

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Parhar v. West Point Pacific Construction
(64th Ave) Ltd.*,
2026 BCSC 415

Date: 20260218
Docket: S247568
Registry: New Westminster

Between:

Gurdip Kaur Parhar and Puneet Singh Parhar

Plaintiffs

And

**West Point Pacific Construction (64th Ave) Ltd., Kalwinder Singh Dosanjh,
Sarabjit Singh Gill, Tarlochan Singh Sahota, Gursher Singh Bhangal, Satinder
Singh Bhangal and Narinder Singh Thandi**

Defendants

Before: The Honourable Justice Ahmad

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

R. Arora

Counsel for the Defendants, Gursher Singh
Bhangal, Satinder Singh Bhangal, and
Narinder Singh Thandi:

T. Boyd

Place and Date of Hearing:

Abbotsford, B.C.
January 29, 2026

Place and Date of Judgment:

Abbotsford, B.C.
February 18, 2026

I. Introduction

[1] **THE COURT:** In November 2021, the defendants, Gursher Singh Bhangal, Satinder Singh Bhangal, and Narinder Singh Thandi (collectively, "the defendants,") entered into a pre-construction contract ("Head Contract") to purchase a townhouse then being constructed by West Point Pacific Construction (64th Ave) Ltd. ("Developer").

[2] Pursuant to an assignment agreement dated December 22, 2021 ("Assignment Agreement"), the defendants assigned their right in title to and in the Head Contract to the plaintiffs. The plaintiffs paid the defendants funds totalling \$95,000 for the assignment.

[3] Unfortunately, the development was subject to foreclosure proceedings, and the sale of the townhouse did not complete.

[4] On this application, the plaintiffs seek judgment against the defendants for the \$95,000 paid under the Assignment Agreement. They argue that the straightforward nature of the claim makes it appropriate to determine summarily under R. 9-6, or alternatively, by way of summary trial under R. 9-7.

[5] The defendants argue that the plaintiffs' characterization of the issue does not accurately capture the fullness or the complexity of either the facts or the law, which makes their claim for judgment unsuitable for summary determination. Alternatively, the defendants say, if the matter can be determined summarily, that determination should result in the dismissal of the claim.

II. Background

A. The Head Contract

[6] Under the Head Contract, the defendants paid the Developer a deposit totalling \$88,000 with the balance of the \$925,050 purchase price to be paid on completion.

[7] The Head Contract provided that the latest completion date would be 12 months from the estimated completion date, which was October 31, 2022. Accordingly, the latest completion date was October 31, 2023 (“Latest Completion Date”).

B. The Assignment Agreement

[8] The Assignment Agreement was negotiated between Aarshdeep Dhillon, a realtor, on behalf of the defendants, and Goldie Bhatti, also a realtor, on behalf of the plaintiffs. Mr. Bhatti prepared the Assignment Agreement.

[9] Clause 5.1 of the Assignment Agreement contemplates that the plaintiffs were to pay the defendants the "Assignment Amount" of \$157,000. Clauses 5.2, 5.4, and 5.8 of the Assignment Agreement set out how that payment was to be made. I refer to those provisions in more detail below.

[10] Clause 5.8 also provides that if the transfer of the townhouse was not submitted for registration to the Land Title Office by the Latest Completion Date, then, “at the option of the [plaintiffs] the Assignment Amount [was] to be released to [the plaintiffs] and [the] Assignment Agreement [would] be terminated.”

[11] I will refer to that latter portion of clause 5.8 as "the Deposit Release Clause."

[12] In respect of the payment provisions in the Assignment Agreement, Mr. Dhillon deposes that he and Mr. Bhatti:

... agreed that the initial deposit already paid by [the defendants] to the [D]evelopers would be assigned to [the plaintiffs], and that in return, \$95,000 would be paid to [the defendants] as soon as the [D]evelopers consented to the assignment with a further payment on completion ...

[13] The defendants depose that Mr. Dhillon told them that he and Mr. Bhatti had negotiated the following:

- a) the defendants would assign the Head Contract and the \$88,000 deposit paid to the Developer to the plaintiffs;

- b) the defendants would pay an assignment consent fee of \$9,500 to the Developer; and
- c) the plaintiffs would pay a total of \$157,000 to the defendants as follows:
 - i. a first payment of \$95,000 would be paid once the Developer consented to the assignment; and
 - ii. the balance of the \$62,000 would be paid on the completion of the Head Contract.

[14] Mr. Thandi denies that he would have agreed that the first payment of \$95,000 would be paid in trust.

