

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Greenleaf Brewing Corporation v.
Lonsdale Quay Market Corp.*,
2023 BCSC 2005

Date: 20231025
Docket: S-227378
Registry: Vancouver

Between:

Greenleaf Brewing Corporation and Mehdi Ebadi aka Martin Ebadi
Plaintiffs

And

**Lonsdale Quay Market Corp., Quay North Urban Development Corp.,
and Quay Property Management Corp.**
Defendants

Before: The Honourable Mr. Justice Stephens

Oral Reasons for Judgment

In Chambers

The Plaintiff, appearing on his own behalf
and on behalf of Greenleaf Brewing
Corporation:

M. Ebadi

Counsel for the Defendants:

D.R. Shouldice
G.A. Morfopoulos

Place and Date of Trial/Hearing:

Vancouver, B.C.
October 10-13, 2023

Place and Date of Judgment:

Vancouver, B.C.
October 25, 2023

[1] **THE COURT:** The plaintiff, Martin Ebadi, together with the plaintiff, Greenleaf Brewing Corporation (“Greenleaf Corp”, and collectively, the “Plaintiffs”), are in a commercial lease dispute with Lonsdale Quay Market Corp. (“LQMC”) and two other corporate defendants (collectively, the “Defendants”) regarding a 2013 lease relating to the former business of Greenleaf brewing which was located at Lonsdale Quay Market in North Vancouver.

[2] The Plaintiffs have filed a claim against the Defendants for wrongful failure to renew the lease for the premises of the brewing business, and for the landlord’s failure to approve a sale of the Greenleaf brewery business for \$450,000.

[3] The commercial relationship between the parties spanned about nine years from 2013 to October 2022. LQMC issued to Mr. Ebadi a notice of termination of the tenancy on September 29, 2022.

[4] Mr. Ebadi filed a notice of application for the summary trial determination of the Plaintiffs’ claims on April 20, 2023.

[5] LQMC has also recently filed its own action against the Plaintiffs for payment of arrears of rent of approximately \$224,000 plus interest, and for an unspecified amount for a percentage of the tenant’s sales revenue calculated under the lease. LQMC, by responding to the Plaintiffs’ summary trial application with the other defendants, has been deemed, by order of this Court dated June 30, 2023, to have brought their own summary trial application for judgment against the Plaintiffs for LQMC’s claim for arrears, interest, and percentage rent.

[6] The lease had a contractual renewal option clause in Schedule E which is subject to certain terms and conditions.

[7] Broadly speaking, the Plaintiffs allege that starting on and after a meeting with the Defendants held on October 2, 2020, in the midst of COVID and thereafter, the Defendants, or some of them, misled the Plaintiffs and gave them false hope about the possibility of the renewal of the lease for the Greenleaf brewery. The Plaintiffs argue that the Defendants knowingly misled them about this.

[8] The Plaintiffs also contend that the Defendants unreasonably refused to consent to the Plaintiffs' proposed assignment of the lease to a third-party potential buyer for the Plaintiffs' business. The Plaintiffs contend that the Defendants considered this proposed assignment eight months after it was raised and only after the Defendants had entered into a letter of intent with a new tenant for the premises and served the Plaintiffs with a notice of seizure under the *Rent Distress Act*, R.S.B.C. 1996, c. 403. The Plaintiffs allege that the Defendants considered Mr. Ebadi's proposed assignment of the lease to a third-party buyer with a closed mind and in bad faith. The Plaintiffs argue that they did not know about the letter of intent with LQMC's then-potential new tenant until last month when it was disclosed in this litigation.

[9] The Defendants dispute the Plaintiffs' claims and contend there is nothing in the evidentiary record before me that LQMC lied or knowingly misled the Plaintiffs. The Defendants also argue that after October 2, 2020, the parties had negotiations, but they were not in relation to the contractual performance of the lease, but were instead landlord-tenant negotiations about a potentially new lease, and there is no obligation to negotiate in good faith in that context. Included in their submissions, they also rely on the no-waiver clause at clause 12.10 of the lease.

[10] There are several substantive issues in dispute on these summary trials, including which plaintiff was actually the tenant under the lease.

[11] The issues presented before me on this summary trial were framed as follows:

- 1) Who was the tenant to the lease – Mr. Ebadi or Greenleaf Corp?
- 2) Did the tenant to the lease have an option to renew the lease in October 2020?
- 3) Did the landlord unreasonably withhold consent to the assignment of the lease to a third party proposed by the Plaintiffs?

