IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Zou v. Miracon Development Inc.,* 2025 BCSC 2476

Date: 20251212
Docket: S258821
Registry: New Westminster

Between:

Jinlu Zou and Huan Yi Zhou

Plaintiffs

And

Miracon Development Inc.

Defendant

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

The Plaintiffs, appearing in person:	J. Zou H. Zhou
Counsel for the Defendant:	P. Sheppard
Place and Dates of Hearing:	New Westminster, B.C. October 24 and November 28, 2025
Written Submissions from the Defendant:	December 5, 2025
Written Submissions from the Plaintiffs:	December 10, 2025
Place and Date of Judgment:	New Westminster, B.C. December 12, 2025

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I. Introduction

[1] This is a dispute between landowners and a builder who was constructing a home on neighbouring property.

[2] Among other things, the landowners allege damage and trespass; the builder acknowledges both, but says the damage and trespass would have been minimized or perhaps avoided altogether had the landowners acted reasonably.

[3] The builder, Miracon Development Inc. ("Miracon"), seeks to resolve this matter by summary trial. The landowners, Ms. Zou and Mr. Zhou, say this matter is not suitable for summary trial. They say they are entitled to a full trial, where oral evidence can be tested by cross-examination.

II. Evidence

A. Defendant

[4] Miracon is a builder of residential homes. One of its projects was the construction of a house on the property adjacent to the plaintiffs' property in Langley. Miracon obtained both excavation and building permits for that work in March 2025.

[5] On May 2, 2025, Ms. Zou telephoned Ron Enns, Miracon's director of operations and customer care, to discuss Miracon's construction plans. Mr. Enns informed her of the planned excavation and construction work and told her the excavation work might affect the stability of the ground along the property line between the two properties. He deposed as follows:

> To mitigate against possible stability issues from the excavation, I told Jinlu Zou that Miracon could remove the fence along the property line and replace it with safety fencing. I informed her that Miracon was prepared to then install a new fence after completing necessary work and would remediate any portions of the Zhou Property affected by Miracon's planned excavation and construction activities, at Miracon's sole cost.

[6] Ms. Zou thanked Mr. Enns for the call. She did not refuse his offer during that call.

[7] On May 20, 2025, Mr. Enns emailed Ms. Zou and reminded her of their earlier discussion about possible stability issues and his proposal about how to deal with it. Mr. Zhou replied to the email by objecting to Miracon's plan to remove the existing fence and refused to consent to Miracon entering their property.

[8] Mr. Enns responded to Mr. Zhou by noting the planned construction was being done in accordance with building permits and while Miracon did not need their consent to carry out its work, Miracon reiterated that they would replace the fencing and remediate the area afterward.

[9] Excavating work was conducted on the Miracon property on May 21, 2025. In a telephone call to Mr. Enns that evening, Mr. Zhou accused Miracon of performing illegal excavation work and causing damage to the plaintiffs' house. He reiterated that they would not grant permission to Miracon to enter onto their property.

[10] Mr. Enns deposed that Mriacon's excavation work took place entirely within the boundaries of the Miracon property. They did not remove any fencing or enter the plaintiffs' property.

[11] Dale Seward, Miracon's construction manager, said he observed surveyors place stakes to mark the excavation boundary so that the excavation would be done in the proper location. He also said the excavation work took place entirely within the boundary of the Miracon property.

[12] Mr. Seward said they were aware of the possibility that soil conditions on the plaintiffs' property might be poor and contribute to degradation after excavation, but they did not know what those soil conditions would be until excavation had begun.

[13] The plaintiffs' post-excavation survey depicts the state of the property on June 6, 2025, and it shows the elevations both at grade and at the bottom of the excavation. These elevations indicate that the maximum excavation depth near the subject property line was about 1.79 m or about 5 feet, 10 inches.

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[14] Mr. Seward said that when the excavation cuts began to exceed around 4 to 6 feet in depth, some sections of the plaintiffs' property began to degrade and collapse. As a result, some sections of fencing along the property line became unstable, some parts collapsed and others were in the process of collapsing.

