

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lindley v. Manchester*,  
2023 BCSC 976

Date: 20230519  
Docket: S133538  
Registry: Kelowna

Between:

**Calvin Lindley**

Plaintiff

And

**Jenny-Lynn Manchester and Alex Louie**

Defendants

Before: The Honourable Justice Hardwick

## Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

T. Eaves

Appearing on her own behalf:

J. Manchester

Appearing on his own behalf

A. Louie

Place and Date of Trial/Hearing:

Kelowna, B.C.

Place and Date of Judgment:

Kelowna, B.C.  
May 19, 2023

[1] **THE COURT:** These are my oral reasons for judgment in respect of a notice of application filed by the plaintiff, Calvin Lindley, on April 28, 2023. The notice of application seeks:

1. An order for immediate vacant possession of the Lands described as:  
Lot 486 CLSR Plan 96467  
1643 Old Ferry Wharf Road, West Kelowna, British Columbia  
V1Z 3X3  
(the “Lands”);
2. An order for a writ of possession to enforce this order and the Order of Justice Ross, pronounced 16/Jan/2023;
3. The defendants, Jenny Lynn Manchester and Alex Louie (the “Defendants”) be committed or fined, or both, for his and/or her contempt of Court for wilfully disobeying the Order of the Honourable Madam Justice C Ross made on 16/Jan/2023 (“Order”), which restrained and prohibited him and/or her pursuant to its terms, and for his and/or her contempt of Court and his and/or her defiance of the authority and dignity of this Court by, during the period from March 16, 2023 to the current day or at any time during that period, conducting themselves or permitting, causing, directing, inflicting, facilitating or encouraging other persons to conduct themselves In contempt of this Court by remaining on the Lands despite the Order stating that they shall not re-enter the Lands which conduct was calculated and designed to interfere with the due administration of Justice.
4. An Order that any possessions or property, including a trailer, that is located on the Lands be deemed to be abandoned and the applicant shall be at liberty to dispose of such personal property without being liable therefor.
5. An Order that the Petitioner and/or his agents be at liberty to force entry to the Lands, and the interior of the trailer located on the Lands for the purpose of enforcing the applicant’s rights under the Order and to dispose of the trailer.
6. An Order that the Petitioner and/or his agents be at liberty to retain a bailiff to assist in the enforcing the terms of the Order including forcing entry to the Lands and the trailer on the Lands and disposing of the trailer located on the Lands and any possessions belonging to the Defendants located on the Lands.
7. Costs against the defendants to be assessed as special costs.

[2] The crux of this dispute pertains to certain lands which have a residential address of 1643 Old Ferry Wharf Road, West Kelowna, British Columbia. The legal description is detailed in the materials, and I shall simply refer to it in these oral reasons for judgment as “the Lands”.

[3] The plaintiff holds a certificate of possession for the Lands. The plaintiff was previously in a relationship with the defendant Jenny-Lynn Manchester. Jenny-Lynn Manchester prefers to be referred to as “Squilxw”.

[4] Squilxw and the plaintiff have two children from their former common-law relationship. Their 16-year-old son resides on the property with Squilxw and the defendant, Alex Louie, who prefers to be identified as “Senk’lip”. The 20-year-old son of the plaintiff and Squilxw apparently visits the Lands regularly, but currently has a residence in another city and is, in any event, over the age of majority. There is a trailer located on the Lands, which the plaintiff concedes belongs to Jenny-Lynn Manchester, also known as Squilxw. There are other various chattels on the Lands which belong to Jenny-Lynn Manchester, also known as Squilxw, and Alex Louie, also known as Senk’lip, or some combination thereof.

[5] ALEX LOUIE: I object.

[6] THE COURT: Sorry?

[7] ALEX LOUIE: I’m sorry. I’m – I’m not a person, just for the record.

[8] THE COURT: Or some combination thereof. There will also be chattels belonging to the minor child, and possibly third parties, as well. Senk’lip has apparently been residing in the trailer on the Lands since approximately in or about -  
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[9] ALEX LOUIE: I object.

[10] THE COURT: You do not get to object. These are my reasons for judgment.

[11] -- since approximately 2020. The notice of civil claim was brought by the plaintiff against the defendants on March 9, 2022. It seeks, amongst other things, primarily an order that the defendants vacate the Lands. The matter was before the Court on several occasions. This included an application for alternative service before Master Schwartz; an adjournment application which was granted on peremptory terms before myself back in November of 2022; and a further

adjournment application granted on peremptory terms by Mr. Justice Betton in December of 2022. The matter was substantively considered by Madam Justice Ross on January 16, 2023. On said date, Madam Justice Ross pronounced judgment as follows:

THIS COURT DECLARES that:

1. The Defendants are trespassing on Lot 486 CLSR Plan 96467 (1643 Old Ferry Wharf Road, West Kelowna, BC V1Z 3X3) (the “Lands”).

THIS COURT ORDERS that:

2. The Defendants be immediately removed from the Lands;
3. The Defendants may not re-enter the Lands;
4. The Orders in paragraphs 2 and 3 of this Order Made After Application are stayed for execution until March 16, 2023.
5. The Defendants shall not interfere in any way with people coming onto the Lands to test, survey, measure, build roads and/or infrastructure, or for any other purpose related to the development of the Lands.
6. Costs of this proceeding be against the Defendants and costs to be assessed.
7. The requirement for the Defendants’ signatures on this Order Made After Application pursuant to Rule 13-1(1) of the *Supreme Court Civil Rules*. BC Reg 168/2009 is hereby dispensed with.

