COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Anderson v. Double M Construction Ltd.,* 2026 BCCA 103

Date: 20260226
Docket: CA51317

Between:

Cheryl Anderson

Appellant
(Plaintiff)

And

Double M Construction Ltd. doing business as Owl's Nest RV Resort, Myles Murtack, Bill Powell, and Joan Powell

Respondents
(Defendants)

Before: The Honourable Mr. Justice Butler
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated January 15, 2026 (*Anderson v. Double M Construction Ltd.*, 2026 BCSC 53, Cranbrook Docket S28640).

Oral Reasons for Judgment

The Appellant, appearing in person (via teleconference):	C. Anderson
Counsel for the Respondents (via videoconference):	T.W. Pearkes
Place and Date of Hearing:	Vancouver, British Columbia February 26, 2026
Place and Date of Judgment:	Vancouver, British Columbia February 26, 2026

Summary:

The appellant applies to stay enforcement of an order of the British Columbia Supreme Court made following a summary trial. The respondents oppose the application and, in the event a stay is granted, seek an order that the appellant post security for costs. The trial judge dismissed the appellant's claims, struck her amended notice of civil claim, and awarded damages for defamation in favour of two of the respondents. The appellant occupied a cabin pursuant to a lease and licence with the respondent, Double M Construction Ltd. The judge found that the appellant repudiated those agreements and that the repudiation was accepted. The appellant was ordered to deliver vacant possession of the cabin.

Held: The application for a stay pending appeal is dismissed. The appellant is unable to demonstrate any merit to the appeal and the balance of convenience favours the respondents. Given the difficulty the appellant will have in relocating, the order for vacant possession of the cabin is stayed to March 31, 2026.

[1] **BUTLER J.A.**: The appellant, Cheryl Anderson, applies for a stay of enforcement of an order of the British Columbia Supreme Court. The respondents, Double M Construction Ltd., doing business as Owl's Nest RV Resort ("Double M"), Myles Murtack, Bill Powell and Joan Powell, oppose the application and, in the event a stay is granted, seek an order that Ms. Anderson post security for costs of the appeal in the amount of $9,750.

[2] The order under appeal, which was made following a summary trial, dismissed Ms. Anderson's action and allowed the respondents' counterclaims regarding the leasehold relationship between Ms. Anderson and Double M. The judge also allowed claims in defamation by some of the individual respondents. Of particular import to the stay application before me, the order requires Ms. Anderson to deliver vacant possession of a cabin she occupies on the Owl's Nest RV Resort (the "Cabin") that is the subject of the parties' contractual relationship.

[3] Justice MacNaughton, as she then was, heard the application below and pronounced the order on January 15, 2026, in reasons indexed at 2026 BCSC 53 ("RFJ"). Despite the relatively modest amounts involved in the claim, the reasons run to 268 paragraphs as the judge outlined the lengthy procedural history and was required to consider the numerous issues raised by the dispute.

Facts and Procedural History

[4] The dispute concerns Ms. Anderson's occupation of the Cabin on campground property owned by Double M. For the purpose of this application, I need not describe the background in detail, however, an understanding of the procedural and factual history is important to my consideration of the stay application. The following is a summary taken largely from the RFJ.

[5] The property is zoned as a privately-owned campground 15 minutes outside Cranbrook. In addition to numerous RV sites in the campground, there are five serviced cabin sites. When the sites were leased, the lessee was required to enter into a licensing agreement entitling them to use the cabin, lot and other facilities owned by Double M: RFJ at para. 14.

[6] On November 25, 2015, the appellant and Double M entered into an agreement described as an "Offer to Lease Hold RV Lot" (the "Lease"). The appellant agreed to pay $65,000 for the lease of the Cabin on the property. Ms. Anderson paid a $5,000 deposit, leaving a balance of $60,000. She indicated at the time the Lease was entered into that she would pay the balance when her property in Alberta was sold. She paid a further $25,000 in July 2016, but never paid the remaining balance. The Lease was subject to the annual licence described as the "Purchase Lot Lease" (the "Licence"), which allowed the appellant to use the lot and access services in exchange for an annual fee of $2,500.

[7] Soon after the Lease and Licence were entered into, the relationship between the parties became acrimonious. Ms. Anderson commenced the action in September 2018. The respondents filed a response to civil claim and a counterclaim seeking relief under Double M's agreements with Ms. Anderson, including rescission. Ms. Anderson responded to the counterclaim and made amendments to her notice of claim on two occasions.