- 4) Did the landlord lie or knowingly mislead the tenant in relation to the performance of the lease, either in respect of the contractual obligation to renew or the assignment of the lease?
- 5) Is unpaid rent and other arrears, including for percentage rent, owed by the Plaintiffs to LQMC and, if so, in what quantum?

Legal Proceedings

[12] Greenleaf Corp filed a notice of civil claim on September 8, 2022 and amended it on July 10, 2023 to add Mr. Ebadi as a plaintiff. Mr. Ebadi is a self-represented litigant and appears also on behalf of the plaintiff, Greenleaf Corp.

[13] LQMC's notice of civil claim against Mr. Ebadi was filed on June 23, 2023 and amended on July 14, 2023 to add Greenleaf Corp as a defendant.

[14] The Plaintiffs have not filed a response to civil claim in LQMC's notice of civil claim proceeding, and so the pleadings in the LQMC action are, strictly speaking, not yet closed. However, LQMC does not take issue with the lack of a filed response to civil claim.

[15] No discovery transcripts were relied on in this summary trial. I was advised there had been no oral discoveries in either action.

[16] I was further advised there has been document production in respect of the Plaintiffs' action which has been ongoing, including, I was advised, up to several weeks ago when the Defendants disclosed the letter of intent of November 2021.

Suitability of Summary Trial – Principles

[17] The parties both contend these applications are suitable for summary trial determination.

[18] However, despite the Plaintiffs' positions on this, as a threshold matter, I must determine if these applications are suitable for summary trial.

[19] Determination of the suitability of an application for summary trial is a discretionary exercise that turns on the particular circumstances of an application: *Gill v. Gill*, 2022 BCCA 264 at para. 56, citing *Gichuru v. Pallai*, 2013 BCCA 60 at para. 34.

[20] The law with respect to suitability has been canvassed in prior cases, including the leading case of *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.*, 36 B.C.L.R. (2d) 202, 1989 CanLII 229 (C.A.). The Court at para. 40 of that case held that a chambers judge can decide a case summarily if the court is able to find the facts necessary for that purpose and finds it would be just to decide the issues in such a way.

[21] The court retains the discretion in the determination of suitability. The exercise of the discretion is guided by two lines of inquiry: (1) whether the court finds the facts necessary to decide the issues of fact or law; and (2) whether it is just in the circumstances to decide the issues summarily.

[22] Proportionality is relevant to this determination: *Brissette v. Cactus Club Cabaret Ltd.*, 2017 BCCA 200 at para. 26.

[23] Conflict in the evidence *per se* is not necessarily always a reason to render a summary trial application unsuitable. As the Court of Appeal stated in *MacMillan v. Kaiser Equipment Ltd.*, 2004 BCCA 270:

[22] The principles relating to the applicability of the summary trial procedure are not in dispute. It should be noted that the mere fact that there is a conflict in the evidence does not in and of itself preclude a chambers judge from proceeding under Rule 18A. A summary trial almost invariably involves the resolution of credibility issues for it is only in the rarest of cases that there will be a complete agreement on the evidence. The crucial question is whether the court is able to achieve a just and fair result by proceeding summarily.

[24] However, a court should not decide an issue of fact or law solely on the basis of preferring one conflicting affidavit over another. There must be documentary evidence, evidence of independent witnesses, or undisputed evidence that undermines the affidavit of one of the parties on critical issues or some other basis

for preferring one affidavit over another: *Brissette* at para. 27, citing *Cory v. Cory*, 2016 BCCA 409 at para. 10.

[25] In addition, as a prerequisite to deciding a case as a summary trial, the court must be able to find the facts necessary to decide the issues of fact or law and must be of the opinion it would not be unjust to decide the issues.

[26] When determining suitability, the court may also consider the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of proceedings, and any other matters which arise for consideration on this question, such as: the cost of the litigation and the time of the summary trial; whether credibility is a critical factor in the determination of the dispute; whether the summary trial may create unnecessary complexity in the resolution of the dispute; and whether the application would result in litigating in slices: *Inspiration Management Ltd.* at para. 49

[27] I have further considered that Mr. Ebadi, who is a self-represented litigant, has, in his oral and written submissions, at times made statements or assertions not contained in his various affidavits. He also sought to rely on at least one document which was not appended to an affidavit. He has relied on hearsay evidence of a person who he contends, at least implicitly, in his submissions to be an important witness to his claim that the Defendants unreasonably withheld consent to his proposed assignment of the lease. I have considered the principles in *Rahman v. Windermere Valley Property Management Ltd.*, 2022 BCCA 258 at paras. 34 to 45, as it relates to the consideration of submissions of self-represented litigants made without evidence in chambers proceedings. I find it appropriate for me to consider Mr. Ebadi's oral statements not contained in affidavits for the limited purpose of assessing the suitability of these applications for summary trial and do so in these Reasons.

