COURT OF APPEAL OF YUKON

Citation: *Yukon (Government of) v. Tarka*
2026 YKCA 2

Date: 20260128
Docket: 24-YU924

Between:

Government of Yukon

Respondent
(Plaintiff)

And

Len Tarka and Eric DeLong

Appellants
(Defendants)

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Mr. Justice Grauer
The Honourable Justice Donegan

On appeal from: An order of the Supreme Court of Yukon, dated September 4, 2024 (*Yukon (Government of) v. Tarka*, 2024 YKSC 40, Whitehorse Docket 21-A0079).

Counsel for the Appellants:	V. Larochelle
Counsel for the Respondent (via videoconference):	K. Sova
Place and Date of Hearing:	Vancouver, British Columbia June 11, 2025
Place and Date of Judgment:	Whitehorse, Yukon January 28, 2026

Written Reasons by:
The Honourable Mr. Justice Grauer

Concurred in by:
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Donegan

Summary:

In the 1980s, the respondent Government of Yukon sought to legitimize the occupation of squatters in the territory. It developed a Squatter Policy, under which every eligible squatter was to have the opportunity to purchase or lease their site, or to relocate to another site, as was determined to be appropriate by the Yukon Squatter Review Panel. The appellant, Mr. Tarka, applied to legitimize his occupation of a cabin in Whitehorse ("the Property"). He sought to buy the Property or to have a "lifetime lease". The Panel recommended that his occupation be legitimized through a "life estate lease", and in 1988, Yukon's Minister of Community and Transportation Services offered him a "life estate lease", subject to Mr. Tarka fulfilling several conditions. Mr. Tarka accepted. In 1991 the conditions were satisfied, Yukon drafted the lease, and it was executed by the parties. The lease provided for a term of "30 years, or the life of the Lessee".

In 2019, Yukon wrote Mr. Tarka and advised that his lease of 30 years would expire in 2021 and would not be renewed. Mr. Tarka objected, taking the position that he had been granted a life estate. Yukon commenced the underlying action seeking vacant possession of the Property. The judge below held in favour of Yukon. She interpreted the lease as providing for a term of 30 years or for the duration of Mr. Tarka's life, whichever is less, and found that no estoppel arose in law or equity that would prevent Yukon from obtaining vacant possession. Mr. Tarka appeals.

Held: appeal allowed.

The judge made a fundamental error in principle in interpreting the lease agreement. She construed the meaning of "30 years, or the life of the lessee" based on the "ordinary and grammatical meaning" of the words despite the contradiction and confusion to which they gave rise. Only after arriving at this interpretation did the judge consider, separately, whether that interpretation might be altered by the context, surrounding circumstances and factual matrix. By doing so, the judge impermissibly constrained her interpretation of the term by proceeding on the basis that the words must mean one of only two things—a 30-year lease, or a life estate—and not something else. A proper interpretation requires interpreting the meaning of the words in their particular context and considering the surrounding circumstances in order to determine the true intent and reasonable expectations of the parties.

The lease agreement did not grant Mr. Tarka a life estate, as a lease cannot convey an interest of uncertain duration. A term of "30 years, renewable during the life of the lessee, at the lessee's option, for a term of up to 30 years" is the only interpretation that fits within the parameters of the words used when viewed in their proper context in light of the surrounding circumstances. Yukon's agreement to renewal is given in the provision "or for the life of the Lessee", indicating that any renewal beyond 30 years would depend only on whether Mr. Tarka was alive.

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Reasons for Judgment of the Honourable Mr. Justice Grauer:

1. INTRODUCTION

[1] This appeal centres around the term of a lease between the Government of Yukon ("Yukon") and the appellant Len Tarka. The lease related to property Mr. Tarka occupied in downtown Whitehorse and was intended to legitimize his position as a squatter on that property. It is known locally as the "Purple Cabin" (the "Property"). Mr. Tarka later sublet the Property to the appellant Eric DeLong.

[2] By the lease, Yukon demised and leased the property to Mr. Tarka "TO HAVE AND TO HOLD for 30 years, or the life of the Lessee from October 1, 1991" (emphasis added). What did the parties mean by this?

[3] Mr. Tarka maintains that it gave him a freehold life estate in accordance with prior discussions and an agreement between him and Yukon. He submits that Yukon is estopped by its conduct and representations from suggesting otherwise. Yukon argues that a lease cannot convey a life estate, and it was not in a position to grant a lease for longer than 30 years. Accordingly, it submits, the clause must be interpreted as if the words "whichever is less" were added. It argues that the facts and law do not support the claim of estoppel.

[4] After a summary trial, the chambers judge agreed with Yukon's position and found no basis for estoppel. She granted Yukon vacant possession of the Property. Her reasons for judgment are indexed at 2024 YKSC 40.

2. BACKGROUND

[5] How the parties came to enter into the lease provides important context for understanding the problem at the root of their dispute.

[6] Mr. Tarka had occupied the Purple Cabin property as a squatter from 1973. There were many squatters in Yukon in those years, particularly in Whitehorse. In the 1980s, Yukon sought to legitimize them in order to solve what it considered to be

a serious land management issue. To that end, it developed a “Squatter Policy” that was finalized in the latter part of 1986.

[7] The object of the Squatter Policy was “[t]o promote the legitimization of squatters where possible; that is, to encourage and enable land holders without tenure to obtain legitimate rights to the land where their use of the land can be identified as appropriate from a sound land management perspective”. Every eligible squatter was to have an opportunity to do one of the following: “(a) enter into an Agreement for Sale for his/her site; (b) enter into a Lease for his/her site; or (c) relocate to another site as allowed under the Homestead Policy.” The Squatter Policy contemplated the creation of a Yukon Squatter Review Panel that would review squatters’ applications for legitimization and make recommendations to the responsible Minister.