Applications before Justice Douglas

[8] Ms. Anderson then filed a series of applications seeking wide-ranging relief including summary disposition of the claims and counterclaims; a restraining order against the three individual respondents; an order prohibiting the respondents from slandering or defaming her; and orders for monetary payments. She also sought an order allowing her to serve written interrogatories in lieu of discovery.

[9] The respondents applied to strike the appellant's amended claim in whole or in part. Alternatively, they sought summary judgment in their favour and asked that the amended notice of civil claim be dismissed on the basis there was no genuine issue for trial: RFJ at para. 83.

[10] Justice Douglas heard the parties' applications and, in reasons indexed at *Anderson v. Double M Construction Ltd.*, 2021 BCSC 1473, dismissed most of the relief sought by Ms. Anderson, including her application to deliver interrogatories. However, she found that Ms. Anderson's contractual damage claims were "inextricably linked to the existence of a valid contractual relationship between the parties after the ostensible termination of the [Licence]" and that the issue of whether the arrangement between the parties was properly construed as a licence agreement or a tenancy needed to be determined.

[11] With respect to the respondents' application, she concluded that Ms. Anderson's amended notice of civil claim was "lengthy, confusing, and prolix" and that it contained "irrelevant statements, unsupported assertions, and alleged claims with no factual or legal foundation". She struck the claim in its entirety but gave Ms. Anderson leave to amend her pleadings but only to particularize the material facts she relied upon for certain claims that were not bound to fail including: breach of contract; trespass; nuisance; breach of privacy; and destruction of property. Justice MacNaughton's RFJ, at paras. 73–91, describe the procedural background and Justice Douglas' decision in detail.

Applications before Justice Morellato

[12] The respondents filed an amended counterclaim on March 20, 2020, alleging that Ms. Anderson had defamed Mr. Murtack and Mr. Powell. Ms. Anderson filed a further amended notice of civil claim on September 13, 2021. The respondents then applied to strike that claim, and Ms. Anderson applied to set aside Justice Douglas' decision on the basis that the testimony presented was fraudulent or perjurious. At the hearing of that application before Justice Morellato, Ms. Anderson made serious allegations against counsel for the respondents. This resulted in adjournment of the application and a separate claim against the lawyer. That claim was eventually dismissed in its entirety by Justice Gaul on April 4, 2024.

Applications before Justice MacNaughton

[13] After considerable delay occasioned by the described applications, the parties set down applications to determine the issues in dispute by way of summary trial under Rule 9-7.

[14] The respondents filed an application seeking (RFJ at para. 8): a declaration the appellant is a vexatious litigant; an order to strike or summarily dismiss the claim; a declaration that the appellant repudiated her contracts with Double M and the contracts are at an end; a declaration the appellant forfeited her interest in the Cabin and that Double M is the owner of the Cabin; an order of vacant possession within 30 days of pronouncement; damages for defamation and punitive damages for Mr. Murtack and Mr. Powell; and special costs.

[15] The appellant disputed the respondents' applications and applied for her claims to be determined by summary trial: RFJ at para. 120, citing RFJ at para. 11. She sought orders to dismiss the respondents' proceedings and strike their claims; an order that the respondents are vexatious litigants; an order setting aside Justice Douglas' judgment and award for costs due to fraud, conspiracy, perjury and misrepresentations; an order for damages to be paid by the respondents due to their negligence and illegal behaviour; and costs.

[16] The RFJ are lengthy and thorough. Justice MacNaughton considered the arguments of the parties in detail and the RFJ respond to the numerous issues raised by the applications. She concluded the appellant had not proven her allegations and dismissed the claims against the respondents. She found that Ms. Anderson's "whole case" was based on the contention that "everything [the defendants] have done is fraudulent…everything", even though she has not established fraud, and notably, that Justice Douglas did not give the appellant leave to proceed with a case in fraud: RFJ at para. 172.

[17] The following is a brief summary of some of the key issues decided in the RFJ.

Suitability for Summary Trial

[18] With reference to the factors found in *Gichuru v. Pallai*, 2013 BCCA 60 (at paras. 30–31), Justice MacNaughton determined that the matter was suitable for determination by summary trial: RFJ at paras. 123–170.

