



S 265440

No. _____
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTSEA CONSTRUCTION LTD.

PLAINTIFF

AND:

HUGH ALEXANDER TRENCHARD

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- a) file a response to civil claim in Form 2 in the above-named registry or this court within the time for response to civil claim described below, and
- b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- b) if you were served with the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- d) if the time for response to civil claim has been set by order of the court, within that time.

Claim of the Plaintiff

Part 1: STATEMENT OF FACTS

Background

1. The plaintiff, Westsea Construction Ltd. ("**Westsea**"), is a corporation duly incorporated pursuant to the laws of British Columbia and has an address for service in these proceedings of 1200 – 925 West Georgia Street, Vancouver, British Columbia, V6C 3L2.
2. The defendant, Hugh Alexander Trenchard ("**Mr. Trenchard**"), is the owner of a leasehold interest (registration number EH136953) in a suite (the "**Suite**") in an apartment building in Victoria, British Columbia known as Orchard House. Mr. Trenchard has an address for service in these proceedings of 805 – 647 Michigan Street, Victoria, British Columbia, V8V 1S9.
3. Orchard House is a 22-story concrete apartment building consisting of 211 leased apartment suites (the "**Suites**") that was constructed in or about 1969. Orchard House has a civic address of 647 Michigan Street, Victoria, British Columbia and is legally described as:

Lot A of Lots 1761 To 1765 inclusive and Lots 1803 To 1807 inclusive,
Victoria City, Plan 22534, PID: 004-154-878

4. Westsea is the registered owner in fee simple and the manager of Orchard House.

The Lease

5. The relationship between Westsea and Mr. Trenchard is governed by a 99-year lease agreement (the "**Lease**").
6. The Lease is a private contract, and is not governed by any legislation.
7. The Lease was entered into between Westsea and Capital Construction Supplies Ltd. ("**Capital Construction**") in 1974. The Lease expires in 2073.
8. After entering into the Lease, Capital Construction sold assignments *pro tanto* of its leasehold interest in individual suites to third parties.
9. The leasehold interests in individual suites have been variously sold to new third parties in the intervening period.
10. Mr. Trenchard obtained his assignment of the Lease by a re-assignment of a leasehold interest that once belonged to Scarlet Gillia Tate, and his interest was filed in the Victoria Land Title Office on January 31, 2011.

11. At the time Mr. Trenchard purchased his re-assignment of the Lease, he expressly agreed to abide by all the covenants of the lessee as contained in the Lease, and to pay all monies thereunder.
12. The Lease includes, *inter alia*, the following express terms:

ARTICLE 4 – LESSEE'S COVENANTS

The Lessee covenants with the Lessor:

4.01 To pay rent;

[...]

ARTICLE 7 – OPERATING EXPENSES

7.01 "Operating expenses" in this Lease means the total amount paid or payable by the Lessor in the performance of its covenants herein contained (save and except those contained in Article 5.11) and includes but without restricting the generality of the foregoing the amount paid or payable by the Lessor in connection with the maintenance, operation and repair of the Building, expenses in heating the common areas of the Building and each of the Suites therein (unless any of the Suites are equipped with their own individual and independent heating system in which event the cost shall be payable by the Lessee of any such suite) and providing hot and cold water, elevator maintenance, electricity, window cleaning, fire, casualty liability and other insurance, utilities, service and maintenance contracts with independent contractors or property managers, water rates and taxes, business licenses, janitorial service, building maintenance service, resident manager's salary (if applicable) and legal and accounting charges and all other expenses paid or payable by the Lessor in connection with the Building, the common property therein or the Lands. "Operating expenses" shall not include any amount directly chargeable by the Lessor to any Lessee or Lessees. The Lessor agrees to exercise prudent and reasonable discretion in incurring Operating expenses, consistent with its duties hereunder.

7.02 Prior to the commencement of each calendar year during the Term other than the Base Year, the Lessor shall furnish to the Lessee an estimate of the Operating expenses for such calendar year based on prior years experience and the Lessee shall pay to the Lessor on the first day of each and every month during such calendar year, One-Twelfth (1/12th) of the Lessee's Share of such estimated Operating expenses.

7.03 In the event that the actual Operating expenses in any calendar year exceed the estimated Operating expenses for that calendar year, the Lessee agrees to pay, within Thirty (30) days of written demand by the Lessor the Lessee's Share of such excess and in the event that the actual Operating expenses in any calendar year is less than the estimated Operating expenses for that year the Lessee's share of operating expenses for the following year shall be reduced accordingly. The actual Operating expenses shall be calculated by the Lessor for each calendar year and shall be certified by the auditors of the Lessor in accordance with generally accepted accounting principles.