[8] While the Policy was under development, Yukon provided a discussion paper to Mr. Tarka and others, outlining the proposed policy and inviting input by June 30, 1986. This discussion paper reviewed both the proposed Homestead Policy and the proposed Squatter Policy and seemed primarily to contemplate the granting of a purchase option, with the possibility of a lease in the case of squatters whose health might be threatened by relocation, or who did do not participate in the Policy.

[9] In response, Mr. Tarka advised Yukon in late June 1986 that he would like to buy the land or have a “lifetime lease”, or alternatively, move the Purple Cabin and preserve it on another site. He noted that he would need a large amount of money to buy the lot because his income was not high, but he was a 13-year resident and wished to remain if possible.

[10] Yukon replied to Mr. Tarka on June 27, 1986, stating:

> The current proposal allows for a life estate lease, the opportunity to purchase upon review of each situation or relocation if legitimization is impossible. We recognize that your situation applies to many others especially in the City. We are sensitive to your situation and you may be assured that your interests will be considered in developing a policy.
>
> [Emphasis added.]

[11] In August of 1986, Yukon's Ministry of Community and Transportation Services circulated an initial draft of the proposed Squatter Policy within the government for comment. That draft contemplated agreements for sale, lease agreements, and a type of lease it described as a "Life Estate". In this regard, the draft provided as follows in clause 7.4:

> 7.4 Conditions of Lease
>
> All lease agreements will include the following conditions:
>
> Residential, Recreational & Commercial:
>
> 1. Five (5) years renewable.
> 2. Transferable.
> 3. Rental fee of 10% of appraised value payable annually in advance.
>
> …
>
> Life Estate:
>
> Where age or infirmity are significant consideration [*sic*] in any decision to relocate an applicant for residential land and circumstances do not force immediate relocation then the following agreement would apply:
>
> 1. Until death of tenant or both joint tenants.
> 2. Non-transferable
>
> …
>
> Comments:
>
> - Acknowledges hardship created for older, infirm persons if forced to relocate. Reduced cost to taxpayer by avoiding welfare support. Humane.
> - The original requirement of five (5) years occupancy has been removed because it was inconsistent with the overall intent.
> - Lease conditions are largely consistent with existing regulations and policy.
> - Life estate clause may be applied in various cases where relocation is difficult.
> - Trapline and life estate lease rents may pose a financial burden to the lessee in some cases.
> - Option for purchase could be part of lease agreement (other than life estate) depending on pricing policy.
>
> [Emphasis original.]

[12] Clause 7.4 attracted the following comment from counsel in Yukon's Justice Ministry on August 14, 1986:

> I would suggest that you may want to allow yourself some flexibility by stating that the term may be up to five years and renewable.
>
> I would point out that the term "life estate" has a very distinct and particular meaning in law and thus the use of the term should be avoided unless it is precisely this type of interest which is intended to be conveyed. In any event, the life estate option would appear to me to be entirely redundant, as it would appear the need it is intended to address could easily be met through the device of a short-term lease subject to renewal.
>
> [Emphasis added.]

[13] Counsel's handwritten note against the heading "Life Estate" in the document reads "—has [indecipherable] meaning in law. Should be avoided unless it is intended. Can't see why can't be done by lease".

[14] In its final form, the Policy omitted any reference to a "life estate"—or, indeed, to a five-year term. It provided in section 11 as follows:

> **11 *Land Disposition: Leases***
>
> **11.1 Conditions of Lease**
>
> Leases shall only be offered where any of the following conditions apply:
>
> 11.1.1 The land may be required for future development.
>
> 11.1.2 Land use constraints are such that title is not recommended by the Review Panel or Appeal Board.
>
> 11.1.3 Relocation is recommended but old age or infirmity of the applicant are significant considerations.
>
> These situations are most likely to arise within municipalities where a lease option may be more appropriate given community planning initiatives.
>
> **11.2 Agreements for Residential, Recreational and Commercial/Industrial Leases**
>
> All lease agreements may extend up to thirty (30) years and may be renewed upon mutual agreement of the parties and shall include the following conditions:
>
> …
>
> [Emphasis added.]

[15] Yukon says that the renewable 30-year term was intended to be consistent with section 14 of the *Lands Act*, RSY 1986, c 99:

> No Yukon lands may be leased for a term exceeding 30 years, but where the terms of the lease so provide, a lease of Yukon lands may at the option of the lessee with the approval of the Executive Council Member be renewed for one additional term not exceeding 30 years.

[16] The *Lands Act* was amended in 2002 (RSY 2002, c 132) without significant alteration to this provision:

> 14 No Yukon lands may be leased for a term exceeding 30 years, but if the terms of the lease so provide, a lease of Yukon lands may at the option of the lessee with the approval of the Minister be renewed for one additional term not exceeding 30 years.

Whether this section applies to the Property is disputed.

[17] In any event, in August 1987, Mr. Tarka applied under the Policy to the Yukon Squatter Review Panel for legitimization of his occupation of the Property. To his application, Mr. Tarka attached as Appendix "A" his correspondence of June 1986, in which he stated that he "would like to buy the land here or have a lifetime lease".

