

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Norris v. Krief*,
2026 BCSC 263

Date: 20260218
Docket: S244259
Registry: Vancouver

Between:

Reginald Norris

Plaintiff

And

Jean Michel Krief, Patricia Benell and Kyle DeConnick

Defendants

And

Reginald Norris

Defendant by way of Counterclaim

Before: The Honourable Justice Stephens

Reasons for Judgment (Summary Trial)

Counsel for the Plaintiff and
the Defendant by Way of Counterclaim:

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Jean Krief, Patricia Benell:

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No other appearances:

Place and Dates of Hearing:

Vancouver, B.C.
November 3-4, 2025

Place and Date of Judgment:

Vancouver, B.C.
February 18, 2026

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Overview

[1] The plaintiff, Reginald Norris, and the defendants, Jean Michel Krief and Patricia Benell (the “Defendants”), are neighbours on Bowen Island. Separating their lands is a road sitting on the Defendants’ side of the property line and travelling uphill (the “Easement Road”), over which the plaintiff has an easement.

[2] Specifically, there is both a primary access easement (for a northern segment) and a secondary access easement (for the southern segment) on the Easement Road, shown in cross hatched and with a bold outline, respectively, in the plan attached as **Schedule A** (being an appendix to the Registered Agreement, defined below).

[3] The Easement Road is an approximately 2,300-foot paved driveway located on the Defendants’ land traversing a relatively steep hill that has a downward slope on one side, especially on the southernmost portion of the road which is at a higher elevation.

[4] In 2024, the plaintiff began building a new house in the southern (higher elevation) portion of his property using the Easement Road, asserting a legal entitlement to do so under the access easements. The plaintiff also constructed a new access point (called the construction access site) along the Easement Road to get to the construction site. A dispute has arisen between the plaintiff and the Defendants about, among other things, the plaintiff’s use of the Easement Road.

[5] On December 10, 2024, on the Defendants’ application, an interlocutory injunction was granted by Justice D. MacDonald (the “Interlocutory Injunction Decision”) enjoining, pending the trial of this action, the plaintiff from: (1) using certain parts of the Easement Road for purposes relating to construction; (2) creating any new access points on the Easement Road; and (3) modifying or otherwise altering certain access points on the Easement Road: *Norris v. Krief*, 2024 BCSC 2239 at para. 72.

[6] The plaintiff now applies by summary trial for final declaratory, injunctive and other relief to, among other things, allow him to build his new home using the Easement Road and also to use a well on the Defendants' land. The summary trial seeks to determine some, but not all, of the issues in the underlying action. The Defendants oppose the relief sought on this summary trial application, although do not dispute the suitability of this application for summary trial. I understand there is a trial of this action scheduled for July 2026.

[7] A preliminary question on this summary trial application is whether the plaintiff's notice of application is suitable for summary trial. If so, the following substantive issues were advanced:

1. Should the court grant declaratory relief sought by the plaintiff for the "free, full and uninterrupted access to the whole of the" primary and secondary access easements on the Easement Road "for persons, animals, and vehicles"?
2. Should the court order that the plaintiff is entitled to alter and improve the land within the primary and secondary access easement areas for the purpose of facilitating access to the plaintiff's property?
3. Should the court grant declaratory relief sought by the plaintiff with respect to an asserted entitlement to "draw water from the well located within the Water Well and Waterline Easement Area"?
4. Have the Defendants wrongfully interfered with the rights of the plaintiff under the Easements?
5. Should the Interlocutory Injunction Decision be set aside?
6. Should the court order a permanent injunction enjoining the Defendants from interfering with or obstructing the primary and secondary access easement areas or otherwise interfering with the plaintiff's right of access over these areas?

7. Should the court order a permanent injunction enjoining the Defendants from “interfering with the plaintiffs right to draw water from the well located within the Water Well and Waterline Easement Area and to repair and maintain the water works, including by disconnecting pipes, shutting off the water supply, or placing locks”?
8. Should the court direct that the damages to the plaintiff caused by the interim injunction be sent for a reference, inquiry or assessment?

[8] For the reasons that follow, despite the parties’ positions to the contrary, I conclude that the summary trial application is not suitable for summary trial.

[9] That said, I make no factual findings binding on any other judge or presider in this proceeding.

Background

[10] The plaintiff is a successor in title to his property. He relies on rights conferred in a registered instrument entitled “EASEMENT AGREEMENTS, SECTION 219 COVENANT AGREEMENTS AND PRIORITY AGREEMENTS”, and labeled as No. BB 180008 (the “Registered Agreement”), originally entered into by his predecessors in title with the Defendants and registered on December 24, 2007.

[11] The plaintiff has four cabins on the lower (northern) part of his property, three of which he uses for rental purposes, and one that he uses for a residence. He also has a yoga studio that can be accessed by the primary access easement.

[12] The Easement Road is a sloped and (chiefly) one-lane road, with some limited areas to pull-over to allow two vehicles traveling in opposite directions to pass.

[13] In 2024, the plaintiff began to construct a new home on the southern portion of his property, at the height of his land.

[14] The plaintiff created an access point from the Easement Road to the construction site on his property using gravel.

[15] The plaintiff and the defendant Mr. Krief had verbal exchanges at or near the Easement Road on multiple occasions. Since I do not need to do so to decide this summary trial application, I will make no factual findings about that.

Legal Proceedings

[16] Legal proceedings commenced in June 2024. The plaintiff's current amended notice of civil claim was filed on July 3, 2025, the Defendants' amended response to civil claim was filed on August 28, 2025, and the Defendants' amended counterclaim was filed June 6, 2025.

[17] In the amended notice of civil claim, the plaintiff alleges breaches of the access easements, nuisance and trespass, breaches of a water easement and assumption agreement, and false imprisonment of cabin guests and yoga students. The plaintiff seeks declaratory relief, injunctive relief and damages.