[15] Mr. Bhatti does not provide any evidence regarding his discussions with Mr. Dhillon. Other than reference to the provisions of the Assignment Agreement, the plaintiffs do not provide any evidence regarding the payment provisions.

[16] On receiving the Developer's consent to the assignment, on December 23, 2021, the plaintiffs paid a total of \$95,000 to the defendants.

C. Subsequent Events

[17] In or around June 2022, foreclosure proceedings were commenced against the Developer. The transfer of the townhouse to the plaintiffs was not submitted for registration to the Land Title Office by October 31, 2023, the Latest Completion Date.

[18] In December 2022, the plaintiffs commenced this action against the Developer and its principals, seeking damages and judgment against the Developer for \$88,000, being the deposit paid under the Head Contract.

[19] In May 2024, the defendants were added to the action. As against them, the plaintiffs seek judgment for \$95,000, being the amount paid under the Assignment Agreement.

[20] The plaintiffs discontinued the action against the Developer and its principals.

III. Issues

[21] Broadly put, the three main issues to be determined are:

- a) is there a genuine issue requiring trial in this action. In other words, are the plaintiffs entitled to summary judgment against the defendants under R. 9-6;
- b) if there is a general issue requiring trial, can the issue be determined summarily under R. 9-7; and
- c) if the answer to either (a) or (b) is yes, are the plaintiffs entitled to judgment against the defendants for the return of the \$95,000 paid under the Assignment Agreement?

IV. Discussion and Analysis

A. Are the plaintiffs entitled to summary judgment against the defendants?

[22] Rule 9-6(2) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, provides that a plaintiff may bring an application for summary judgment on all or part of a claim. Pursuant to subrule (5), on hearing an application under R. 9-6(2), the court may pronounce judgment in favour of a plaintiff if satisfied there is "no genuine issue for trial."

[23] As the Court explains in *Balfour v. Tarasenko*, 2016 BCCA 438 at para. 42:

[42] On a summary judgment application brought against a defendant, the essential question is whether the defendant is bound to lose. If so, summary judgment should be granted to avoid unnecessary waste of time and expense.

[24] In support of their application for summary judgment, the plaintiffs referred to the decisions in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 [*Sattva*] in respect of contract interpretation and *Tang v. Zhang*, 2013 BCCA 52 [*Zhang*] in respect of "deposits".

[25] In *Zhang*, the Court concluded that, absent a provision to the contrary, the word "deposit" should be given its normal meaning in law, that is, to motivate contracting parties to carry through with their bargains: at para. 30. As the plaintiffs note, the non-refundable nature of the deposit will only apply "if the purchaser failed to complete, not if the vendor refused to complete": *Zhang* at para. 5, citing *Williamson Pacific Developments Inc. v. Johns, Southward, Glazier, Walton and Margetts* (1997), 35 B.C.L.R. (3d) 180 at para. 12, 1997 CanLII 4074 (B.C.C.A.).

[26] Regarding contract interpretation, the plaintiffs refer to para. 57 of *Sattva*, which provides:

... The interpretation of a written contractual provision must always be grounded in the text and read in light of the entire contract (Hall, at pp. 15 and 30-32). While the surrounding circumstances are relied upon in the interpretive process, courts cannot use them to deviate from the text such that the court effectively creates a new agreement (*Glaswegian Enterprises Inc. v. B.C. Tel Mobility Cellular Inc.* (1997), 1997 CanLII 4085 (BC CA), 101 B.C.A.C. 62).

[27] In light of those decisions, the plaintiffs argue that the interpretation of the Deposit Release Clause contained within clause 5.8 of the Assignment Agreement is a simple one: as the transfer of the property was not submitted for registration by the Latest Completion Date, the Assignment Amount, or the amount paid to the defendants, is to be released to the plaintiffs.

[28] The defendants argue the plaintiffs' reading of the decisions in *Zhang* and *Sattva* were too narrow and, moreover, that neither the law nor the facts are as straightforward as the plaintiffs argue them to be.

[29] Specifically, while the defendants do not dispute the general principle that a "deposit" is intended to secure the completion of a contract, they say that *Zhang* also provides that principle is subject always to the expression of a contrary intention: *Zhang* at paras. 21, 25, and 30(2).

[30] Furthermore, while the defendants do not appear to dispute that evidence of surrounding circumstances cannot overwhelm or contradict the words employed in

the contract, they argue that surrounding circumstances do, nonetheless, inform contract interpretation. As the Court confirms in *Sattva* at para. 47:

[47] ... the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine “the intent of the parties and the scope of their understanding” (*Jesuit Fathers of Upper Canada v. Guardian Insurance Co. of Canada*, 2006 SCC 21, [2006] 1 S.C.R. 744, at para. 27, *per* LeBel J.; see also *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4, [2010] 1S.C.R. 69, at paras. 64-65, *per* Cromwell J.). To do so, a [Court] must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:

No contracts are made in a vacuum: there is always a setting in which they have to be placed. . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.