[15] Mr. Seward deposed:

> Due to imminent safety concerns posed by the collapsing sections of fencing, I and other Miracon workers entered the Zhou Property to remove the sections of collapsed and partially collapsed fencing. I and other Miracon workers then placed the removed fence panels safely on the rear of the Zhou property, just inside the property line. After we had placed the removed panels, I and other Miracon workers constructed bracing on a section of remaining fencing. These activities were done solely to address imminent safety concerns along both sides of the property line, and only to the extent necessary to remove the panels, safely place the panels elsewhere, and construct the bracing.

[16] Mr. Seward said this was the only time that Miracon personnel entered or conducted work on the plaintiffs' property.

[17] WorkSafeBC safety regulations require that there be a "safe entry" inspection of the excavation site prior to commencing any further work. Miracon engaged a geotechnical engineer to conduct that inspection. The engineer recommended that Miracon install plastic sheeting over exposed side areas and extend the existing downspouts of the plaintiffs' house to the bottom of the excavated area.

[18] Email correspondence between Miracon and the plaintiffs continued from May 21 to May 26, with the plaintiffs communicating their complaints about the excavation and Miracon repeating its offer to fully remediate their property in exchange for access. Mr. Enns asked to be permitted access so that Miracon could secure the fence and also to properly block off that portion of the plaintiffs' side yard that had collapsed. On both May 23 and May 26, Mr. Enns asked for access to the plaintiffs' property so that Miracon could implement the recommendations of the geotechnical engineer. The plaintiffs continued to refuse access to their property.

[19] On May 22 the plaintiffs sent an email entitled "Formal Complaint Regarding Property Damage and Unauthorized Construction", claiming a significant sum for

compensation. They also made a complaint to Langley Township about alleged over-excavation.

[20] On May 29, following a rainfall, Mr. Seward noted some further degradation along the property line. As noted in one of the photographs, this degradation took place in an area which, due to the plaintiffs' refusal to allow Miracon on their property, Miracon had been unable to cover with plastic sheeting or extend the downspout on the plaintiffs' house.

[21] On June 12, Mr. Enns and Mr. Seward met with a representative of Langley Township at the site. The Township representative told Miracon's representatives that from the Township's perspective, Miracon could continue with its construction.

[22] Also on June 12, the geotechnical engineer recommended an alternative method of securing the excavation site, that of using concrete lock-blocks along the side adjacent to the plaintiffs' property. On June 16, concrete lock-blocks were installed on the site as the engineer had recommended. After these were installed, the engineer provided a report approving the continuation of the construction.

[23] On June 18, Miracon filled in portions of the degraded property along the line of lock-blocks, using gravel as fill. They used a gravel slinger so that no Miracon worker would have to set foot on the plaintiffs' property. On July 10, Miracon again used a slinger, this time to backfill gravel and sand along all the affected property line area. Mr. Seward said that this mix of gravel and sand stabilized the ground, ensured safety along the property line and also levelled the ground on both sides of the property line.

[24] Construction proceeded on the Miracon property, and by early September 2025 the foundation had been laid and the structural framing of the house was complete. As part of the final aspects of the construction, Miracon plans to landscape and construct a fence along the subject property line. They will remediate the area as much as possible without accessing the plaintiffs' property.

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[25] In July 2025, Miracon sought and obtained from a professional landscaper a quote totalling $4,200 (including GST) for the remediation of the plaintiffs' side property. The work covered by the quote is the supply and installation of new and existing fence panels, with new fence posts, and the supply and installation of gravel along the side of the house to both meet the grade and match the existing gravel.

[26] Mr. Enns said that, based on his experience in similar projects, had the plaintiffs accepted any of Miracon's offers to remediate their property, that work would have been completed within three to six weeks.

B. Plaintiffs

[27] The plaintiffs filed identical affidavits. They each attest to the fact that Miracon commenced excavation on the adjacent property, the soil on their property collapsed, and portions of their fence and yard fell. They also say that on or around May 21, Miracon employees entered on their property, without consent, and left materials on their property. The accompanying photographs suggest the latter reference is to the bracing that Miracon used to stabilize the remaining fence.

