

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Massot v Shewchuk*,
2025 BCSC 2293

Date: 20251121
Docket: S62846
Registry: Kamloops

Between:

Eric Bernard Emmanuel Massot

Plaintiff

And

**Mark Daniel Shewchuk, Elizabeth Ann Shewchuk
and Daniel B. Hutchinson**

Defendants

Before: The Honourable Justice B. Smith

Reasons for Judgment

The Plaintiff, appearing in person:

E.B. Massot

Counsel for the Defendants:

E.E. Ross

Place and Date of Hearing:

Kamloops, B.C.
October 9, 2025

Place and Date of Judgment:

Kamloops, B.C.
November 21, 2025

Introduction

[1] Mark Shewchuk (“Mr. Shewchuk”) and Elizabeth Shewchuk (“Ms. Shewchuk”) (together the “Shewchuks”) and Daniel Hutchinson (“Mr. Hutchinson”) (together with the Shewchuks, the “Defendants”) apply for summary trial of their counterclaim in an action brought against them by Emmanuel Massot (the “Plaintiff”). In the Defendants’ counterclaim the only relief sought is an order that the Plaintiff be declared a vexatious litigant and that he be required to pay special costs.

Background

[2] William Welsh (the “Deceased”) died on March 23, 2021.

[3] The Deceased owned a parcel of land, municipally described as 619 North Fork Road, Cherryville, British Columbia (the “Property”).

[4] The Deceased had a will dated November 4, 2019 (the “Will”).

[5] On April 20, 2021, a will search was conducted, and returned only the Will.

[6] Pursuant to the Will:

- Mr. Shewchuk was named executor of the Deceased’s estate (the “Estate”);
- Ms. Shewchuk was named alternative executor should Mr. Shewchuk refuse or renounce his executorship;
- the Plaintiff received a specific bequest of \$20,000 (the “Bequest”);
- the Shewchuks received equal shares of the residue of the Estate.

[7] The Plaintiff is not a spouse or a child of the Deceased. Prior to the Deceased’s death, the Plaintiff and the Deceased were friends.

The Probate Proceedings (BCSC Vernon Court File No. P53015)

[8] On or about March 29, 2021, Mr. Shewchuk retained Mr. Hutchinson, a British Columbia lawyer, to obtain a grant of probate with respect to the Estate.

[9] On April 15, 2021, Mr. Hutchinson sent a letter to the Plaintiff enclosing a copy of the Will and a notice in Form P1 – Notice of Proposed Application in Relation to the Estate of William Welsh.

[10] On July 27, 2021, the court issued grant of probate to Mr. Shewchuk.

[11] On December 10, 2021, the Property was transferred to the Defendants as joint tenants.

[12] Mr. Shewchuk or his counsel has attempted six times unsuccessfully to deliver the Bequest to the Plaintiff. The Plaintiff initially refused to sign the required release and consent forms. Then the Plaintiff began marking the cheques “void” and returning them, insisting that the money be paid into court, yet refusing to sign any consent form to that effect.

[13] On January 7, 2025, Mr. Shewchuk filed an application seeking the opinion, advice or direction of the court respecting the management or administration of the Bequest or, in the alternative, an order that the money be paid into court, less special costs.

[14] On January 13, 2025, the Plaintiff filed an application response opposing the relief sought and seeking instead orders for passing of accounts of the Estate and a review of disbursements of the Deceased’s property.

[15] On January 20, 2025, Justice Laurie heard and granted Mr. Shewchuk’s application, and ordered that the Bequest be paid into court, less special costs of \$6,747.05. Justice Laurie dismissed the Plaintiff’s application for an order for passing of accounts of the Deceased’s estate and a review of disbursements of the Deceased’s property, finding that he had no standing to challenge the Will and that the period for doing so had in any event elapsed.

[16] On March 26, 2025, the Bequest, less the special costs ordered by Laurie, J., was paid into court.

[17] The Plaintiff still refuses to sign Laurie J.’s order.

The First Action (BCSC Vernon Court File No. E57649)

[18] On May 31, 2022, the Plaintiff started an action against the Shewchuks by way of notice of civil claim in the Supreme Court Vernon Registry, Court File No. E57649 (the “First Action”).

