home and is therefore a chattel, negating the requirement for writing under the *Law and Equity Act*, but the general principle still applies. There may of course be other material

terms, but those terms are generally essential in all contracts. Of note, there is no assignment clause in the form of contract that would provide for the substitution of parties.

[37] The plaintiffs point to a text message sent by Mr. Susak to Mr. Venier from November 2021, which states the following:

> I just finished talking to Mike.
> We agreed to 150,000 all in.
> Includes arrears
> We would put down 20,000 cash
> What kind of intrest would you be charging

[38] There are a couple of issues with this text message in terms of its evidentiary value. First, there is no communication from Mr. Venier one way or the other that would endorse or adopt Mr. Susak's summary. Moreover, in the overall context of this matter and the subsequent contract that included Ms. Taylor and Mr. Cotterill, all I take from this message is that the parties had clearly had a discussion about a possible purchase by the plaintiffs of Unit 37, but that the details still needed to be worked out.

[39] I do not find the evidence to be sufficient to establish there was a binding contract as of December 3, 2021.

December counteroffer

[40] Following the December 3, 2021 draft contract, Ms. Choiniere responded as I have indicated earlier: she wished to have a smaller deposit, and she wanted Mr. Susak's name to be included in place of Mr. Cotterill and Ms. Taylor. Towards the end of December 2021, Ms. Choiniere sent a certified cheque in the amount of $4000, representing what she was wanting to pay by way of deposit.

[41] The evidence with regard to the sending of this deposit is not entirely clear, to the extent that it is not apparent from the evidence as to whether there was any express communication by the defendants of their acceptance or rejection of the

plaintiffs' proposed changes at that time, including the change to the amount of the deposit. However, although the deposit cheque was not cashed upon receipt, it was not returned either.

January 1, 2022 conversation

[42] The next significant event was on January 1, 2022. Mr. Susak contacted Mr. Venier by telephone. Paragraph 12 of Mr. Susak's affidavit #1 provides as follows:

> 12. On January 1, 2022, I spoke on the phone with Mr. Venier about the Home. Mr. Venier was in Hawaii at the time. I asked him if I could start working on it to bring the Home into a habitable condition, doing cleaning and renovations. Mr. Venier encouraged me to do this, telling me that Ms. Choiniere and I should "treat it as our own" and that he would sort out the paperwork when he got back from Hawaii.

[43] Mr. Venier was questioned about this during his examination for discovery, and he did not deny the conversation took place as described by Mr. Susak. Mr. Venier's evidence is that he told Mr. Susak that they should treat Unit 37 as their own because it was intended to be a benefit associated with their employment as opposed to because it was in fact going to be theirs. However, Mr. Venier's subjective intentions are of little to no evidentiary value because the legal test for whether or not a contract was formed is based on the objective bystander.

[44] Thereafter, the plaintiffs set about preparing Unit 37 for occupation. They cleared garbage, replaced the carpet with laminate flooring, cleaned up the yard, repaired or replaced interior doors and replaced appliances. In addition to their labour, the plaintiffs also depose to having expended funds. Mr. Susak deposes to hiring a labourer, and they paid for the materials and the appliances.

[45] Retire West suggests that the plaintiffs charged some of the materials for the repairs to Unit 37 to the defendants' account at a local hardware store, evidence they say is consistent with its position that Unit 37 was intended to be a benefit associated with the plaintiffs' roles as managers only, and that there was no intention to sell it to them.

[46] The evidence on this point is not clear.

[47] A subsequently hired property manager has sworn an affidavit in which she includes certain invoices that make reference to Mr. Susak and to Unit 37. However, she does not depose to the fact that the defendants paid them, presumably because she was not in a position to know because she was hired some months later. During his examination for discovery, Mr. Venier confirmed that he did not know whether Mr. Susak or the defendants had paid those invoices.