[28] The plaintiffs say the excavation and trespass interfered with their use and enjoyment of their land and caused damage to their property. They depose that they repeatedly asked Miracon to restore their yard by backfilling and stabilizing the soil along the property line "using proper methods", but Miracon did not do so.

[29] The plaintiffs say that Miracon has blocked access to their property. Here, they refer to a particleboard panel that was erected as part of the bracing, which blocked access to the sloughed-off side of the property for safety reasons. The plaintiffs calculate the size of the affected area to be 105.6 square metres.

[30] The plaintiffs acknowledge that Miracon asked for access to their property in order to remediate the area, but they say they refused access because "the proposed measures were inadequate to restore my Property and would have interfered with my land further". They say their property remains damaged and unsafe along portions of the fence and yard. The photographs referenced for the

latter appear to be images of portions of the collapsed fence and fence posts. They also refer to a nail that they found stuck to an outside wall of their garage.

[31] The plaintiffs say the $4,200 estimate for fence replacement only covers limited fence replacement, and the actual damage includes soil loss, drainage blockage, safety hazards and "structural impacts". They depose that "professional assessments and quotes confirm that the cost of proper restoration exceeds this amount". They did not provide any of those professional assessments and quotes.

[32] As to interference with the use of their property, they refer to their inability to use the hose on that side of their house to wash their organic waste bin and to the fence panels that were dropped in their driveway and had to be re-secured by them.

[33] They say the "occupation and obstruction" have directly affected their living conditions, safety and enjoyment of their property. In this regard, they referred to photographs showing their gas line had been exposed at the site of the gas meter.

III. Positions of the Parties

A. Miracon

[34] Miracon submits the plaintiffs' action should be dismissed or, alternatively, that judgment be granted in only a nominal amount or, further alternatively, in the amount of $4,200.

[35] Miracon notes that prior to conducting excavation work on its property, it sought to prevent degradation to the plaintiffs' yard and fence, and proposed mitigation measures that it would carry out at its expense. The plaintiffs refused. When portions of the plaintiffs' property sloughed away and some fence sections failed, Miracon again offered to remediate the area and again the plaintiffs refused.

[36] Miracon submits the plaintiffs have failed to prove any quantifiable damage and, in any event, have failed to mitigate any losses by failing to either accept Miracon's offers to remediate the plaintiffs' property or carry out the remediation themselves.

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[37] Miracon notes that in the notice of civil claim, the plaintiffs seek general damages, special damages, an injunction and a declaration that they are entitled to file a certificate of pending litigation (CPL) against the Miracon property. The plaintiffs plead causes of action in trespass, negligence, nuisance and breaches of the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337; the *Builders Lien Act*, S.B.C. 1997, c. 45; the *Community Charter*, S.B.C. 2003, c. 26; and the *Local Government Act*, R.S.B.C. 1996, c. 323.

[38] As to each of these matters, Miracon says:

a) the plaintiffs have not claimed an interest in land or a right of action in respect of land, so there are no grounds for their claim for a CPL;

b) there are no grounds for granting an injunction as the plaintiffs have failed to plead any facts to support that any trespass is either ongoing or anticipated;

c) the statutes invoked by the plaintiffs do not give rise to any applicable causes of action or relief;

d) there is no actionable trespass as the single incident of trespass was fleeting and minimal and was done only for the purpose of addressing an imminent safety concern. No damages should be awarded in these circumstances; alternatively, any damages awarded should be nominal, with conventional awards for “neighbourly disputes” often being $1 or some other small amount: *Skrypnyk v. Crispin*, 2010 BCSC 140 at paras. 23 and 25; *Manak v. Hanelt*, 2022 BCSC 1446 at paras. 49-50.

e) there is no actionable nuisance as the plaintiffs have not established significant and substantial interference with the use or enjoyment of their property and have not led any proof of material damage. In any event, even if the plaintiffs had led evidence on those matters, they failed to accept or carry out any measures to mitigate their losses; and

f) the plaintiffs have failed to prove negligence as they have failed to lead any evidence of a standard of care or evidence that Miracon failed to meet that standard of care.