[18] In their second amended counterclaim, the Defendants allege (among other things) that the plaintiff has made unauthorized and unreasonable use of the driveway as well as trespass and nuisance and seek cancellation of the "Alleged Water Well Easement" under s. 35 of the *Property Law Act*, R.S.B.C. 1996, c. 377. They also seek injunctive relief and damages. Among other things, they plead that the plaintiff has made unreasonable use of the secondary access easement in a way that is "dangerous" and "excessive", and similar pleas are made in their response to civil claim.

The Interlocutory Injunction Decision

[19] Both parties applied for interim injunctive relief, and on December 10, 2024, a judge of this Court granted the Interlocutory Injunction Decision in the Defendants' favour. In granting the Defendants an interlocutory injunction, D. MacDonald J. found

at the irreparable harm stage that “allowing the plaintiff to continue with construction could potentially cause a safety risk”:

[58] Without deciding the merits, I accept the defendants’ position that allowing the plaintiff to continue with construction could potentially cause a safety risk to users given the increase in traffic due to the construction, as well as poor weather for much of the year.

...

[60] ... the defendants will suffer an irreparable loss if someone is injured – or worse, dies – due to the increase in traffic on the Road. The defendants have established irreparable harm.

[20] However, the Interlocutory Injunction Decision made no findings binding on a trial judge in this action:

[10] At this stage I am considering an application and a cross-application for interim injunctions. As a result, I must refrain from making factual findings as that will be within the purview of the trial judge. Rather, I must undertake a preliminary assessment, without delving too deeply into the merits, to determine whether an interim injunction should be granted to the defendants.

[21] The plaintiff notes that the finding of a potential safety risk in the Interlocutory Injunction Decision “was made absent any expert evidence as to the safety of the driveway and the potential risks (if any) flowing from its use by the plaintiff’s construction vehicles.”

[22] The plaintiff submits that he “has been unable to access the construction site on his property using the driveway since July 2024” and that the “issue of the proper interpretation of the Easements is urgent as the existing injunction is preventing the plaintiff from continuing construction of his residence, resulting in significant cost increases and potentially compromising the quality of construction.”

Case Planning Order

[23] On July 24, 2025, Justice Hori made a case planning order setting down for hearing, by consent, a summary trial application limited to the interpretation and application of the easements registered against title to the Defendants’ property, “subject to differing directions or orders of the summary trial judge.”

Relief Sought by Plaintiff on this Summary Trial

[24] The plaintiff seeks the following relief on this summary trial:

1. The Primary Access Easement, Secondary Access Easement, and Water Well and Waterline Easement (as defined in the document registered as BB180008, together the “Easements”) are valid and enforceable and the plaintiff and his servants, agents, workmen, contractors, lessees and residential tenants are entitled to free, full and uninterrupted access to the whole of the Primary and Secondary Access Easement Areas for persons, animals, and vehicles;
2. The plaintiff is entitled to alter and improve the land within the Primary and Secondary Access Easement Areas for the purpose of facilitating access to the plaintiff’s property, including by clearing brush, levelling the land, and laying down a road base;
3. The plaintiff is entitled to draw water from the well located within the Water Well and Waterline Easement Area up to the aggregate of the amounts specified from time to time by the Bowen Island Municipality as being the minimum daily water volume requirements for one residence and five one bedroom guest cottages or “bed and breakfast” units;
4. The defendants Jean Michel Krief and Patricia Benell have wrongfully interfered with the rights of the plaintiff under the Easements;
5. The injunction granted by Justice MacDonald on December 10, 2024 is set aside;
6. The defendants Jean Michel Krief and Patricia Benell and their agents are permanently enjoined from interfering with or obstructing the Primary and Secondary Access Easement Areas or otherwise interfering with the plaintiff’s right of access over the Primary and Secondary Access Easement Areas.
7. The defendants Jean Michel Krief and Patricia Benell and their agents are permanently enjoined from interfering with the plaintiff’s right to draw water from the well located within the Water Well and Waterline Easement Area and to repair and maintain the water works, including by disconnecting pipes, shutting off the water supply, or placing locks;
8. The question of damages to the plaintiff caused by the injunction obtained [by] the defendants shall be sent for a reference, inquiry or assessment to an Associate Judge, Registrar, or Special Referee; and
9. Costs.

Legal Background: Suitability for Summary Trial

[25] Both parties submit that this application is suitable for summary trial.

[26] Nevertheless, despite the parties' agreement, I must consider the suitability of this application for summary trial and decide whether that is so: *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249 at para. 89 [*Main Acquisitions*].

[27] As stated in *Buchner v. Longenecker*, 2025 BCSC 804 at para. 19, the factors with respect to suitability of a summary trial have been set out in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.) and *Gichuru v. Pallai*, 2013 BCCA 60.

[28] I stated general principles as to the suitability of summary trials in *Hallat v. Couturier*, 2024 BCSC 901:

[8] Determination of the suitability of an application for summary trial is a discretionary exercise that turns on the particular circumstances of an application; *Gill v. Gill*, 2022 BCCA 264, at para. 56, citing *Gichuru v. Pallai*, 2013 BCCA 60, at para. 34.

[9] The law with respect to suitability has been canvassed in prior cases, including the leading case of *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (BC CA.), a decision of the Court of Appeal. There the court at para. 40 of that case held that a chambers judge can decide a case summarily if the court is able to find the facts necessary for that purpose and finds it would be just to decide the issues in such a way.

[10] The court retains the discretion in the determination of suitability. The exercise of discretion is guided by two lines of inquiry: (1) whether the court finds the facts necessary to decide the issues of fact or law; and (2) whether it is just in the circumstances to decide the issue summarily.

[11] Proportionality is relevant to this determination; see *Brissette v. Cactus Club Cabaret Ltd.*, 2017 BCCA 200, at para. 26. ...