[18] Even though the Policy no longer referred to a "life estate", the Squatter Policy Coordinator used that term when he wrote to Mr. Tarka by letter dated May 16, 1988, advising him of the Squatter Review Panel's response to his application:

> The Yukon Squatter Review Panel has reviewed your application under the Squatter Policy and has made the following recommendations:
>
> **Legitimize for residential use through life estate lease. There is no obligation by the City of Whitehorse to provide city services.**
>
> **Conditions:**
>
> 1. **Lot size to be 0.38 acres more or less**.
>
> Under the policy you may appeal these recommendations within 45 days. If you decide to appeal you must submit a written appeal to this office by **June 30, 1988**.
>
> If no appeal is received than the recommendations will be forwarded to the Minister for his decision. …
>
> [Emphasis original.]

[19] Mr. Tarka did not appeal. Although he had sought to purchase the land as a first choice, he thought he had obtained his alternative choice of a "lifetime lease" (his words) and was satisfied with that.

[20] Yukon's Minister of Community and Transportation Services followed up by letter to Mr. Tarka dated July 6, 1988, stating this:

> I am pleased to inform you that your application for legitimization under the Yukon Squatter Policy is approved in accordance with the Squatter Panel recommendations as follows:
>
> Legitimize for residential use through life estate lease. There is no obligation by the City of Whitehorse to provide city services.
>
> Conditions:
>
> 1. Lot size to be 0.38 acres more or less.
>
> You will find attached for reference purposes Section 10 and 11 of the Policy which outlines the simple steps involved in acquiring legal tenure to the land. You will note that your next step is to notify in writing within sixty (60) days Ms. Terry Simonson, Lands Branch, Box 2703, Whitehorse Y1A 2C6 of your acceptance of the conditions of approval.
> …
>
> [Emphasis added.]

[21] Mr. Tarka responded by letter to Ms. Simonson (undated):

> Thank-you for your offer of legitimised residential use of the land my house sits on through a life estate lease…. This I accept. It will take some time to comply with the conditions of approval in total but I agree to do this.
>
> [Emphasis added.]

[22] A hitch arose when Yukon realized that a portion of the Property was located on land owned by the City of Whitehorse, with the larger part of the Purple Cabin located on Whitehorse's portion. The Manager of the Lands Branch in Yukon's Ministry of Community and Transportation Services wrote to Whitehorse on January 2, 1990, to address the issue:

> Mr. Tarka's squatter application, for a parcel within the escarpment area of Whitehorse, was recommended for approval through a life estate lease. Mr. Tarka is anxious to proceed with a lease and has completed the legitimization steps of paying back taxes and obtaining a surveyor's sketch of his parcel. …
>
> … Unfortunately Mr. Tarka's application area straddles both YTG and City land, with the majority of his building located on City land.
>
> [Emphasis added.]

[23] Whitehorse responded on January 22, 1991:

> This letter shall confirm that the City recognizes that existing squatters located within those areas locally known as "the Escarpment" and "Shipyards/Sleepy Hollow" are non-conforming to OS-Open Space requirements of the Whitehorse Zoning Bylaw.
>
> The City does not object to life estate leases being offered by Y.T.G. to legitimize squatters located in these areas. Non-conforming use of existing structures may continue for the term of the life-estate lease. …
>
> [Emphasis added.]

[24] Ultimately, with the necessary conditions satisfied, the lease, drafted by Yukon, was signed by the parties in November 1991, though effective from October 1 of that year. As we have seen, the lease provided for a term of "30 years, or the life of the Lessee".

[25] Under cross-examination at the summary trial, Mr. Tarka acknowledged that he had time to review this clause before signing the lease and noted that although they had agreed to "legitimization for a life lease … they added a 30-year clause into it, which was not part of the original agreement." He went on to testify:

> So I did get back to them and I tried to negotiate in terms of getting some clarification, but I didn't, and they said either take it or leave it. So, under some duress, I signed it.

He went on to say that he trusted that they had done their job.

[26] We now move forward to April 2, 2019. On that date, Yukon wrote Mr. Tarka to advise that his lease of 30 years would expire on September 30, 2021, and "[a]s per your lease document, dated November 18, 1991, your lease will not be renewed." Yukon reiterated this position by letter to Mr. Tarka of July 27, 2020, in which it noted: "The lease does not include a provision for renewal and it will not be renewed."

[27] Mr. Tarka protested, pointing out that he had been offered, and had accepted, a "life estate lease". Yukon's representative responded as follows on May 7, 2021:

> Thank you for your note. Although your lease does not specify that it has been made for the lessor [*sic*] of 30 years or the life of the lessee, we have interpreted this to mean the lessor of [*sic*] because the lease could not have been validly made for more than 30 years. The lease is subject to the Lands Act, which does not allow for lease terms longer than 30 years. Given the

> ambiguity in the lease and looking at the old communication you provided, I will take another look at all references to a life estate lease in your file.
>
> [Emphasis added.]

[28] Finally, on August 9, 2021, Yukon advised Mr. Tarka, that the lease would indeed expire on September 30, 2021. Yukon noted that while the Squatter Policy provided that a lease could be renewed upon mutual agreement, there was no obligation to renew the lease, and the lease itself did not provide for renewal. Yukon reported that Whitehorse did not support a further lease of the site given its Official Community Plan, and so Yukon declined to renew it.

[29] On October 13, 2021, Yukon commenced this action against the appellants seeking, among other things, vacant possession of the Property. Thereafter, Yukon applied for judgment by way of summary trial, which was granted by order pronounced September 4, 2024. In essence, the judge interpreted the lease as providing for a term of 30 years or for the duration of Mr. Tarka's life, whichever is less, and found that no estoppel arose in law or equity that would prevent Yukon from obtaining vacant possession.