7.04 "Lessee's Share" in this Lease means the ratio which the area of each of the suites bears to the total area of all suites in the Building, which ratio is hereby agreed to be in percentage terms and as applicable to each suite as set forth in Schedule "A" hereto.

ARTICLE 8 – PROVISOS

[...]

8.02 If the Lessee shall fail to perform any covenant or condition of this Lease on his part to be performed, the Lessor may (but shall not be obligated so to do) perform such covenant or condition as agent of the Lessee and all amounts paid by the Lessor in respect thereof and all costs, damages and expenses suffered or incurred by the Lessor in respect thereof shall be due and payable by the Lessee to the Lessor on demand as rent and the Lessor may exercise any remedy in respect of the recovery of any such amounts as it might for rent in arrears.

8.03 Any installment of rent or monies payable as rent not paid on the due date shall without prejudice to any other rights of the Lessor arising from such breach, bear interest from the due date at the rate of Ten (10%) per annum or such rate as may from time to time be prescribed by the Lessor until paid.

8.04 Proviso for re-entry by the Lessor on non-payment of rent or non-performance of covenants.

[Underlining added.]

The Default Petition and 2023 Application to Strike

13. On September 12, 2018, Westsea filed a petition (the "**Default Petition**") against Mr. Trenchard and other Orchard House leaseholders for their non-payment or payment-out-of-protest of Operating Expenses under Article 7.02 of the Lease.
14. Westsea brought the Default Petition pursuant to Article 8.02 of the Lease about Mr. Trenchard's and the other respondents' covenants to pay Operating Expenses under Article 7.02 of the Lease.
15. In respect to his response to the Default Petition, Mr. Trenchard filed frivolous and vexatious pleadings which did not disclose a defence.
16. As a result, on January 21, 2022, Westsea sought leave from the Court to apply to strike Mr. Trenchard's pleadings (the "**2023 Application to Strike**").
17. On the same date, Justice Gaul granted Westsea leave to bring the 2023 Application to Strike.
18. On April 3 and 4, 2023, the 2023 Application to Strike was heard before Justice Gaul.

19. On February 9, 2024, Justice Gaul issued his reasons with respect to the 2023 Application to Strike. Justice Gaul found in favour of Westsea, ordering that the impugned paragraphs of Mr. Trenchard's pleadings be struck.
20. By bringing the 2023 Application to Strike, Westsea incurred legal charges attributable to striking Mr. Trenchard's frivolous and vexatious pleadings.
21. In the 2023 Application to Strike, Justice Gaul made no award as to costs.
22. A portion of the legal charges Westsea incurred by bringing the 2023 Application to Strike are payable by Mr. Trenchard as rent under Articles 4.01 and 8.02 of the Lease.

The 2024 Appeal

23. On February 16, 2024, Mr. Trenchard filed a Notice of Appeal appealing Justice Gaul's decision in the 2023 Application to Strike (the "**2024 Appeal**").
24. On June 13, 2024, the 2024 Appeal was heard in Vancouver before Madam Justice Newbury, Madam Justice Fenlon, and Mr. Justice Butler.
25. On July 23, 2024, Mr. Justice Butler issued written reasons for the Court with respect to the 2024 Appeal. The Court dismissed the 2024 Appeal, and made no award as to costs.
26. Westsea elected not to seek an order for costs in the 2024 Appeal, and instead elected to recover its legal charges relating to the 2024 Appeal under the Lease.
27. By responding to the 2024 Appeal, Westsea incurred legal charges. The legal charges Westsea incurred in the 2024 Appeal were solely attributable to Mr. Trenchard.
28. The legal charges Westsea incurred by responding to the 2024 Appeal are payable by Mr. Trenchard as rent under Articles 4.01 and 8.02 of the Lease.

Failure to Pay

29. Westsea has a demand for payment of the legal charges attributable to Mr. Trenchard that were incurred in the 2023 Application to Strike and the 2024 Appeal (collectively, the "**Legal Charges**").
30. Westsea claims against Mr. Trenchard for the Legal Charges which are due and owing pursuant to the terms of the Lease.
31. Despite Westsea's demand, Mr. Trenchard has neglected, refused, or failed to pay the Legal Charges.

Interest in Land

32. Westsea claims an interest in the Suite pursuant to Article 8.04 of the Lease, which provides Westsea with a proviso for re-entry on non-payment of rent or non-performance of covenants under the Lease.

