

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Bockhold v. CIBC Wood Gundy*,
2026 BCCA 74

Date: 20260130
Docket: CA50711

Between:

Murray Bockhold

Appellant
(Defendant)

And

**CIBC Wood Gundy, A Division of CIBC World Markets Inc./
Marches Mondiaux CIBC Inc.**

Respondent
(Plaintiff)

Before: The Honourable Mr. Justice Harris
The Honourable Justice Warren
The Honourable Justice Francis

On appeal from: An order of the Supreme Court of British Columbia, dated
May 7, 2025 (*CIBC Wood Gundy v. Bockhold*, 2025 BCSC 896,
Vancouver Docket S241997).

Oral Reasons for Judgment

Counsel for the Appellant: B. Illion

Counsel for the Respondent: M.R. Howcroft
T.P. Barker

Place and Date of Hearing: Vancouver, British Columbia
January 26, 2026

Place and Date of Judgment: Vancouver, British Columbia
January 30, 2026

Summary:

The appellant challenges an order granting summary judgment in favour of the respondent in the respondent's action to enforce a settlement agreement between the parties. The appellant raises two grounds of appeal: (1) the judge erred in granting summary judgment in the face of his counterclaim; and (2) the judge failed to consider his defence of duress. Held: appeal dismissed. It was open to the judge to conclude that the counterclaim did not stand in the way of summary judgment because the counterclaim raised the same issues as the response to civil claim with respect to enforceability of the settlement agreement and the other issues in the counterclaim were extricable. The judge did not err in failing to consider the defence of duress. This defence was not explicitly argued and was not available on the record before her.

FRANCIS J.A.:**Introduction**

[1] The appellant, Murray Bockhold, appeals an order granting summary judgment against him.

[2] Mr. Bockhold was employed by the respondent, CIBC Wood Gundy ("Wood Gundy"), from 2013–2018. In connection with his employment, he received an interest free loan of \$1 million from Wood Gundy.

[3] In April 2018, Mr. Bockhold's employment with Wood Gundy was terminated. At that time, the outstanding balance on his loan was just over \$600,000. Wood Gundy sued Mr. Bockhold for the payment of the balance and accrued interest on the loan (the "Debt Action"). The Debt Action proceeded to trial in June 2023, but during the trial, the parties settled and the Debt Action was never adjudicated.

[4] The agreement settling the Debt Action (the "Settlement Agreement") required Mr. Bockhold to pay Wood Gundy a total of \$500,000, split into two payments of \$250,000. The first payment was made; the second payment was not. Wood Gundy then sued to enforce the Settlement Agreement (the "Enforcement Action").

[5] Wood Gundy applied for summary judgment in the Enforcement Action. Mr. Bockhold brought a cross application for further document production. The summary judgment application and the document production application were set down to be heard together in chambers. The chambers judge adjourned the document production application and granted summary judgment in favour of Wood Gundy finding that none of the defences to the action gave rise to a genuine issue for trial.

[6] Mr. Bockhold appeals the decision of the chambers judge. In doing so, he raises new issues on appeal, and alleges errors in the judge's analysis of the position he advanced before her. He submits that she ought to have found that his counterclaim, filed during the course of the hearing, precluded the granting of summary judgment. He also submits that the chambers judge erred in finding that there was no genuine issue for trial because she failed to properly consider his defence of duress, even though that argument was not expressly advanced before her.

Background

[7] Mr. Bockhold was represented by counsel at the time that the Debt Action was settled. He signed the Settlement Agreement, and he made the first \$250,000 payment contemplated by the Settlement Agreement. The day before the second payment was due, his counsel delivered a Notice of Intention to Withdraw. Mr. Bockhold requested an extension to the deadline for the second payment, which was granted. However, the second payment was never made.

[8] In his amended response to civil claim in the Enforcement Action, Mr. Bockhold pleaded two legal defences: he denied entering into the Settlement Agreement, and, in the alternative, he submitted that if he did enter into the Settlement Agreement, he did so based on misrepresentations made by Wood Gundy.