[48] Mr. Susak's affidavit states that the plaintiffs paid for the repairs and improvements, albeit he does not specifically address the invoices from the hardware store that were referred to by the new manager.

[49] I note that the amount in issue is under $900 and relates solely to painting supplies. I have no persuasive evidence in the materials as to who actually paid this amount. However, there is little doubt that this amount represents but a small fraction of the overall cost of the renovations undertaken by the plaintiffs and therefore even if this amount were paid by either of the defendants, it would not be determinative.

February Contract

[50] On February 8, 2022, Retire West sent the February Contract to the plaintiffs. It was largely in the same form as the previous draft contract, but it included Mr. Susak's name in the place of Mr. Cotterill and Ms. Taylor's names, and a reduced deposit amount, albeit reduced to $5,000 rather than $4,000 as Ms. Choiniere had requested. It also included a promissory note.

[51] Both the February Contract and the promissory note were backdated to January 1, 2022, and the email from Retire West included specific instructions on how to execute the contract – the plaintiffs were to print two copies, sign them, and return the documents to Retire West for execution. The instructions were as follows:

> Please print this out twice, sign in all spots and mail both original copies to our office.

> Then I will have Aldo put his signature on them and I will give you one complete copy back and that way we will each have a copy.

[52] The plaintiffs did as directed. They printed two copies of the February Contract, and both copies, along with the promissory note, were signed by both plaintiffs and sent back to Retire West for Mr. Venier's signature. Mr. Venier was still in Hawaii at the time, and therefore some modest delay was anticipated.

[53] Retire West suggests that the February Contract was simply another draft based on Ms. Choiniere's requested changes and was not intended to be binding. There are a couple of difficulties with this submission.

[54] First, Ms. Choiniere had requested the deposit be reduced to $4000, but the February Contract refers to a deposit of $5000. As such, the February Contract does not actually reflect Ms. Choiniere's requested changes.

[55] Second, and more tellingly, the accompanying email provides detailed instructions to the plaintiffs about printing and execution, while also indicating that the February Contract was to be returned for Mr. Venier's signature. The most reasonable, and indeed the only reasonable, interpretation of the email and its attachments when viewed by the objective bystander is that Retire West was offering to sell on the terms in the February Contract and the promissory note, and the plaintiffs could accept that offer if they so chose.

March 1, 2022

[56] On March 1, 2022, the plaintiffs moved into Unit 37. They provided postdated cheques both for pad rent and pursuant to the promissory note.

[57] Mr. Venier had not yet signed the February Contract on behalf of the defendants. However, he had not said that he would not sign it, and the plaintiffs understood he was still in Hawaii. Retire West never told the plaintiffs that they should not move in once their renovations were completed.

Termination of employment

[58] On April 25, 2022, the defendants terminated the plaintiffs' employment and on the following day, returned all of the cheques to them, including the postdated cheques and also the initial deposit cheque. The promissory note was not returned, however.

[59] Retire West's position is that there was never an intention to contract and matters never went beyond the discussion or negotiations stage. During his examination for discovery, Mr. Venier indicated that even at the time of his conversation with Mr. Susak on January 1, 2022, he had some concerns about the plaintiffs in their roles as managers.

[60] Notwithstanding Mr. Venier's evidence that he told the plaintiffs to treat Unit 37 as their own on January 1, 2022, only because it was intended to be a benefit associated with their employment, the objective evidence paints a different picture:

a) Retire West had already provided a draft contract of sale to the plaintiffs previously (albeit with slightly different terms, including different parties);

b) Mr. Venier told Mr. Susak to treat Unit 37 as his own;

c) at no time were the plaintiffs told to stop their renovations;

d) the defendants sent the February Contract with instructions for execution, including the promissory note, which documents were signed and returned;

e) the plaintiffs moved in on March 1, 2022; and

f) Ms. Choiniere's deposit cheque (and other cheques) was not returned until after the plaintiffs had been terminated from their employment.