Credibility

[19] Justice MacNaughton was highly critical of Ms. Anderson's credibility and reliability as a witness. She found that Ms. Anderson's evidence consisted of self-serving narratives without admissible proof. In dismissing Ms. Anderson's claims, the judge found that:

> [152] … The affidavits filed by Ms. Anderson are especially illuminative of the serious evidentiary deficits in her evidence. Her affidavits are replete with speculation and unattributable hearsay which are incapable of proof. They demonstrate that Ms. Anderson's testimony is not credible, as stated. Her testimonial evidence is self-serving and irrational when considered in the context of common sense and corroborative evidence…
>
> [Emphasis added.]

Contract Repudiation

[20] Justice MacNaughton found the parties agreed that Ms. Anderson would begin paying the Licence fee in 2016, when she relocated to the Cabin. She concluded that Ms. Anderson failed to pay the Licence fee in all but one of the years

she resided at Owl's Nest RV Resort. The judge also found that Ms. Anderson defaulted on her obligation to pay the balance of the Lease Price for the Cabin: RFJ at para. 37.

[21] The judge determined that the appellant's nonpayment of the License Fee and balance of the Purchase Price resulted in repudiation of her contracts with Double M. In the result, she found that Ms. Anderson forfeited her interest in the Cabin: RFJ at para. 200.

Damage to Property

[22] The appellant claimed that Double M had damaged her property and interfered with her use of the property. The judge concluded that the respondents were not liable for the alleged damage to her property or to her water and power lines: RFJ at paras. 186–187.

[23] Ms. Anderson alleged that on February 12, 2017, two employees of Double M willfully damaged her property by using the shovel of a backhoe to collapse a garage shelter that she had built. She alleged that her rare collector Mercedes Benz automobile and a motorboat stored in the shelter were damaged. Ms. Anderson was in Alberta at the time. Justice MacNaughton accepted the evidence of two Double M employees who denied any willful destruction of property. The judge found that Ms. Anderson's claims of intentional damage were entirely speculative and found it more probable that the shelter collapsed due to the heavy accumulation of snow on a flat roof: RFJ at paras. 53–63.

[24] Ms. Anderson further claimed that the respondents had deliberately damaged her property by cutting off her water, sewer, and electricity for over six months. Justice MacNaughton rejected her claims finding that contradictory evidence presented by Double M was credible, reliable, and unrefuted by the appellant: RFJ at paras. 65–70.

Cross-Applications for Orders under s. 18 of the *Supreme Court Act*

[25] Justice MacNaughton dismissed both parties' applications under s. 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 for orders that they had commenced vexatious proceedings. However, she noted that the time spent on the proceedings was "wholly disproportionate" to the amount in dispute and the issues that required determination. She found that Ms. Anderson's conduct unnecessarily and inappropriately prolonged the proceedings and was a relevant consideration for deciding costs: RFJ at para. 212.

Defamation Claims

[26] The judge concluded that Mr. Murtack and Mr. Powell had proved the necessary elements supporting their claims in defamation and awarded damages of $7,500 to each: RFJ at paras. 232, 240. In doing so, she noted that: allegations of sexual predation and pedophilia are serious; the statements were made in a tight-knit community where the respondents do business; and the appellant showed no remorse: RFJ at para. 240. She declined to award punitive damages.

Orders

[27] Justice MacNaughton summarized the orders (RFJ at para. 257):

> a) Ms. Anderson's amended notice of civil claim filed September 13, 2021, is struck and her claims are dismissed pursuant to Rule 9-7;
>
> b) Ms. Anderson's repudiation of her contracts with the defendant, Double M Construction Ltd., was accepted, and the contracts are at an end;
>
> c) Ms. Anderson has forfeited her interest in the Cabin, and the defendant Double M. Construction Ltd. is its owner;
>
> d) The defendants' amended counterclaim is granted;
>
> e) Ms. Anderson shall deliver up vacant possession of the Cabin and the lot on which it sits within 60 days of pronouncement of this order;
>
> f) Damages for defamation are payable by Ms. Anderson to Myles Murtack in the sum of $7,500;
>
> g) Damages for defamation are payable by Ms. Anderson to Bill Powell in the sum of $7,500; …

Costs

[28] The judge awarded special costs to the respondents because of the appellant's reprehensible conduct. Examples noted by the judge included: threatening the Supreme Court scheduling manager responsible for Cranbrook; general belligerence and anger towards the judge and against counsel during her submissions; consumption of a disproportionate share of scarce resources and court time through repeated arguments; failure to comply with Justice Douglas' pleadings order by filing amended pleadings "replete with hearsay, speculation, and conclusions without evidentiary foundation"; and lengthy unsupported affidavits which were unduly repetitive: RFJ at paras. 263, 266.