[Emphasis added.]

[31] While post-contract conduct is generally not admissible as part of the “factual matrix” to assess the intended scope of the contract, such conduct can be admitted if the contract remains ambiguous after consideration of its text and factual matrix: *Shewchuk v. Blackmont Capital Inc.*, 2016 ONCA 912 at paras. 46–48.

[32] The defendants submit that, in the circumstances of this case, the more fulsome view of the case law governing the issues dictates that they are not bound to lose; rather, they say there is a genuine issue for trial.

[33] I agree with that submission.

[34] Most notably, contrary to the premise on which the plaintiffs’ interpretation is based, clause 5.8 is not the only provision regarding payments made under the Assignment Agreement. Clauses 5.2 and 5.4 address the issue as well.

[35] On their face, those clauses appear to be inconsistent, not only with one another, but internally as well, in respect of key issues including: what portion of the \$157,000 Assignment Amount is to be paid to the defendants, to whom the monies are to be paid, and the basis on which those monies are to be held or released.

Various, clauses 5.2, 5.4, and 5.8 of the Assignment Agreement provide:

- a) Under clause 5.2 for the payment of "a deposit of \$95,000 which will form part of the Assignment Amount" to be delivered "in trust to DIRECT TO ASSIGNOR" and held in trust in accordance with the provisions of the *Real Estate Services Act*, S.B.C. 2004, c. 42.
- b) Under clause 5.4, for the payment of \$62,000, being the \$157,000 Assignment Amount "other than the [\$95,000] Deposit payable under Clause 5.2", and that amount is to be paid to the "Stakeholder" or the "Assignee's conveyance".
- c) Also under clause 5.4, for the payment of \$95,000 to "Sellers" and the balance (\$62,000) to be paid on completion. Although capitalized, "Sellers" is not defined in the Assignment Agreement.
- d) Under clause 5.8, that the amount of the deposit paid by the Assignor (\$88,000) is to be "released to the Assignor" and the balance of the Assignment Amount (\$69,000) to be paid in trust by the Stakeholder and released to the Assignor on the transfer of the property.

[36] As noted, the Deposit Release Clause in clause 5.8 also provides that on a failure to complete the sale, the Assignment Amount is to be released to the Assignee. However, the plaintiffs did not pay the full Assignment Amount (that is \$157,000) to the defendants.

[37] Given those glaring inconsistencies, it is easily arguable that the Assignment Agreement is ambiguous with respect to the treatment of the Assignment Amount. Especially in light of that ambiguity, and in any event, I do not accept that the

plaintiffs' sole reliance on the Deposit Release Clause comprised in the last three lines of clause 5.8 is determinative of the matter.

[38] As the defendants argue, the plaintiffs' sole reliance on those three lines ignores the surrounding circumstances, including, to the extent that it is admissible, Mr. Dhillon's evidence that he and Mr. Bhatti discussed that the plaintiffs would pay \$95,000 to the defendants, and his denial that they had any discussion about holding that money in trust.

[39] It also ignores the fact that the plaintiffs initially sought to recover the \$88,000 deposit from the Developer, a position that is inconsistent with their current position that they are entitled to \$95,000 from the defendants. Given the ambiguity of the Assignment Agreement, evidence of post-contract conduct could arguably inform interpretation.

[40] Moreover, also without deciding the point, although clause 5.2 refers to a \$95,000 "deposit":

- a) the words "DIRECT TO ASSIGNOR" in clause 5.2; and
- b) and the requirement in clause 5.8 that the initial \$88,000 deposit paid by the Assignor to be "released to the Assignor"

appear to express a contrary intention. In other words, it is not clear that the mere use of the word "deposit" alone is dispositive of the issue.

[41] For the above reasons, I cannot conclude that the defendants are bound to lose. There is a genuine issue for trial.

[42] The plaintiffs' application for summary judgment under R. 9-6 is dismissed.

[43] I will now consider whether this matter is suitable for determination by way of summary trial.

B. Are the plaintiffs entitled to judgment on a summary trial?

[44] Pursuant to R. 9-7(15)(a) on the hearing of a summary trial application, the court may:

- (a) grant judgment in favour of any party, either on an issue or generally, unless
 - (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
 - (ii) the court is of the opinion that it would be unjust to decide the issues on the application.

...

[Emphasis added.]

[45] I will start with the first prong of the test.