[61] I find Retire West's email of February 8 attaching the February Contract accompanied by the promissory note, which was consistent with the parties' prior discussions, constituted an offer to sell by Retire West and the plaintiffs, by signing

both the February Contract and the promissory note, accepted the offer. The returning of the original documents to Retire West as directed represented a communication of that acceptance. At that time, the parties had a binding contract of purchase and sale.

[62] There are some aspects of Mr. Venier's evidence that I do not accept because they do not accord with common sense. If the sole reason to have told Mr. Susak on January 1 to treat Unit 37 as his own was because Mr. Susak was going to be living in it as a benefit of his employment, it would make no sense for the defendants to send to the plaintiffs the February Contract and the promissory note, documents that are only consistent with an outright purchase. Presumably, the plaintiffs could have purchased Unit 37 and resigned their employment the very next day, and there is also nothing in any communications or in any of the evidence that would suggest that the defendants retained an option to repurchase.

[63] If Retire West had intended to retain ownership of Unit 37, one would expect that they would have set some parameters on the renovations, such as a budget. Moreover, if that were the case, the defendants would undoubtedly have offered to pay for the expenses as they arose. However, this did not happen. The only evidence on this point is Mr. Venier's uncommunicated assertion well after the fact that he was always willing to repay the plaintiffs.

[64] It would seem that at some point, Mr. Venier had second thoughts about the plaintiffs' roles as his property managers. As a result, he declined to sign the February Contract notwithstanding the defendants' prior representation via Ms. Sawchuk's email, that he would do so. It is not apparent as to when Mr. Venier changed his mind, nor is it important in the circumstances, but although he suggested that he was already having concerns by January 1, 2022, when he spoke to Mr. Susak from Hawaii, it must have been after February 8, 2022, because otherwise he would not have directed that the February Contract be sent to the plaintiffs for execution. By that time, it was too late for Retire West to back out of the agreement because the parties already had a binding contract of purchase and sale.

[65] Whether the parties ever had a binding and enforceable agreement at any time prior to the February Contract might be an interesting point but is not one that I need to decide. The parties had a binding contract by no later than when the plaintiffs sent the February Contract back to Retire West, along with the signed promissory note.

Performance of the contract

[66] The defendants also argued during the hearing that the plaintiffs failed to perform certain terms of the contract. Although the defendants did not raise the alternative argument of a breach if a contract is found to exist in their response, I will address those arguments.

[67] The first argument of breach is that the only deposit paid was in the amount of $4000 as opposed to the $5000 contemplated in the February Contract, and the second argument is that the plaintiffs failed to provide any documentation for registration of the mobile home registry. The defendants point to the 'time of the essence' clause in the February Contract with regard to these obligations:

> 1. **DEPOSIT**: The purchaser shall provide a deposit in the amount of $5,000.00 on account of the proposed purchase of the Manufactured Home. The deposit shall be paid within 24 hours of execution of this agreement and shall be made payable to Retire West Communities Ltd.
>
> . . .
>
> 3. **COMPLETION**: The sale will be completed on or before January 1, 2022 (the "Completion Date").
>
> (a) Tender or payment of monies by the Purchaser to the Vendor will be by certified cheque, bank draft, cash or Lawyer's (or Notary's) Trust cheque.
>
> (b) All documents required to give effect to this Agreement will be delivered in registerable form where necessary and shall be lodged for registration in the appropriate Manufactured Home Registry on or before the completion date.
>
> (c) Time shall be of the essence hereof, and unless the balance of the payment is paid and such formal agreement is entered into on or before the Completion Date, the Vendor may at the Vendor's option terminate this Agreement and in such event the amount paid by the Purchaser will be absolutely forfeited to the Vendor on account of damages, without prejudice to the Vendor's other remedies.
>
> . . .

