



No. S265440

Vancouver Registry

Form 2 (Rule 3-3(1))

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTSEA CONSTRUCTION LTD.

PLAINTIFF

AND:

HUGH ALEXANDER TRENCHARD

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: Hugh Alexander Trenchard, the Defendant

Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 - Defendant's Response to Facts

1. Unless expressly stated, the Defendant denies every allegation of fact and pleading in the Plaintiff's Notice of Civil Claim filed July 22, 2026 (the "NOCC").
2. The Defendant admits the facts alleged in paragraphs 1 to 5, 7 to 10, 18, 19, 21, and 23 to 25 of Part 1 of the NOCC.
3. In answer to paragraph 6, the Defendant admits the Lease is a contract, but denies Westsea's allegation that it is not governed by any legislation.
4. In answer to paragraph 11, the Defendant admits that his registered reassignment contains a covenant to perform the lessee's obligations under the Lease. This is not an admission that the disputed Legal Charges are payable under the Lease, nor anything else in Westsea's NOCC.
5. In answer to paragraph 12, the Defendant admits only that the quoted provisions reproduce portions of the Lease.
6. In answer to paragraphs 13 and 14, the Defendant admits that the Default Petition alleges non-payment or payment under protest of Operating Expenses.
7. In answer to paragraph 15, Justice Gaul did not find the Defendant to be a vexatious litigant or find that all of his pleadings were frivolous, vexatious, or disclosed no defence.

8. In answer to paragraphs 20 and 27, which are denied, the Defendant puts Westsea to strict proof of the incurrance of said legal charges, their payment, timing, allocation, causation, necessity, reasonableness, and contractual recoverability.
9. In answer to paragraph 26, the Defendant admits that Westsea elected not to seek court-ordered costs of the 2024 Appeal. He denies that the election creates a contractual entitlement to its actual legal accounts or any charge against the Defendant's leasehold interest in Orchard House Suite 805 – 647 Michigan Street, Victoria BC ("the Defendant's leasehold interest").
10. In answer to paragraph 29, the Defendant admits that Westsea sent a demand dated July 21, 2026 for payment of \$207,125. He denies that the demand established an amount due as rent or complied with the prerequisites of Article 8.02 or other requirements in fact and law.
11. In answer to paragraph 32, the Defendant denies that Article 8.04 creates for Westsea an equitable lien, mortgage, charge, power of sale, equity of redemption, or other estate or interest in the Defendant's leasehold interest.

Division 2 - Defendant's Version of Facts

Strike application and appeal

12. On April 3 and 4, 2023, Westsea's application to strike portions of the Defendant's Further Amended Response in the Default Petition was heard over approximately two days.
13. Approximately one-half day of that hearing concerned issues common to the respondents generally and was not confined to the paragraphs Westsea sought to strike from the Defendant's pleading.
14. On February 9, 2024, Justice Gaul decided the application: *Westsea Construction Ltd. v. Taylor*, 2024 BCSC 210. The order struck a limited number of paragraphs dealing with three defined subjects. It did not strike the Defendant's entire response and did not determine Westsea's entitlement to recover its actual legal accounts from the Defendant.
15. Justice Gaul did not find that the Defendant was a vexatious litigant or that he had engaged in vexatious conduct. The Court of Appeal later described the order as striking a "limited number of paragraphs": *Trenchard v. Westsea Construction Ltd.*, 2024 BCCA 273, paras. 2, 41-45.
16. The Defendant filed his appeal on February 16, 2024. The appeal was heard on June 13, 2024 over approximately one-half day.
17. On July 23, 2024, the Court of Appeal dismissed the appeal and made no order as to costs. It did not decide whether the Lease permits Westsea to charge its solicitor-and-client accounts for the strike application or appeal to the Defendant as rent.

Timing and Westsea's knowledge of the Legal Charges

18. The alleged Legal Charges concern legal services retained by Westsea for the April 2023 strike application and the appeal heard June 13, 2024. The work necessary to prepare for and conduct those proceedings had been performed by June 13, 2024.
19. Westsea retained the lawyers who performed that work. When each service was performed and each account was incurred or became payable, Westsea knew that the work concerned the Defendant's pleading or appeal and knew the facts on which it now alleges that the charge should be attributed to him.
20. Westsea commenced this action on July 22, 2026, more than two years after the appeal hearing.

