

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *4 Noses Brewing Company, LLC v. Specific Engineering Solutions Ltd.*,
2026 BCSC 749

Date: 20260427
Docket: S259371
Registry: Vancouver

Between:

4 Noses Brewing Company, LLC

Plaintiff

And

Specific Engineering Solutions Ltd.

Defendant

Before: The Honourable Justice Laurie

Reasons for Judgment

Counsel for the Plaintiff:

C. Dolfo-Smith

Counsel for Defendant:

S. Yan

Place and Date of Trial/Hearing:

Vancouver, B.C.
March 30, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 27, 2026

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INTRODUCTION

[1] This is an application by the defendant, Specific Engineering Solutions Ltd. (“Specific Engineering”), pursuant to R. 3-8(11) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*], to set aside an order for default judgment obtained by the plaintiff, 4 Noses Brewing Company, LLC (“4 Noses”), on February 9, 2026, and entered on March 10, 2026. The defendant also seeks leave to file a response to civil claim, a draft of which is attached to the notice of application.

BACKGROUND

[2] The claim involves damages sought in connection with an alleged breach of contract related to the plaintiff’s purchase of lagering tanks from the defendant in 2021.

[3] The notice of civil claim was filed on December 10, 2025 (“NOCC”). It alleges that:

- a) In March 2021, the plaintiff and the defendant entered into a purchase agreement in connection with the lagering tanks (“Agreement”).
- b) Among other things, the Agreement provided for a limited warranty for the longer of one year from the date of installation and one year and six months from the date of manufacture.
- c) The limited warranty provided that the equipment was free from defects in material or workmanship under normal use and service.
- d) The limited warranty also provided that in the event of product failure, the defendant’s obligation was limited to repairing or replacing their product.
- e) Subsequently, the plaintiff discovered that the lagering tanks were defective. Despite the plaintiff’s attempt at repairs, in accordance with the advice from the defendant, the defects rendered the lagering tanks unusable.

- f) In July 2022, the plaintiff advised the defendant that the lagering tanks were defective and provided the defendant evidence of the defects.
- g) Over the course of 2023 and 2024, the defendant attempted to resolve the issues with the lagering tanks without repairing and replacing them. The issues remained unresolved.
- h) In November 2024, the parties entered into an agreement (“2024 Agreement”) wherein the defendant agreed to build new lagering tanks for the plaintiff and to cover certain associated costs.
- i) The defendant’s general manager, John Leask, entered into the 2024 Agreement on behalf of the defendant.
- j) Subsequently, the defendant informed the plaintiff that the new lagering tanks would be delivered on or around May 2025.
- k) In May 2025, the defendant’s representatives advised the plaintiff that there was a change in Specific Engineering’s management and that they were unsure as to the delivery date for the new lagering tanks.
- l) In June 2025, the defendant indicated an intention to repudiate the 2024 Agreement when the defendant’s sole director, Kosi Stobbs, informed the plaintiff that while the new tanks had been built, the defendant would not be paying for shipping or rigging costs, contrary to the 2024 Agreement.
- m) At all times the plaintiff relied on the limited warranty in the Agreement and the terms of the 2024 Agreement.
- n) The plaintiff incurred and will continue to incur losses from the defendant’s breach of both Agreements.

[4] After an unsuccessful attempt to personally serve Mr. Stobbs at his former address, the plaintiff sent the NOCC by registered mail to the defendant’s registered and records office at the law offices of Harper Grey in Vancouver on January 7,

2026. However, it appears that counsel at Harper Grey did not send the NOCC to the defendant until February 2, 2026.

[5] In his affidavit dated March 17, 2026, Mr. Stobbs deposed that he did not receive the NOCC until February 2, 2026, when he received it via email from counsel at Harper Grey. He was not aware of the NOCC until then. On March 9, 2026, Mr. Stobbs retained present counsel of record.

[6] Mr. Stobbs also deposed that when he received a copy of the default judgment on March 11, 2026. He promptly instructed counsel to apply to set aside the default judgment. He notified the plaintiff on March 12, 2026, of his intention to bring the within application.