[68] Retire West also points to the last paragraph of the contract which provides that there are no other representations or warranties and says that this is inconsistent with an obligation on the part of the defendants to finance the deal by way of vendor takeback financing. Paragraph 11 of the contract provides as follows:

> 11. THERE ARE NO REPRESENTATIONS, WARRANTIES, GUARANTEES, PROMISES OR AGREEMENTS OTHER THAN THOSE SET OUT HEREIN; ALL OF WHICH WILL SURVIVE THE COMPLETION OF THIS SALE. THIS AGREEMENT IS A LEGAL DOCUMENT. THE PARTIES ACKNOWLEDGE HAVING READ THE ENTIRE DOCUMENT BEFORE SIGNING.

[69] As it relates to the promissory note, Retire West suggests that the contract is uncertain because after five years, the amortization table provides for an amount owing of approximately $137,000 and there is no such suggestion as to how that would be paid.

[70] The argument regarding the promissory note is without merit. The amortization table looks like any normal amortization table in which the term of the loan is shorter than the amortization period – that is, it shows there will be a balance outstanding at the end of the term.

[71] As for the impact of the ‘time of the essence’ clause, the completion date was stated to be January 1, 2022, but the February Contract was not provided to the plaintiffs until February 8, 2022.

[72] Either the contract contains an error, or the time of the essence was waived, but under either event the defendants are not in a position to rely on it.

[73] The parties contemplated that Mr. Venier was going to sign the February Contract on behalf of Retire West, but there would be a delay because Mr. Venier was in Hawaii for the winter and was going to return in the spring. The formalities of effecting the transaction were ostensibly on hold because he was away and had previously communicated that he would deal with matters upon his return. Mr. Venier attempted to repudiate the contract before he signed it, but he was not in a position to do so.

[74] I do not accept that the plaintiffs breached the terms of the February Contract.

Remedies

[75] Retire West suggests it may be better for all concerned if damages are awarded should the court find there is a binding contract. However, they take issue with the opinion of the plaintiffs' appraiser, Mr. Rogers, because the original version of his report failed to include the certification under Rule 11-2, and Retire West also seeks occupation rent by way of counterclaim.

[76] I accept that the decision in *Pichugin v. Stoain*, 2014 BCSC 2061, would apply in this case regarding the expert's certification, and that the certification cannot be simply added on later. While the court may admit a report that did not originally have the certification, it will generally be because the expert provided an explanation that the court accepted (for example, *Courchesne v. Chau*, 2023 BCSC 2199) and no such explanation was provided here.

[77] More problematic is that the Court is not able to determine occupation rent. There is no expert evidence on the point, and the only evidence is a very brief paragraph in Mr. Venier's affidavit in which he says rent would be $1000 per month. However, this is the same amount as the monthly loan payment under the promissory note, and I do not accept that fair market rent would necessarily be the same amount as the loan payment.

[78] Further, the evidence is not sufficient to calculate an appropriate amount of compensation for the plaintiffs for the time, trouble and expense of cleaning and renovating Unit 37.

[79] The primary relief sought by the plaintiffs is a declaration of ownership. Rule 20-4 governs the granting of declaratory relief.

[80] Even though an order for specific performance is often the appropriate order to enforce a contract, I am satisfied that a declaration is appropriate here. Because the manufactured home is a chattel as opposed to real property, and it is not

apparent to the Court that further documentation or further actions are required to give effect to the contract that I have found to be in effect between the parties.

[81] The Court therefore hereby declares that the plaintiffs are the owners of the manufactured home referred to as Unit 37, and that Retire West is entitled to a registered charge against the manufactured home for the balance of the purchase price, in accordance with item 1 of the relief sought on this application. Incidental to the declaration of ownership, the plaintiffs are obligated to pay the pad rent from the date they occupied Unit 37.

[82] The plaintiffs are entitled to their costs of the summary trial application.

[83] If the parties cannot agree on the amounts owed within 60 days of this decision, they have liberty to apply.

"Wilson J."