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[39] Miracon submits that the plaintiffs failed to mitigate damages. They refused to allow Miracon to take precautionary measures to protect their property, and despite demanding that Miracon remedy the sloughing of their property and fence damage, they refused Miracon's offers to remediate and failed to do the remediation work themselves.

[40] Miracon argues that the plaintiffs' case ought to be dismissed outright, or with only nominal damages, but if damages are to be awarded they ought to be assessed at $4,200, based on the estimated cost of rebuilding the damaged portion of the fence and completing the restoration of the affected area.

[41] Finally, Miracon argues that if summary judgment is not granted in terms of the claim as a whole, some of the plaintiffs' claims ought to be dismissed under Rule 9-5. The claims that should be struck are those for a CPL, for an injunction and for alleged breaches of the various statutes.

[42] As to suitability for summary trial, Miracon says:

a) the facts are largely undisputed and there are no significant matters that turn on credibility;

b) the plaintiffs have not provided any evidence of quantifiable damages and, in any event, the amount or amounts involved are relatively small;

c) the issues are not complex;

d) the cost and delay associated with a conventional trial would be disproportionate to the amount involved; and

e) continued delay would work to the prejudice of Miracon because the plaintiffs have threatened to register a CPL against the subject property.

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B. Plaintiffs

[43] The plaintiffs argue that their claims in trespass, negligence and nuisance require factual and legal determinations that are unsuitable for summary trial. They say they are entitled to have the matter proceed to a full trial where oral evidence can be tested by cross-examination.

[44] The plaintiffs say, further, that the interests of justice, proportionality and fairness require that this matter proceed to a full trial rather than be addressed summarily.

[45] In particular, the plaintiffs say this matter is not suitable for summary trial because:

a) there are significant disputes of fact regarding the cause and extent of damage and responsibility for the collapse of the plaintiffs' land and fence;

b) resolution depends on credibility assessments and expert evidence, which cannot be properly determined on affidavit evidence alone;

c) their claims are based on torts which are "fact heavy" and require a full trial for fair adjudication;

d) the defendant's blocking and occupation of a portion of the plaintiffs' property constitutes a continuing trespass and interference with property rights, which illustrates why this matter cannot be resolved on affidavit evidence alone.

[46] In oral submissions, the plaintiffs said they were concerned about the exposure of the gas line underneath the meter, they contacted Fortis to report it and a Fortis technician attended at their property to inspect it. They do not know if there is anything wrong with it as they did not hear further from the technician.

[47] They say they did not give permission to Miracon to carry out remedial work because they did not know what Miracon was going to do.

[48] In later oral submissions, the plaintiffs said the major issues are: (1) the cause of the soil collapse; (2) the adequacy of Miracon's remediation proposal; (3) the suitability of the backfill used by Miracon; and (4) whether the plaintiffs failed to mitigate or act reasonably. The plaintiffs repeated that these were fact-heavy issues that required a full trial.

[49] In their oral submissions, the plaintiffs made a number of assertions that were not referred to in their affidavits or otherwise the subject of any evidence. These included the following:

a) Miracon did not use approved fill; specifically, it did not use fill of the same standard used by the subdivision developer for the construction of other homes in the area;

b) one of the Miracon employees admitted to the plaintiffs that Miracon had excavated "across our [property] line";

c) they are concerned the excavation might have caused cracks in the foundation of their house, and they have not had the time to consult an expert on that;

d) the landscaper's quote for the fence rebuilding might not be for the same quality of fence, and it does not provide for the anchoring of the fenceposts in concrete; and

e) further information from their surveyor (also not in an affidavit) is that the affected area comprises 11 square metres or 118 sq. ft.

[50] The plaintiffs submit that Miracon has rendered a portion of their property unusable and unsafe, a situation that has continued for "many months".