Proportionality and Summary Trial Suitability

[28] Considering first the matter of proportionality, LQMC's claim against Mr. Ebadi personally (or, alternatively, against Greenleaf Corp) is for unpaid arrears

against the Plaintiffs of approximately \$224,000 plus percentage rent, interest at 18% per annum, costs, and expenses, including legal costs on a solicitor-client basis. The claim for percentage rent is an unquantified amount; I have no evidence on the quantum.

[29] Taken together, I assess the quantum of LQMC's claim against the Plaintiffs, including Mr. Ebadi personally, to be in the range of \$300,000 and likely more.

[30] I have also had regard to the affidavit of Mr. Ebadi's wife, which states that since October 2020, Mr. Ebadi has been under "huge stress" which got "more and more as time went on," and which "has affected their family and relationship with each other" and also caused worry and stress for herself. I find that it is particularly important in this context, given the quantum of Mr. Ebadi's personal exposure to a potential significant monetary amount, that adjudication of the Plaintiffs' and LQMC's claims be done justly.

[31] I find that from a proportionality perspective, this consideration mitigates against a summary trial determination.

[32] Further, the Defendants, in opposing the Plaintiffs' summary trial, contend that the issue that Mr. Ebadi raises with respect to an alleged breach of the duty of honest contractual performance, including whether, and to what extent, silence of a landlord can ground a breach of the duty of honest performance claim, is an issue that could have significant implications for commercial tenancy law and practice in the province. The Defendants contend that the Plaintiffs' application for summary trial should be dismissed, including for this reason, among others. I make no comment on the merit if any of that argument or whether it accurately describes the Plaintiffs' legal theory or its potential implications. However, I do find that the Defendants' asserted implications of the importance of the issue or an issue arising on the Plaintiffs' claim for the purposes of suitability goes to proportionality (see R. 1-3(2)(b) of the *Supreme Court Civil Rules*) and also militates against a summary trial disposition.

[33] I return now to the consideration of the suitability of these summary trial applications on the record before me.

The Plaintiffs’ Allegations Generally

[34] As identified above, among the substantive issues raised by the Plaintiffs in their claims are the Defendants’ alleged breach of the duty of honest performance of contractual obligations: see *Bhasin v. Hrynew*, 2014 SCC 71, and *C.M. Callow Inc. v. Zollinger*, 2020 SCC 45, and related cases. The *Bhasin* case holds, among other things, that “parties must not lie or otherwise knowingly mislead each other about matters directly linked to the performance of the contract”: para. 73; *C.M. Callow* at para. 86. Broadly speaking, the Plaintiffs allege that the Defendants knowingly misled them with respect to the renewal provision of the lease following a meeting about renewal, which took place between the parties on October 2, 2020, which the Plaintiffs argue is a matter linked to the performance of the lease.

[35] The Plaintiffs also argue that the Defendants unreasonably withheld their consent to an assignment of the lease to a potential buyer. They frame this also as another instance of alleged breach of the duty of honest performance. They argue there is evidence, which is probably characterized as circumstantial evidence, including that the defendant entered into negotiations with, and later signed a letter of intent with, a potential new tenant for the premises in November 2021, and delay in the defendant making a decision about the proposed assignment for eight months after it was raised by the plaintiff, and only after the landlord had issued a notice of seizure, all of which the Plaintiffs claim show the Defendants had made up their mind already and acted unreasonably.

[36] The Plaintiffs also allege the Defendants or defendant landlord acted unreasonably, contrary to the duty of honest performance of the consent to assignment provision under the lease.

[37] In their written and oral submissions, the Plaintiffs make allegations such as the Defendants were deceitful, made false statements, and took a factual position in

their response which is totally false, acted unethically, lied to Mr. Ebadi, and gave false hope to the Plaintiffs.

[38] There are several meetings between the parties relevant to the sequence of events at issue, including on October 2, 2020, August 20, 2021, and February 15, 2022, which occurred between Mr. Ebadi and a representative of LQMC, Mr. Mathiesen, in the presence of Mr. Ebadi's wife.

