

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tut v. Evershine Land Group Inc.*,  
2023 BCSC 2105

Date: 20231201  
Docket: S217930  
Registry: New Westminster

Between:

**Kamaljit Kaur Tut**

Plaintiff

And

**Evershine Land Group Inc. and Guneet Grewal**

Defendants

And

**Amarjit Singh Tut**

Defendant by way of Counterclaim

Before: The Honourable Mr. Justice Ball

## Reasons for Judgment

The Defendant by way of Counterclaim,  
appearing in person:

A.S. Tut

Counsel for the Defendants:

W.D. MacLeod

No other appearances:

Place and Date of Hearing:

New Westminster, B.C.  
November 3, 2023

Place and Date of Judgment:

New Westminster, B.C.  
December 1, 2023

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**Introduction**

[1] These are Reasons for Judgment on a continuation hearing brought to consider the report and recommendation of Registrar Gaily dated May 18, 2023, directed by this Court in an order pronounced March 20, 2021, and entered April 15, 2021.

[2] This Court pronounced judgment in favour of the defendants on March 12, 2021. The plaintiff subsequently appealed that judgment to the Court of Appeal, which, on February 15, 2022, dismissed the appeal in reasons indexed at 2022 BCCA 63.

**Background**

[3] The Court of Appeal set out the background of this matter as follows:

[5] Evershine Land Group Inc. ("Evershine") was the registered owner of a parcel of land containing nine lots in Surrey, B.C. (the "Parent Parcel"). Evershine's principal, Mr. Sukh Grewal, is one of its directors and the father of the respondent Guneet Grewal.

[6] One of the lots on the Parent Parcel had a two-storey house and a coach house (the "Property"). Evershine offered the Property for sale; prior to this offering, Evershine had made an application to the City of Surrey to have the Parent Parcel subdivided into nine residential lots.

[7] The appellants are husband and wife. On November 30, 2014, Ms. Tut and Evershine entered into a written contract of purchase and sale which provided that:

- (a) the buyer would pay the purchase price of \$635,000 for the lot on which the Property was located, excluding the other eight lots which were in the process of being subdivided from the lot occupied by the Property;
- (b) the buyer would pay an initial deposit of \$20,000 upon acceptance of the offer;
- (c) the buyer would pay an additional deposit of \$10,000 to be paid before January 15, 2015;
- (d) the completion date was to be May 29, 2015;
- (e) the possession date was December 9, 2014, approximately six months prior to closing;
- (f) the buyer was to pay \$2,500 per month for rent, plus utilities, prior to the completion date;

(g) in the event that the buyer failed to pay the balance of the deposit of \$10,000 or the monthly rent on time, the contract would be null and void and all deposits would be forfeited to Evershine; and

(h) unless the balance of the payment was made, or formal agreements to pay the balance were entered into by the completion date, the seller would have the option to terminate the contract. In that event, the amount paid by the buyer would be non-refundable and forfeited to the seller, without prejudice to the seller's other remedies.

[8] The appellants took possession of the Property and paid the initial deposit of \$20,000 and rent for the month of December 2014. Ms. Tut failed to pay the second deposit of \$10,000 by January 15, 2015 but did so following a demand by Evershine in February 2015. Ms. Tut was late paying the rent for February 2015 and did not pay the rent for March 2015.

[9] On March 29, 2015, Mr. Grewal requested the Tuts to vacate the Property but they refused to do so.

[10] Ms. Tut did not tender any of the documents required for completion to occur, or the amount owing under the contract by the completion date of May 29, 2015. Mr. Grewal then advised the appellants that the deposits, which totalled \$30,000, would be applied to the outstanding rent.

[11] The appellants continued to reside at the Property after the completion date, although Ms. Tut did relocate to India at some point. Rental payments were sporadic; the last one was made in February 2018. The subdivision plan was approved and registered on June 28, 2018.

[12] Ms. Tut still resided in India at the time of the summary trial which took place in February 2021.