[12] Conflict in the evidence *per se* is not necessarily always a reason to render a summary trial application unsuitable. As the Court of Appeal stated in *MacMillan v. Kaiser Equipment Ltd.*, 2004 BCCA 270, at para. 22:

[22] ...the mere fact that there is a conflict in the evidence does not in and of itself preclude a chambers judge from proceeding under Rule 18A. A summary trial almost invariably involves the resolution of credibility issues for it is only in the rarest of cases that there will be a complete agreement on the evidence. The crucial question is whether the court is able to achieve a just and fair result by proceeding summarily.

[13] However, a court should not decide an issue of fact or law solely on the basis of preferring one conflicting affidavit over another. There must be documentary evidence, evidence of independent witnesses, or undisputed evidence that undermines the affidavit of one of the parties on critical issues

or some other basis for preferring one affidavit over another; see *Brissette*, at para. 27, citing *Cory v. Cory*, 2016 BCCA 409, at para. 10.

[14] In addition, as a prerequisite to deciding a case on a summary trial, the court must be able to find the facts necessary to decide the issues of fact or law and must be of the opinion it would not be unjust to decide the issues.

[15] When determining suitability, the court may also consider the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of proceedings, and any other matters which arise for consideration on this question, such as the cost of litigation and the time of the summary trial; whether credibility is a critical factor in the determination of the dispute; whether the summary trial may create unnecessary complexity in the resolution of the dispute; and whether the application would result in litigating in slices: *Inspiration Mgmt.*, at para. 49.

[16] The summary trial rule makes the judge a gatekeeper. It is a crucial role. Notwithstanding the wishes or submissions of counsel, judgment should not be given if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so; see *Main Acquisitions Consultants v. Yuen*, 2022 BCCA 249, at para. 89.

...

[18] Where there exists “uncertainties in the evidence”, see *Main Acquisitions*, at para. 100; and the determination of legal issues are largely fact dependent and require a close examination of the facts, these circumstances can militate against a summary trial determination since it may not be possible to find the facts necessary to decide those issues: *Main Acquisitions*, at paras. 100-101 and 106.

...

[26] My role is to decide a case on summary trial if I can do so justly, and find the necessary facts.

Position of the Parties

Plaintiff

[29] The plaintiff submits that this matter is suitable for summary trial. The plaintiff contends that the “court can readily determine the relevant facts and decide the issues on the affidavit evidence. The parties have also had the opportunity to conduct examinations for discovery. A summary trial is proportionate and appropriate.” The plaintiff relies on: *Smith v. Balen*, 2018 BCSC 918 at paras. 35–38; *Buchner* at paras. 12–20; *Aulakh v. WIT Management Corp.*, 2023 BCCA 108 at para. 58 (an appeal of an order granting an interim injunction); and *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83 at paras. 27–35.

[30] The plaintiff further submits, as to the suitability of this matter for summary trial: “[t]he issues to be determined are the interpretation of the Easements, and whether interferences with the Easements have occurred. The parties have agreed to proceed by way of summary trial to address these issues.”

[31] On the merits, the plaintiff relies on wording in the Registered Agreement with respect to the primary access easement and secondary access easement (ss. 2.01 and 2.02). He also relies on the wording in the Registered Agreement regarding the water well (s. 3.01). The plaintiff submits:

Both Access Easements expressly permit use by the plaintiffs servants, agents, workmen, contractors, and lessees. Both allow use on foot, with or without animals, bicycles, and other non-motorized vehicles, and motor vehicles, including (without limitation) automobiles, trucks, motorcycles, and all terrain vehicles.

[Emphasis in original.]

[32] The plaintiff argues that his “right to use and access the driveway and well is secured by way of three easements registered against title to the defendants’ property”. The plaintiff “applies for a summary trial of the interpretation of those three easements: the Primary Access Easement, Secondary Access Easement (together, the ‘Access Easements’) and the Water Well and Waterline Easement (the ‘Water Easement’, and collectively, the ‘Easements’).”

[33] The plaintiff submits that, because they require fact-finding not possible on this application:

The remaining issues between the parties, including claims in trespass, nuisance, and unlawful means, claims relating to an alleged assumption agreement, and the defendants’ claim [that the Water Easement should be cancelled] under s. 35 of the *Property Law Act*, are to be resolved at trial scheduled to begin July 13, 2026.

[34] As for the matters at issue on this application, the plaintiff argues “that the Access Easements permit vehicles to traverse the Access Easements and travel on to the plaintiff’s land. This includes vehicles for the construction of the plaintiff’s residence.”

[35] The plaintiff contends that:

the Access Easements clearly and unambiguously give the plaintiff, and his servants, agents, workmen, contractors, lessees and tenants, the right to free, full and uninterrupted access to the easement areas. The court should not hesitate to confirm this plain and obvious interpretation and affirm the plaintiff's rights under the Access Easements.

[Emphasis added.]

The plaintiff further contends:

The plaintiff has a clear legal right to use the Access Easements and to draw water from the Shared Well.

[36] On the question of safety, the plaintiff submits: “[t]o be clear, other than the defendants’ conclusory statements, there is no evidence that the driveway is unsafe or unsuitable for the plaintiff’s use.”

[37] In supporting their argument on suitability, the plaintiff argues that “the injunction is a special circumstance that warrants severing the interpretation of the Easements from the remaining issues in the action.”

[38] As to the Water Easement claim, the plaintiff contends that any suggestion that he is “obligated to discharge the Water Easement” does not arise on this application. Instead, the plaintiff submits that this issue:

requires a determination of whether the parties entered into an assumption agreement and if so, on what terms. Alternatively, it requires a determination under s. 35 of the *Property Law Act*. These issues are to be resolved at trial.