3. OVERVIEW OF THE JUDGMENT BELOW

[30] The judge began by observing that on October 1, 1991, Yukon had leased the Property to Mr. Tarka for residential purposes at $100 per year for a term of "30 years, or the life of the Lessee". Mr. Tarka argues in part that the agreement was not a lease, but rather the demise of a freehold estate comprising a life tenancy.

3.1 Life estate v. leasehold estate

[31] The judge went on to discuss the difference between a life estate and a leasehold estate at paras 17–20. She observed correctly that a life tenancy is a freehold estate which by its nature is of uncertain duration. A leasehold interest, on the other hand, is a temporary right of possession of the freehold estate granted by the owner in fee simple for a term that is certain or is capable of being made certain. When a life estate ends, the remainder of the freehold interest reverts to the original

owner or may devolve upon a third party. When a leasehold interest ends, the right of possession reverts to the owner in fee simple.

3.2 Issues delineated

[32] The judge noted that the principal issues raised before her were, first, whether Yukon had title to all of the Property, and second, whether Mr. Tarka had a life interest in the Property or a leasehold estate (at para 13).

[33] The judge decided the first question, Yukon's title to the Property, in Yukon's favour, and the appellants have not appealed from that determination.

[34] With respect to the second issue, the nature of Mr. Tarka's interest in the Property, the judge noted three sub-issues (at para 16):

1. Did the Minister's letter of July 6, 1988, as accepted by Mr. Tarka, create a contract (see paras 19 and 20 above)?

2. Did the Minister's letter give Mr. Tarka an interest in the Property through promissory or proprietary estoppel? and

3. What interest in the Property did Mr. Tarka acquire through the lease?

[35] Sub-issues 1 and 2 addressed Mr. Tarka's argument that the Minister's letter provided him with an interest in the Property in one of two ways: first, that it constituted a contract granting him a life interest, or, second, if it did not constitute a contract, then the letter provided Mr. Tarka with a life interest through promissory or proprietary estoppel.

3.3 Contract?

[36] Did the Minister's letter create a contract? The judge concluded that it did not. She observed that even if the letter and Mr. Tarka's response contained the necessary elements of offer, acceptance, and consideration, they did not demonstrate a mutual intention to create a legal relationship and be bound by its terms (at para 48). In her view, the purpose of the Minister's letter was to inform

Mr. Tarka that he had been accepted for legitimization, and the interest in land for which he was eligible. She described it as a "decision letter, not a contract", that stated various conditions that must be fulfilled "before an agreement can be entered into" (at para 49).

3.4 Promissory estoppel?

[37] In one succinct paragraph, the judge found that promissory estoppel did not apply on the ground that the parties were not in a legal relationship at the time of the Minister's letter:

> [51] In my opinion, promissory estoppel does not apply. For promissory estoppel to apply, the parties must be in a legal relationship at the time the promise is made (*Trial Lawyers Association of British Columbia v Royal & Sun Alliance Insurance Company of Canada*, 2021 SCC 47 at para. 15). Typically, promissory estoppel arises in a contractual relationship in which one party promises to change or not enforce parts of a contract, and the other party relies on the promise to their detriment. Mr. Tarka does not argue that the parties were in a contractual or other legal relationship at the time the Minister wrote the letter. I will therefore only consider whether Mr. Tarka has an interest through proprietary estoppel.

3.5 Proprietary estoppel?

[38] After setting out the requirements to establish proprietary estoppel, the judge concluded that Mr. Tarka had not met them. In particular, she found at para 69 that the reference in the Minister's letter to a "life estate lease" was "too ambiguous and not 'clear enough' to be a representation that Mr. Tarka could reasonably rely upon as promising a right to a life estate in the Property".

[39] Although that finding disposed of the issue, the judge went on to consider whether Mr. Tarka detrimentally relied on the alleged representation, concluding at para 71 that, if there had been a representation that he could reasonably rely on, then he relied on that representation to his detriment. Ultimately, however, the judge was satisfied that "proprietary estoppel does not attach to Mr. Tarka's interest in the property, as Yukon did not make a sufficiently clear representation that Mr. Tarka was eligible to receive a life estate" (at para 79).

3.6 What interest was acquired through the lease?

3.6.1 Legal principles

[40] The judge began by reviewing the legal principles applicable to the interpretation of a contract (which, of course, includes a lease). For present purposes, two of the leading cases she cited at para 83 are particularly important.

[41] The first, of course, is *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53, where the Court said this:

> [46] The shift away from the historical approach in Canada appears to be based on two developments. The first is the adoption of an approach to contractual interpretation which directs courts to have regard for the surrounding circumstances of the contract — often referred to as the factual matrix — when interpreting a written contract [citation omitted]. …
>
> [47] Regarding the first development, the interpretation of contracts has evolved towards a practical, common-sense approach not dominated by technical rules of construction. The overriding concern is to determine "the intent of the parties and the scope of their understanding" [citations omitted]. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning … [citation omitted].
>
> [Emphasis added.]

[42] The second is *Blackmore Management Inc v Carmanah Management Corporation*, 2022 BCCA 117, where the Court of Appeal for British Columbia observed,

> [50] Finally, each word and clause of a contract is assumed to have a purpose; courts do not prefer interpretations that render contractual terms ineffective or meaningless [citations omitted].

[43] After reviewing the parties' submissions, the judge then embarked upon her analysis.