[39] From the submissions I have heard, it seems likely that credibility is a live issue, both for the representatives of the Defendants and of Mr. Ebadi, and potentially relevant to certain factual findings which the Court may need to make in the determination of this claim. For example, in general, while the Plaintiffs allege the Defendants engaged in knowingly misleading them, the Court did not hear any oral or *viva voce* evidence from any representative of the Defendants.

[40] There are also some conflicts in the evidence before me. For example, the parties disagree as to what was said in a meeting about an alleged tenant improvement ("TI") discussion, which the plaintiff said led to a \$22,500 TI which was never credited by the defendant landlord. Mr. Ebadi deposes that a meeting took place in May 2018 about the plaintiff's asserted TI credit. The defendant landlord disagrees with Mr. Ebadi's account of their discussion about the TI, although the representative of the defendant does not specify in his affidavit what date or dates that occurred.

[41] The Defendants say the TI issue is only a modest issue in financial terms and not material, and should not stand in the way of the suitability of these applications for summary trial, but I find this TI issue goes to the dealings between the parties and potentially credibility of relevant witnesses, and I consider it relevant in my suitability analysis and weigh it in my consideration of that issue.

[42] Also, the Defendants' evidence is that Mr. Ebadi asked for reduced rent in their discussions with him, and Mr. Ebadi, in his Affidavit No. 3, deposes that this is a false statement.

[43] The Plaintiffs also point to asserted conflicts between the Defendants' conduct and statements made in newspaper articles quoting the Defendants after the lease was terminated. In addition, the Plaintiffs argue there is some potential internal conflict in the Defendants' affidavit. For example, the Plaintiffs argue there is conflict between para. 21 of Mr. Mathiesen's Affidavit No. 1 and para. 17 of his Affidavit No. 2, where he gives a different start date for the time period of certain discussions with Mr. Ebadi.

[44] As noted, the Defendants also have a claim under the lease against the Plaintiffs for unpaid percentage rent, although there is not good evidence of this in the record. The Defendants suggested that if judgment were given in their favour, this quantum issue could be severed off for determination later. Mr. Ebadi argued that the sales figures he provided the Defendants during the course of their commercial relationship were never previously challenged. I detect potential evidentiary conflict as to this point. Further, the dealings between the parties with respect to the percentage rent claim is relevant potentially to the history of the dealings between the parties more generally, which could also be relevant to the factual matrix of the dispute between the parties.

Issue 3 – Alleged Refusal to Exercise Consent to Assignment

[45] Now addressing suitability as to the specific substantive issues before me, I begin with Issue 3 relating to the alleged Defendants' unreasonable refusal to consent to the Plaintiffs' proposed assignment of the lease.

[46] On their claim for refusal to assign the lease, the Plaintiffs point to evidence that at the time the Defendants considered the proposed assignment on and after August 16, 2022, they had already signed a letter of intent with another tenant and had instructed a bailiff to serve a notice of seizure on the Plaintiffs. They also refer to a December 2021 email between the landlord and the then-new tenant. The Plaintiffs say it is clear that the defendant landlord had a closed mind and also argues the Defendants' consent was unreasonably withheld.

[47] The Plaintiffs argue that the landlord knew about the request for consent for an assignment of the lease, but the landlord only called the proposed assignee after eight months after signing the letter of intent with a new tenant.

[48] The Plaintiffs have also filed hearsay evidence of the person who was the proposed buyer, a Mr. Halavi, about his conversation with the Defendants. There is evidence Mr. Halavi spoke to a representative from the Defendants in August 2022. The Defendants' representative, Mr. Mathiesen, denies the hearsay evidence account about what the plaintiff's wife deposes she was told secondhand by Mr. Halavi had been said by Mr. Mathiesen in a conversation with Mr. Halavi. The plaintiff relied on an email from Mr. Halavi to Mr. Ebadi where Mr. Halavi stated, if required, he could testify about these matters. But at this summary trial, the proposed purchaser has given no direct evidence in relation to the Plaintiffs' assertion that the Defendants unreasonably refused to consent to the assignment.

[49] The Plaintiffs also contend in their submissions that "the defendants' argument for denying my buyer is that he didn't have experience, which is a false statement."