[39] As for the injunctive relief they seek, the plaintiff submits “[a] permanent injunction restraining the defendants from further interfering with the Easements is warranted, and is the usual remedy, in these circumstances”.

Defendants

[40] The Defendants characterize the main issue on this summary trial as whether “the Plaintiff is permitted to use the driveway at issue in the manner he proposes, or whether his use - both past and future - is excessive and therefore a trespass.”

[41] With respect to the Defendants' assertion that the plaintiff has trespassed, I note there is no application before me for a summary trial on the issue of whether the plaintiff has committed an actionable trespass on the Defendants' land.

[42] The Defendants submit this matter is suitable for summary trial, and rely on *Langlois v. Tessaro*, 2018 BCSC 1463, aff'd *Tessaro v. Langlois*, 2019 BCCA 95. They submit, among other things:

It is appropriate in these circumstances to hive off the issue of the interpretation of the Easement Agreement as no unfairness will result from determining it in advance of other issues in the litigation. Nor is the issue of interpretation intertwined with the other causes of action.

[43] On the merits, the Defendants contend that “[i]t is this court’s task to interpret the agreement as a whole, and determine the scope of the restrictions which the Defendants submit are clear and unequivocal”.

[44] The Defendants rely on, among other provisions of the Registered Agreement, s. 4.02(a) and (c), which they submit are binding on the plaintiff as a successor in title. This provision states:

- 4.02 Whitaker and Gould hereby covenant with Krief and Benell that:
- (a) Whitaker and Gould shall not use or enjoy any part of the Primary Access Easement Area, Secondary Access Easement Area or Water Well and Waterline Easement Area except in accordance with the reservations and restrictions set out herein;
 - ...
 - (c) that Whitaker and Gould and their invitees, servants, agents, workmen, contractors, licensees, lessees and tenants shall pass and repass over the Primary Access Easement Area, Secondary Access Easement Area and Water Well and Waterline Easement Area so as not to interfere with the enjoyment of the Servient Tenement by Krief and Benell;

[45] I add here that the plaintiff contends that s. 4.02(c) is a positive covenant that does not run with the land and is not binding on the plaintiff, who is a successor in title to Whitaker and Gould. The Defendants disagree with that and argue that s. 4.02(c) “is a clear prohibition on the Plaintiff’s use and a negative covenant which runs with the land”.

[46] The Defendants maintain that the “[p]laintiff is asking ... for this Court to modify terms of the Easement Agreement and delete the express restrictions that prohibit his intended use, in order to justify his past and future conduct”.

[47] Further, the Defendants argue that “pursuant to its clear and unambiguous wording, the Water Well Easement should have been discharged as early as 2021, yet the Plaintiff maintains his refusal to do so”.

[48] The Defendants submit, as an alternative position, that “the Plaintiff entered into an Assumption Agreement when he purchased Dominant Tenement.” The existence of an assumption agreement is pleaded by the plaintiff in his amended notice of civil claim.

[49] The Defendants submit that the “[p]laintiff intends to use the Southern Access Point as his main driveway, thereby increasing traffic on this single lane Driveway and increasing the risk to the safety of its users.” The Defendants contend:

It is the increase in traffic caused by two unconnected and uncoordinated parties up and down the Driveway that is the issue. It’s the Defendants Driveway and their own property, they can use it however they wish. What this Court needs to determine is whether the Plaintiff’s proposed increase in traffic which is likely to cause a safety hazard in the estimation of Justice MacDonald is reasonable use and granted by the Easement Agreement.

[Emphasis added.]

[50] The Defendants contend that what the plaintiff proposes to do on the Easement Road would be:

excessive use of the Secondary Access Easement, as the Defendants would now have to contend with other cars on the Driveway at an increase of 95-100% more of the time, blocking ingress and egress from the servient tenement along the only access road. This is an interference with the use and enjoyment of the Servient Tenement and interferes substantially with the Servient Tenements right to pass and repass over the Driveway, which is not permitted. Such a use would be excessive, and it constitutes a trespass.

[51] The Defendants also rely on a restrictive covenant registered against title to the plaintiff's property on December 24, 2007, which includes the following term:

Restrictive Covenant over Covenant Area

2.01 The Transferor, as the registered and beneficial owner of the Servient Tenement, hereby covenants and agrees with the Transferee, as the registered and beneficial owner of the Dominant Tenement, that no buildings or other permanent or temporary structures will at any time hereafter be built, constructed, placed or stored upon any part of the Covenant Area.

[Emphasis added.]

[52] As to the Water Well Easement, the Defendants argue that:

Based upon the clear wording of the Easement Agreement the Plaintiff was required to discharge the Water Well Easement as the Dominant Tenement:

- (i) Had drilled its own well in 2021 which supplied the Dominant Tenement with water;
- (ii) Was no longer supplied with water by the Defendants' Water Well for the two periods of March 2021 until an undefined date where the Plaintiff unilaterally turned his water back on and from May 2024 – February 2025; and
- (iii) Was repeatedly requested by the Defendants to discharge the Water Well Easement.

[53] They contend that the plaintiff instead “chose to secretly reconnect to the Defendants' Water Well and steal water and electricity for just over three and a half years.”

[54] Overall, the Defendants submit that “the Injunction Order should stay in place permanently, the Water Well Easement should be discharged, and the Plaintiff's action should be dismissed.”

Legal Background: Easements

[55] Certain principles regarding the interpretation of easements, and the doctrine of ancillary rights, are stated in *Armstrong v. District of North Saanich*, 2024 BCSC

1844 [Armstrong SC], aff'd *Armstrong v. North Saanich (District)*, 2025 BCCA 277 [Armstrong CA]:

Legal framework

[32] Easements are to be interpreted as contractual documents. The Court must determine the intent of the parties by reading the contract as a whole and giving the words used their ordinary and grammatical meaning. Surrounding circumstances will be considered, but should not “overwhelm” the words of the agreement. The wording of the instrument governs issues of interpretation unless there is an ambiguity, or the surrounding circumstances demonstrate that the parties could not have intended a particular use or interpretation (*Tessaro v. Langlois*, 2019 BCCA 95 at para. 19; *Robb v. Walker*, 2015 BCCA 117 at para. 31; and *Fallowfield v. Bourgault*, 2003 CanLii 4266 (ONCA) at para. 10).