3.6.2 Ordinary and grammatical meaning

[44] She began at paras 95–98 with the heading “Ordinary and Grammatical Meaning”. She concluded that, in their ordinary and grammatical meaning, the words in the “impugned phrase” meant that “the term of the lease is 30 years or for the duration of Mr. Tarka’s life, whichever is less”. In her view, both phrases, “30 years” and “life of the lessee” would have meaning, as either event could mark the end of the agreement. That would not be the case if the interpretation were that the lease would be for ‘30 years or the duration of Mr. Tarka’s life, whichever is greater’:

> [95] I find that the ordinary and grammatical meaning of the impugned phrase is that the term of the lease is 30 years or for the duration of Mr. Tarka’s life, whichever is less. If “[t]o have and to hold, for 30 years, or the life of the Lessee” is interpreted in this way, then both phrases “30 years” and “life of the Lessee” have meaning, as either event could mark the end of the agreement.
>
> [96] On the other hand, Mr. Tarka’s interpretation, which is that the lease would be for 30 years or for the duration of Mr. Tarka’s life, whichever was more, does not create a life estate. In Mr. Tarka’s interpretation of the phrase, the Lease Agreement would continue in effect if he had passed away before September 30, 2021 (30 years after the Lease Agreement took effect). Presumably his heirs would then benefit from the Lease Agreement until the 30 years had expired. That, however, is not a life estate. A life estate would, rather, have terminated upon Mr. Tarka’s death. To establish a life estate, the term would have to state: “To have and to hold, for the life of the Lessee”.
>
> [97] In oral submissions, Mr. Tarka’s counsel did argue that was the actual intent of the term, submitting essentially the words “30 years” were meaningless and should simply be ignored. This submission runs contrary to the principle that all words and phrases of a contract have a purpose. The exception that meaningless or self-contradictory terms may be ignored if they are mere verbiage or about an issue of minor importance does not apply here. The words are not meaningless in themselves, they are not self-contradictory, and relate to an essential term of the contract. I therefore conclude that the words should not simply be ignored.
>
> [98] The ordinary and grammatical sense of the phrase suggests that the term of the lease is 30 years or for the duration of Mr. Tarka’s life, whichever is less.

3.6.3 The context of the entire agreement

[45] Next, the judge turned to consider “The Context of the Entire Agreement” in paras 99–104, commenting that, “[f]or the most part, the other terms of the agreement do not assist in determining the length of the agreement or the interest

granted to Mr. Tarka" (para 99). At para 104, she concluded that, "aside from the termination for cause clause, the Lease Agreement as a whole could support either a life tenancy or a leasehold estate".

3.6.4 The Lands Act

[46] At paras 105–117 of her reasons, the judge considered Yukon's argument that a life tenancy lease is not permitted by section 14 of the *Lands Act* (see paras 15 and 16 above), observing:

> [105] … A lease granting a life interest would therefore be unlawful. Where a contract can be interpreted in two ways, and one interpretation is unlawful, while the other is not, the lawful interpretation is to be preferred (*Unique Broadband Systems, Inc (Re)*, 2014 ONCA 538 at para. 87).

[47] The judge held at para 116 that Yukon "can only enter leases that grant leasehold estates", concluding at para 117:

> Given that courts will avoid a contractual interpretation that renders the agreement unlawful, and the *Lands Act* does not permit Yukon to enter into leases which grant life estates, the interpretation that, under the Lease Agreement, Mr. Tarka had a leasehold estate, with a maximum 30-year term, is preferred.

3.6.5 Surrounding circumstances

[48] At paras 118–121, the judge discussed the relevance of the surrounding circumstances. In her view, they did not support the conclusion that the intent of the parties, in signing the contract, was to provide Mr. Tarka with a life interest. She concluded on this aspect as follows:

> [121 In my opinion, the phrase "30 years, or the life of the Lessee" is unambiguous. Relying on the surrounding circumstances to come to a different interpretation would emphasize the importance of the surrounding circumstances too much, at the expense of the words written in the Lease Agreement.
>
> [Emphasis added.]

[49] Having reached this conclusion, the judge rejected the application of the principle of *contra proferentem*:

> [122] *Contra preferentem* [*sic*] applies only where the contract bears two reasonable constructions. It is a tool of last resort (*Jamel Metals Inc v Evraz Inc*, 2012 SKCA 116 at para. 52). It is therefore not applicable here.

3.7 Remedies

[50] In this section, from paras 123 through 143, the judge considered two questions. The first concerned the remedy to which Mr. Tarka would be entitled if, contrary to the judge's finding, he had established proprietary estoppel. The second was whether Yukon should be granted the relief it was seeking in addition to vacant possession.

3.8 Conclusion

[51] At paras 143 and 144, the judge granted judgment in favour of Yukon, ordering Mr. Tarka and Mr. DeLong to deliver vacant possession within 90 days together with corollary relief.

4. ISSUES

[52] Mr. Tarka appeals, raising the following issues:

1. Whether the judge erred in law, in principle, and in mixed law and fact, by interpreting the phrase "30 years, or the life of the Lessee" as implicitly including the phrase "whichever is less" (as opposed to "whichever is greater"). As argued, this issue devolved into four sub-issues:
    a) Did the judge err in relation to the context required to interpret the words properly?
    b) Did the judge err in concluding that a term of "30 years or the life of the lessee whichever is greater" would not create a life estate?
    c) Did the judge err in her application of the doctrine of illegality? and
    d) Did the judge err in failing to apply the doctrine of *contra proferentem* on the basis that the clause was not ambiguous?