[7] In addition, Mr. Stobbs deposed that he intends to defend the claim; the allegations in the NOCC are without merit; and that the defendant has relevant evidence in support of its response to civil claim ("RTCC").

The Draft RTCC

[8] The defendant attached a copy of its proposed RTCC to the notice of application. The RTCC alleges that:

- a) In its general practice, when the defendant and a customer enter into an agreement for the purchase of equipment manufactured by the Specific Engineering, a standard sales order is issued, which forms the contract between the parties.
- b) In January 2021, the defendant issued a standard sales order to the plaintiff that included the purchase of two lagering tanks ("Sales Order").
- c) Shipping and installation costs were not included in the Sales Order.
- d) The Sales Order included a limited warranty that the equipment was free from defects in material or workmanship under normal use and service, and that in

the event of failure, the defendant would either replace or repair the equipment.

- e) The limited warranty in the Sales Order excluded the defendant from liability for certain things and for equipment that had been subjected to certain circumstances. The Sales Order also provided that the limited warranty was only valid for a period of one year from the date of installation, but not longer than one year and six months from the date of manufacture, whichever period was longer.
- f) The date of manufacture of the lagering tanks purchased by the plaintiff was August 2021. Based on that date, the limited warranty expired as of February 2023.
- g) Up until February 2023, the defendant attended to repair the defects raised by the plaintiff that fell within the scope of the limited warranty. However, many of the defects complained of were either excluded from the warranty or fell outside the warranty period.
- h) In respect of the 2024 Agreement, the limited warranty neither assumes nor authorizes any other person to assume on behalf of the defendant any other obligation or liability in connection with the sale or use of the products or equipment contained in the Sales Order.
- i) Mr. Leask did not have the authority to enter into a subsequent contract on behalf of the defendant that contradicted the standard terms of the Sales Order and the limited warranty therein.
- j) In the alternative, the correspondence between Mr. Leask and the plaintiff was merely an agreement to agree and is not binding on the defendant.

LEGAL FRAMEWORK

[9] The parties agree on the applicable test for setting aside a default judgment. Recently, in *Dhunna v. Brown*, 2026 BCSC 517 [*Dhunna*], Justice Stephens summarized the governing principles:

[21] The test for setting aside the Default Judgment is found in *Miracle Feeds v. D & H Enterprises Ltd.*, 10 B.C.L.R. 58 at 61, [1979] B.C.J. No. 1965 (Co. Ct.) [*Miracle Feeds*]:

... in order for a defendant to succeed on an application to set aside a default judgment, he must show:

1. That he did not wilfully or deliberately fail to enter an appearance or file a defence to the plaintiff's claim;
2. That he made his application to set aside the default judgment as soon as reasonably possible after obtaining knowledge of the default judgment, or give an explanation for any delay in the application being brought;
3. That he has a meritorious defence or at least a defence worthy of investigation; and:
4. That the foregoing requirements will be established to the satisfaction of the court through affidavit material filed by or on behalf of the defendant.

See also Yao at para. 49.

[22] These factors are not applied as a checklist but are considered holistically, as described by Mr. Justice Voith (as he then was) in *Director of Civil Forfeiture v. Doe*, 2010 BCSC 940 at para. 15:

[15] ... [I]t does not follow as a matter of necessity that the failure of the defendants to expressly address each of the various requirements set out in *Miracle Feeds* precludes them from being successful on an application under Rule 17(12) [the Rule in the previous *Supreme Court Rules* that permitted a party to apply to set aside default judgment]. These requirements are not immutable. The failure or inability of a defendant to address a particular factor in *Miracle Feeds* is not necessarily fatal. Conversely, there may well be additional factors identified by a defendant which are relevant to its application and to the court's discretion.

See also *Chung v. Solimano Law Corporation*, 2021 BCSC 1225 at para. 34.