[33] Evidence of the surrounding circumstances is generally limited to objective background facts that were either known by the parties, or reasonably ought to have been known by the parties at or before the easement or contract was entered into. (*Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633 at para 58 and *Murphy v. Huber Estate*, 2021 BCSC 1334 at paras. 11-14, aff'd 2022 BCCA 353).

[34] Easements do not give the dominant tenant exclusive or unrestricted use of a piece of land. The grant of an easement gives rise to “two sets of rights that co-exist over the easement property.” The property owner may assert his or her remaining rights over the easement to the extent that they do not derogate from or interfere with the rights granted under the easement. What actions by the holder of an easement constitute substantial interference with a property owner’s residual rights depends on the circumstances (*Lotzkar v. The Owners, Strata Plan BCS2715*, 2012 BCSC 1500 at paras. 35-40, 44).

[35] Ancillary rights that are not expressly set out in an easement may arise. The grant of an easement is *prima facie* also the grant of such ancillary rights as are reasonably necessary to its exercise or enjoyment (*Kasch v. Goyan*, 1993 CanLii 2291 (B.C.C.A.) at paras. 9-10 and *Fallowfield* at para. 11).

[36] Whether an easement gives rise to an ancillary right that is reasonably necessary depends on a consideration of all the relevant circumstances. (*Kasch v. Goyan*, at para. 11). The right must be necessary for the use or enjoyment of the easement, not just convenient or even reasonable (*Fallowfield*, at paras. 11 & 23).

[37] The issue of ancillary rights can be approached in two stages. The first task is to interpret the wording of the grant in the context that existed at the time it was granted. The next question is “whether there are any ancillary rights, not included in the wording of the granted easement, that are reasonably necessary for the respondents to be able to exercise their use of the easement (*Fallowfield*, at para. 19).

[56] In *Armstrong CA*, the Court of Appeal, affirming this Court's decision in *Armstrong SC*, stated:

[100] While no easement may grant "exclusive and unrestricted use" of the subject land (*Reilly v. Booth* (1890), 44 Ch. Div. 12 at 26), as this would simply amount to a transfer of underlying title, the owners of a dominant tenement are "entitled to every reasonable use" of an easement "for its granted purpose": *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd.*, 2025 ONCA 56 at para. 25. Accordingly, the grant of an easement is *prima facie* also the implied grant of any ancillary rights that are "necessary for the comfortable use and enjoyment" of the easement in accord with its purpose: *Montcrieff v. Jamieson*, [2007] U.K.H.L. 42 at para. 29, citing *Jones v. Pritchard*, [1908] 1 Ch. 630; see also *Kasch BCCA* at para. 9.

...

[106] The principle that the scope and use of an easement by the owner of the dominant tenement ought not interfere unreasonably (or, "substantially") with the servient owner's use and enjoyment of their land is correlative to the principle that the owner of the dominant tenement may make any reasonable use of the easement for its granted purpose: *Montcrieff* at para. 45. They are, in other words, two sides of the same coin.

[57] The doctrine of substantial interference of an easement, constituting a trespass, is set out in *1711811 Ontario Ltd. v. Buckley Insurance Brokers Ltd.*, 2025 ONCA 56 [*Buckley CA*]:

[25] ... substantial interference turns on the instrument creating the easement and the factual circumstances: see *Laurie v. Winch*, [1953] 1 S.C.R. 49; *MacKenzie v. Matthews* (1999), 180 D.L.R. (4th) 674 (Ont. C.A.); *Weidelich v. de Koning*, 2014 ONCA 736, 122 O.R. (3d) 545. The significance of the encroachment depends on its impact on the easement's reasonable use. The dominant owner is entitled to every reasonable use of the right-of-way for its granted purpose.

[58] The Ontario Court of Appeal then goes on to state:

[49] With respect to substantial interference, again, the parties agree that the trial judge stated the test properly, at para. 47:

The test for an actionable encroachment is whether there is a 'substantial interference' with the use and enjoyment of the easement for the purpose identified in the grant: *Oakville (Town) v. Sullivan*, [2021 ONCA 1, 23 R.P.R. (6th) 175]; *Weidelich v. de Koning*, 2014 ONCA 736, 122 O.R. (3d) 545, at paras. 9-11; *Fallowfield*, at paras. 40 and 41. The dominant owner may only sustain a claim predicated on substantial interference with reasonable use.

Finding: Suitability of Summary Trial

[59] In my view, this notice of application is not suitable for summary trial.

Litigating in Slices

[60] First, the parties ask the court to litigate the claims in this action in slices. For example, the parties propose to litigate the issue of the interpretation and proper scope of the access easements, separately from claims in trespass and nuisance. While litigating in slices, on its own, is not dispositive, it can tend to militate against suitability: *Greenleaf Brewing Corporation v. Lonsdale Quay Market Corp.*, 2023 BCSC 2005 at paras. 53, 67; *Panopus PLC v. A.I.S. Resources Limited*, 2025 BCSC 1850 at paras. 9, 143.

[61] Second, I find the plaintiff's Water Well Easement relief sought is not suitable for summary trial adjudication. It is intertwined with the asserted existence of an assumption agreement (the terms of which I am unable to decide on this summary trial) and the Defendants' claim that that Water Well Easement should be discharged. In my view, the summary trial evidence concerning the Water Well claim is inadequate to fairly and justly make findings in order to resolve that issue as advanced by the plaintiff.

