

Getting Good Faith Right: The BCCA's Guidance in *Dhanesar v. Pandher*

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In *Dhanesar v. Pandher*, 2026 BCCA 63, the British Columbia Court of Appeal (the BCCA) allowed an appeal, finding that the trial judge erred by applying incorrect legal principles in interpreting the contract and analyzing the duty of good faith.¹

This case illustrates the importance of correctly applying the common law duty of good faith when assessing the exercise of contractual discretion. The BCCA clarified that this duty operates as a general doctrine, distinct from the principles of contractual interpretation, and that discretion must be exercised in a consistent manner with the purpose for which it was conferred.

Background

In January 2022, the Respondents began constructing a four-bedroom, four-bathroom house on a bare-land strata property they owned in Abbotsford, British Columbia (the Property). The Appellant was the prospective purchaser of the Property.²

Following negotiations, the parties entered a contract on January 29, 2022 (the Contract). Under the Contract, the Respondents agreed to build the house and then transfer the Property to the Appellant on the completion date of October 7, 2022 (the Completion Date), for a purchase price of \$1.515 million.³

The Contract

The Contract was based on a standard form contract prepared by the British Columbia Real Estate Association and the Canadian Bar Association. However, the Appellant's realtor added terms and conditions to section 3 of the Contract to address the fact that the house had not yet been built (the Substantial Completion Provision).⁴

The Substantial Completion Provision was the only clause in the Contract that the parties labelled a "fundamental term."⁵ The provision stated:

"It is a fundamental term of this contract that the Seller must have finished all work, and delivered to the Buyer by the Completion Date, an unconditional Municipal/City/Regional District Occupancy Certificate or

*other evidence satisfactory to the Buyer that construction is finished [emphasis added].*⁶

Section 3 of the Contract also included that if the house “does not have occupancy or is not ready by September 27, 2022 *then at the [buyer’s] sole discretion the buyer may extend completion for up to 90 days [emphasis added].*”⁷

Relevant Events

The Appellant ultimately refused to complete the Contract on the Completion Date.⁸ Among other reasons, there was uncertainty about whether the Respondents complied with the Substantial Completion Provision.

The Respondents’ contractor, Mr. Kahlon, arranged for a final inspection of the Property by the City of Abbotsford (the City). On October 6, 2022, the City provided Mr. Kahlon an “Inspection Slip” stating that the final inspection was rejected, the reasons for the rejection, and ordering reinspection.⁹

That same day, the City approved provisional occupancy of the Property and provided Mr. Kahlon with a “Provisional Occupancy Slip” which stated, “Final by 6th April 2023.”¹⁰

That afternoon, Mr. Kahlon, sent the Respondents only the Provisional Occupancy Slip, describing it as the “final” and congratulating them.¹¹ He did not inform the Respondents that the final building inspection had been rejected, did not send them the Inspection Slip, and did not explain the reasons why only provisional occupancy had been approved.¹²

The purchase did not close on the Completion Date, and the Respondents claimed against the Appellant purchaser for breach of contract. The Appellant counterclaimed for return of the deposit.¹³

The Lower Court Decision

The primary issue before the trial court was the correct interpretation of the Substantial Completion Provision in the Contract.¹⁴ The trial judge closely examined the Appellant’s evidence that she was dissatisfied with receiving only provisional occupancy and that she placed significant weight on the absence of an unconditional occupancy permit when deciding not to complete the sale of the Property.¹⁵

The trial judge interpreted the phrase “or other evidence satisfactory to the Buyer” in the Contract to mean evidence that would satisfy a reasonable person “with all the subjective but reasonable standards” of the Appellant.¹⁶ He concluded that this interpretation aligned with an “objective reasonableness” test for the good faith exercise of contractual discretion, which he found was established by the Supreme Court of Canada (SCC) in *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 [*Wastech*].¹⁷

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Applying this test, the trial judge held that the Appellant exercised her discretion to determine her satisfaction with the “other evidence” unreasonably, unfairly, and contrary to good faith requirements because she wrongly believed she had completely subjective discretion.¹⁸ In his view, she focused solely on the Respondent’s failure to deliver an unconditional occupancy permit and failed to consider other evidence that the construction was complete.¹⁹ He further reasoned that because the term “sole discretion” does not appear in the Substantial Completion Provision, the buyer’s discretion could not be exercised unilaterally.²⁰

The Appeal

The central issue on the appeal was whether the trial judge made an extricable error of law by applying incorrect principles of contractual interpretation.²¹ The dispute focused on how the duty of good faith operated in this context and whether it had been breached.

The BCCA concluded that the trial judge made two interrelated legal errors.

Analysis of the Lower Court’s Decision

First, the judge incorrectly treated the duty of good faith in the exercise of contractual discretion as a principle of contractual interpretation, rather than as a general doctrine of the common law. As the SCC in *Wastech* outlined, the contract itself is the primary source of the parties’ obligations, and the duty of good faith operates alongside, rather than within, the principles of contractual interpretation.

Second, the trial judge wrongly assumed that the duty of good faith in this context required a standard of objective reasonableness. This is an incorrect interpretation of *Wastech*. The “reasonableness” inquiry under the duty of good faith discretion is not based on reasonable person test.²² It is assessed against the purposes of the contractual provision.²³

The BCCA ultimately held that the trial judge erred in law in applying the wrong principles to his interpretation of the Contract and his analysis of the duty of good faith in the exercise of contractual discretion.²⁴ The proper analysis required the judge to first interpret the Contract, specifically, the purpose of the discretion conferred by the Substantial Completion Provision and then determine whether the Appellant exercised discretion in a manner consistent with that purpose.²⁵

Accordingly, the BCCA set aside the trial judge’s decision and ordered a new trial.

Key Takeaways

1. The duty of good faith governing the exercise of contractual discretion is not a principle of

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contractual interpretation. It is a broader common law doctrine that operates alongside the contract, not within its interpretive framework. Courts will first interpret the contract and the purpose of the discretion before assessing compliance with the duty.

2. “Reasonableness” in this context does not mean an objective reasonable person test. Instead, the exercise of discretion must align with the purpose for which the discretion was granted in the contract. Misapplying an objective standard is an extricable legal error.

¹ *Dhanesar v. Pandher*, 2026 BCCA 63.

² *Ibid* at paras 7 and 9 [*Dhanesar*].

³ *Ibid* at para 9.

⁴ *Ibid* at para 10.

⁵ *Ibid* at para 11.

⁶ *Ibid* at para 10.

⁷ *Ibid* at para 12.

⁸ *Ibid* at para 2.

⁹ *Ibid* at para 25.

¹⁰ *Ibid* at para 26.

¹¹ *Ibid* at para 27.

¹² *Ibid* at para 27.

¹³ *Ibid* at paras 31-33.

¹⁴ *Pandher v Dhanesar*, 2025 BCSC 316 at para 1.

¹⁵ *Ibid* at paras 55-57.

¹⁶ *Dhanesar*, *supra* note 1 at para 4.

¹⁷ *Wastech Services Ltd. v. Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7 [*Wastech*].

¹⁸ *Dhanesar*, *supra* note 1 at paras 68 and 47.

¹⁹ *Ibid* at para 4.

²⁰ *Ibid* at paras 40-41.

²¹ *Ibid* at para 52.

²² *Ibid* at para 72.

²³ *Ibid* at para 74.

²⁴ *Ibid* at para 75.

²⁵ *Ibid* at para 74.