[23] Justice Chan stated in *Arbutus Capital Leasing Ltd. v. 1265644 B.C. Ltd.*, 2024 BCSC 1846 that the test is not to be applied rigidly and seeks to do justice between the parties:

[8] ... the *Miracle Feeds* test is not to be applied rigidly and the failure of a defendant to address each of the factors does not preclude them from being successful. Further, in applying the *Miracle Feeds* requirements, courts may consider a balancing of interests and

prejudice as between the parties. Ultimately, any relief “must be consistent with the overarching aim of the court to do justice between the parties”: *Al Boom Wooden Pallets Factory v. Jazz Forest Products (2004) Ltd.*, 2012 BCSC 487 at paras. 52.

[24] Yao confirmed that the focus of the *Miracle Feeds* test is the overall interests of justice:

[50] While *Miracle Feeds* describes these as cumulative requirements, later jurisprudence establishes them as a non-exhaustive list of considerations or factors serving as indicators of whether it is in the interests of justice to set aside the default judgment: *Andrews* at para. 29.

Admissibility of Mr. Stobb’s Second Affidavit

[10] Before applying the *Miracle Feeds* test, I will address a preliminary issue regarding the admissibility of Mr. Stobb’s second affidavit dated March 26, 2026 (“Stobbs Second Affidavit”).

[11] The plaintiff argues that much of the content in the Stobbs Second Affidavit is inadmissible because it is not a proper responding affidavit under R. 8-1(13) and because the plaintiff did not have an opportunity to respond to it.

[12] The plaintiff seeks an opportunity to respond to the Stobbs Second Affidavit, if it is found to be admissible.

[13] To a lesser extent, the plaintiff also objects to the admission of the Stobbs Second Affidavit on the basis that the events described therein occurred when Mr. Stobbs was not a director of Specific Engineering. The plaintiff asserts that Mr. Stobbs did not have personal knowledge of these events.

[14] Among other things, the impugned portions of the Stobbs Second Affidavit describe and attach the supporting documents relied upon by the defendant, including the Sales Order and invoice for the lagering tanks, photographs of the nameplates of the lagering tanks showing the manufacture date, and the bill of lading in respect of the delivery of the lagering tanks. In addition, the Stobbs Second Affidavit asserts that Mr. Leask did not have the authority to enter into the 2024 Agreement with the plaintiff.

[15] The defendant concedes that the Stobbs Second Affidavit was filed late but submits that it would be appropriate for the Court to admit it pursuant to R. 8-1(14) because it is probative and directly relevant to the issues before the Court. Further, the contents of the Stobbs Second Affidavit are not new evidence, and its admission would not prejudice the plaintiff.

[16] Post-hearing, I gave the plaintiff the opportunity to respond to the Stobbs Second Affidavit, as requested.

[17] On April 7, 2026, the plaintiff filed a responding affidavit, dated April 6, 2026, from Tommy Bibliowicz who is an owner and director of 4 Noses (“Bibliowicz Affidavit”). In the Bibliowicz Affidavit, Mr. Bibliowicz disagreed with much of the evidence contained in the Stobbs Second Affidavit. Among other things, Mr. Bibliowicz deposed that:

- a) The Sales Order attached to the Stobbs Second Affidavit was merely a “quote” and not a binding sales order: at paras. 5–8.
- b) The terms of the limited warranty were never agreed to or brought to his attention by any representative of the defendant: at para. 9.
- c) Immediately upon receipt of the lagering tanks, the plaintiff noticed that they were defective and unusable. The defendant acknowledged these defects and coordinated with 4 Noses to make the necessary repairs: at paras. 10–13.
- d) On various occasions, the defendant’s representatives acknowledged liability and fault for the defective lagering tanks: at paras. 12, 15–16, 23, 25.
- e) All the complaints were made within one year after delivery of the tanks or 18 months after their manufacture: at para. 17.
- f) On November 22, 2024, John Leask, on behalf of the defendant, proposed to build new tanks and to cover the associated building, shipping, and rigging costs. 4 Noses accepted the proposal on November 25, 2024: at para. 27.