Part 2: RELIEF SOUGHT

1. Westsea seeks the following relief as against Mr. Trenchard:
 - a. a declaration that Mr. Trenchard is in default of Articles 4.01 and 8.02 of the Lease;
 - b. an order that Westsea is entitled to the sale of the assignment of Mr. Trenchard's leasehold interest in the Suite and Westsea has exclusive conduct of sale pursuant to Article 8.04 of the Lease (the "**Court-Ordered Sale**");
 - c. in the alternative, if the Suite is not sold pursuant to the Court-Ordered Sale, an order that Westsea may apply for an order that Mr. Trenchard and all persons claiming by or through him shall be foreclosed from all right, title, interest and equity of redemption in and to the Suite, or any one of them;
 - d. an order for interest on the Legal Charges pursuant to Article 8.03 of the Lease;
 - e. a certificate of pending litigation against the Suite;
 - f. general and specific damages for breach of contract; and
 - g. such further and other relief as this Court deems just.
2. Westsea elects not to seek an order for its costs of this Action and instead elects to rely on its contractual entitlement to costs under the Lease.

Part 3: LEGAL BASIS

Statutes and Common Law

1. Westsea pleads and relies on:
 - a. the law of leasing;
 - b. the law of contract;
 - c. the law of equitable lien; and
 - d. the *Land Title Act*, R.S.B.C. 1996, c. 250 and amendments thereto.

Breach of the Lease

2. The relationship between Westsea and Mr. Trenchard is governed by the terms of the Lease.

Westsea Construction Ltd. v Mathers, 2014 BCSC 143 at para 32

3. The Lease is a valid and binding contract between Westsea and Mr. Trenchard.

4. The Lease, construed as a whole, is clear and unambiguous.

Westsea Construction Ltd. v Trenchard, 2019 BCSC 1675
at para 164, aff'd 2020 BCCA 152

5. The Lease provides Westsea with powerful remedies for collection of outstanding arrears under the Lease, including termination of leasehold interests and a re-taking of the property.

Westsea Construction Ltd. et al. v Shao et al. (2018, June 1),
Vancouver Registry S140051 (BC SC) at para 24

6. An equitable lien in a property arises when a party with an obligation to another party with respect to that property fails to perform its obligation.

Biehl v Strang, 2011 BCSC 1373
Chu v Chen, 2005 BCCA 21

7. Under Articles 4.01 and 8.02 of the Lease, Mr. Trenchard is required to pay the Legal Charges.

8. By neglecting, refusing, and/or failing to pay the Legal Charges, Mr. Trenchard has breached his covenants under Article 4.01 and 8.02 of the Lease.

9. Westsea has an equitable lien in the Suite because of Mr. Trenchard's neglect, refusal, and/or failure to pay the Legal Charges in breach of his covenants under the Lease.

10. As a result of Mr. Trenchard's breach of the Lease and neglect, refusal, and/or failure to pay the Legal Charges, Westsea has suffered loss and damages.

Costs

11. Westsea elects to rely on its contractual right to recover legal charges incurred in this Action and does not seek an order for costs from this Court.

12. In the alternative, Westsea seeks the costs of this Action payable as special costs.

Plaintiff's address for service: Singleton Urquhart Reynolds Vogel LLP
1200 – 925 West Georgia Street
Vancouver, BC V6C 3L2
Attn: Mark C. Stacey

Fax number address for service (if any): None

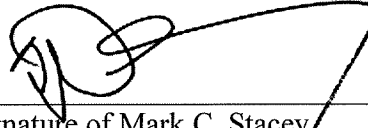
E-mail address for service (if any): service@singleton.com

Place of trial: Vancouver, BC

The address of the registry is:

800 Smithe Street, Vancouver, BC

Date: July 22, 2026

A handwritten signature in black ink, appearing to be 'M. Stacey', written over a horizontal line.

Signature of Mark C. Stacey
Lawyer for the Plaintiff

Rule 7-1(1) of the Supreme Court Civil Rules states:

- 1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - a) prepare a list of documents in Form 22 that lists
 - a. all documents that are or have been in the party's possession or control and that could, if available, be used by any party to prove or disprove a material fact, and
 - b. all other documents to which the party intends to refer at trial, and
 - b) serve the list on all parties of record.

Appendix

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

The Plaintiff claims against the Defendant in relation to breach of a 99-year lease agreement, and is seeking conduct of sale of the Defendant's property in addition to damages.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☒ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[Check all boxes below that apply to this case]

- ☐ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law

☐ conflict of laws

☒ none of the above

☐ do not know

Part 4:

[If an enactment is being relied on, specify. Do not list more than 3 enactments.]

Land Title Act, R.S.B.C. 1996, c. 250