[12] The plaintiff sought to appeal the order of Madam Justice Ross in this Court. The notice of appeal was struck, by order of Mr. Justice Betton made February 24, 2023. No application to extend the time for appeal was made to the British Columbia Court of Appeal, and there are no ongoing existent appeal proceedings of the order of Madam Justice Ross at this time.

[13] The application before this Court was served in accordance with the *Supreme Court Civil Rules* and in accordance with the alternate service order of Master Schwartz. Although not originally included in the application record, I was provided with, at my request, the affidavits of service from counsel for the plaintiff. They confirm appropriate service was made. The defendants both attended on May 15, 2023, before me, and thus were clearly on notice of the application. They were given the further opportunity, by me, to provide response materials, as they had not provided an application response or supporting affidavit material, whether new or

historical, to support their position in respect of the relief being sought in this application. I set a time limit in my order of May 15, 2023, for the filing and service of those materials.

[14] As was the topic of submissions in court this morning, all that was served in accordance with my order of May 15, 2023 was an eight-page fax sent to counsel for the plaintiff. It was entered as Exhibit 1 for the purposes of this application, as it was not contained in the application record. Much of that material is inadmissible, given that this application involves, *inter alia*, an application for contempt, and thus strict evidentiary rules apply. Specifically, and without limitation, hearsay evidence is not applicable.

[15] I have denied the request for submission of other affidavit material as, in my view, this simply delays the inevitable, subject to intervention from our Court of Appeal. This matter was commenced last year. There were, as noted, peremptory adjournments. The order of Madam Justice Ross was made back in January. This application was properly served, as I have noted. There has thus been the opportunity to seek independent legal advice. I say this, in particular, as Squilxw has indicated a desire to seek legal representation and indicates doing so this week has been challenging. While that might be the case, there was time prior to this week to make those inquiries. This matter has been outstanding for some time. The reality is that the defendants do not agree with the orders of this Court, but that does not mean that those orders are not enforceable. It is trite law that court orders are not mere recommendation. They must be followed, unless successfully appealed or stayed pending same.

[16] Our Court of Appeal recently, in *Dempsey v. Pagefreezer Software Inc.*, 2023 BCCA 202, set out the four principles of civil contempt, at paras. 20–22. Specifically, the Court of Appeal held that:

[20] Civil contempt has three elements, which the applicant must prove beyond a reasonable doubt:

- a) The order alleged to have been breached clearly and unequivocally stated what should and should not be done;

- b) The party alleged to be in breach had actual knowledge of the order; and
- c) The party alleged to be in breach intentionally did the act prohibited in the order, or intentionally failed to do the act that the order compels.

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*Carey v. Laiken*, 2015 SCC 17 at paras. 32–35.

[21] The Court in *Carey* emphasized the power to punish a contempt of court is discretionary and ought to be used sparingly: at para. 36.

[22] Further, “all that is required to establish civil contempt is proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice”: *Carey* at para. 38. A contemnor need not intend to disobey the court order: *Carey* at para. 38.

[17] In this case, the elements of civil contempt are clearly proven beyond a reasonable doubt. The order of Justice Ross is clear and unambiguous. The order of Justice Ross has not been complied with. The defendants have clear notice of the order of Justice Ross. The failure to comply with the order of Justice Ross has been intentional, as the defendants have chosen to remain on the Lands, contrary to the order to deliver vacant possession, despite the fact that the enforcement of that order was stayed to allow them the opportunity to leave and organize their belongings.

[18] The greatest concern I have in this case is, frankly, for the minor child of Squilxw and the plaintiff, but for whose occupancy on the Lands the Court would be inclined to grant the relief sought by the plaintiff on a more expedited timeline. However, this reason, and being mindful of the quote from *Carey* that punishment for contempt is to be exercised in my discretion and sparingly, as appropriate, I have

crafted an order which I consider addresses the ongoing dis-obeyal of the order of Madam Justice Ross, and the other factual considerations.

[19] My order is that I am granting an order for writ of possession of the Lands, as defined in the notice of application. I shall direct counsel for the plaintiff to prepare that writ and accompanying order through Supreme Court Scheduling for my signature, forthwith. Any enforcement of that writ of possession, however, is stayed until Monday, June 12, 2023, at 4 p.m. This matter shall come back before me on Monday June 12, 2023, at 9:45, in Judge's chambers in Kelowna, to determine if the writ of possession has been complied with. If it has not, the writ of possession will then be enforceable in accordance with the relief sought at paras. 5 and 6 of the plaintiff's notice of application. I shall then set a further hearing date during the week of June 12th, or such other date as might be agreed to between the parties and in accordance with Supreme Court Scheduling, to deal with the sanctions for contempt in accordance with the *Supreme Court Civil Rules*.

[20] Distilling this down to as plain language as possible, the defendants and all other occupants need to depart the Lands and take any personal property they wish to retain with them, prior to Monday, June 12, at 9:45 a.m. This allows the opportunity to purge the contempt of Madam Justice Ross's order. If the Lands are not vacated by that date, which I repeat again is Monday, June 12, at 9:45 a.m., the writ will be enforced by a bailiff and I will further be considering sanctions for contempt, which include committal -- that means incarceration -- as well as financial remedies such as special costs.

[21] If you choose to appeal this order, it must be done in accordance with the rules of the British Columbia *Court of Appeal Rules*. It is not acceptable to rely upon what are asserted to be representations from staff belonging to the court registry. Either seek legal advice or follow the rules as they are set out.

[22] I am dispensing with the obligation or the requirement that either of the defendants sign this order but shall direct that a copy of the order be submitted for my signature and review, and that it shall then, after my signature and entry, shall be

forthwith provided by email in accordance with the alternative service order of Master Schwartz, to the defendants.

[23] Those are my reasons for judgment.

“Hardwick J.”