Default Petition and July 2026 demand

21. The parties appeared before Justice Gaul in November 2025 in the Default Petition. Judgment remains reserved, including whether litigation-related legal charges may be charged to leaseholders as Operating Expenses.
22. Westsea's letter dated July 21, 2026 demanded \$207,125 as rent, purportedly for the strike application and 2024 Appeal. The letter enclosed no calculation, statement of account, invoice, proof of payment, allocation, or explanation of the reasonableness and necessity of the amounts claimed.
23. The Defendant replied in writing on July 22, 2026. He disputed the demand, requested the underlying accounts and particulars, disputed Westsea's reliance on Articles 7.01 and 8.02, and requested that the demand be withdrawn or held in abeyance pending Justice Gaul's decision.
24. Westsea filed this action and registered Certificate of Pending Litigation No. CB2934034 (the "CPL") on July 22, 2026, while Justice Gaul's decision in the Default Petition remained reserved.

Legal Charges

25. The NOCC does not state the dollar amount of the Legal Charges, itemize the accounts comprising them, or identify when each account was rendered, incurred, or paid.
26. The \$207,125 demand concerns alleged legal work associated with proceedings whose oral hearings occupied approximately two and one-half days in total.
27. The demand does not separate the strike application from the appeal; work concerning issues common to all respondents from work specific to the Defendant; fees from disbursements and taxes; staff or contract billings, rates, or time recorded; or work performed before and after July 22, 2024. It identifies no credits, write-offs, reimbursements, or allocation among Westsea, the Defendant, and other respondents.

Leasehold, alleged security, and effect of the CPL

28. The Defendant did not agree to grant and has not granted Westsea a mortgage, charge, lien, power of sale, equity of redemption, or other security interest in the Leasehold for the Legal Charges.
29. The legal services were retained by Westsea for proceedings brought by or against Westsea. They did not acquire, preserve, or improve the Leasehold, nor did they relate to any covenant to be performed by the Defendant under the Lease.
30. Article 8.04 states circumstances in which Westsea may re-enter following a default. It does not state that any amount allegedly due is secured by a mortgage, charge, lien, power of sale, or equity of redemption.

Division 3 - Additional Facts

31. On March 25 and July 8, 2026, Westsea announced a Fire Alarm System Replacement Project estimated at \$2,439,084 and a Domestic Water Supply and Sanitary Drainage Re-Piping Project estimated at \$5,043,270. Westsea required the Defendant to pay an estimated total of approximately \$50,079 for the two projects.
32. By letter dated July 15, 2026, the Defendant requested supporting records for those projects and asked whether Westsea would consent to and process a voluntary sale and reassignment of the Defendant's lease interest while the litigation-cost claim remained disputed.
33. Based on current market information and existing mortgage obligations, the Defendant estimates his net equity in the leasehold at approximately \$100,000. The CPL impairs the marketability of the leasehold and his ability to sell, reassign, or refinance it.
34. The Defendant disputes the Legal Charges but has not represented to Westsea that he will refuse to satisfy any amount lawfully determined to be due.
35. Article 4.07 of the Lease requires Westsea's prior written consent to a sale and reassignment and provides that consent is not to be arbitrarily or unreasonably withheld.

Part 2: RESPONSE TO RELIEF SOUGHT

36. The Defendant consents to none of the relief sought in Part 2 of the NOCC.
37. The Defendant opposes all relief sought in paragraphs 1(a) to (g) and 2 of Part 2 of the NOCC, including the alternative claim for special costs.
38. The Defendant seeks costs and special costs.

Part 3: LEGAL BASIS

Limitation Act

39. Under ss. 6 and 8 of the *Limitation Act*, S.B.C. 2012, c. 13 (the “Act”), any claim based on Legal Charges discovered before July 22, 2024 is statute-barred. Westsea discovered, or reasonably ought to have discovered, its alleged contractual claim when it incurred or became liable for the accounts and knew the work and the alleged basis for attributing it to the Defendant.
40. Further and alternatively, each severable component of the Legal Charges is subject to its own discovery analysis. Any discrete work performed after July 22, 2024 does not revive an earlier claim. Westsea is put to strict proof of when each account was rendered, incurred, paid, and attributed to the Defendant.
41. Any discrete work reviewing or reporting on the Court of Appeal reasons released July 23, 2024 does not revive earlier preparation, hearing, or appeal charges.
42. Article 8.02 is a contingent reimbursement provision, not a demand obligation governed by s. 14 of the *Limitation Act*. The words "on demand" are not conclusive: *Leatherman v. 0969708 B.C. Ltd.*, 2018 BCCA 33, paras. 21-30 and 43-45.
43. Section 16 of the *Limitation Act* does not govern Westsea's direct claim for its own legal accounts. It addresses contribution and indemnity claims arising from an underlying claim: *Neale Engineering Ltd. v. Ross Land Mushroom Farm Ltd.*, 2023 BCCA 429, paras. 45-46.