[9] In his application response to the summary judgment application, Mr. Bockhold submitted that the Settlement Agreement was invalid because he was induced to sign it on the basis of fraudulent misrepresentations by Wood Gundy.

[10] On the afternoon of the first day of the hearing of the summary judgment application, Mr. Bockhold filed a counterclaim. The counterclaim alleges widespread financial wrongdoing implicating multiple levels of government, regulatory agencies, banks, accounting firms, law firms, and the press. It adds over 50 new defendants and seeks damages. It also seeks an order rescinding the Settlement Agreement on the basis that it was obtained through fraudulent misrepresentation.

Decision of the Chambers Judge

[11] In her reasons for judgment, the judge considered whether she should decide the summary judgment application, given the newly filed counterclaim. She found that the counterclaim was not “inextricably interwoven” with the issues in the Enforcement Action. Indeed, with respect to the Settlement Agreement, the issues raised in the counterclaim were identical to those raised in Mr. Bockhold’s response to civil claim. She held that it would be “unjust and inconsistent with the object of the Rules to permit Mr. Bockhold to avoid summary judgment simply by filing a counterclaim that effectively duplicates his defence” (at para. 22). With respect to the remaining issues in the counterclaim that were not related to the enforcement of the Settlement Agreement, the judge found that these issues were distinct from the Enforcement Action. She therefore determined that the counterclaim did not preclude summary judgment in this case.

[12] In applying the test for summary judgment, the judge considered whether the applicant had demonstrated that there was no genuine issue for trial. She noted that Mr. Bockhold conceded at the hearing that he had agreed to the settlement (at para. 28). The concern raised by Mr. Bockhold in response to the summary judgment application was not that he did not enter the Settlement Agreement, but rather that the Settlement Agreement was not enforceable because it was obtained through fraud. The alleged fraud advanced by Mr. Bockhold was as follows:

- a) The agreement was based on fraudulent misrepresentations by Wood Gundy.
- b) The witnesses called by Wood Gundy committed perjury at the trial of the Debt Action.
- c) Witness tampering prevented Mr. Bockhold from calling evidence at the trial of the Debt Action.
- d) Inadequate document discovery prevented him from proving his case at the trial of the Debt Action.

[13] The judge considered these four alleged fraudulent activities and found that they raised no genuine issue for trial as to the enforceability of the Settlement Agreement. The judge granted summary judgment in favour of Wood Gundy and struck the portion of Mr. Bockhold's counterclaim that sought to set aside the Settlement Agreement. She did not strike the remaining claims in the counterclaim.

Discussion

[14] On appeal, Mr. Bockhold raises two primary alleged errors in the judge's reasoning. First, he argues that she erred in finding that the counterclaim was not inextricably interwoven with the issue of the enforceability of the Settlement Agreement. Second, he alleges that the chambers judge failed to consider his defence of duress.

Did the judge err in finding that the counterclaim did not preclude summary judgment?

[15] Mr. Bockhold argues that the judge erred in deciding the summary judgment application in the face of his counterclaim.

[16] The judge, citing *Pavlov v. Edwards*, 2024 BCCA 155 at para. 69, noted that the mere existence of a counterclaim is not a bar to summary determination, and that the operative question was whether the issues raised for determination by

summary judgment are inextricably interwoven with the issues to be determined in the counterclaim.

[17] *Pavlov* involved an application for a summary trial under Rule 9-7, not an application for summary judgment under Rule 9-6. Nevertheless, there is clear jurisprudential support for the proposition that a chambers judge has discretion to grant summary judgment even in the face of a counterclaim: *Tahvili v. HSBC Bank Canada*, 2004 BCCA 22 at para. 16; *XY, Inc. v. IND Lifetech, Inc.*, 2009 BCSC 453 at para. 32; *Bai v. MLGB E-Sports Inc.*, 2018 BCSC 679 at para. 57.