[19] In the Plaintiff’s notice of civil claim in the First Action he sought the following relief:

1. Cessation of acts of aggression, intimidations and false [accusations] by Mark-Daniel: Shewchuk and his solicitors towards the Plaintiff.
2. The continued unrestricted use and occupation of the land parcel described as: Osoyoos Division Yale District plan 2955, by and for the plaintiff Eric-Bernard-Emmanuel: Massot.
3. The rebuilding of South Perimeter fence, holding pen and corral structures.
4. Right for the: unrestricted access directly from the: Northfork Road address and road frontage to the land parcel: Osoyoos division Yale district plan 23955.

[20] On June 14, 2022, the Shewchuks filed a response to civil claim, which was served on the Plaintiff on June 15, 2022, along with counsel’s letter to the Plaintiff requesting production of his list of documents. In the Shewchucks’ response to civil claim, they denied all the relief sought.

[21] On July 6, 2022, counsel sent a second letter to the Plaintiff, by registered mail and email, providing the Shewchuks’ list of documents and again requesting the Plaintiff’s list of documents. The Plaintiff did not claim the second letter and, on July 28, 2022, it was returned to counsel.

[22] On July 20, 2022, counsel sent a third letter to the Plaintiff, requesting a response to his two previous requests for the Plaintiff’s list of documents, and indicating a response deadline of July 27, 2022.

[23] On July 27, 2022, still not having received the Plaintiff’s list of documents, the Shewchuks served the Plaintiff with a notice of application requesting an order to compel him to produce his list of documents.

[24] On August 16, 2022, Associate Justice Schwartz heard the application and ordered that the Plaintiff produce his list of documents (the “First Schwartz Order”).

[25] On August 23, 2022, the Plaintiff made an affidavit indicating his refusal to accept the First Schwarz Order, apparently due to a misspelling of his name:

The: Affiant, alleges: that: the: Fact; by: the: Lack; for: the: Due Process; by: the: Law, that: the: Defence, Against: the: Affiant: Eric-Bernard-Emmanuel: Massot, is null, and, that: the: Orders: for: the: continuation, by: the: fraudulent, misrepresentation: by: the: name: ERIC BERNARD EMMANUAL MASSOT, by: the: Master: Schwartz, are: null, and: Void.

[26] The Plaintiff filed an application, returnable September 6, 2022, alleging that the Shewchuks did not file a response to civil claim in accordance with the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*]. Also on September 6, 2022, the Plaintiff brought a short leave application requesting an interim injunction allowing him access to the Property.

[27] Counsel attended court on September 6, 2022. The Plaintiff did not attend. The Plaintiff’s applications were adjourned to September 13, 2022.

[28] On September 13, 2022, Schwartz A.J. heard the Plaintiff’s two applications and an application by the Shewchuks for particulars of the Plaintiff’s claim. Schwartz A.J. granted the Shewchuks’ application and ordered costs against the Plaintiff (the “Second Schwartz Order”).

[29] On September 21, 2022, the Plaintiff filed an amended notice of civil claim.

[30] On November 7, 2022, the Plaintiff wrote a letter in which he restated his refusal to accept any orders of Schwartz A.J.

2. By the information, by my 3rd Affidavit, sworn on: August 23, 2022, I am unable, to follow, or respond, to: any order by the: Master Schwartz.

[31] On December 5, 2022, the Shewchuks brought an application seeking relief for the Plaintiff’s trespass on the Property. The Plaintiff did not attend. Justice G.P. Weatherill awarded the Shewchuks damages of \$500 for the Plaintiff’s trespass on

the Property and made an order restraining the Plaintiff from attending within 50 feet of:

- Mr. Shewchuk;
- Ms. Shewchuk;
- a property owned by the Shewchuks in Vernon;
- the law firm acting for the Defendants;
- the employees of the law firm acting for the Defendants;
- the Property; and
- the Vernon courthouse, except for the purpose of attending court for the purposes of the probate proceedings.