2. Whether the judge erred in law in finding that promissory estoppel was not established because the parties were not in a legal relationship;

3. Whether the judge erred in law by failing to consider and apply the doctrine of estoppel by convention;

4. Whether the judge erred in law, in principle, or mixed law and fact by concluding that there had been no representation or assurance "clear enough" to ground a claim of proprietary estoppel;

5. Whether the judge erred in law and in fact in her (*obiter*) assessment of the extent of detrimental reliance on the representations made; and

6. Whether the judge erred in law and in principle in her (*obiter*) conclusion concerning what remedy would be appropriate if Mr. Tarka had established proprietary estoppel.

5. DISCUSSION

5.1 Overview: an extricable error of law

[53] *Sattva* tells us that the proper interpretation of an agreement is generally a question of mixed fact and law (at para 50), attracting a deferential standard of review. The exception, of course, is where there has been a legal error in the application of the test, or where there is an extricable question of law, in which case the standard of review is correctness. As the Court stated in *Sattva* at para 53:

> Legal errors made in the course of contractual interpretation include "the application of an incorrect principle, the failure to consider a required element of a legal test, or the failure to consider a relevant factor" (*King [v. Operating, Institute of Manitoba*, 2011 MBCA 80], at para. 21). Moreover, there is no question that many other issues in contract law do engage substantive rules of law …

[54] In my respectful opinion, the judge below made a fundamental error in principle in interpreting the lease agreement. She did so by focusing on the "ordinary and grammatical meaning" of the words comprising the phrase in question, construing their meaning on that basis notwithstanding the contradiction and

confusion to which they gave rise. Only after doing so did she turn to the context, surrounding circumstances and factual matrix. She did so to consider their effect on an already arrived-at interpretation rather than employing those interpretive aids as part of one overall interpretive exercise in order to resolve the inherently confusing nature of the term in question. Given the multitude of strands that the issues in this case required the judge to weave together, and the manner in which the case was argued, it is not altogether surprising that the judge took the approach she did. Nevertheless, the result was a legal error in the application of the test as enunciated in *Sattva*.

[55] As Justice Rothstein put it in *Sattva*:

> [47] … To [determine the intent of the parties and the scope of their understanding], a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning:
>
> > No contracts are made in a vacuum: there is always a setting in which they have to be placed . . . In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
>
> ([*Reardon Smith Line Ltd. v. Hansen-Tangen*, [1976] 3 All E.R. 570 (H.L.)], at p. 574, *per* Lord Wilberforce).
>
> [48] The meaning of words is often derived from a number of contextual factors, including the purpose of the agreement and the nature of the relationship created by the agreement (see *Moore Realty Inc. v. Manitoba Motor League*, 2003 MBCA 71, 173 Man. R. (2d) 300, at para. 15, *per* Hamilton J.A.; see also Hall, at p. 22; and McCamus, at pp. 749-50). As stated by Lord Hoffmann in *Investors Compensation Scheme Ltd. v. West Bromwich Building Society*, [1998] 1 All E.R. 98 (H.L.):
>
> > The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. [p. 115]
>
> [Emphasis added.]

[56] This passage makes it clear that the interpretive exercise is holistic, looking at the ordinary and grammatical meaning of the words in their particular context and considering the surrounding circumstances in order to determine the true intent and reasonable expectations of the parties. Looking at the words alone is not the way to accomplish this (see, for instance, *Sutter Hill Management Corporation v Mpire Capital Corporation,* 2022 BCCA 13 at para 32, leave to appeal ref'd 40112 (1 September 2022); see also *Dumbrell v. The Regional Group of Companies Inc*., 2007 ONCA 59 at para. 53).

[57] But that was how the judge approached it. She did so notwithstanding her recognition of the fundamental differences between a leasehold interest and a freehold life estate (at paras 17–20), and her recognition in the context of the proprietary estoppel argument that the phrase "life estate lease" was "too ambiguous" and called for clarification (at para 69).

[58] In the lease, the words used in their ordinary and grammatical meaning similarly described legally irreconcilable concepts (30 years/life of the Lessee) that demanded context to be understood. Yet, only after arriving at an interpretation based on what she took to be their ordinary meaning did the judge consider, separately, whether that interpretation might be altered by the context, including the effect of legality and the significance of the surrounding circumstances. By doing so, the judge impermissibly constrained her interpretation of the term by proceeding on the basis that the words must mean one of only two things—a 30-year lease, or a life estate—and not something else.

[59] As a result of this approach, the judge devoted little attention to the surrounding circumstances and factual matrix in the interpretive process, citing *1001790 BC Ltd v 0996530 BC Ltd*, 2021 BCCA 321 at para 42, for the proposition that the surrounding circumstances should not overwhelm the words contained in the agreement. But that case was one where the words in question were very clear. The appellant argued that they nevertheless did not reflect the parties' agreement: essentially a case of *non est factum* rather than interpretation.

[60] This case is very different. In order to have any chance at resolving the confusion created by the words chosen and giving effect to them all, the judge was obliged to consider the ordinary and grammatical meaning of the words in the context of the document as a whole, the factual matrix and the surrounding circumstances. The problem was not whether the words might be overwhelmed by those other interpretive requirements, but whether their meaning could thereby be sensibly derived.

[61] Given this extricable error of law, the correctness standard applies. Our task is now "to interpret the contract afresh with due regard to the factual findings of the judge, subject to any palpable and overriding error or misapprehension of the evidence in relation to those findings": *Catherwood Towing Ltd v Lehigh Hanson Materials Limited*, 2024 BCCA 348 at paras 83 and 148, leave to appeal ref'd: 41594 (15 May 2025).

5.2 Interpreting the lease agreement

5.2.1 Overview

[62] I begin by restating the problem that brings us here. What did the parties intend when they entered into an agreement titled "Lease" under which Yukon, as "lessor", demised and leased the Property to Mr. Tarka as "lessee", "TO HAVE AND TO HOLD for 30 years, or the life of the Lessee …" (emphasis original).

