IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Leschuk v. Greenridge Exploration Inc.,* 2026 BCSC 403

Date:20260312
Docket: S251310
Registry: Vancouver

Between:

Roger Grant Leschuk

Plaintiff

And

Greenridge Exploration Inc. and ALX Resources Corp.

Defendants

Before: The Honourable Justice Matthews

Reasons for Judgment

Counsel for the plaintiff:	N.A. Rayan J. Turner, Articled Student
Counsel for the defendants:	S. Chern
Place and Date of Trial/Hearing:	Vancouver, B.C. August 22 and November 10, 2025
Place and Date of Judgment:	Vancouver, B.C. March 12, 2026

Overview

[1] The plaintiff, Roger Leschuk, was employed by the defendant ALX Resources Corp. (and its predecessor company) from February 2013 until ALX was acquired by the defendant Greenridge Exploration Inc. on December 30, 2024. It is in dispute which of ALX or Greenridge employed Mr. Leschuk after the acquisition, but regardless of which, on January 14, 2025, his employer terminated him with 10 months of working notice.

[2] Neither ALX nor Greenridge paid Mr. Leschuk on his next scheduled pay date after he was given notice. Mr. Leschuk was told the day before that his pay would be delayed. He asserts that in the days that followed he repeatedly raised the issue and was not given any meaningful response about when he would be paid. He deposed that when almost two weeks passed without any pay, he took the position that he had been constructively dismissed. Mr. Leschuk seeks damages for breach of his employment contract. He asserts he was employed by Greenridge and seeks a declaration in that regard.

[3] ALX and Greenridge assert that Mr. Leschuk was employed by ALX after Greenridge acquired ALX. They assert that he was not constructively dismissed because the failure to pay him was not a clear, unequivocal intention to repudiate the employment contract and because he acquiesced to the missed pay which was explained to him to be due to problems with payroll after Greenridge acquired ALX.

[4] ALX and Greenridge also take the position that when Mr. Leschuk asserted that he had been constructively dismissed due to the lack of pay, an employee of Greenridge, Mike Parmar, on behalf of ALX, asked Mr. Leschuk to return to work. Mr. Leschuk refused. Greenridge and ALX take the position that in doing so, Mr. Leschuk unreasonably failed to mitigate his damages.

[5] Mr. Leschuk seeks to have his claim for wrongful dismissal resolved by summary trial. ALX and Greenridge oppose all the orders sought but did not expressly take the position that the matter is not suitable for summary trial prior ot the hearing, at which time they took the position that if the evidentiary conflicts were

resolved by accepting Mr. Leschuk's evidence, then the matter is not suitable for summary trial.

[6] The issue of the suitability for summary trial must be determined as a threshold issue. For the reasons that follow, I have concluded the matter is not suitable for summary trial.

[7] Because of my determination on suitability, I will not be addressing the other issues, including which defendant was Mr. Leschuk's employer. For that reason, I will refer to the defence positions as those of ALX and Greenridge and references to the evidence of what Mr. Leschuk's employer did by describing the actions as being of ALX and Greenridge, except where the evidence makes it clear that it was one or the other. This approach should not be taken as any comment on whether they were separate operating entitles and if so, which employed Mr. Leschuk after Greenridge acquired ALX.

Suitability for Summary Trial Determination

[8] There are two preconditions to proceeding by summary trial. The first is that the court must be able to find the facts to decide the issues of fact and law. The second is that it must be just to proceed by summary trial.

[9] In his submissions, Mr. Leschuk emphasized the second of the two preconditions for a summary trial arguing that if a summary trial procedure can produce a just and fair result, it should be pursued, citing *Hryniak v. Mauldin*, 2014 SCC 7. With regard to the first precondition, he submits that there are relatively minor evidentiary conflicts which do not render the matter unsuitable for summary trial determination.

[10] In their application response, ALX and Greenridge opposed the orders sought by Mr. Leschuk on the merits. They did not take the position that the matter was not suitable for summary trial disposition.