[50] The Plaintiffs argue that the Defendants already knew the answer when they called the prospective assignee and were acting in bad faith and gave the Plaintiffs false hope. The representative of LQMC, Mr. Mathiesen, denies this and deposed that from November 2021 onward, LQMC engaged in "discussions in good faith" with Mr. Ebadi, including "considering and rejecting Mr. Ebadi's proposal from Mr. Halavi to acquire the brewery and lease the premises." The Defendants also argue that the letter of intent was non-binding, and there was no evidence on this summary trial that it was unreasonable to refuse to assign the lease.

[51] I find that I am not able to find facts on this issue on these materials, and it would not be just and fair to do so. The evidentiary record on this summary trial lacks oral testimony of relevant witnesses. There are conflicts in the evidence and the Plaintiffs rely on hearsay of the proposed assignee, who the Plaintiffs tacitly argue is an important witness for one of their main claims. I also find that any

necessary credibility findings could not fairly be made on the record before me, and it would not be just to decide this issue.

[52] I so find on the basis of either framing this issue as to the reasonableness of the Defendants' refusal to consent to an assignment of the lease, or if treated as an alleged breach of the duty of honest performance of contract under the *Bhasin* case law authority.

[53] Having so found, I find that determining the remainder of the substantive issues arising would be an exercise in litigating in slices, which would not be suitable for summary trial. However, I will nevertheless consider the suitability of another discrete substantive issue put before me: the alleged breach of the duty of honest performance with respect to an alleged renewal of the lease.

Issue 2 – Alleged Breach of the Duty of Honest Performance regarding the Renewal of the Lease

[54] I also find that this issue is not suitable for summary trial. I am not able to make necessary findings of fact on this application. It would not be just to do so.

[55] In opposing the summary trial, the Defendants say it is abundantly clear that the tenant had no contractual right of renewal because a necessary condition precedent was not triggered due to the plaintiff tenant's non-payment of rent, so there was no contractual right of renewal. The Defendants assert that in a meeting on October 2, 2020, the plaintiff was told that LQMC was not obligated to renew the lease. The Defendants submit that after October 2020, it was not "business as usual."

[56] However, the Plaintiffs say the matter of renewal was up in the air at and after October 2, 2020, and the Plaintiffs rely on evidence of emails after October 2, 2020, in which the Defendants use the word renewal or renew, and the affidavit evidence of the Defendants states there were renewal discussions after October of 2020. The Plaintiffs argue that the words "not obligated" to renew left things up in the air and it was not a firm "no" by the Defendants to a contractual renewal. They contend they

were left hanging for 16 months until February 2022, until the landlord finally said it would not renew the lease.

[57] The Plaintiffs argue that the Plaintiffs and the Defendants met and discussed a renewal of the lease, and they contend in their written submissions:

This is what really happened here. Defendant notified me he is not obligated to give me a renewal option for his two weak excuses, he had already made up his mind, however, he refused to notify me of his decision for the next sixteen months to achieve his objectives which solely benefited him and cost me my livelihood, investment, and 9 years of hard work, with excessive stress for the last two years of it.

[58] The Defendants' position that the contractual renewal option in Schedule E under the lease was inapplicable was not set out to the Plaintiffs in a letter in October 2020 or thereafter in their discussions. Instead, the evidence before me suggests it was discussed verbally in a meeting.

[59] The Plaintiffs argue the concept of renewal is a term of the lease, and the allegation against the Defendants about renewal discussions is linked to contractual performance of the lease. The Plaintiffs argue that the renewal clause also allows the landlord to require renovations, and the landlord did ask the plaintiff for potential renovation plans. The Plaintiffs argue the duty of honest contractual performance was engaged.

[60] Having considered the evidence before me, including Mr. Ebadi's submissions, I detect some difference in view as to what was precisely said between the parties in the October 2, 2020 meeting about the lease renewal. I also detect disagreement as to whether it was or was not "business as usual" or the ordinary course of business after the October 2, 2020 meeting.

[61] The duty of honest performance includes, among other things, an inquiry into the knowledge of the defendant, and a finding about the honesty of a party's contractual performance is considered in the context of the factual matrix: *Bhasin* at paras. 94, 96, 100–101. I note that one of the cases referred to by the Defendants which it sought to distinguish, where a breach of the honest performance duty was

ultimately found by the Court, involved an eight-day trial: *2505243 Ontario Limited (ByPeterandPaul.com) v. Princes Gates Hotel Limited Partnership*, 2022 ONCA 859 at para. 13.