[62] Removing the Water Well Easement issue from the issues to be decided on the summary trial would call for even further litigation in slices, by interpreting part of the Registered Agreement (as it concerns the primary and secondary access easements) but not all provisions which are at issue in this action (the Water Well Easement).

[63] An easement must be interpreted as a whole: *Armstrong SC* at para. 32. While also not on its own dispositive, it is generally undesirable on this summary trial to litigate in slices by interpreting the primary and secondary access easements in the Registered Agreement but not deciding and interpreting the Water Well Easement in the Registered Agreement.

Assessment of the Safety of the Plaintiff's Proposed Use of the Easement Road

[64] Third, having to decide on this summary trial the contentious factual issue of whether the plaintiff's proposed use of the Easement Road for constructing a new house at the southern end of his property and accessing that new house poses a safety risk also tends to render a summary trial not suitable.

[65] The Defendants contend that the plaintiff's proposed use of the Easement Road constitutes a safety hazard and is excessive. An argument that a person's use of an easement is excessive and unsafe might be said to relate to whether use of an easement right, once its scope has been established by interpretation, nevertheless constitutes an unreasonable and substantial interference with reasonable use and constitutes a trespass: *Englehart v. Holt*, 2014 BCSC 1969 at para. 140 (rev'd in part 2015 BCCA 517), citing *Granfield v. Cowichan Valley Regional District*, 16 B.C.L.R. (3d) 382, 1996 CanLII 356 (C.A.); *Lafontaine v. University of British Columbia*, 2018 BCCA 307 at paras. 49–50; *Paiva v. Buckley*, 2023 ONSC 6541, aff'd *Buckley CA*; *Raimondi v. Ontario Heritage Trust*, 2018 ONCA 750 at paras. 26–27. However, here the Defendants contend that the asserted excessive nature of the plaintiff's proposed use creates a safety hazard on the Easement Road, which informs the intent of the parties and concerns the proper interpretation of the Registered Agreement. The Defendants thus argue that the matter of safety goes to interpreting the proper scope of the access easements—an issue raised on this summary trial.

[66] The summary trial evidence is that the Easement Road is a steep, chiefly single lane road which, at least at the southern portion near the construction site, travels above a steep slope with buildings below.

[67] There is a conflict in the affidavit evidence as to whether the plaintiff's proposed use of the Easement Road for constructing a home on the southern portion of his property would be reasonably safe. Ms. Benell deposes that the plaintiff's proposed use would not be safe:

25. While the use of the Secondary Access Easement at the northern/lower portion of the driveway was contemplated and relatively safe, the road

becomes much more dangerous along the southern/upper portion of the road.

...

31. ... because [the plaintiff] intends to now use this new Construction Access Point to build his house, the Secondary Easement will receive regular construction traffic. The road is not meant to be used for heavy residential use and cannot handle frequent, large and wide machinery and construction vehicles. It is not wide enough and not safe enough to accommodate this type of heavy two-way traffic.

...

39. There are ample dangers with allowing the Plaintiff to continue his construction. Based on the construction work thus far, the Road will continue to be deteriorated. More importantly, there is significant safety risks to users of the Road (including us, him, and other guests). I myself found it very difficult and dangerous to reverse up the steep hill, which is bordered a steep drop off.

[68] The defendant Ms. Benell deposes that in 2007 the Defendants lost control of their vehicle and they “went all the way down the slope and crashed at the bottom. Fortunately, no one was seriously hurt, but the vehicle had extensive damage.” She also deposes that her tenants have “had two cars go over the edge of the driveway during the winter”.

[69] Ms. Benell deposes that when she built her residence on her property in 1993, she used an alternative access road from another neighbour’s property. However, in response to this contention, the plaintiff points to what he says is contradictory evidence from Mr. Krief’s discovery and says the Defendants “have used the driveway for the construction of their own home”.

[70] Ms. Benell also deposes:

There is no feasible point along the long stretch where one may turn around. Moreover, if one were to come face to face with a vehicle looking to access the Construction Access Point, a driver travelling down the Driveway would only have the option of backing up past the Construction Access Point where there is a cliff on one side of the road, or the car coming up the driveway would have to back all the way down to the pullouts or bend in the Driveway.

[71] Also of note, Ms. Benell deposes that she “fear[s] that someone may get seriously injured or die on the Road if it continues to be used in this way”.

[72] In the same vein, the defendant Mr. Krief deposes: “I have lived on the lands encompassing the Plaintiffs property and our property for several decades. I have used the driveway encompassing the Primary Access Easement and Secondary Access Easement for decades. It is a narrow road and is not intended for large construction vehicles”.

[73] Mr. Krief further deposes:

Mr. Norris also states that all of the accidents that have happened along the Secondary Access Easement have only happened during winter weather. However, there is frequently inclement weather on Bowen Island and use of the road at any time of the year can become very dangerous very quickly should there be rain, snow, etc. The risk is dramatically increased if one is required to drive in reverse back up the road.

[74] The plaintiff’s position, by contrast, is that his proposed use of the Easement Road is and has been safe. He deposes that “[t]he Driveway is not unusual for Bowen Island” and he “do[es] not believe that there is any legitimacy to their assertion that the Driveway is unsafe.” On discovery, in an excerpt relied on by the Defendants, the plaintiff stated: “I haven’t had significant concern with the traffic coming down the driveway.” In oral submissions, the Defendants’ counsel challenged the reliability of the plaintiff’s evidence on discovery about the issue of safety, arguing there has been a contradiction in his evidence.