[11] During the hearing of the application, the Court advised both parties that it required substantive submissions on suitability given the obvious conflicts in the evidence. The Court directed their attention to the appellate authorities which require the trial court to be a gatekeeper on the issue regardless of the positions of the parties: *Main Acquisitions Consultants Inc. v. Yuen*, 2022 BCCA 249 at para. 8; *Newhouse v. Garland*, 2022 BCCA 276.

Legal Principles

[12] Rule 9-7(15)(a) of the *Supreme Court Civil Rules* permits a court to grant judgment on a summary trial hearing unless “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 “the court is of the opinion it would be unjust to decide the issues on the application”.

[13] The two preconditions are related but they are also independent of one another. The court must not proceed by summary trial if either precondition does not favour summary trial: *Placer Development Ltd. v. Skyline Explorations Ltd.*, 67 B.C.L.R. 366, 1985 CanLII 147 (C.A.) at 385–386. Because the court is the gatekeeper, it and cannot sidestep the issue even where the parties do not dispute proceeding by summary trial: *Main Acquisitions Consultants Inc.* at para. 89.

[14] With regard to whether the court can find the necessary facts, where there are conflicting affidavits that cannot otherwise be resolved, or where credibility is a central issue, proceeding summarily will not be appropriate. Conflicting facts may be resolved where objective evidence or rationale inferences weighs in favour of one version, or where a version is so improbable that the credibility of its source can be assessed on implausibility and the quality of the affidavit evidence alone: *Newhouse* at paras. 129–131.

[15] Where there is nothing to assist the assessment of conflicting evidence, a judge should not decide an issue of fact or law solely on the basis of conflicting affidavits; courts have generally erred on the side of caution in terms of declining to proceed summarily in the face of a credibility contest: *Greater Vancouver Water*

District v. Bilfinger Berger AG, 2015 BCSC 485. See also *Cory v. Cory*, 2016 BCCA 409 at para. 10, where the Court of Appeal held that “a summary trial judge should not simply choose between one affidavit and another”.

[16] Where there is a "head on" conflict in the evidence regarding an important issue, and the court either cannot resolve the issue or cannot resolve the issue without assessing the deponents' credibility, it will not be suitable for summary determination. A court cannot sidestep conflicts by relying on only a portion of the record, assuming certain facts, or by taking the plaintiff’s case at it’s highest: *Concord Pacific Acquisitions Inc. v. Oei*, 2017 BCSC 236 at para. 50.

[17] With regard to whether it is just to decide a matter by summary trial, in *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30–31, citing the seminal decision of *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.), the Court of Appeal held it depends on the following factors:

a) the amount involved;

b) the complexity of the matter;

c) its urgency;

d) any prejudice likely to arise by reason of delay;

e) the cost of taking the case forward to a conventional trial in relation to the amount involved;

f) the course of the proceedings;

g) the cost of the litigation and the time of the summary trial;

h) whether credibility is a critical factor in the determination of the dispute;

i) whether the summary trial may create an unnecessary complexity in the resolution of the dispute;

j) whether the application would result in litigating in slices; and

k) any other matters which may be relevant in the particular case.

Whether the Facts Can Be Found

[18] The following are the evidentiary disputes:

a) Mr. Leschuk described a history of workplace bullying and intimidation in his examination for discovery. Warren Stanyer, the CEO of ALX and then the president of Greenridge, testified that they were like a family at ALX, that he cared about Mr. Leschuk's welfare and wanted Mr. Leschuk to be comfortable.

b) Mr. Leschuk deposed that in the fall of 2024, when he was aware that Greenridge was acquiring ALX, he asked Mr. Stanyer if his employment agreement would be honoured. He deposed that Mr. Stanyer replied that if Mr. Leschuk saw to it that the vote went through in favour of acquisition, he would be amply rewarded. Mr. Leschuk deposed that when he reminded Mr. Stanyer about that after the acquisition went through, Mr. Stanyer said he never said that and asked Mr. Leschuk if he had a recording of the conversation. Mr. Stanyer deposed that he did not guarantee that Mr. Leschuk would be amply rewarded or make any promises about any specific outcome. He agrees he asked if Mr. Leschuk had a recording because he was curious and would liked to have heard the recording.