[32] Justice G.P. Weatherill declined to grant other relief sought in the absence of the Plaintiff.

[33] On February 15, 2023, the Shewchuks filed an application to dismiss the First Action.

[34] On March 23, 2023, the Shewchuks brought an application to dismiss the First Action. Justice Hori reserved judgment on the application.

[35] On April 26, 2023, Hori, J. issued written reasons in which he dismissed the First Action and ordered costs against the Plaintiff.

[36] At a taxation hearing on October 18, 2023, Associate Judge Keim assessed the Shewchuks' bill of costs and issued a certificate of costs in the amount of \$10,019.42 payable by the Plaintiff to the Defendants.

[37] At a subpoena to debtor hearing on February 6, 2024, to enforce \$11,220.42 owing by the Plaintiff to the Shewchuks, Schwartz A.J. ordered the Plaintiff to pay

\$11,220.42 to the Shewchuks, in payments of \$500 a month, commencing March 7, 2024 (the “Third Schwartz Order”). The \$11,220.42 included the \$10,019.42 previously owing, plus the Shewchuks’ costs of the hearing.

[38] On February 8, 2024, by registered mail and email, counsel sent the Plaintiff a draft of the Third Schwartz Order for his signature. To date, the Plaintiff has refused to sign the Third Schwartz Order.

The Second Action (BCSC Kamloops, Court File No. S62789)

[39] On December 28, 2023, the Plaintiff started an action against the Defendants by way of notice of civil claim – admiralty (*in rem and personam*) in the Supreme Court Kamloops Registry, Court File No. S62789 (the “Second Action”).

[40] On January 19, 2024, the Defendants filed a response to civil claim, denying the relief sought.

[41] On January 22, 2024, the Plaintiff filed a notice of discontinuance.

The Third Action (BCSC Kamloops, Court File No. S62846)

[42] On January 22, 2024, on the same day the notice of discontinuance in the Second Action was filed, the Plaintiff started an action against the Defendants by way of notice of civil claim in the Supreme Court Kamloops Registry, Court File No. S62846 (the “Third Action”).

[43] At paragraphs 15 and 16 of the Plaintiff’s notice of civil claim in the Third Action, he makes the following allegations against Mr. Hutchinson and the Shewchuks:

15. By the failure: to abide by his Oath as a barrister, and, in the stead of advising his client to act within the Acts and Rules set forth by Legislation, such that: the Rights of the Plaintiff should be protected, and that: his client’s fiduciary obligations to the Plaintiff, and to William Welsh; deceased, be observed; for: the: Due Process of Law; and, by the failure: for the redress with the Court for the remedy: for: the matter of the Plaintiff’s refusal to accept the terms for (the) Release and Consent, for: the settlement of the Matter of the Estate of William Welsh; Daniel-B. Hutchinson acted in collusion with Mark-Daniel Shewchuk, and, being in full awareness of circumstances,

fraudulently, and, with intent, enabled the transfer of the: PID 006-177-948: LOT 1 SECTION 24 TOWNSHIP 57 OSOYOOS DIVISION YALE DISTRICT PLAN 23955 EXCEPT PLAN 41562, on November 23, 2021.

16. The Plaintiff, in solidarity with his friend, the late William Welsh, deceased, by: the Breach of Trust, by the Defendants: Mark-Daniel Shewchuk and Elizabeth-Ann Shewchuk, and, by the collusion, with the Daniel B. Hutchinson, acting as legal adviser to Mark-Daniel Shewchuk; the Plaintiff, by his own right, and for the rights and honor for the late William Welsh, brings this matter before the Court.

[Emphasis added.]

[44] On July 18, 2024, the notice of civil claim in the Third Action was served on the Defendants.

[45] On August 9, 2024, the Defendants filed a response to civil claim and a counterclaim.

[46] On February 4, 2025, the Plaintiff filed a notice of discontinuance.

[47] The Plaintiff has not filed a response to counterclaim. The Defendants have not withdrawn their counterclaim.