[13] On September 10, 2018, Evershine transferred the Property to Ms. Grewal. In August 2019 a notice to end tenancy was delivered to the Property but proceedings under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 were unsuccessful. Mr. Tut continued to reside at the Property as at the date of the summary trial.

[14] In his reasons, which are indexed as 2021 BCSC 453, the judge referred to some of the evidence that was before the court at the summary trial:

[22] At para. 9 of the 2nd Affidavit of Mr. Grewal, Mr. Grewal swore that shortly after the Completion Date, he attended the Property where Mr. Tut was residing and asked Mr. Tut why the sale had not been completed on the Completion Date. Mr. Grewal swore that Mr. Tut said the financing to complete the purchase had not been obtained. Mr. Grewal then told Mr. Tut that Evershine would apply the deposits equalling \$30,000 to the rent owing for the occupancy of the Property at the rate of \$2,500 per month. This application of deposit funds to the monthly rent of the Property then followed for the next 12 months.

[23] Mr. Tut was cross-examined on his Affidavit on November 2, 2020, and confirmed under cross-examination that he had made no payment of rent after May 2015, except a payment of \$10,000 in 2018. Not only did the plaintiff fail to pay the rent on the Property, but Mr. Tut in the same cross-examination admitted that the Coach House had been rented to tenants at various times after December 2014.

[15] Ms. Tut commenced the proceedings in the court below on August 14, 2019. The notice of civil claim sought, *inter alia*, (1) specific performance of the contract or, in the alternative, damages, and (2) declarations that "the Defendant, Guneet Grewal hold the legal and beneficial interest in the interest of [Evershine] and the Plaintiff" and that Evershine "has fraudulently transferred the title of the Property into the name of the Defendant, Guneet Grewal to defeat the interest of the Plaintiff". A certificate of pending litigation (the "CPL") was registered by Ms. Tut against the Property at that time.

[16] On October 17, 2019, Evershine filed a counterclaim against both appellants in which it sought, *inter alia*, judgment for debt for arrears of rent in the amount of \$50,000 plus \$2,500 per month until they surrendered possession of the Property.

[4] On April 9, 2021, the plaintiff filed a notice of appeal. On June 4, 2021, Madam Justice Newbury of the Court of Appeal imposed a stay of proceedings pending the hearing of the appeal on the condition that the appellants: (a) pay \$2,000 on or before June 15, 2021; (b) pay \$4,000 per month thereafter until the appeal had been decided; and (c) deliver all rents received under or pursuant to any sublease or tenancy on the property. As noted above, the appeal was dismissed with costs to the defendants on February 15, 2022.

[5] On May 5, 2022, proceedings under a reference by this Court made on March 20, 2021, were brought to the Registrar for the purpose of having the Plaintiff, Kamaljit Tut and defendant by counterclaim Amarjit Tut account for:

1. How much rent they received from any tenant(s); and
2. Based on an amount of \$2500 per month, how much rent they still have to pay to the Defendants.

[6] The Master held a pre-hearing conference and there ordered the following:

- a) Within 45 days, the parties will exchange lists of documents listing any documentation that may assist in determining:
  - i. what rent was paid by or on behalf of the plaintiff to the defendants since November 30, 2014: and

- ii. what monies the plaintiff or the defendant by counterclaim have received directly or indirectly from other occupants of the property since November 30, 2014.
- b) Within 45 days, the plaintiff and the defendant by counterclaim make their best efforts to obtain the names and contact information of any occupant, other than themselves and their children, since November 30, 2014 and to provide that information to the defendants.
- c) If either party intends to bring an application for further production of documents such application must be heard by August 15, 2022, subject to counsel agreeing to another date.
- d) By September 13, 2022, the plaintiff and the defendant by way of counterclaim will deliver to the defendants a list of witnesses they intend to call at the Registrar's hearing along with "Will Say" statements for each of those witnesses.
- e) By September 20, 2022, the defendants will deliver to the plaintiff and the defendant by way of counterclaim a list of witnesses they intend to call at the Registrar's Hearing, along with "Will Say" statements for each of those witnesses.