c) Mr. Leschuk deposed to what he considered was a rather crude attempt by Mr. Parmar of Greenridge to buy him out for a fraction of what his severance would have been just prior to the end of 2024, to which he did not respond. He deposed that he thought that Mr. Parmar lied about the financial status of ALX and Greenridge when he made this offer. Mr. Parmar disputed the nature of the conversation he and Mr. Leschuk had

and deposed that he did not lie about the financial status of ALX or Greenridge.

d) Mr. Leschuk deposed that after ALX was acquired by Greenridge, ALX appeared to cease to exist as a separate entity. He deposed that he continued to report to Mr. Stanyer, who was no longer the CEO of ALX but the President of Greenridge. Mr. Stanyer and ALX deposed that ALX continued to operate as an entity separate from Greenridge, with Mr. Leschuk and one other employee.

e) Mr. Leschuk deposed that on January 13, 2025, Mr. Stanyer told hm that ALX's CFO, who was no longer with ALX, had not been "forthcoming about payroll" but did not elaborate. He deposed that on January 14, 2025, Mr. Stanyer told him his pay might be slightly delayed. Mr. Leschuk deposed that he understood from the conversation that the problem had been fixed and he did not want to make an issue about a slight delay.

f) Mr. Stanyer deposed that on January 13, 2025, he asked Mr. Leschuk if he would be okay with ALX and Greenridge missing the January 15, 2025, pay and Mr. Leschuk responded that he was. Mr. Stanyer deposed that he understood that Mr. Leschuk was fine with waiting to the end of the month to be paid.

g) Mr. Leschuk deposed that he does not recall if Mr. Stanyer ever asked him if it was okay, but if he did, it was in the context of casual conversations about how he was doing in the context of the general upheaval. He deposed that he did not understand any such conversations to be Mr. Stanyer seeking his consent to suspend his pay, and if he had been asked that, he would not have consented.

h) Mr. Leschuk deposed that that on January 16 and 17, he raised his pay with Mr. Stanyer during phone calls and wanted to know when the issue

would be fixed. He deposed that Mr. Stanyer blamed the former ALX CFO and assured him it would be fixed shortly but did not provide specifics.

i) Mr. Leschuk deposed that over a period of two weeks, he followed up with Mr. Stanyer several times, as many as 10 and not less than three. He deposed that the tenor of the conversations was that he was not okay with it and was expecting Mr. Stanyer to address it. Mr. Stanyer deposed that Mr. Leschuk never brought it up or raised any issues with his pay. Mr. Stanyer deposed that they only spoke about the issue two or three times, and each time he, Mr. Stanyer, raised it. He deposed that Mr. Leschuk told him that he had not been paid but did not complain or demand to be paid.

j) Mr. Leschuk testified that when he had not been paid by January 27, 2025, he had enough as he had not been paid for over a month. He was aware that another employee who was supposed to be paid on January 15, 2025 was paid because she was paid with a “manual” cheque to her which Mr. Stanyer asked Mr. Leschuk to co-sign. Mr. Leschuk testified that given that he knew that ALX and Greenridge had managed to pay her despite the payroll problems, the fact that they were not paying him despite his complaints was a sign that ALX and Greenridge were deliberately not paying him to get him to quit.

k) After Mr. Leschuk stated that he considered himself constructively dismissed, ALX and Greenridge paid him the pay he was owed between December 25, 2024, when he had last been paid, and January 27, 2025, his last day of work. Mr. Parmar, the CEO of Greenridge, advised him that ALX still considered him its employee and offered him the opportunity to continue working for ALX. Mr. Parmar deposed that Greenridge paid Mr. Leschuk, and he communicated ALX’s position to Mr. Leschuk in an effort to step in and resolve the matter for Greenridge’s subsidiary.