Discussion

Procedure

[48] The Defendants seek the following orders:

1. Pursuant to Rule 9-7 of the Supreme Court Civil Rules, that this matter is suitable to be determined by way of Summary Trial.
2. An Order, pursuant to the Supreme Court Act, section 18, that the Plaintiff be found to be a vexatious litigant;
3. The Plaintiff pay to the Defendants special costs of the action;
4. Special costs to be summarily decided in the amount of \$10,601.81 and \$4,000.00 for this hearing; and
5. Such further orders as this Honourable Court deems just.

[49] At the hearing of the application, counsel indicated that he could have applied for default judgment. The Plaintiff was present at the hearing and counsel proposed instead that the matter be determined by summary trial.

[50] I cannot grant default judgment on this application. Rule 3-8 of the *Rules*, which concerns applications for default judgment, requires certain procedural steps to be taken for default judgment to be available. Those steps have not been taken on this application.

[51] Further, in the present circumstances, summary trial is unavailable because the Plaintiff has not filed a response to counterclaim.

[52] Rule 9-7(2)(d) of the *Rules* states:

Application

(2) A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following:

[...]

(d) an action by way of counterclaim in which a response to counterclaim has been filed.

[53] I understand why counsel sought to proceed by summary trial, given that the only relief sought apart from costs is a declaration by the court that the Plaintiff is a vexatious litigant, something not available by registering default judgment with the registrar.

[54] While I cannot decide this application through either default judgment or summary trial, I can determine the application for a vexatious litigant order pursuant to s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 [SCA]. I can also determine the application for costs of the application.

Vexatious Litigant

[55] Pursuant to s. 18 of the SCA:

Vexatious proceedings

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving the person an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

[56] In *Holland v. Marshall*, 2010 BCSC 1560, at paras. 7–8 [*Holland*], Justice B.J. Brown said:

[7] To succeed on an application pursuant to s. 18, the applicant must demonstrate:

1. that the proceedings are vexatious in the sense of having been taken in the absence of objectively reasonable ground; and
2. that proceedings have been brought habitually or persistently, such that the litigant has continued obstinately in the course of conduct, despite protests or criticism. (*British Columbia) Public Guardian and Trustee v. Brown* 2002 BCSC 1152.

[8] In *Lang Michener v. Fabian* (1987) 1987 CanLII 172 (ON SC), 37 D.L.R. (4th) 685, the Ontario High Court described the characteristics of a typical vexatious proceeding:

- a) bringing one or more actions to decide an issue which has already been determined by a court of competent jurisdiction;
- b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief;
- c) actions brought for an improper purpose, including the harassment or oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- d) grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- e) failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings;
- f) persistently taking unsuccessful appeals from judicial decisions; and
- g) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action.

[57] Considering all the factors discussed in *Holland*, I find that the Plaintiff is a vexatious litigant, because he has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court, first against the Shewchuks, then against their counsel too.

[58] By the Bequest, the Deceased gifted his friend, the Plaintiff, \$20,000. For reasons known only to the Plaintiff, he refused to accept the Bequest and instead

dragged the Shewchuks and their lawyer through years of expensive and frivolous litigation. Justice Hori dismissed the First Action. The Plaintiff commenced the Second Action, discontinued it three days after the Defendants filed a response to civil claim, and the same day commenced the Third Action.

[59] The courts of this country exist to provide justice to all litigants. They do not exist as a tool for those who would abuse the power of the court process to pursue vexatious litigation against others. Unfortunately, that is what has occurred in this case.

Costs

[60] The court has inherent jurisdiction to award special costs: *MacLeod v. Harrington (Guardian of)* (1995), 14 B.C.L.R. (3d) 201 (B.C.C.A.) at para. 218; *658946 B.C. Ltd. v. 0773907 B.C. Ltd.*, 2024 BCSC 1700 at paras. 11–12.

[61] Rule 14-1(1)(b)(i) of the *Rules* provides for an award of special costs.

[62] Special costs may be awarded when a party has engaged in reprehensible conduct during the course of the litigation: *Garcia v. Crestbrook Forest Industries Ltd.*, (1994) 9 B.C.L.R. (3d) 242 (B.C.C.A.).