[51] While the plaintiffs' primary position is that this matter is not suitable for summary trial, if the Court finds otherwise then the plaintiffs submit that the assessment of damages should be much higher than the defendant asserts. In addition to remediation costs, the plaintiffs submit that their loss of use ought to be

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based on the square footage involved, which they now say is 118 square feet, at $1 per day for each square foot, for the estimated 10 months it will take to remedy the situation. The plaintiffs cited six cases which they said endorsed this approach to the assessment of damages in trespass cases.

[52] In addition to these damages, the plaintiffs asked the Court to levy a fine against Miracon for having “excavated our land without permit from Langley City Hall”. The plaintiffs also made submissions on matters relating to costs.

[53] I indicated to the plaintiffs that they had not raised the matter of a fine in their pleadings, and that costs would be dealt with at a later time.

C. Miracon Reply

[54] In reply, Miracon noted that various assertions made by the plaintiffs in their submissions were not in an affidavit and, as they are not in evidence, the Court ought not to take them into account.

[55] Miracon also noted that, contrary to the plaintiffs’ submissions, the landscaper’s quote expressly covers work to “supply and install new and existing panels with new posts in concrete footings”.

[56] As the defendant had not had the opportunity to consider the six case authorities referenced by the plaintiffs in the second day of their submissions, I granted leave to the defendant to provide brief written submissions and allowed the plaintiffs to reply to those submissions.

[57] In its written submissions, Miracon said that although the plaintiffs’ six case references came with plausible-looking names and citations, the cases do not exist. Miracon said these cases appear to be hallucinations generated by artificial intelligence and, as such, ought to carry no weight whatsoever.

[58] In their reply submissions, the plaintiffs did not deny that their cited cases were AI-generated, and they went on to essentially repeat their principal submissions.

IV. Discussion

A. Summary Trial – Principles

[59] Rule 9-7(15)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, reads as follows:

> (15) On the hearing of a summary trial application, the court may
>
> (a) grant judgment in favour of any party, either on an issue or generally, unless
>
> (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
>
> (ii) the court is of the opinion that it would be unjust to decide the issues on the application,
>
> (b) impose terms respecting enforcement of the judgment, including a stay of execution, and
>
> (c) award costs.

[60] In *Inspiration Management. Ltd. v. McDermid St. Lawrence Ltd.*, 1989 CanLII 229 (B.C.C.A.), the Court said:

> [49] In deciding whether it will be unjust to give judgment the chambers judge is entitled to consider, inter alia, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration on this important question.

[61] Another well-settled principle associated with summary trial applications is the obligation on the part of an application respondent to put their "best foot forward" in mustering their case in opposition: *Dong v. Real Estate Board of Greater Vancouver*, 2021 BCCA 483 at para. 17. Among other things, this means that while an application respondent may take the position that the matter is unsuitable for disposition by summary trial, they must also come prepared to prove their claim: *Gichuru v. Pallai*, 2013 BCCA 60 at para. 32.

B. Analysis

[62] I am satisfied that this matter is suitable for disposition by summary trial. The essential facts are not in dispute, the case is not complex, both the site and the

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works are well documented in photographs and enable a full appreciation of both the scene and the work done, the amount involved is relatively small, and the cost of taking this matter to a conventional trial would be disproportionate to the amount at issue in the case.

[63] In a moment, I will review the essential facts that are not in dispute, but I will first make some observations about the proximity of the two properties and their structures.

[64] The properties are part of what appears to be a new subdivision and the houses are quite close to one another. The plaintiffs' survey shows that the side of their house is just 1.3 m (a little over 4 feet) from the property line. It also shows that window wells for below-grade windows in the plaintiffs' house extend to a point that is about half that distance, meaning they are just .6 m or 2 feet from the property line. I presume the setback distance for Miracon's property is the same. The point of these observations is that there is relatively little room between the two properties.