Pending Default Petition

44. Further and alternatively, if Westsea's alleged entitlement depends on a determination that the Legal Charges are Operating Expenses under Article 7.01, that predicate issue remains under reserve in the Default Petition. On that alternative, this claim is premature and should be stayed or managed so as to avoid inconsistent determinations.

Contractual entitlement

45. The Lease must be interpreted as a whole and in its objective context: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at paras. 47-50.
46. Article 8.02 requires Westsea to prove a covenant the Defendant failed to perform, Westsea's performance of that covenant as the Defendant's agent, and qualifying amounts paid or incurred in that performance. Retaining lawyers for Westsea's strike proceedings or responding to the Defendant's appeal was not performance of any Defendant's covenant.
47. Articles 4.01, 7.01, and 8.02 do not independently make the Legal Charges rent.

48. Furthermore, Article 7.01 requires Westsea to exercise prudent and reasonable discretion in incurring Operating Expenses. If said Legal Charges constitute Operating Expenses, which is denied, Westsea breached its duty to exercise prudent and reasonable discretion in incurring them.
49. Clear contractual language is required before a party's own solicitor-and-client expenses are recoverable as rent or a separate debt. The Lease has no such clear language: *O'Connor v. Fleck*, 2000 BCSC 1147, paras. 276-280, among other cases.
50. Any enforceable contractual claim for legal expenses remains subject to the Court's discretion and proportionality: *Peace River Partnership v. Cardero Coal Ltd.*, 2023 BCCA 351, paras. 148-149.
51. Under Rules 3-7(18) to (20), Westsea must provide particulars sufficient to identify the accounts, dates, work, rates, payments, credits, and allocation said to comprise the Legal Charges.

No pleaded basis for security, foreclosure, or sale

52. Under Rule 3-7(9), a conclusion of law may not be pleaded without the material facts supporting it. The NOCC pleads no agreement, transfer of value, subrogation, unjust enrichment, or other juridical event by which the alleged personal debt became secured against the Leasehold.
53. Article 8.04 is a proviso for re-entry on a proven default. It does not create a mortgage, charge, equitable lien, power of sale, or equity of redemption, and Rule 21-7 does not create those substantive rights.
54. Rule 2-1(2)(g) prescribes a petition for specified relief concerning a charge on land or sale. Westsea's pleaded material facts disclose, at most, a personal claim for Legal Charges and not an existing proprietary interest in the Leasehold.
55. If a lease default capable of supporting forfeiture or re-entry is established, the Defendant relies on s. 24 of the *Law and Equity Act* and the Court's equitable jurisdiction to grant relief against forfeiture.

Certificate of Pending Litigation (CPL)

56. Section 215(1) of the *Land Title Act* requires the pleading supporting a CPL to disclose a claim to an estate or interest in land. The threshold is assessed on the pleaded material facts: *Bilin v. Sidhu*, 2017 BCCA 429 at paras. 36, 55, and 58; *Xiao v. Fan*, 2018 BCCA 143 at para. 27.
57. The pleaded facts disclose, at most, a personal obligation to pay Legal Charges and a possible right of re-entry upon a proven default. They do not disclose an estate or interest in the Leasehold securing the Legal Charges. The CPL should therefore be cancelled.

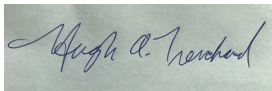
58. Further and alternatively, the Defendant relies on Rules 9-5 and 9-6 and ss. 254 and 256 of the *Land Title Act*, including the hardship caused by the CPL's impairment of the marketability and financing of the Leasehold.

Defendant's address for service:

Hugh Alexander Trenchard
805 - 647 Michigan Street
Victoria, BC V8V 1S9

E-mail address for service: **h.a.trenchard@gmail.com**

Date: August 9, 2026

A handwritten signature in blue ink that reads "Hugh A. Trenchard". The signature is written in a cursive style and is placed on a light-colored, slightly textured background.

Hugh Alexander Trenchard
Defendant

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

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
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party of record to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.