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

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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.

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