IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tafti v. Davis,*
2025 BCSC 1102

Date: 20250526
Docket: S175641
Registry: Vancouver

Between:

Mehdi Alaei Tafti

Plaintiff

And:

Alan Davis, John Davies, and The Owners, Strata Plan LMS 1866

Defendants

Before: The Honourable Justice G.C. Weatherill

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing in person:	M.A. Tafti
Counsel for the Defendants:	M. Li
Place and Date of Hearing:	Vancouver, B.C. May 26, 2025
Place and Date of Judgment:	Vancouver, B.C. May 26, 2025

[1] **THE COURT:** This action was commenced by the plaintiff, Mr. Tafti, a self-represented litigant, on August 8, 2017, almost eight years ago.

[2] During the course of the litigation, the defendants were subjected to what Madam Justice Newbury described in one of several interlocutory appeals taken by the plaintiff as “an avalanche of chambers applications directed at expanding [the plaintiff’s] causes of action to include every complaint that he has about the

building in which he lives and its management by the defendant strata corporation: *Tafti v. Davis*, 2020 BCCA 363, at para. 16.

[3] After a trial of the action before Mr. Justice Crossin that lasted 42 days, Crossin J. issued his 74-page reasons for judgment on February 2, 2024, dismissing the plaintiff's claims in their entirety: *Tafti v. Davis*, 2024 BCSC 176 (the "Trial Reasons"). In concluding his reasons, Crossin J. wrote:

> [375] It has been previously referenced, or at least alluded to throughout these reasons, that the plaintiff struggled placing evidence before the court that supported his overall views that the defendants have been guilty of the alleged conduct supporting his claims.
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> [376] In addition the plaintiff revealed himself to be an unreliable historian of the events in issue. I also conclude in many respects the plaintiff was not credible. He views any slight, no matter how objectively trivial, as evidencing an unjustified intrusion into the operation of his free will; that in turn is perceived by him as a series of grave injustices perpetrated by the persons that interact with him in the building.

[4] The plaintiff now seeks to reopen the trial on the basis of what he says is fresh and new evidence, in the hopes of getting a different result. He says this evidence will demonstrate that the evidence provided at trial was false or misleading.

[5] To succeed on an application to reopen on new evidence, an applicant must show:

1) that a miscarriage of justice would probably occur if the trial were not reopened; and

2) that the new evidence would probably change the result.

[6] A "miscarriage of justice" is something beyond the possibility of a different result; it goes to an unfair benefit or advantage that a reasonable person would regard it as shocking and unconscionable. The later an application is brought, the greater scrutiny is applied, particularly if judgment has already been granted. A judge's discretion to reopen a trial should be exercised with restraint, and a party may not use the rule to reargue, recast, or restate his case: *Grewal v. Grewal*, 2016 BCCA 237 at para. 70.

[7] The later the application arises, the more stringently the test for reopening must be applied: *1104318 B.C. Ltd. v. Dr. Paul Wittenberg, Inc.*, 2025 BCCA 68 at

para. 39. When the application to reopen is made after judgment has been granted, even greater scrutiny must be applied: *Cox v. Swartz Estate*, 2022 BCSC 1494 at para. 52.

[8] In *Moradkhan v. Mofidi*, 2013 BCCA 132 at para. 31, the Court of Appeal set out the following principles applicable to an application to reopen on the basis of fresh evidence:

> [31] […]
>
> - it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment;
> - a judge's unfettered discretion to reopen a trial should be exercised with restraint;
> - a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice;
> - it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence;
> - the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and
> - the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial.

[9] The court in *Dadwal v. Parmar*, 2024 BCSC 860, provided the following helpful summary of what amounts to a miscarriage of justice in this regard at para. 63 of the decision:

> [63] A "miscarriage of justice" is "something far beyond the possibility that a different result might have been reached", and is "a result that would leave one party with such an unfair benefit or advantage at the expense of the other that a reasonable person would regard it as shocking and unconscionable": *Aquiline Resources Inc. v. Wilson*, 2005 BCSC 1461, at para. 12. Further, in considering the likelihood of a miscarriage of justice, it is important to consider whether the evidence could have been presented at the hearing if the party had been duly diligent: *AME Distribution Inc. v. Wang*, 2019 BCSC 95, at para. 12. Further, miscarriages of justice do not result from a party's mere perceived unfairness after failing to adduce evidence: *Cox* at para. 55.

[10] There is a difference between "fresh" and "new" evidence in this type of application. In *Mann v. Jagpal*, 2020 BCSC 1919, Justice Giaschi concisely articulated this difference, and the corresponding different test for admission, as follows:

> [24] Fresh evidence, is evidence that existed at the time of the trial or hearing. Fresh evidence is only admissible if it is established: (1) the evidence was not discoverable by reasonable diligence at the time of the original trial or hearing; (2) the evidence is relevant; (3) the fresh evidence is credible; and (4) if believed, the evidence could have affected the final result or, in family cases, it is in the interest of justice to admit it: *Jens v. Jens*, 2008 BCCA 392, paras. 28 and 30; *Kane v. Proffitt*, 2018 BCCA 106, para. 49.
>
> [25] New evidence is evidence that only came into existence after the trial or hearing. The test for the admission of new evidence is more stringent. New evidence is only admissible if it disproves an assumption that was made by the trial or hearing judge as to a future event: *Jens*, para. 29; *Kane*, para. 50.