[65] Based on the evidence properly before the Court, the following facts are not in dispute:

a) Miracon was authorized to carry out the excavation at its building site;

b) Miracon asked for permission to enter onto the plaintiffs' property to remove the fence and take some protective measures against instability, promising to remediate the area afterward, but the plaintiffs refused to grant permission;

c) Miracon's excavating work was done in its proper location and did not go beyond the property line;

d) some of the soil on the plaintiffs' property sloughed away during and after the excavation, which caused sections of the fence to collapse;

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e) to address safety concerns posed by the collapsed and collapsing sections of fencing, Miracon workers entered the plaintiffs' property to remove sections of collapsed fencing and brace the remaining fencing;

f) a geotechnical engineer carried out a post-excavation inspection and recommended certain measures to protect the plaintiffs' property from further degradation, but despite Miracon's renewed promise to fully remediate the area afterward, the plaintiffs refused to grant Miracon access to their property to carry out those measures;

g) there was a further sloughing of the plaintiffs' property after a rainfall;

h) on the recommendation of the geotechnical engineer, Miracon deployed lock-blocks along the area of the most significant sloughing and then backfilled portions of that area with gravel by using a gravel slinger so that Miracon's workers would not intrude on the plaintiffs' property;

i) later, Miracon again used a slinger to backfill all the area along the property line with gravel and sand. Photographs show the area to be restored to what appears to be its approximate former grade; and

j) the collapsed portion of the fence has not been restored or replaced.

[66] Contrary to the plaintiffs' submissions, there are no factual disputes regarding the cause and extent of damage or the responsibility for the collapse of the plaintiffs' land and fence. Accordingly, there are no credibility issues on those matters.

[67] I turn now to the facts relating to damages. One aspect is clear enough, as the fence has yet to be repaired or restored. I also accept that the plaintiffs have not been able to access that side of their property, but I note the affected area is a fairly narrow strip of property at the side of their house and the only specific inconvenience they have mentioned is their inability to wash their organics waste bin in that area. While it is clear they have been unable to access that side of their house for some time, it is also clear that the extended period of time that this has

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been the case is due to their failure to mitigate by accepting Miracon's offers to remediate the area and build a new fence.

[68] The photographs show that the area would have been accessible as of July 10 (the date the area was fully backfilled) but for the particleboard panel holding up the fence at one end, which blocked access. On the evidence, had the plaintiffs accepted Miracon's offer to restore the fence, the area would have been back to normal within six weeks. It was also open to the plaintiffs to restore the fence themselves and claim the cost as damages, but they did not do that.

[69] In brief, I am satisfied that had the plaintiffs mitigated their damages by addressing the fence issue, their inability to access that side of their property would have been limited to six weeks at most. Their failure to mitigate their damages means they cannot claim damages for their inability to access beyond that time.

[70] They also say their garage was damaged because they found a nail sticking out of it. I note this nail is some distance away from Miracon's area of activity, with a parking area in between, and so I am left in some doubt that it is associated with Miracon's work. But even assuming that a nail gun might generate enough force to send a large nail that far, the damage is inconsequential and looks to be easily repairable. I also note the plaintiffs led no evidence about the cost of this repair.

[71] Other aspects of damages claimed by the plaintiffs are vague or unsupported. They claim "soil loss, drainage blockage, property safety hazards and structural impacts that require more extensive remediation", and they refer to "professional assessments and quotes" that they did not put in evidence. Aside from soil loss, none of those issues are detailed or verified in any way in their affidavits.

[72] While the plaintiffs have a concern, perhaps an understandable concern, about the safety of the gas line that was exposed due to sloughing, there is no evidence suggesting the line was damaged in any way or that there is any resulting safety issue associated with it. During submissions, Mr. Zhou said the gas line to their house was inspected by a Fortis technician some time ago, but they have

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heard nothing since. It is difficult to accept that a Fortis technician who found an actual safety issue would not do anything about it. Given the lack of evidence on this point, the plaintiffs' allegation about possible damage to their gas line is no more than unfounded speculation.