- g) At no time after the 2024 Agreement did any representative of the defendant allege that the 2024 Agreement was not valid or that Mr. Leask did not have the authority to bind the defendant. The defendant proceeded to fulfil the 2024 Agreement until May 2025: at para. 28.
- h) Mr. Stobbs was not a director of the defendant during the period of October 31, 2024, to May 30, 2025; therefore, he has no personal knowledge regarding the 2024 Agreement: at paras. 29, 30, 32.
- i) In June 2025, in response to a demand letter sent by the plaintiff's counsel, Mr. Stobbs stated that he intended to repudiate the 2024 Agreement. The plaintiff's counsel accepted the repudiation of the Agreement on behalf of 4 Noses as of December 9, 2025: at paras. 34–35.

[18] Rule 8-1(14) permits the admission of affidavits filed outside the time limits set out in the *Rules*, subject to consent of the parties or court order. The court's discretion to admit late-filed affidavits under this rule involves a balancing of the interests of truth-seeking, fairness, and prejudice. The overarching objective is the attainment of a just result: *Victoria and District Cricket Association v. West Coast Cricket Organization*, 2024 BCSC 65 at paras. 24–25, citing *Mann-Campbell v. JUUL Labs Canada Ltd.*, 2023 BCSC 2153 at para. 15.

[19] In applying these principles to the present circumstances, I conclude that it would be appropriate to admit the Stobbs Second Affidavit. I agree with the defendant that the contents of the Stobbs Second Affidavit are probative and directly relevant to the issues before the Court. Specifically, they are relevant to the assessment of whether the defendant has a meritorious defence or at least one that is worthy of investigation. In this sense, it advances the truth-seeking interests of the administration of justice.

[20] Further, the prejudice caused to the plaintiff by the late-filed affidavit, if any, is low. Based on the NOCC, the contents of the Stobbs Second Affidavit should not be

a surprise to the plaintiff. In addition, the plaintiff has had an opportunity to adduce additional evidence in response to the Stobbs Second Affidavit.

[21] In my view, permitting the defendant to adduce the Stobbs Second Affidavit would advance the ultimate objective of attaining a just result.

[22] I find the Stobbs Second Affidavit to be admissible.

APPLICATION OF MIRACLE FEEDS TEST

[23] I will now apply the *Miracle Feeds* test to the present application.

I. Did the defendant wilfully or deliberately fail to file a response to the claim?

[24] The first factor requires the Court to determine whether the defendant's failure to file a RTCC was wilful, deliberate, or otherwise blameworthy: *Chung v. Solimano Law Corporation*, 2021 BCSC 1225 at para. 18 [*Chung*]; *Dhunna* at para. 25.

[25] Wilful or deliberate conduct is not the equivalent of conduct that is unreasonable or negligent. There must be an intention not to defend or a blameworthy refusal to accept service: *Asia Growth v. Qiao*, 2023 BCSC 2173 at para. 52; *Dhunna* at para. 26.

[26] The plaintiff contends that the defendant's failure to file a response was wilful and deliberate. It submits that that the defendant has not provided a plausible explanation for not becoming aware of the NOCC in January 2026. It asserts that in addition to service of the NOCC at the defendant's registered and records office, the plaintiff also caused the NOCC to be emailed to Mr. Stobbs on January 2, 2026. Further, the plaintiff submits that the defendant has provided no evidence that the NOCC was not sent to them by Harper Grey at the time of service.

[27] In my view, the evidence falls short of establishing that the defendant's failure to file a RTCC was wilful or deliberate. Although the precise cause of the nearly one-month delay between service of the NOCC and its receipt by the defendant, is unclear on the record, I do not find that this is sufficient to support an inference of

wilful or deliberate conduct. Further, there is evidence to the contrary, as Mr. Stobbs deposed in his first affidavit, filed March 17, 2026, that he intended to defend the claim on behalf of the defendant.

[28] With respect to the email that counsel for the plaintiff sent to Mr. Stobbs, the latter deposed that he did not see the email upon searching his inbox. He added that since he had never received an email from the plaintiff's counsel before, it was possible that the email was sent to his junk folder and automatically deleted before he saw it.

[29] In the circumstances, I am not satisfied that the evidence supports a finding of blameworthy conduct or wilful and deliberate conduct evincing an intention not to defend on the part of the defendant.

