



No. 57144
Vernon Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KAREN ESPERSEN and ERIK ESPERSEN

PLAINTIFFS

AND:

THOMAS OWEN QUIGLEY and
CATHERINE ANN QUIGLEY

DEFENDANTS

NOTICE OF APPLICATION

Names of applicants: Thomas Owen Quigley and Catherine Ann Quigley
(the "Defendants")

To: Karen Espersen and Erik Espersen (the "Plaintiffs")

TAKE NOTICE that an application will be made by the applicants to the presiding associate judge at the Vernon Law Courts at 3001 – 27 Street, Vernon, B.C., on the **12th day of March, 2024**, at 9:45 a.m. for the order(s) set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An Order for the extension of time for filing of the Counterclaim herein.
2. Costs of this application against the Plaintiff, in any event of the cause.

Part 2: FACTUAL BASIS

Background information derived from allegations in the pleadings

1. At all material times, the Plaintiffs have been living in a house on a rural acreage property located at 301 Langille Road, Edgwood, BC (the "**Property**").
2. The Plaintiff Karen Espersen ("**Karen Espersen**") and the Defendant Catherine Ann Quigley are sisters.

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3. As set out in the Notice of Civil Claim, the Plaintiffs had owned the Property for approximately 14 years until financial issues arose.
4. The Defendants purchased the Property in a court foreclosure proceeding, on or about November 14, 2014.
5. Despite having lost title to the Property in the foreclosure, the Plaintiffs claim beneficial ownership of the Property and seek to have legal title of the Property transferred back to them. The Defendants dispute the claim.
6. The Plaintiffs have alleged there was a verbal agreement between the Plaintiffs and the Defendants, whereby the Defendants would hold the property in trust for the Plaintiffs after purchasing it in the foreclosure proceeding. The Plaintiffs further allege that the Defendants agreed to transfer title of the Property back to the Plaintiffs at some indeterminate point in the future and allege that in the meanwhile they have paid certain expenses related to the Property and made certain improvements to the Property. The Plaintiffs allege that the Defendants are in breach of the agreement for refusing to transfer title of the Property back to them.
7. The Defendants say that they purchased the Property from RBC in the foreclosure proceedings. The Defendants allege, *inter alia*, that the parties agreed that the Plaintiffs would make best efforts to apply for subdivision of the Property and that following subdivision the Plaintiffs would purchase a subdivided piece of the Property back from the Defendants. There was no set date for this occur, and no set price. In the interim, the Plaintiffs could continue to live on the Property as tenants and pay rent to the Defendants.
8. The Defendants allege that they have also made improvements to the Property.
9. Ultimately, the Property was never subdivided, and the Plaintiffs continue to live on the Property.

Information from the Affidavit of Jackie Stakkestad #1

10. In the Spring or Summer of 2015, the Plaintiffs allowed the Bilinskis to move into a second dwelling house also located on the Property (the "**Manufactured Home**"), and since then, the Bilinskis have continued to reside on the Property in the Manufactured Home.
11. Karen Espersen and David Bilinski have been engaged in an ostrich farming business together, as principals and shareholders of Universal Ostrich Farms Inc. and have utilized the Property for the purpose of raising ostriches.

12. Neither the Bilinskis nor Universal have ever paid the Defendants any rent for their occupation of the Property or entered into any form of agreement with the Defendants permitting the Bilinskis or Universal to use, enjoy or access the Property.
13. The Defendants are currently living in rental accommodation and would like to move onto the Property themselves. They seek vacant possession of the Property, and hereby seek leave to file a Counterclaim for that and other relief, in the form attached hereto as **Appendix 1**.

History of the litigation to date

14. On June 3, 2021, the Plaintiffs filed a Notice of Civil Claim against the Defendants and filed a CPL against title to the Property.
15. On November 19, 2021, the Defendants filed a Response to Civil Claim.
16. Examinations for Discovery of each of the Defendants took place on December 19, 2022.
17. An Examination for Discovery of Karen Espersen took place on December 20, 2022.
18. On April 21, 2023, the Defendants filed an Amended Response to Civil Claim.
19. The action has not yet been set down for trial.