[19] The evidence is frankly at odds in several respects with regard to the fact finding relevant to constructive dismissal and to mitigation of damages.

[20] With regard to constructive dismissal, there are two broad inquiries. The first is whether the employer unilaterally imposed a fundamental change to the terms of the employee's employment and thereby evinced an intention to no longer be bound by the contract: *Farber v. Royal Trust Co.,* [1997] 1 S.C.R. 846 at para. 33, 1997 CanLII 387. If those requirements are met, the second inquiry is whether the employee accepted the change in terms, or by their conduct elected to affirm the employment relationship: *Potter v. New Brunswick Legal Aid Services Commissions,* 2015 SCC 10 at paras. 30–31.

[21] With regard to the first inquiry, it can be met by showing unilateral conduct that amounts to breach of an express or implied term of a contract that is sufficiently serious to constitute constructive dismissal, or alternately by showing that an employer's pattern of conduct shows that the employer no longer intends to be bound by the contract: *Potter* at paras. 32–34, 43.

[22] ALX and Greenridge argue that Mr. Leschuk's non-payment or missed payment was not unilateral, but rather after discussion with him to which he said "okay". Mr. Leschuk disputes that, but also argues that does not matter because the written employment contract provides that Mr. Leschuk is to be paid on the 15th day and the last day of each month, and provides that the terms of the employment contract cannot be varied except in writing. Mr. Leschuk argues that unless the change was agreed to in writing, it is a breach of a term of the contract.

[23] That reduces the importance of the evidentiary disputes. However, that is not the end of the analysis pertinent to the first inquiry. Even if the payment default was a breach of a written term that cannot be amended except in writing, it still has to be serious enough to amount to a fundamental breach to be constructive dismissal.

[24] While one might expect that timely pay is a fundamental term of an employment contract and missed or non-payment is always serious, there is a body of law on whether late payment or non-payment of wages amounts to a constructive dismissal. That law looks to the second branch of the first inquiry: whether they

employer has evinced an intention to no longer be bound by the contract through its late payment or non-payment of wages.

[25] The leading case is *Poole v. Tomenson Saunders Whitehead Ltd.,* 43 D.L.R. (4th) 56*,* 1987 CanLII 2647 (B.C.C.A.), in which the Court held, at para. 24, that "non-payment of a relatively minor portion of the consideration to be paid for services which are to be performed over a prolonged time period would not by itself usually … qualify as a fundamental breach". The court went on to say at para. 38 that "there must be evidence of other circumstances, such as dismissal, etc., from which one can infer that such non-payment can properly be construed as an absolute refusal of the employer to perform the contract or otherwise evinces an intention of the employer not to be bound by the contract of employment".

[26] Cases on non-payment or late payment of wages were summarized in *Pavlis v. HSBC Bank Canada,* 2009 BCSC 498. At para. 53, Justice Dorgan concluded that failure to pay a portion of an employee's salary may amount to a fundamental breach where the unpaid amount makes up a significant or substantial part of the employee's total remuneration or the number of non-payments is significant. In addition, the context in which the late payment or non-payment occurred, such as whether the employee could legitimately conclude that the employer did not have the financial wherewithal to make the payment, is relevant. This is in accordance with the statement in *Poole* that evidence of other circumstances relating to the late payment or non-payment may inform the characterization of the default as the employer refusing to perform or evincing an intention to be bound by the contract or non-payment that was a refusal by the employer to perform the contract.