[18] The judge found that the portion of Mr. Bockhold's counterclaim that sought rescission of the Settlement Agreement was identical to his defence to the Enforcement Action. The counterclaim was filed in the course of the multi-day summary judgment application. In these circumstances, the judge held that it would be unjust to allow Mr. Bockhold to avoid summary judgment by filing a counterclaim that is duplicative of his defence. She also held that the remaining claims in the counterclaim were not intertwined in any way with the issue of the enforceability of the Settlement Agreement. The fact that Mr. Bockhold has made sweeping allegations of fraud in the banking industry should not preclude summary judgment on a discrete and separate issue.

[19] If a defence does not give rise to a genuine issue for trial, then a counterclaim that duplicates that defence will suffer from the same deficiency. Therefore, in my view, it was open to the judge to conclude that, insofar as the counterclaim raised the same issues as the response to civil claim with respect to the enforceability of the Settlement Agreement, the counterclaim did not stand in the way of summary judgment.

[20] Further, with respect to the other matters pleaded in the counterclaim, Mr. Bockhold was unable to establish a connection between the large-scale institutional wrongdoing he has alleged and the enforceability of the Settlement Agreement. On their face, the two issues are extricable; the determination of one does not impact the determination of the other. In my view, it was open to the judge

to find that summary judgment on the Settlement Agreement was appropriate in the face of the other claims, which remain to be pursued by way of Mr. Bockhold's counterclaim.

[21] In these circumstances, I am not persuaded that the judge erred by failing to conclude that the counterclaim rendered summary judgment unsuitable in this case.

Did the judge err in not considering Mr. Bockhold's claim of duress?

[22] Mr. Bockhold submits that the chambers judge failed to consider that duress is a triable issue. However, he did not raise the doctrine of duress in his amended response to civil claim, his application response, or his counterclaim. The doctrine of duress was not explicitly advanced before the judge.

[23] Before this Court, Mr. Bockhold argues that duress was implicitly raised in the court below, when he submitted that someone tampered with his intended witnesses and when he alleged that certain Wood Gundy witnesses committed perjury. These factors left in him a position where he had no choice but to accept the settlement. This is consistent with Mr. Bockhold's statement in his amended response to civil claim that "[i]n the absence of witnesses to support Bockhold's pleadings, and fearing an award of costs, Bockhold reluctantly verbally accepted counsel's advice and accepted CIBC's pre-trial settlement offer".

[24] Mr. Bockhold argues that the judge should reasonably have understood that these facts gave rise to an argument that the Settlement Agreement was procured by duress. On his submission, her failure to consider whether there was a triable issue on the defence of duress amounted to an error of law.

[25] Duress is a common law defence to the enforceability of a contract. If duress is made out, the agreement is voidable at the instance of the party who signed under duress: *Jestadt v. Performing Arts Lodge Vancouver*, 2013 BCCA 183 at para. 45.

[26] Economic duress is recognized as a form of duress that could constitute a defence to the enforceability of a contract: *Dairy Queen Canada, Inc. v. M.Y. Sundae Inc.*, 2017 BCCA 442 at para. 49.

[27] In order for a defendant to successfully establish duress, they must establish that: a) the other party used an illegitimate means of persuasion; and b) there is a causal relationship between the illegitimate means used and the execution of the contract, overriding the free will of the defendant: *Bell v. Levy*, 2011 BCCA 417 at paras. 71–72.

[28] In oral submissions on this appeal, counsel for Mr. Bockhold referred to three sources of evidence that he says are capable of raising a triable issue on the question of duress:

- a) a July 14, 2023 email sent by Mr. Bockhold after the settlement was executed, discussing the fact that the BC Securities Commission (“BCSC”) interfered with his witnesses;
- b) affidavit evidence of Mr. Bockhold that was in the record before the judge but did not make its way into the appeal book; and
- c) oral submissions made by Mr. Bockhold at the court below which, according to his counsel, contained further evidence of duress.