[62] The Plaintiffs' claim against the Defendants is one of allegedly knowingly misleading the Plaintiffs about the contractual renewal of the lease. Determining this claim will likely require the Court to make a finding of the Plaintiffs' understanding of the renewal state of affairs on and after October 2020, and also will necessitate making a finding about the knowledge or state of affairs of the Defendants and its representatives, including about the Plaintiffs' understanding.

[63] I am not able, on the material before me, to make findings about the Plaintiffs' and Defendants' state of knowledge or state of mind with respect to the topic of lease renewal discussions in order to adjudicate this claim on this summary trial.

[64] I also find the allegations will likely require a consideration of credibility of witnesses, and I am unable, in this case, to make findings on the affidavit evidence.

[65] I make no finding on the merit, if any, of the Plaintiffs' claim for breach of duty of honest contractual performance, but I do find on the record before me that I cannot make the findings necessary to adjudicate that claim, and it would not be just to do so.

[66] I do not say that every claim where a breach of duty of honest performance is alleged by a party will be unsuitable for summary trial. I do, however, find that on the material before me, that issue as it arises in this particular claim is not suitable for summary trial determination.

Other Substantive Issues in the Summary Trial

[67] Determination of the other substantive issues presented on this summary trial would involve litigating in slices, which I decline to do.

[68] For example, the issue of the quantum of alleged arrears and other claimed items owing, if any, by the Plaintiffs is inextricably linked to the Plaintiffs' claims

against the Defendants. It would not be just and fair to cleave off the issue of the Plaintiffs' contractual liability to the Defendants and decide it separately.

[69] I have considered that this matter was set before me for a four-day summary trial. The Plaintiffs submitted that a summary trial was the "preferred alternative" to a conventional trial. However, a summary trial is not a preferred alternative when adjudication in that way would be unjust and unfair.

[70] I have also considered the Defendants' alternative submission that this matter would be suitable for a hybrid trial using the summary trial record and conducting cross-examinations on affidavits. I decline to do so. I find that with the state of affidavits which were before me and the nature of the allegations made by the Plaintiffs, this would not be an efficient or just way to decide this matter and for the Plaintiffs to present evidence as to their version of the relevant events, and for the Defendants to fairly have an opportunity to respond to that evidence. I decline to proceed in that hybrid fashion.

[71] I add that nothing in my reasons relieves the Plaintiffs of their obligation to present their case in accordance with the *Supreme Court Civil Rules* and the rules of evidence in any future hearings in this Court.

Order

[72] Rule 9-7(15)(a), which is the summary trial rule, states, in part, on the hearing of a summary trial application, the court may grant judgment 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 . . .

[73] Considering the whole of the evidence, I find that I do not have the necessary evidence, and I am unable to find the facts necessary to decide the issues of fact and law, and it would be unjust to do so in the circumstances; and I am unable to,

and therefore do not, grant judgment on these summary trials for the reasons set out in R. 9-7(15)(a)(i) and (ii).

[74] For these reasons and for the reasons I have given:

- 1) The amended notice of application of the Plaintiffs filed on September 7, 2023 for summary trial is dismissed as not suitable pursuant to R. 9-7(15)(a); and
- 2) The application of the Defendants for summary trial, as set out in their amended application response filed on September 22, 2023, is dismissed as not suitable pursuant to R. 9-7(15)(a).

[75] Are there any submissions on costs? Mr. Shouldice?

[76] CNSL D. SHOULDICE: Mr. Justice, given that in this scenario the parties were in agreement that a summary trial was their preferred way of proceeding and that, at least on this point, both parties were unsuccessful with respect to the suitability aspect, my submission would be that costs should be in the cause and be left for determination by the trial judge.

[77] THE COURT: All right. Mr. Ebadi, do you have any --

[78] MEHDI EBADI: I agree, Mr. Justice.

[79] THE COURT: So, that -- and you understand what costs in the cause means? So, what Mr. Shouldice is saying is that the order will be whoever would be successful at the trial at the end of the day will obtain costs of this application.

[80] MEHDI EBADI: Exactly.

[81] THE COURT: You agree with that?

[82] MEHDI EBADI: Yes, I do.

[83] THE COURT: All right. So, I will make that order for both of the applications, and so costs of each or both of the applications will be costs in the cause of the respective proceedings. Do you understand that? Is that clear, Ms. Shouldice?

[84] CNSL D. SHOULDICE: Yes.

[85] THE COURT: Mr. Ebadi?

[86] MEHDI EBADI: Yes.

[87] THE COURT: All right.

“Stephens J.”