[46] As I have set out above, in accordance with the principles of contract interpretation, as set out in *Sattva* at para. 47, whether the Deposit Release Clause contained in clause 5.8 is dispositive of the plaintiffs' position will be determined by the "intent of the parties and the scope their understanding". The intent and scope, in turn, will require a consideration of the whole of the contract in light of the surrounding circumstances known to the parties at the time of the formation of the contract: *Sattva* at para. 47.

[47] In addition, given the inconsistency and ambiguity of clauses 5.2, 5.4, and 5.8, post-contract conduct may also inform, to some degree, the intention of the parties.

[48] Despite the clear relevance, the plaintiffs offered no evidence as to the "surrounding circumstances" about how or why the parties agreed to the payment provisions they did, nor do they offer any explanation as to why they did not initially commence an action against these defendants if it was their intention that they would be able to do so if the sale did not complete.

[49] Instead, the plaintiffs have provided their own interpretation of the relevant provisions. That subjective interpretation does not provide a sufficient basis for

which to determine the parties' rights and obligations under the Assignment Agreement.

[50] On the other hand, the defendants purport to provide objective evidence of the parties' intention in the form of the evidence of Mr. Dhillon. Again, he deposes that having expressly discussed the "deposit" with Mr. Bhatti, they agreed that the plaintiffs would pay \$95,000 to the defendants as soon as the Developer consented to the assignment. He denies there was any agreement or discussion that the \$95,000 would be held in trust.

[51] Mr. Bhatti does not refute that evidence. Moreover, despite being asked for documents, including correspondence with "any realtor", the plaintiffs have failed to provide any other objective evidence that would refute Mr. Dhillon's evidence.

[52] However, even accepting, without deciding, that Mr. Dhillon's evidence is admissible of the parties' intention, it too raises issues that require determination. Most notably, while Mr. Dhillon deposes that he reviewed the terms of the Assignment Agreement, he provides no explanation for the inclusion of the "trust" language in clause 5.2 of the Assignment Agreement.

[53] For this matter to be suitable for determination by way of summary trial, I must be able to find the facts of the surrounding circumstances including, for example:

- a) What specifically did the parties' representatives discuss, if anything, about whether the \$95,000 payment would be made directly to the defendants or was to be held in trust?
- b) What did the plaintiffs know about the defendants' status or ability to hold the \$95,000 "in trust" under the *Real Estate Services Act*?
- c) What did the parties' representatives discuss about the inclusion of the Declaration of Deposit Form as part of the transaction?

- d) Why did Mr. Dhillon not delete the reference to the “trust” in the provisions of the Assignment Agreement?
- e) Why did the plaintiffs initially commence this action against the Developer?

[54] With insufficient evidence regarding the surrounding circumstances, I am unable to find facts necessary to decide the issues raised on this application, either to grant judgment or to dismiss the claim.

[55] Having reached that conclusion, I do not have to decide if it would be unjust to decide the issues on a summary basis.

[56] The plaintiffs' application for judgment on a summary trial basis pursuant to R. 9-7 is dismissed.

V. Conclusion

[57] Despite that conclusion, I acknowledge the importance of summary trial procedures in ensuring access to justice by favouring proportionality and fair access to the affordable, timely, and just adjudication of claims: *Hryniak v. Mauldin*, 2014 SCC 7 at paras. 1–5.

[58] I am also mindful that notwithstanding my conclusion on this application, I am not required to remit this case to the trial list if I find it may be possible for the court to find the facts necessary to give judgment by employing any of the procedures allowed by R. 9-7(12): *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at paras. 56–57, 64, 1989 CanLII 229 (B.C.C.A.). Those procedures include ordering that a party file and serve an affidavit or by ordering cross-examinations on affidavits.

[59] In this case, I do not discount the possibility that summary trial may ultimately be suitable if further steps are taken to establish a more fulsome picture of the “surrounding circumstances” of the Assignment Agreement. Indeed, given the

amount in dispute and given the singular issue to be determined, that very well may be the desired outcome.

[60] Without intending to dictate the evidence that may allow the Court to determine the issues on a summary trial basis, it seems to me that more fulsome affidavit evidence from the realtors and, possibly, cross-examination, may assist the Court. However, with no or minimal submissions from the parties regarding the specific steps that may assist the Court in finding the facts necessary to determine the issue or an appropriate timeline for those steps, I decline to make any specific orders in that regard.

[61] However, if such steps are taken, either of the parties has leave to re-apply for summary trial under R. 9-7. In that case, I am not seized of any such application.

[62] Costs of this application are awarded to the defendants.

“Ahmad, J.”