[63] We know that in 2019, Yukon took the position that this was a lease for 30 years, so that it would terminate September 30, 2021, while Mr. Tarka took the position that the lease legitimized his residential use of the land for his lifetime by way of a "life estate lease".

[64] It is also evident that the words used in the lease "30 years, or the life of the Lessee" do not readily fit together because they describe two different things: (1) a finite period of time consistent with Yukon's present position, and (2) a period of uncertain duration to be measured by Mr. Tarka's life, consistent with his position.

But those were the positions they took in 2019. We must look at 1991. What was their intention and the scope of their understanding then?

[65] I do not agree with the judge that one can discern the answer to this question through the ordinary and grammatical meaning of the words themselves. Either phrase (30 years/life of the lessee) would be superfluous if the other was the limit the parties intended. The reality is that the document was poorly drafted. We should try to give meaning to both aspects. How is this possible?

[66] In order to solve this conundrum, it will be necessary to look at all of the factors discussed above. What is the context in which the words appear? Who are the parties and what were they intending to accomplish? What was the genesis of the agreement, and what do those surrounding circumstances tell us about the parties' intention and expectations? What other interpretive aids are available, such as illegality and the principle of *contra proferentem*? Finally, taking all of these factors into account, and exercising common sense, what was their mutual intention?

5.2.2 The parties

[67] The Government of Yukon is, of course, a sophisticated organization, with various departments led by Ministers and staffed with experienced public servants, and with access to in-house legal advice. It was the mover in all of this and was solely responsible for the legitimization process, the content of the legitimization proposals, and the drafting of the lease agreement. It did all of this in pursuit of its goal of enabling squatters to obtain legitimate rights to the land in a manner consistent with both the squatters' circumstances and sound land management.

[68] Mr. Tarka is relatively unsophisticated and, at the time, was relatively young. He had no legal training but understood what he wanted to achieve through the legitimization process: to buy the Property or have a "lifetime lease" (his words), being a lease for the rest of his life. He did not, however, have any control over what Yukon offered, or what form legitimization might take. This was no negotiation

between parties with equal bargaining power. That is not to say, however, that Yukon was indifferent to squatters' varying individual situations.

5.2.3 Genesis

[69] Mr. Tarka wanted a "lifetime lease" if he could not buy the Property. What the Squatter Review Panel recommended was that his tenure be "legitimize[d] for residential use through life estate lease". How did that concept arise, and what did it mean?

[70] As we have seen, the draft policy in 1986 contemplated legitimization through three alternative means: agreements for sale; lease agreements for renewable five-year terms; and a form of lease agreement called "life estate". When Mr. Tarka indicated that he would like to buy the property or have a "lifetime lease", he was told that the "current proposal allows for a life estate lease", or the opportunity to purchase.

[71] Legal counsel cautioned Yukon against the use of the term "life estate", suggesting that the concept envisioned by the draft policy could be accomplished through a lease by means of renewable terms.

[72] When the Policy was finalized, it no longer referred to a "life estate" and contemplated lease agreements for up to 30 years, renewable upon mutual agreement. Nevertheless, in response to his application, the Squatter Review Panel recommended legitimization "for residential use through life estate lease". The Minister approved that recommendation in precisely the same language on July 6, 1988.

[73] Nowhere in the exchanges between Mr. Tarka and Yukon was there mention of 30 years as the term of the lease, with one exception. Enclosed with the Minister's letter was a copy of sections 10 and 11 of the Policy. According to the letter, however, this attachment was for the purpose of "outlin[ing] the simple steps involved in acquiring legal tenure to the land."

[74] Section 11, of course, did indicate that "all lease agreements may extend up to thirty (30) years and may be renewed upon mutual agreement …". Yukon argued that this aligned the Policy with the *Lands Act*, and therefore, ultimately, the 30-year term had to be incorporated into the lease. It is evident, however, that, at the time, the Minister saw no inconsistency between section 11 of the Policy and Yukon's approval and offer of "residential use through life estate lease".

[75] This makes sense if, as legal counsel had advised Yukon, a lease with a renewable term would accomplish what had been initially contemplated as a life estate lease.

[76] From Mr. Tarka's perspective, what had been offered, and accepted by him, would have appeared to be exactly what he had requested: a lifetime lease. He would not have known that the two concepts were legally irreconcilable. That is why, as he deposed, he did not appeal the Squatter Panel's recommendation in the hope of obtaining an agreement for sale.

[77] The next step, of course, was the lease itself providing for the equally irreconcilable term of "30 years, or the life of the lessee".

5.2.4 Legality: Leases, Life Estates and Proprietary Estoppel

[78] Mr. Tarka argued below and before us that the effect of the Minister's letter was to offer Mr. Tarka a freehold life estate in the Property, which offer Mr. Tarka accepted. A "life estate lease", he submits, is not a lease at all, and therefore not subject to the law concerning leases, including the *Lands Act*.

[79] The judge noted, and I agree, that a life estate cannot be conveyed by means of a lease. A lease must be for a certain term, or at least a term that is capable of being made certain. It cannot be granted for the life of the lessee. A life estate is a freehold estate of a higher order and is, by definition, of uncertain duration. In this sense, Mr. Tarka is correct in saying that the granting of a life estate does not create a leasehold interest.