[75] A construction contractor on Bowen Island, Mr. Paul McGillvray, a lay witness, has also sworn an affidavit (relied on by the plaintiff), which states he does “not have any concerns regarding the safety or suitability of the Driveway for the construction project” at the southern end of the road:

7. I have driven the Driveway up to the construction site many times. Based on my personal and professional experience, the Driveway is typical for Bowen Island, where many properties have rocky and sloped terrain. Many driveways on Bowen Island are shared between properties, and many are only wide enough for a single vehicle.

8. I do not have any concerns regarding the safety or suitability of the Driveway for the construction project. It is moderately sloped with wide bends on the lower corners that allow for two-way traffic. It also has a pullout along the single lane straight upper portion.

9. I have worked on many projects with far more difficult access without incident. Where necessary, I ensure that additional safety measures are taken.

[76] Mr. McGillvray then gives two examples of his safety practices.

[77] Several other affiants, in affidavits relied on by the plaintiff, depose that the Easement Road is typical of Bowen Island and in their view not unsafe. For example, one affiant deposes: “[b]ased on my personal experience living in the area, the driveway leading up to the viewpoint is typical of many properties on Bowen Island and is not unusually hazardous or unsafe”. Another affiant deposes: “I did not have any concerns regarding the safety of the driveway”. The Defendants object to the admissibility of this lay evidence; but is not necessary for the purposes of this application to decide that objection.

[78] In the circumstances of this case, where safety has been put in issue and the Defendants oppose the plaintiff’s relief on this basis, a just determination of an action should consider matters of safety with respect to the relief sought and its implications. Put another way, considerations of proportionality in this context should take into account assertions regarding safety risks caused by use of the Easement Road, which the Defendants have put in issue, and which (while making no binding findings) formed part of the basis for the Interlocutory Injunction Decision.

[79] The plaintiff submits that the issue of safety is not relevant to the interpretation of the easements. However, I am not satisfied that the matter of the safety of the plaintiff’s proposed use of the Easement Road is irrelevant to the issues raised on this summary trial.

[80] Analytically, it may be that factual considerations concerning safety might ultimately only be relevant at trial to the Defendants’ claim that the plaintiff unreasonably and substantially interfered with reasonable use of the access easements, constituting a trespass (which is not at issue on this summary trial), and not to the proper interpretation of the scope of the primary and secondary easements which the parties seek to adjudicate on this summary trial. However,

matters of safe use of the Easement Road might also, possibly, constitute objective evidence of the background facts at the time of executing the Registered Agreement, informing its interpretation: *Cook v. Massey*, 2025 BCSC 1410 at para. 16. There is a possible overlap between these issues, and they are intertwined since the matter of safety may be relevant to them.

[81] I make no decision binding on any other presider as to whether, and where, the factual issue of safety resides in the ultimate analysis of the legal issues in this action. But, at this stage, I cannot preclude the possibility that factual matters concerning the safe use of the Easement Road might inform the court's assessment of the proper interpretation of the primary and secondary easements, which is an issue raised on this summary trial. I am not prepared to conclude the factual issue of safety is irrelevant to deciding the issues on this summary trial.

[82] The court, in coming to a disposition of the claims in this action, will likely be mindful of matters of safety when considering the plaintiff's claims as to the scope of his right to use the primary and secondary access easements. This tends to militate toward a method of adjudication which will put the court in a position to satisfactorily assess the safety issue.

[83] In my view, there is a conflict in the evidence between the plaintiff, and the plaintiff's witnesses, on the one hand, and the Defendants, on the other, as to whether the Easement Road is safe for the plaintiff's proposed use. This is a conflict in the evidence on a factual issue that I cannot resolve on this summary trial, and which renders the court unable to achieve a just and fair result in this summary trial. Unlike *Smith*, relied on by the plaintiff in support of the suitability of this application for summary trial, this is not a case where there is no conflict in the evidence: at para. 36.

[84] The Defendants have asserted that the plaintiff's evidence about safety is contradictory and effectively challenge the reliability of his evidence.

[85] The plaintiff, for his part, challenges the credibility and reliability of the Defendants' affidavit evidence: he contends that the "defendants tendered evidence and made arguments at the injunction application that subsequent examinations for discovery and third-party affidavits have readily shown to be false, misleading, and exaggerated".

[86] Addressing the conflict in the affidavit evidence could potentially give rise to credibility assessments of witnesses, which are not amenable to resolution based on the affidavit evidence before me: *Hallat* at para. 49; *Saran v. Cartonio, Inc.*, 2020 BCCA 252 at para. 43.

[87] The plaintiff, in submissions on this summary trial, asked the court to reject the Defendants' evidence that the plaintiff's proposed use of the Easement Road would be unsafe, but in my view that is not something I can fairly or justly decide on this summary trial.

[88] The plaintiff points to the Defendants' past use of the Easement Road, including that they have at times allowed large vehicles on the road, which he contends "demonstrates the lack of legitimacy to their position" about safety. In my view, that evidence is relevant, but not dispositive; such evidence does not on its own lead to a conclusive determination on the safety issue in the plaintiff's favour given the cumulative conflicts in the affidavit evidence.

[89] This summary trial is not suitable for deciding the plaintiff's request for declaratory relief for the "free, full and uninterrupted access to the whole of the Primary and Secondary Access Easement Areas" for persons and vehicles, in the face of the Defendants' assertion that, and the conflicting evidence as to whether, the plaintiff's proposed use of the Easement Road would be unsafe for persons using that road and others on the adjoining property.

[90] In my view, this summary trial would not be a just manner to decide matters of safe use of the Easement Road in order to determine the issues on summary trial.

[91] The plaintiff also asks me to set aside the Interlocutory Injunction Decision in part because I should find that plaintiff's use of the Easement Road is actually not unsafe. Without coming to any conclusion on this factual issue, I am not satisfied I can fairly make that assessment on this summary trial.

[92] In short, I am not satisfied that a summary trial will achieve a just result, having regard to the issue raised about safety.