[27] The resolution of the evidentiary conflicts in this case are important as they may be determinative of constructive dismissal. On the one hand, Mr. Leschuk asserts he never agreed to miss a payday, that he asked about it frequently, that the tenor was that he was dissatisfied and expected it to be addressed right away, but he was never told when the matter would be redressed. He deposed the non-communication on the issue was disconcerting and caused him to believe that maybe his employer was trying to force him to quit. On the other hand, Mr. Stanyer

asserts that he asked Mr. Leschuk about the pay issues, that Mr. Leschuk said he was okay with missing the January 15 payment, that Mr. Leschuk never raised it again until he asserted constructive dismissal, but that Mr. Stanyer asked Mr. Leschuk about it a couple of times and Mr. Leschuk did not express any problems with the continued non-payment.

[28] Mr. Stanyer and other ALX and Greenridge affiants deposed that had Mr. Leschuk insisted on payment, they would have made sure he was paid, despite the payroll problems. This is evidence from which a court could infer that the payroll problems were not actually preventing ALX and Greenridge from paying Mr. Leschuk, but they preferred to use the payroll system to do so and so did not pay him when he was due to be paid. Whether ALX and Greenridge's choice to not pay Mr. Leschuk pending resolution of the payroll problem amounts to ALX and Greenridge refusing to perform the contract depends on whose evidence is accepted on the communications between Mr. Leschuk and Mr. Stanyer on the topic.

[29] ALX and Greenridge submit that the evidentiary issue can be resolved because Mr. Leschuk deposed that he could not remember a conversation in which Mr. Stanyer asked him if he was okay, and that evidence allows me to accept the evidence of Mr. Stanyer. However, Mr. Leschuk deposed that he did not remember a conversation about being asked if he was "okay" but deposed that the conversations they had where he might have said that he was okay were casual conversations about how things were going with the transition from ALX to Greenridge. He deposed they were not conversations in which he was asked if he consented to a suspension of his pay. Accordingly, Mr. Leschuk's evidence that he cannot remember an "okay" conversation does not resolve the conflict.

[30] The conflicting affidavit evidence is a head on conflict for which there is no objective evidence to assist. There are no obvious inferences or plausibility rationales that heavily weigh in favour of one version or the other. I conclude that the conflicting evidence precludes a finding on the first inquiry of constructive dismissal.

[31] The second inquiry is whether Mr. Leschuk acquiesced. The same problems preclude fact finding to resolve that issue.

[32] With regard to the defense of failure to mitigate raised by ALX and Greenridge, in *Farquhar v. Butler Brothers Supplies Ltd.,* 23 B.C.L.R. (2d) 89 at paras. 15, 19–20, 1988 CanLII 185 (C.A.), the Court of Appeal held that an employee will usually be under a duty to accept re-employment with the terminating employer so long as the employment relationship continues to be characterized by mutual understanding and respect. The duty does not obligate an employee to mitigate their damages by working in an atmosphere of hostility, embarrassment, or humiliation.

[33] There is conflicting evidence that is relevant to the whether the duty applies. Mr. Leschuk alleges that Mr. Stanyer made a promise about an ample reward for him after the acquisition which Mr. Stanyer later disavowed and then asked if Mr. Leschuk had recorded the conversation. Mr. Stanyer denies the conversation and deposed that he asked about a recording because he was curious. Mr. Leschuk also alleges Mr. Parmar tried to buy him out on ridiculous terms while being dishonest about the financial status of ALX and Greenridge. Mr. Leschuk deposed to workplace bullying and intimidation. Mr. Stanyer deposed that he regarded Mr. Leschuk as family and wanted him to be comfortable.

[34] Finally, the allegations about Mr. Stanyer not communicating in a meaningful way with Mr. Leschuk about his pay or responding in a substantive way to his questions about when he was going to be paid, especially when coupled with the undisputed evidence that Mr. Leschuk had been given working notice, could amount to a finding of an unacceptable work atmosphere for the purpose of requiring Mr. Leschuk to mitigate his damages by returning to work with ALX and Greenridge. Conversely, if I reject Mr. Leschuk's evidence and/or accept Mr. Stanyer's evidence that he inquired of him about the missed pay period and whether he was okay, the obligation to mitigate by continuing employment could arise.