[7] At no point did the plaintiff or the defendant by way of counterclaim provide any information to the defendants pursuant to the order of Master Krentz. Consequently, on August 26, 2022, the defendants applied for and were granted an order by Master Nielsen, by consent, that the plaintiff and defendant by way of counterclaim deliver to counsel for the defendant by September 6, 2022:

- a) A further list of documents listing any documentation that may assist in determining:
  - i. what rent was paid by or on behalf of the plaintiff to the defendant since November 30, 2014 for the use of the property located at 7379 - 194 St. in Surrey, B.C. ("the Property");
  - ii. what monies the plaintiff and defendant by way of counterclaim have received directly or indirectly from other occupants of the Property since November 30, 2014.

[8] Master Nielsen also ordered that "The plaintiff and defendant by way of counterclaim make their best efforts to obtain the names and contact information of

any occupant of the Property, other than themselves and their children since November 30, 2014 and to provide the defendants with those names and contact information not later than September 6, 2022.”

[9] The plaintiff and defendant by way of counterclaim did not fulfill the obligations in Master Nielsen’s order in any way.

[10] On or about October 11, 2022, the parties came to an agreed statement of facts.

[11] In October 2022, on Mr. Tut’s request (who was then in Alberta), a further hearing before the Registrar was adjourned and reset for March 17, 2023. Mr. Tut had advised defendant’s counsel Mr. MacLeod that he would appoint counsel within three weeks. On that basis, Mr. MacLeod consented to the resetting of the Registrar’s hearing. However, neither Mr. Tut nor any legal counsel on his behalf made any subsequent contact with Mr. MacLeod, and the matter came before the Court on November 7, 2023.

[12] On November 7, 2023, Mr. Tut asked the court for a further adjournment. However, in the circumstances—in particular Mr. Tut’s repeated failures to meaningfully participate in this proceeding or otherwise comply with his own promises, such as his failure to provide relevant documents as ordered on two occasions and his refusal to re-appear to complete an examination for discovery when he had agreed to do so—the application for a further adjournment was denied.

### **The Gaily Hearing**

[13] The facts found by Registrar Gaily are noted above. Counsel noted a mathematical error in calculating the amount of rent paid by Ms. Tut. Rent of \$2,500 was due for 76 months, totalling \$190,000. Registrar Gaily then deducted \$111,000, being the amount listed in the table at pages 10 and 11 of her reasons. That table, however, includes sums that were ordered to be paid by Newbury J. of the Court of Appeal in an order granting a stay of proceedings of this Court’s original order. As a term of the stay of proceedings, the Court of Appeal ordered the plaintiff to pay

\$2,000 on or before June 15, 2021 and thereafter \$4,000 per month as rent awaiting argument of the appeal and the Court of Appeal's judgment. The Court of Appeal gave reasons dismissing the appeal with costs to the defendants.

[14] As a result, the amount that the Registrar should have deducted from the \$190,000 was \$50,000, not \$111,000. Based on that correction, the amount owing for rent was \$140,000.

[15] In addition, the plaintiff was required to account for rental payments made by others to the plaintiff which were not authorized by the owners. The evidence was that an unauthorized tenant named Chad Lavers was paying the plaintiff at least \$1,000 for a period of 76 months, totalling \$76,000. The plaintiff must also pay that sum to the defendant.

[16] The total judgment in favour of the defendant to be paid by the plaintiff is \$216,000, being the total of the corrected amount owing of \$140,000 and the unauthorized rent of \$76,000.

[17] Following the hearing of this application on November 3, 2023, counsel for the applicant drew two mathematical errors to the attention of the Court. Both errors reduced the amount of the judgment and both errors have been corrected in paras. 14, 15 and 16 above.

[18] The defendant was awarded special costs of this action against the plaintiff and defendant by counterclaim. That order was specifically upheld by the Court of Appeal. The same order shall apply to this hearing with respect to costs, which shall also be payable by the plaintiff and defendant by counterclaim as special costs.

“Ball J.”