[29] With respect to Mr. Bockhold’s July 14, 2023 email, this appears to be correspondence sent by Mr. Bockhold to Jared Day at the US Department of Justice. It contains, amongst other things, Mr. Bockhold’s description of what happened at the trial of the Debt Action. In the email, Mr. Bockhold asserts that the BCSC prevented both of his two proposed witnesses, one a former employee of the BCSC and the other a current employee of the BCSC, from testifying in the trial of the Debt Action.

[30] Assuming the statement in Mr. Bockhold’s email is true, this evidence is not capable of giving rise to a triable issue with respect to duress. There is no assertion

in Mr. Bockhold's email, or anywhere else in the record, that Wood Gundy was involved in any way with the witnesses Mr. Bockhold wished to call. At its highest, this evidence supports the conclusion that these witnesses' employer, the BCSC, would not let them testify in the Debt Action. The actions of the BCSC do not have any bearing on the question of whether Wood Gundy used an illegitimate means of persuasion to induce Mr. Bockhold to enter the Settlement Agreement against his will.

[31] Counsel for Mr. Bockhold also argues that there was affidavit evidence before the judge that was relevant to the duress argument, such as text messages between him and his witnesses. This evidence did not make its way into the appeal book and was not before this Court.

[32] It was Mr. Bockhold's responsibility as appellant to ensure that all relevant evidence was placed before this Court on appeal. He appears to have made a choice not to put this evidence before the Court and now seeks to rely on it.

[33] To the extent that the nature of the affidavit evidence Mr. Bockhold tendered in the summary judgment application can be discerned from his application response, it does not assist him in this appeal. The facts referred to in the application response, if supported by the evidence, do not make any reference to any witness interference by Wood Gundy. Rather, like the July 14, 2023 email, the application response refers to the BCSC interfering with Mr. Bockhold's witnesses. There are no facts alleged in the application response that would, if supported by evidence, be capable of giving rise to a triable issue on the defence of duress.

[34] Finally, counsel for Mr. Bockhold submits that since Mr. Bockhold was self-represented on the summary judgment application, there was bound to be a blurring of the line between evidence and argument, and evidence of duress was likely provided by Mr. Bockhold in the course of his submissions. However, counsel was unable to point to any specific evidentiary point made by Mr. Bockhold in his oral submissions that was relevant to duress. Such evidence, if it existed, would have been unsworn. As his counsel was unable to identify the nature of the evidence

that was allegedly provided in the course of Mr. Bockhold’s submissions, he cannot reasonably ask this Court to infer that such evidence exists, let alone that it is capable of raising a triable issue about duress.

[35] Since the record before the judge was not capable of raising a triable issue with respect to the defence of duress, it is not necessary to consider whether Mr. Bockhold’s duress argument is a truly new argument on appeal, or whether, as Mr. Bockhold submits, it was implicitly raised and ought to have been dealt with by the judge. Nor is it necessary to consider whether Mr. Bockhold has met the required test for raising a new issue on appeal as articulated in *Hwlitsum First Nation v. Canada (Attorney General)*, 2018 BCCA 276 at para. 36, leave to appeal ref’d, 2019 CanLII 23868 (S.C.C.) and *Bartch v. Bartch*, 2018 BCCA 271 at para. 30.

[36] Even if Mr. Bockhold had advanced the argument before the judge, the judge would have been compelled to conclude beyond doubt that there was no genuine issue for trial. The judge did not err in failing to consider an argument that was not available on the record before her.

Conclusion

[37] For these reasons, I would dismiss the appeal.

[38] **HARRIS J.A.:** I agree.

[39] **WARREN J.A.:** I agree.

[40] **HARRIS J.A.:** The appeal is dismissed.

“The Honourable Justice Francis”