[11] Fresh evidence that existed at the time of the trial but came to the applicant's attention afterwards generally ought not to have been reasonably discovered beforehand: *Cox* at para. 59.

[12] In summary, while a trial judge has a wide discretion to reopen the trial to hear new evidence, this discretion should be exercised sparingly and with the greatest care so as to prevent fraud and abuse of the court's process.

[13] It is obvious that the plaintiff, Mr. Tafti, is a frustrated individual who strongly believes that his rights have been infringed and his life adversely impacted by what he views as the strata council's misfeasance and malfeasance. He proclaimed before me today that he always suspected that there was evidence being withheld by the strata council but that he was thwarted by the strata council from obtaining it. He maintains that the structural and other issues he has complained of for years are still not being addressed by the strata council.

[14] After a release of the Trial Reasons, which included the following observation at para. 360:

> [360] The plaintiff’s theory in my view rests on speculation, suspicion and conjecture. In any event, it was a theory and allegation struck from his pleadings. I will say no more.

the plaintiff set about to do further investigation.

[15] As Newbury J. noted at para. 16 of the decision referred to above (*Tafti v. Davis*, 2020 BCCA 363), the plaintiff:

> [16] […] has ignored orders striking out various aspects of proposed pleadings and he has then reintroduced them in another way before another judge hoping to get a different result. […]

[16] In my view, that sentiment applies equally to the application now before me. Indeed, the plaintiff advised me during his reply submissions that “the determination made should be revisited”.

[17] As best I have been able to discern from the plaintiff's rambling and often incomprehensible submissions, he claims that the facts did not register on the trial judge, and the trial judge “got the law and the facts wrong” and misapprehended his legal position. He also submits that the witnesses at trial either misapprehended or misrepresented the facts and that he has since uncovered fresh and new evidence demonstrating as much.

[18] The data and methods of analysis before the court at trial, he says, were “not credible”. He says that his reasonable expectations at trial were violated. He says that the new and fresh evidence relates to, again as best I have been able to discern:

a) mould being present in the HVAC system that supplies his unit in the building, caused, he says, by the manner in which water is circulated in the system as well as mismanagement of the cooling towers and chillers;

b) insufficient cooling provided by the HVAC system;

c) omissions and misrepresentations and half truths made by the defendants in their evidence at trial; and

d) a phenomenon called condensation-induced water hammer he first learned about during a walk through of the build's mechanical room on February 14, 2025, itself instigated by a "regression analysis" he performed during the months of November and December 2024 using water data he obtained apparently from the City of Vancouver.

[19] The plaintiff also complains of ongoing concessions made by the residential strata corporation to the commercial strata corporation, which he says has caused

structural damage. The plaintiff submitted that the appropriate remedy in part is to have another expert opine on what he has uncovered.

[20] I repeat, new evidence is only admissible if it disproves an assumption that was made by the trial or hearing judge as to a future event. All of the events put forward by the plaintiff in his submissions relate to events that took place prior to the trial.

[21] In my view, the plaintiff's application to reopen the trial is an attempt to put before the court a continuation of the same complaints that he raised at the trial and to have them reweighed, this time bolstered and supplemented by new theories and a further investigation and analysis that he has conducted after judgment was pronounced.

[22] In my view, all of that evidence was reasonably discoverable before the trial. I agree with the submissions of counsel for the defendants in their entirety. Reopening the trial would, in my view, not be in the interests of justice. The application is dismissed. Now, costs?

[SUBMISSIONS ON COSTS]

[23] THE COURT: If a “misguided” application such as this one is brought to this court the unsuccessful party can expect that there will be consequences in costs. In this case the strata corporation had to pay counsel to defend yet another misguided application. Mr. Tafti, the next time you consider filing an application, you might want to think about what will happen if you lose. Typically an order as to costs is made.

[24] THE PLAINTIFF: I respectfully submit that the application was to avert a miscarriage of justice already occurred.

[25] THE COURT: You heard what I have said?

[26] THE PLAINTIFF: Yes.

[27] THE COURT: An application to reopen a trial is not something that succeeds very often. Such an order is rarely made.

[28] THE PLAINTIFF: Yes.

[29] THE COURT: And only in compelling circumstances. The circumstances that you have brought before this court with, I don't know, 11 binders, each of which is about 4 or 5 or 6 inches thick of material, in my view did not come close to demonstrating a compelling case for reopening the trial.

[30] THE PLAINTIFF: Did Justice review this material?

[31] THE COURT: That being the case, I am going to award costs. It will be Scale B costs to the defendants.

"G.C. Weatherill J."