[73] The plaintiffs also allege the backfilling of their property needs to be done "using proper methods", but they offered no evidence about that either. There is nothing to show the fill used by Miracon was improper or in any way substandard.

[74] As noted in another trespass and nuisance case, *Rose v. Canadian Natural Resources Ltd.*, 2025 BCSC 1108:

> [72] As I have said, the plaintiffs appear to treat this as a summary judgment application [as distinct from a summary trial application]. They say their claims have merit and therefore cannot be dismissed. However that misapprehends what they must do in response to a summary trial application. If, in fact, their claim in trespass is "established by the evidence" as they suggest, it is incumbent on them to lead evidence to prove the losses that flow from that. What loss or damage have the plaintiffs suffered as a result of that trespass? What amount of damages should be awarded to compensate the plaintiff for any such loss or damage? The plaintiffs have not led evidence to address these points.

[75] Those comments apply equally to some of the plaintiffs' claims in this case.

[76] I turn now to the legal aspects of the claim.

Trespass

[77] I accept that the plaintiffs have shown that Miracon's employees trespassed on their property when they entered it to stabilize the remaining fence, remove unstable fence panels to a place of safety, and ensure safety by blocking access to the affected area with a particleboard panel. This trespass was both brief and minor and so it warrants only a nominal or very modest award. I am satisfied that $100 is an appropriate sum here. This reflects a vindication of the plaintiffs' legal right but it also suggests they ought not to have brought a lawsuit, or at least not continued it once all the evidence was known, even though technically they were correct: *Skrypnyk* at para. 25.

Nuisance

[78] I am satisfied that the plaintiffs have established their claim in nuisance, as Miracon carried out works on its own property that resulted in loss of lateral support and physical damage to the plaintiffs' property. Here, I note that the loss of lateral support was, by all appearances, to that part of the plaintiffs' yard that was in its natural state.

[79] The measure of damages for the rebuilding of the fence, together with the restoration of the strip of property in question, is the sum found in the landscaper's quote, which is $4,200. I award that sum to the plaintiffs.

[80] I conclude that the plaintiffs should also be compensated for the limited and modest inconvenience they encountered in not being able to access that narrow strip on the side of their house, which is where they cleaned their waste bin. Given the limited nature and extent of that inconvenience, I do not consider it appropriate to assess damages based on some sort of notional rent, as the plaintiffs submitted based on their AI-generated fictional cases. While I accept that damages based on a notional rent might be available in some cases (perhaps in a situation where a tortfeasor profits from their ongoing use and trespass of the innocent party's property), that is not the situation here.

[81] As noted earlier, I also conclude the period of compensable inconvenience ought to be limited to six weeks, as any inconvenience after that time was due to the plaintiffs' failure to mitigate. I am satisfied that $500 is an appropriate award here.

[82] I dismiss the remaining claims for the following reasons:

a) alleged breaches of statutes: I agree with the defendant that none of these statutes creates any cause of action that would be applicable here;

b) the claim in negligence: the plaintiffs led no evidence of a standard of care, and thus there is no evidence that Miracon breached a standard of care;

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c) the claim for a certificate of pending litigation: the plaintiffs' claims do not involve claims to an interest or right of action in or to land; and

d) the claim for an injunction: the trespass here was fleeting and temporary and there is no basis on which to conclude that it will be repeated. Similarly, the activity that led to a loss of lateral support is at an end. There is no basis on which I would order an injunction in these circumstances.

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V. Conclusion

[83] In summary, and for the reasons just given, I award damages to the plaintiffs for trespass and nuisance in the total amount of $4,800. The remainder of the plaintiffs' claims are dismissed.

[84] The defendant asked for the opportunity to make written submissions on costs. I direct that these submissions be exchanged and submitted to the Court through the Scheduling Manager on the following schedule:

a) the defendant shall submit its costs submissions, not exceeding three pages, within seven days of the date of this decision;

b) the plaintiffs shall submit their reply cost submissions, not exceeding three pages, within seven days of receiving the defendants' submissions;

c) the defendants shall have three days after that to submit any reply submissions.

"Blok J."