[35] There is no objective evidence, rational inferences, or plausibility rationales to assist with resolving these conflicts in the evidence to make the requisite findings of fact for mitigation.

[36] I do not accept Mr. Leschuk's submission that the evidentiary conflicts are not minor; they are relevant to the key issues of a unilateral fundamental change in the contract, acquiescence, and mitigation. I do not accept ALX and Greenridge's submissions that the evidentiary conflicts can be resolved in their favour.

[37] The facts cannot be found on summary trial.

Whether It Would Be Just to Proceed Summarily

[38] This case has many features that weigh in favour of proceeding by summary trial in furtherance of a just outcome: the amount involved is modest compared to the expense of litigation; it is not a complicated case; while it is not urgent, it is about Mr. Leschuk's means of supporting himself; and a summary trial will not create complexity or result in litigating in slices. The only factor that weighs against proceeding summarily is that the conflicting evidence makes credibility a critical factor in deciding some of the issues.

Conclusion on Suitability for Summary Trial

[39] Both parties submit in essence, that the first precondition should be deemed to be met, because the amount at stake does not bear the cost of a traditional trial. In essence, they submit it would be unjust not to proceed by summary trial.

[40] The language of Rule 9-17(15) and the jurisprudence require both preconditions to be met. While many of the factors in the second branch of the test favour summary trial disposition, it is not permissible to sidestep the first branch of the test, and it is not met in this case.

[41] I question the assumption or presumption that in cases such as this, a summary trial is more efficient and less time consuming than a traditional trial. The parties set it for one day which was not sufficient for their submissions on the merits of the summary trial, let alone meaningful submissions on suitability for summary trial, on which the Court insisted. When the inadequacy of the time set became clear during the first day, I gave the parties the options of starting again before another presider with a proper time estimate or continuing before me, while cautioning that it

may be some time before they got back before me. They opted for the latter and obtained a second full day which could not be arranged for two and one half months. The case could have been tried traditionally in two or three days. If it had been set for a traditional trial with a proper duration from the outset, it would not have been necessary to litigate the matter of summary trial determination, and there would have been no wasted time between appearances.

[42] It goes without saying that parties should not assume that a matter will be determined to be suitable for summary trial disposition and that must be factored into their decision-making on the most efficient way to resolve a case. At the end of the day, the merits of this matter have not been advanced through this process.

Costs

[43] This was Mr. Leschuk's application, and it has not been successful, so normally costs would be in favour of the defendants.

[44] However, I am of the view that a share of the blame that this case failed on the suitability issue falls at the feet of ALX and Greenridge. They neither consented to nor opposed summary trial disposition in their application response or their written submissions. A party who opposes disposition by summary trial has the burden to persuade the court that the matter is not suitable for summary trial disposition. Given their application response, Mr. Leschuk would have reasonably concluded that Greenridge and ALX did not oppose summary trial disposition.

[45] When I first asked their counsel for their position, the submission was that the matter was suitable for summary trial disposition despite the conflicts in the evidence, which he submitted should be resolved in his client's favour. When I pressed him on that, and specifically what view his clients would take if I resolved the evidence in Mr. Leschuk's favour, they took the position that in that case, the matter was not suitable for summary trial disposition.

[46] Given the burden on a party disputing the suitability for summary trial disposition, part of the problem in this case was that ALX and Greenridge did not

commit to a position on suitability in their application response and waffled on it during the hearing. Had ALX and Greenridge fully considered suitability at the outset, presumably they would have taken the position that they eventually took before me. In those circumstances, Mr. Leschuk would have known that if he proceeded to seek summary trial disposition, he would be met with opposition.

[47] I conclude that all parties bear responsibility for the application going forward despite that it was not suitable for summary trial disposition and did not result in a resolution on the merits. For that reason, they should bear their own costs.

Disposition

[48] The application for summary trial determination is dismissed.

[49] The parties will bear their own costs of the application.

"Matthews J."