[63] In *Mayer v. Osborne Contract Ltd.*, 2011 BCSC 914, the court identified a number of circumstances in which said special costs may be awarded. These circumstances include where a party maintains unfounded allegations of fraud or dishonesty.

[64] I find there is no evidence that either the Shewchuks or Mr. Hutchinson have engaged in any of the behaviour complained of. In particular, there is no evidence of collusion, which in the context of the facts is tantamount to an allegation of fraud or dishonesty. I find there is no evidentiary or other basis to conclude that either the Shewchuks or Mr. Hutchinson has at any time during their involvement in this matter conducted themselves other than completely in accordance with the law. I find that there is no evidentiary or other basis to conclude that Mr. Hutchinson has at any

time during his involvement with this matter acted contrary to his professional obligations as a British Columbia lawyer.

[65] The Defendants are entitled to special costs, because the Plaintiff's conduct rises to the level of what the courts characterize as reprehensible conduct in that it includes unfounded allegations of collusion against the Shewchuks and Mr. Hutchinson.

[66] The Plaintiff's conduct warrants sanction for three reasons.

[67] First, the Plaintiff's conduct is antithetical to the object of the *Rules*. Rule 1-3(1) of the *Rules* states that "the object of these Supreme Court Civil Rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits." Unfounded allegations of fraud and dishonesty, in this case framed as collusion, are unjust to the targets of the allegations, and have the potential to lead to injustice, not only for the targets, but also in the determination of the litigation; while delay and increased expense invariably also result, as counsel find themselves unable to respond without potentially being in a conflict of interest, and clients have the expense of retaining new counsel. Allegations of fraud and dishonesty are serious and potentially very damaging to those accused of deception: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 26.

[68] Second, the Plaintiff's conduct is corrosive of the solicitor-client relationship between the Shewchuks and Mr. Hutchinson, as well as of the solicitor-client relationships between Mr. Hutchinson and his other clients, who may learn that their counsel is alleged to have acted fraudulently or dishonestly in another matter for someone else. A successful relationship between a client and their counsel depends on the client having full confidence and trust in the counsel's undivided loyalty and dedication to the case: *C.S. v. C.B.*, 2021 BCSC 879 at para. 7; *Schuetze v. Pyper*, 2022 BCSC 455 at para. 15, aff'd 2023 BCCA 334 at para. 50. Unfounded allegations of fraud and dishonesty are a distraction for counsel in that they impugn their integrity.

[69] Finally, the Plaintiff's conduct is deserving of reproof. The main purpose of special costs is to censure litigation misconduct: *Tanious v. The Empire Life Insurance Company*, 2019 BCCA 329 at para. 53. As the British Columbia Court of Appeal said in *Gichuru v. Smith*, 2014 BCCA 414 at para. 80:

...A lawyer relies on his reputation for integrity. While not every accusation against a lawyer will lead to special costs, when a lawyer's reputation is falsely assailed, the Court's reproof should be felt.

[70] The Defendants seek costs totalling \$14,601.81. Prior to the hearing of the Defendants' application on October 9, 2025, their costs associated with the Third Action were \$10,601.81, inclusive of GST. They estimate their costs for attending and speaking to their application on October 9, 2025 at \$4,000.

[71] Concerning the hearing on October 9, 2025, counsel for the Defendants had to attend court in Kamloops from their office in Vernon. In the circumstances, it was reasonable that they did not seek leave to attend by videoconference. The hearing took more than half a day to complete. I am satisfied that \$4,000.00 in costs for the hearing on October 9, 2025 is appropriate.

Orders

[72] The Defendants are entitled to special costs in the amount of \$14,601.81, of which \$4,000 is costs of the hearing on October 9, 2025.

[73] Pursuant to s. 18 of the SCA, the Plaintiff is prohibited from bringing or commencing proceedings in this court, under any name, against, Mark Daniel Shewchuk, Elizabeth Ann Shewchuk, Daniel B. Hutchinson, the estate of William Welsh, or any lawyer who represented the parties, without leave of a justice of this court.

[74] I dispense with the need for the Plaintiff's signature on the orders. Entered orders will be provided to him in due course.

"B. Smith J."

B. SMITH J.