[80] I agree with the judge, however, that from the perspective of proprietary estoppel, the Minister's letter cannot properly be read as offering a freehold life estate. That would have been inconsistent with the parameters of the Squatter Policy from its inception: agreement for sale, lease agreement, or relocation. The reference in the draft Policy to a "life estate" was in the context of a form of lease agreement, not in the context of an agreement for sale, which is what the transfer of a freehold life estate would require. It was an unhappy reference, as legal counsel pointed out at the time; counsel for Yukon at the summary trial conceded that it was "unfortunate". It was deleted from the final form of the Policy.

[81] It is noteworthy that Mr. Tarka's primary objective had been to obtain fee simple to the Property through an agreement for sale. That was not approved, and he clearly understood that. Nor did Mr. Tarka fall into the category of persons who had to be relocated because they did not otherwise meet the parameters for legitimization. He fell into the middle category of persons to be legitimized through lease agreements.

[82] Why, then, did both the Squatter Review Panel and the Minister continue to use the phrase "life estate lease", and why did the lease refer to the life of the lessee?

5.2.5 Interpreting the term of the lease agreement

[83] I have already indicated my view that the Minister's use of the phrase "life estate lease" was not intended to offer the transfer of a freehold life estate. At the same time, it seems clear that it cannot be read as offering a lease limited to 30 years. Nowhere was that mentioned in the dealings between the parties leading to the lease agreement.

[84] As I see it, the answer is found in the attachment of the word "lease" to the term "life estate". What was intended, one must assume, was not something legally unrecognizable, but rather something that accomplished the intent of the original draft policy: in the right circumstances, a lease that would likely last the lifetime of the lessee, as Mr. Tarka had requested. How could that be accomplished? Just as

the lawyer pointed out: through a renewable term. That concept was indeed incorporated into section 11.2 of the final Policy.

[85] The lease, however, says nothing about renewal. Despite this, in my respectful view, the only interpretation that fits within the parameters of the words used when viewed in their proper context in light of the surrounding circumstances, is that the reference in the lease to "30 years or the life of the Lessee" (emphasis added) must be taken to mean "30 years, renewable during the life of the lessee, at the lessee's option, for a term of up to 30 years".

[86] In this way, the term fits what the Minister offered (a "life estate lease"), what the Squatter Policy envisioned ("All lease agreements may extend up to thirty (30) years and may be renewed upon mutual agreement"), and what the lease provided ("for 30 years, or the life of the Lessee"). On the face of the document, a reference to renewal would reasonably have been considered superfluous given the reference to the life of the lessee. That reference, in short, must be interpreted as necessarily providing for renewal if the lessee were still living after 30 years.

[87] Why renewable at the lessee's option? Because that is consistent with the dealings between the parties (the feature of renewability replacing the previous concept of a life estate lease), and because it is inherent in the lease's provision that it extends for "30 years, or the life of the Lessee"—the latter phrase indicating that any renewal beyond 30 years depends only on whether Mr. Tarka remains alive.

[88] In the context of discussing Mr. Tarka's claim of proprietary estoppel, the judge found that the Minister's statement that Mr. Tarka was eligible for a "life estate lease" would, on its own, "be sufficient to promise a life estate to Mr. Tarka" (at para 62). She went on to note, however, that there was more to the letter and that statement, because the letter attached section 11 of the Squatter Policy. That policy noted that "all lease agreements may extend up to thirty (30) years and may be renewed upon mutual agreement of the parties …". What the judge did not consider, given the focus of the argument, was that, properly interpreted, the Minister's

assurance was for something different—something not inconsistent with the Squatter Policy.

[89] As I stated above, I agree that, in the circumstances, the Minister's promise cannot be taken to have created a life estate for Mr. Tarka. But as I also noted, it is evident that neither the Squatter Review Panel nor the Minister saw any inconsistency between the two elements of the promise of a "life estate lease" and the provisions of section 11 of the Squatter Policy. It should surprise no one if Mr. Tarka, too, saw no inconsistency, particularly because the letter referred him to section 11 for an entirely different purpose. Moreover, there is no reason to suppose he would have considered a lease term of 30 years renewable on agreement to be different from his understanding of a lifetime lease, given Yukon's apparent agreement to renewal in promising a "life estate lease" and in referencing the length of his life in the term of the lease.

[90] As we have seen, the *Lands Act (2002)* permits renewal of a 30-year term at the option of the lessee "where the terms of the lease so provide … with the approval of the Minister". The parties disagree as to whether the *Lands Act* applies to the Property. In my view, it is not necessary to resolve that question because, assuming that it does, the terms of this lease do provide for renewal at the option of the lessee when properly interpreted; this necessarily indicates the approval of the Minister.

5.2.6 Contra proferentem and other grounds

[91] I agree with the judge that the doctrine of *contra proferentem* has no application in this case because the lease can be interpreted without it.

[92] In the circumstances, I do not consider it necessary to address the other grounds of appeal raised by the appellants.

[93] I note as well that Yukon did not argue that Mr. Tarka's subletting of the property to Mr. DeLong was of any consequence. Although the lease prohibited assignment without consent (assignment would have made the assignee liable to

Yukon for all of Mr. Tarka's obligations under the lease), it did not prohibit subletting without consent (subletting, of course, leaves Mr. Tarka liable to Yukon for the lessee's obligations).

6. DISPOSITION

[94] For these reasons, I would interpret the lease agreement as providing for a lease term of 30 years, renewable during the life of the lessee, at the lessee's option, for a term of up to 30 years. I would therefore allow the appeal and set aside the order of the chambers judge. It follows that I would dismiss Yukon's application for an order for vacant possession. Yukon is, of course, entitled to any outstanding lease payments forthwith.

"The Honourable Mr. Justice Grauer"

I AGREE:

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Donegan"