Correspondence as to the Counterclaim

20. On or about July 14, 2023, counsel for the Defendants sent a letter to plaintiffs' counsel, enclosing a draft Counterclaim in the form attached hereto as Appendix 1, together with a Consent Order which would allow for the Defendants to file the Counterclaim. Plaintiff counsel did not respond to this letter.
21. On or about August 25, 2023, defence counsel sent a follow-up letter to plaintiff counsel asking for a response to his letter of July 14, 2023. Plaintiff counsel did not respond to this letter.
22. On September 14, 2023, defence counsel phoned plaintiff counsel but was not able to talk to him. Defence counsel sent an email requesting a call back about the draft Counterclaim.
23. On September 25, 2023, defence counsel phoned again and was again unable to speak to plaintiff counsel. Defence counsel sent another follow-up email asking if plaintiff counsel had instructions yet, and advising that if plaintiff counsel did not respond, defence counsel would be preparing a court application.

24. At the time of filing, the Plaintiffs have not responded to any communications on this issue.

Part 3: LEGAL BASIS

1. Rules 3-4(1) and 3-3(3) of the *Supreme Court Civil Rules* apply.
2. The Applicants rely on Rules 1-3(1) and 22-4(3) of the *Supreme Court Civil Rules*.
3. The competing claims of the Plaintiffs and the Defendants are inextricably linked.
4. The Counterclaim would not be statute barred, as the use and occupation of the Property by the Defendants, Bilinski and Universal is ongoing. If the application for a Counterclaim is denied, the Defendants could commence a separate action and have the two actions consolidated.
5. There would be no prejudice to any of the parties by allowing the Counterclaim.
6. If the Plaintiff's claim is dismissed at trial, it would not be just, convenient, speedy or inexpensive to require the Defendants to pursue a claim for vacant possession of the Property by way of a second trial in a separate action.
7. The Applicants rely on *Evans v. Dumitrean*, 2019 BCSC 203 and *Raven v. A&W Ranching Ltd.*, 2014 BCSC 1359.
8. As to costs, the Applicants rely on Rule 14-1.

Part 4: MATERIAL TO BE RELIED ON

1. The pleadings filed in the action.
2. Affidavit of J. Stakkestad #1, to be sworn and filed.
3. Such further and other material as counsel may advise.

The applicant(s) estimate(s) that the application will take **10** minutes, even if contested.

☒ This matter is within the jurisdiction of an associate judge.

☐ This matter is not within the jurisdiction of an associate judge.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to the application, you must:

- (a) file an application response in Form 33 within 5 days after the date of service of this notice of application or, if the application is brought under Rule 9-7 of the Supreme Court Civil Rules, within 11 days after the date of service of this notice of application, and
- (b) at least 2 days before the date set for the hearing of the application, serve on the applicant 2 copies, and on every other party one copy, of a filed copy of the application response and the other documents referred to in Rule 9-7 (12) of the Supreme Court Civil Rules.

Date: 23 February 2024



Signature of
☐ applicant ☒ lawyer for applicant(s)
 Richard P. Barton

To be completed by the court only:

Order made:

☐ in the terms requested in paragraphs _____ of
 Part 1 of this notice of application

☐ with the following variations and additional terms:

Date: _____

Signature of ☒ Judge ☐ Associate Judge

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

[Check the box(es) below for the application type(s) included in this application.]

[6]

- ☐ discovery: comply with demand for documents
- ☐ discovery: production of additional documents
- ☐ extend oral discovery
- ☐ other matter concerning oral discovery
- ☐ amend pleadings
- ☐ add/change parties
- ☐ summary judgment
- ☐ summary trial
- ☐ service
- ☐ mediation
- ☐ adjournments
- ☐ proceedings at trial
- ☐ case plan orders: amend
- ☐ case plan orders: other
- ☐ experts
- ☒ other

[B.C. Reg. 119/2010, Sch. A, s. 43]

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DEFENDANTS

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**NOTICE OF APPLICATION
(Extend Time to File Counterclaim)**

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