[93] I am cognizant that proportionality considerations also include the cost of proceeding to a conventional trial: *Buchner* at paras. 15–17, 20; *Hallat* at para. 15. I am cognizant, and have considered, that the cost of proceeding to a conventional trial would tend to militate in favour of a summary adjudication—and both the plaintiff and the Defendants request a summary trial adjudication on the issues they have raised. However, on balance this factor does not outweigh other considerations in the suitability analysis I have referred to.

[94] Further, while there is stated to be urgency for the plaintiff to the adjudication of the issues advanced on this summary trial in order to complete construction of a new home on his property, this does not in my view outweigh other suitability considerations.

The “Assumption Agreement”

[95] Fourth, in opposing the plaintiff's relief sought, the Defendants made submissions about an assumption agreement entered into by the plaintiff and its impact on the issues on this summary trial. An assumption agreement appears to be called for in s. 4.02(m) of the Registered Easement when the owners of the dominant tenement (the plaintiff's property) elected to sell it to the plaintiff. The plaintiff pleads an assumption agreement in his amended notice of civil claim, and the Defendants plead the existence of an assumption agreement in their second amended counterclaim. It appears the parties disagree on whether a formal written assumption agreement is in the evidentiary record before me. In oral submissions, counsel submitted that the position of the parties is that there has been some

adoption through conduct, but the scope of what has been adopted is not necessarily agreed.

[96] I am not satisfied that I have sufficient evidence to determine the terms of any assumption agreement. An assumption agreement could potentially be relevant to a just determination of the plaintiff's claims on this summary trial (and defences), and it would be unjust to decide the summary trial without at least considering such an agreement, and its relationship with the issues on summary trial: *Xia v. Hummingbird Cove Lifestyles Ltd.*, 2024 BCSC 1290 at para. 29, leave to appeal to BCCA refused, *Cai v. Ping*, 2025 BCCA 205.

Summary: Suitability Finding

[97] I return to the main premise of the role of the court on a summary trial application: judgment on summary trial should not be given if the court is unable, on the evidence, to find the necessary facts or if it would be unjust to do so: *Main Acquisitions* at para. 89.

[98] I find that I do not have the necessary evidence, and I am unable to find the facts necessary, to decide the factual and legal issues, and it would be unjust to do so in the circumstances. I am therefore unable to, and do not, grant judgment on this summary trial application for the reasons set out in the *Supreme Court Civil Rules* at R. 9-7(15)(a)(i) and (ii).

Conclusion and Order Granted

[99] I order that the plaintiff's notice of application for summary trial filed September 2, 2025, is dismissed as not suitable pursuant to R. 9-7(15)(a) and 9-7(11)(b).

Costs

[100] Both parties sought to proceed by summary trial. Given my decision, I find that each party should bear their own costs of this application.

“Stephens J.”

Schedule A – Plan of Easements
Showing the Primary Access Easement and Secondary Access Easement

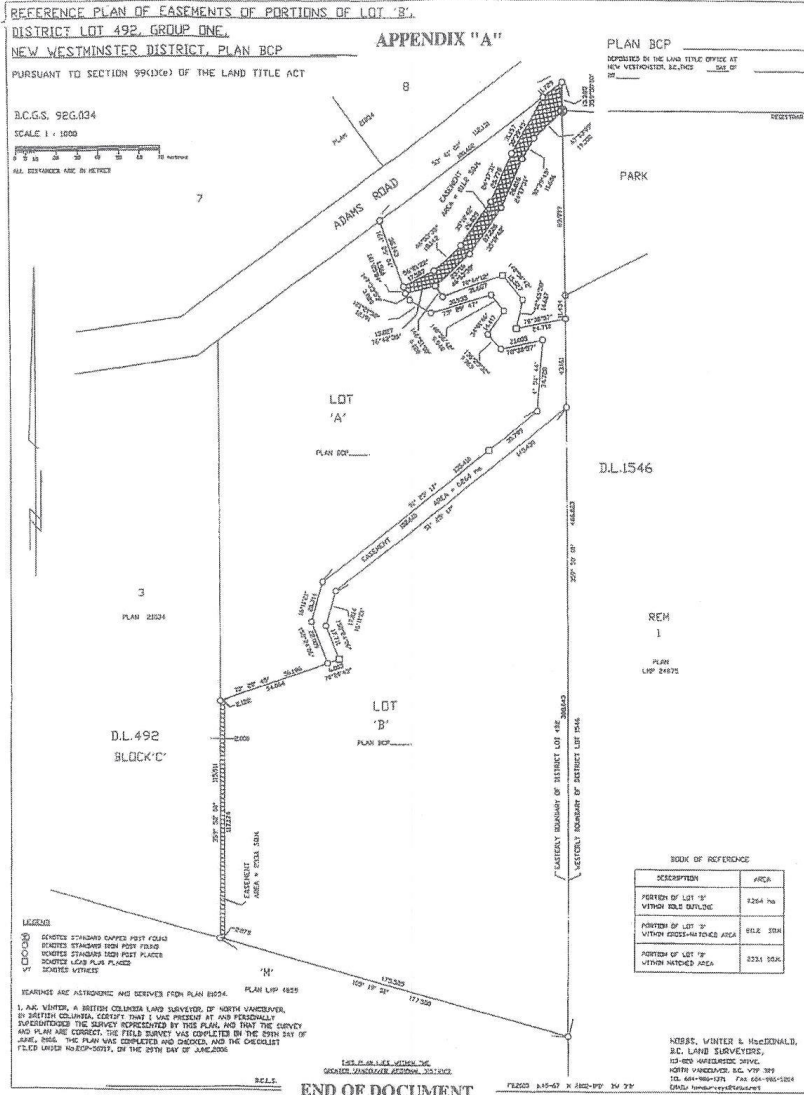
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GENERAL INSTRUMENT – PART 2

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