Stay Application

Legal Principles

[29] The test outlined in *RJR-Macdonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 outlines that the applicant for a stay of execution has the onus to establish three criteria:(1) there is merit to the appeal in the sense that there is a serious question to be tried; (2) they will suffer irreparable harm if the stay is refused; and (3) the balance of convenience favours granting the stay. The ultimate consideration is whether it is in the interests of justice to grant a stay: *Coburn v. Nagra*, 2001 BCCA 607 at paras. 7, 9.

[30] The merit threshold for a stay application is low. The applicant need only show that the "claim is not frivolous or vexatious": *RJR* at 335, 337–338. The question is not whether the applicant can establish a strong *prima facie* case, but whether there is a serious question to be tried: *RJR* at 335.

[31] Irreparable harm, meanwhile, asks "whether a refusal to grant relief could so adversely affect the applicants' own interests that the harm could not be remedied if the eventual decision on the merits does not accord with the result": *RJR* at 340–341.

[32] At the balance of convenience stage of the test, the question is which of the parties will suffer the greater harm from the granting or refusal of the application: *RJR* at 335, 342–344.

Analysis

[33] I turn to consider the relevant factors and whether it is in the interests of justice to grant a stay.

Merits

[34] Ms. Anderson's written submissions on the merits are brief and somewhat inconsistent. She attempted to provide further detail at the hearing today. She emphasizes that the merits threshold is low and says she has identified several errors in the judgment below that require consideration on appeal.

[35] Ms. Anderson's application for a "no fees order" provides her most complete argument on the grounds of appeal. Her stated grounds are:

- Misapplying the summary trial framework and failing to permit cross-examination;
- Failing to apply the correct legal test for procedural fairness;
- Erroneously giving weight to disputed and allegedly fabricated documents while discounting the appellant's evidence;
- Misapplying principles of bailment and unjust enrichment;
- Making findings unsupported by the evidentiary record regarding occupancy, damages and special costs; and
- Failing to consider whether enforcement of the order would cause disproportionate and irreparable harm.

[36] I have no hesitation in concluding that Ms. Anderson is unable to satisfy the low merits threshold. Her arguments on the merits of her appeal—like her

allegations at trial—are bald assertions unsupported by concrete demonstration of legal or factual errors.

[37] The appellant's first two grounds of appeal concern her allegations of procedural unfairness. They are without any support in the record. She alleges she was not provided adequate accommodation or a full opportunity to present her case but can point to nothing in the reasons or procedural history to support the allegation. It is clear Ms. Anderson was given every opportunity to advance her claims throughout the proceedings. She was able to tender substantial evidence across the various applications and was able to rely on all 10 of her previously filed affidavits at the summary trial: RFJ at paras. 121, 139.

[38] Ms. Anderson's specific claims about procedural fairness due to the summary trial process are undercut by the assessment of suitability undertaken by the judge. Ms. Anderson asserts that procedural fairness was compromised because her acceptance of proceeding by way of summary trial was contingent on having an opportunity to present *viva voce* evidence. She also alleges that she was not permitted to cross-examine affiants. The RFJ do not support her contentions. Ms. Anderson did not examine any of the respondents for discovery and did not apply for cross-examination: RFJ at para. 127. Ms. Anderson took the position before Justice MacNaughton that the case was suitable and appropriate for determination by summary trial. The judge noted:

> [133] As stated above, I accept Ms. Anderson's submission that her claims are suitable to be determined by way of a summary trial and find that it is appropriate to do so. Ms. Anderson acknowledges that the Court has her evidence and does not suggest that she has other evidence to add or that some other evidence will turn up. The case as presented by Ms. Anderson by way of her affidavits is as good as it is going to get. She does not suggest that there is other evidence that might be available to her.

[39] I see no merit in the assertion that the judge "misapplied the legal threshold" in deciding the case under Rule 9-7 and do not consider that it raises a serious question.