II. Did the defendant make the application to set aside the default judgment as soon as reasonably possible?

[30] With respect to whether the defendant brought an application to set aside the default judgment as soon as reasonably possible, the plaintiff concedes, and I agree, that this part of the test has been met on the record.

III. Is there a defence worthy of investigation?

[31] A defence is worthy of investigation if there is a "degree of plausibility". This requires more than merely making an allegation. The evidence in support of the application to set aside the default judgment must be sufficiently detailed to enable the court to correctly inquire as to whether there is indeed such a defence. The burden is on the defendant, but it is a low burden to meet: *Dhunna* at para. 58, citing *Chung* at para. 28.

[32] The defendant submits that it has a meritorious defence, or at least one worthy of investigation, based on the terms of the limited warranty in the Sales Order, as outlined in the RTCC. Further, it disputes the existence or validity of the 2024 Agreement. Finally, in oral submissions, counsel for the defendant contended that the plaintiff's claim, which was filed in December 2025, was barred by the two-

year limitation period pursuant to the *Limitation Act*, S.B.C. 2012, c.13. As pleaded in the NOCC, the plaintiff was aware that the lager tanks were defective as early as July 2022.

[33] The plaintiff's primary argument is under this part of the *Miracle Feeds* test. It argues that the Stobbs Second Affidavit is inadmissible; therefore, the defendant has failed to adduce evidence of a meritorious defence. Further, it submits that the proposed defence is without merit and is not worthy of investigation. It also submits that the limited warranty should more properly be considered on the assessment of damages.

[34] In apparent response to the defendant's assertion that the claim is statute-barred, the plaintiff's counsel submits that the claim only relies on the 2024 Agreement. Further, he submits that the proposed RTCC does not mention this alleged defence.

[35] In my view, the defendant has demonstrated a defence that is at least worthy of investigation based on the alleged terms of the limited warranty, the alleged invalidity of the 2024 Agreement, and the alleged application of the two-year limitation period.

[36] While the Bibliowicz Affidavit largely disputes the evidence in the Stobb's Second Affidavit, it is not the Court's function at this point to resolve these issues or make factual findings. The Court need only be satisfied that the applicant has raised a defence at least worthy of investigation. As the jurisprudence holds, the applicant's burden to demonstrate this is low.

[37] Although the Bibliowicz Affidavit denies knowledge of, or agreement to, the terms of the alleged limited warranty, this assertion appears to be inconsistent with the NOCC which acknowledges that the parties had an "Agreement" that included a limited warranty. The description of the limited warranty in the NOCC is generally consistent with the limited warranty contained in the Sales Order. For the purpose of

this application, I find that the defendant has laid a sufficient evidentiary foundation with respect to its reliance on the limited warranty.

[38] Further, I don't agree with the plaintiff's submission that the limited warranty is more properly considered in the assessment of damages. The terms of the limited warranty in the Sales Order refer specifically to exclusions from liability.

[39] With respect to the 2024 Agreement, the position advanced by the defendant is, in large part, a legal one. For example, the defendant relies on the terms of the limited warranty. In the alternative, the defendant characterizes the 2024 Agreement as merely an agreement to agree. In this context, any lack of personal knowledge by Mr. Stobbs regarding the events surrounding the 2024 Agreement does not materially affect my assessment of the relevant issues.

[40] Further, even without the Stobb's Second Affidavit, I find that the defendant's assertion that the claim is statute-barred, is also a defence that is at least worthy of investigation. Although in response, the plaintiff's counsel contended that the claim relies only on the 2024 Agreement, this submission is inconsistent with the NOCC which alleges that the defendant breached *both* the Agreement and the 2024 Agreement: see NOCC at para. 31.

[41] Considering the factors in *Miracle Feeds* holistically and recognizing that the overarching aim is the interests of justice, I conclude that it would be appropriate in the circumstances to exercise the Court's discretion to set aside the default judgment.

CONCLUSION

[42] The application to set aside the default judgment entered on March 10, 2026, is granted.

[43] The defendant may file its RTCC as attached to the notice of application. The draft RTCC may be amended to add the limitation defence, if the defendant chooses to pursue such defence.

COSTS

[44] Costs of the application shall be in the cause.

“Laurie J.”