

# Beyond damages: When specific performance prevails in British Columbia real estate litigation

January 28, 2026

Specific performance remains one of the most contested remedies in British Columbia real estate litigation. In [Culos Development \(1996\) Inc. v. Baytalan, 2025 BCCA 265](#) (Culos), the Court of Appeal clarifies how “uniqueness” should be assessed and when damages will not suffice. This article analyzes the Culos decision and its impact on the availability of specific performance as a remedy in British Columbia real estate disputes.

## What you need to know about specific performance in British Columbia

Historically, the Supreme Court of Canada has stated that specific performance should not be granted as matter of course. In [Semelhago v. Paramadevan, \[1996\] 2 S.C.R. 415](#), the Supreme Court of Canada indicated that in order for specific performance to be an appropriate remedy, the property must be unique such that a substitute would not be readily available. Later, in [Southcott Estates Inc. v. Toronto Catholic District School Board, 2012 SCC 51](#), the Supreme Court of Canada emphasized that there is no common law presumption that real property is unique.

British Columbia courts have likewise treated specific performance as an exceptional remedy, especially when the property is being purchased for investment or development purposes. In such cases, British Columbia courts have generally favoured awarding monetary damages, recognizing that most commercial properties are replaceable. For example, in [Earthworks 2000 Design Group Inc. v. Spectacular Investments \(Canada\) Inc., 2005 BCSC 22](#), the British Columbia Supreme Court indicated that a property is not considered “unique” in the context of a claim for specific performance merely because it holds special value for a particular buyer. Even where some uniqueness is shown, the buyer must still establish that damages would be inadequate before the test for specific performance will be satisfied. This approach has been grounded in the principle of market fungibility and the desire for predictability in commercial transactions.

The Culos decision marks a shift. Specific performance may be justified, even in the context of investment or development properties.

## Background of the dispute

In Culos, the purchaser sought to acquire a Kelowna property for the development of non-profit social housing under an option to purchase. The vendor refused to complete the sale, challenging the validity of the option to purchase. The trial judge found a binding contract but declined to order specific performance, limiting the award of damages to reliance damages only. On appeal, the Court of Appeal overturned this **decision, focusing on the unique characteristics of the property and the purchaser's** substantial site-specific work, including planning, rezoning, and pre-development activities.

## Analysis

The Court of Appeal reaffirmed that the adequacy of damages must be assessed in light **of the property's characteristics and the purchaser's intended use. There are many** factors that may be taken into account in considering the propriety of an order for specific performance, focusing on uniqueness.

**"Uniqueness" does not require the property to be absolutely irreplaceable. Rather, it is** sufficient that the property possesses qualities that make it especially suitable for the **purchaser's proposed use, and that these qualities cannot be reasonably duplicated** elsewhere. In Culos, the fact that the purchaser had done a significant amount of site-specific planning, due diligence, and pre-development work, along with rezoning and other planning processes, were all significant in finding that the property was not simply land that could be exchanged for any other. The Court of Appeal concluded that monetary damages would not adequately compensate the purchaser, and specific performance was the appropriate remedy.

## Key takeaways

- The Culos decision clarifies that specific performance is an available remedy in British Columbia real estate disputes, even for investment-type properties.
- Courts will look beyond the commercial nature of the transaction and focus on the substantive facts of each case.
- Uniqueness is key.
- Specific performance can be awarded, even in respect of properties purchased solely for investment or development purposes, when the property possesses **qualities that make it especially suitable for the purchaser's proposed use, and these qualities cannot be reasonably duplicated elsewhere.**

If you have questions about specific performance or real estate contract remedies in British Columbia, please reach out to any of the key contacts below.

By

[Matthew G. Swanson](#), [Sarah Péloquin](#), [Emma Gibson](#)

Expertise

[Commercial Real Estate](#), [Disputes](#), [Real Estate Disputes & Litigation](#)

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

### Montréal

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

### Toronto

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.