[40] The third, fourth, and fifth grounds of appeal noted by Ms. Anderson concern the judge's findings of fact and of mixed fact and law. Those findings are entitled to deference on appeal. The appellant must demonstrate palpable and overriding error. Ms. Anderson has not directed us to anything in the reasons or record that might support her claims of misapprehension of evidence or unsupported findings of fact. At best, her complaints are directed at the weight given to evidence by the trial judge. That is not a basis on which this Court could interfere with the trial decision.

[41] I would note that her argument for a stay is centered on what she says was an erroneous decision regarding the parties' contractual relationship. She submits that the respondents' evidence was confused and inconsistent. She says it was not clear whether the agreement was for a leasehold interest, a licence, or sale of the Cabin.

[42] I am unable to discern any issue worthy of consideration by this Court in the grounds of appeal advanced. As with Ms. Anderson's other arguments, she is unable to direct me to factual findings that appear to be incorrect, let alone palpably incorrect. She has also failed to identify any legal error in the judge's analysis. The evidence about the parties' agreements was straightforward. The Lease and Licence were before the court. The appellant has not attempted to demonstrate any error by directing me to provisions in those agreements. There was also no dispute in the court below that Ms. Anderson failed to pay the balance owing under the Lease when she commenced occupancy, or that she only made one of the annual payments required by the Licence agreement.

[43] As she indicated in argument today, Ms. Anderson's defense to the contractual claims under the Lease and Licence rested entirely on her assertion that Double M and its employees had intentionally damaged her property and therefore she did not have to make the required payments under the agreements. The judge's decision on this claim depended on findings of fact. The judge explained why she did not accept Ms. Anderson's unsubstantiated assertions. The appellant has not

identified any particular error other than to say the evidence was false or the judge erroneously gave the respondents' evidence too much weight.

[44] I accept that the merits threshold is low and that grounds of appeal that challenge findings of fact can be found to satisfy that threshold. However, in the unique circumstances of this case, when I examine Ms. Anderson's allegations of error by the trial judge, it is evident that her argument amounts to a proverbial "house of cards"; it has virtually no chance of success. I conclude she has not identified a serious question to be tried.

Irreparable harm

[45] Ms. Anderson argues she will suffer irreparable harm because the order requires her to vacate the Cabin and she will be unable to re-establish housing. She says that if the stay is not granted the appeal is rendered "nugatory". She submits that she does not have the financial means to relocate; nor the ability to secure alternate housing on short notice given her income.

[46] The respondents acknowledge that the harm to the appellant is serious as she has been ordered to vacate the home she has lived in for several years. However, they submit that the Court must also consider the whole of the circumstances and the fact that Ms. Anderson has resided in the Cabin for many years without paying the balance on the Lease and without making the annual Licence payments. I will consider those factors but note that they are more properly examined in the balance of convenience.

[47] I agree with Ms. Anderson that the harm she would suffer if her application for a stay is denied is significant. However, it must be noted that she was not in the position of a residential tenant, but a party to commercial agreements for the use and occupation of property. She has remained in possession of property without making payments as required under written agreements. Whether a stay is to be granted must be determined by legal principles that include assessment of the merits, the balance of convenience, as well as the nature of the harm.

Balance of Convenience

[48] As the respondents submit, I must presume that the judgment below is correct. While Ms. Anderson will suffer harm and inconvenience if a stay is not ordered, the respondents will suffer considerable inconvenience if a stay is granted. Unfortunately, this dispute has taken more than seven years to reach judgment in the lower court. The appellant has failed to make the contractual payments found to be owing and has now indicated she has no ability to do so. I infer she also has no ability to pay the special costs order. She has not offered to post security for the defamation awards and presumably has no ability to pay those damages. The inconvenience to the respondents of continuing this situation by granting a stay is obvious. In addition, if a stay is granted, the respondents would continue to be impacted by the appellant's disruptive conduct towards employees and residents, as found by the judge: RFJ at para. 141.

[49] In these circumstances, Ms. Anderson's application amounts to a request for a "free ride" to pursue her appeal which I have found to be entirely lacking in merit. The balance of convenience clearly favours the respondents. It is not in the interests of justice to stay the proceedings.

Disposition

[50] I dismiss Ms. Anderson's application for a stay of proceedings pending appeal. However, in the circumstances, and acknowledging the difficulty she will have in relocating, I would grant a stay of the term of the order requiring her to vacate the property to March 31, 2026. No other term of the trial order is stayed.

[51] Given the decision I have reached, I need not consider the respondents' application for security for costs of the appeal.

"The Honourable Mr. Justice Butler"