

CANADA / JUDGMENT

Echelon Insurance v. Cube Project Management Ltd.

2025 BCSC 1805

COURT

Supreme Court of British Columbia

DECIDED

16 September 2025

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2025 BCSC 1805 Echelon Insurance v. Cube Project Management Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Echelon Insurance v. Cube Project Management Ltd.,

2025 BCSC 1805

Date: 20250916

Docket: S233018

Registry: Vancouver

Between:

Echelon Insurance / Echelon Assurance

Plaintiff

And

Cube Project Management Ltd. and Scott Davies

Defendants

And

Precision Engineering Ltd., Bahig Wanas, Mann Engineering and Planning Corporation, David Russel Mann, GMS Canada Lumber Corp. dba Home Lumber & Building Supplies, and Anthony Eric Vanzetta dba Tony Vanzetta Construction

Third Parties

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Defendants Cube Project Management Ltd. and Scott Davies:

J. Antifaev

Counsel for the Application Respondent, 0917917 B.C. Ltd.:

M. Scherr

(by videoconference)

No other appearances.

Place and Date of Hearing:

Vancouver, B.C.

August 27, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 16, 2025

Introduction

- [1] The defendants Cube Project Management Ltd. ("Cube") and Scott Davies (collectively the "Cube Defendants") apply for:
- a) Leave to amend their third party notice. The amendment involves correction of a misnomer of one of the named third parties from "Precision Engineering Ltd." to "0917917 B.C. Ltd."; and
 - b) Renewal of the third party notice for 60 days, so it can be served on 0917917 B.C. Ltd.
- [2] The application respondent 0917917 B.C. Ltd. ("091 BC") acknowledges that there has been a misnomer, but it opposes the application because it says the Cube Defendants already have a duplicate third party claim pending against it in another action.

Background

- [3] On April 19, 2023, the plaintiff ("Echelon") filed its notice of civil claim in this action (the "Vancouver Action"). It claims pursuant to an indemnity agreement (with Cube) and a personal guarantee (with Mr. Davies) in relation to a BC New Home Warranty program warranty for a home which was constructed at 10305 Resthaven Drive, Sidney, BC (the "Sidney Property"). It says that on November 12, 2020, the homeowners of that property submitted to warranty claim to it alleging various defects and deficiencies. These included a shifted wall, slider doors that would not close, water accumulation, and water damage. On the same day, it informed Cube of the claim and instructed it to repair the defects. Echelon

determined that the alleged defects and deficiencies were covered by the Warranty. It says Cube failed to repair them, so Echelon carried out investigations, engaged a building envelope engineer to diagnose the claim and contractors to propose repair solutions and estimate repair costs. The estimated costs approached or exceeded the policy limit, \$200,000. Echelon entered into a settlement agreement with the homeowners and paid them the policy limit, in exchange for a release. Echelon now seeks to recover the settlement amount plus its investigation costs (\$17,153.18) from the Cube Defendants.

- [4] On January 26, 2024, the Cube Defendants filed a response to civil claim, denying the claim against them. They also filed a third party notice, claiming contribution and indemnity from several sub-trades, in the event the Court finds that the Cube Defendants liable to Echelon. In the third party notice, one of the third parties named was what they believed to be the company which provided structural engineering services for construction of the Sidney Property. At the time of construction, that company's name was "Precision Engineering Ltd."
- [5] In the third party notice, "Precision Engineering Ltd." and the claim against it are described as follows:
9. The third party, Precision Engineering Ltd. ("Precision"), was a company registered pursuant to the laws of British Columbia, with a registered office located at 201 - 19 Dallas Road, Victoria, British Columbia.
 10. At all material times, Precision carried on business as, inter alia, a consulting structural engineering firm and at all material times represented itself as an engineering firm qualified to design and construct residential homes.
 11. The third party, Bahig Wanas ("Wanas") was at all material times a professional engineer. Wanas present address is unknown to the Claiming Parties.
 12. At all material times, Wanas was an employee or agent of Precision and was acting within the scope of his employment or agency.
 13. At all material times, Wanas and Precision provided structural engineering services for the construction of the Home.
 14. Wanas and Precision owed the plaintiff and the Claiming Parties a duty (contractual, statutory, common law, or otherwise) to use all reasonable skill, care, diligence, and competence of a reasonably prudent professional engineer, and engineering firm, as applicable.
 15. Wanas and Precision, among other duties, owed the plaintiff and the Claiming Parties a duty (contractual, statutory, common law, or otherwise) to ensure that the Home was:
 - a. designed and constructed in a good and workmanlike manner;
 - b. designed and constructed with suitable materials;

- c. designed and constructed in compliance with the Building Code, all other applicable codes, regulations, bylaws, enactments and industry standards;
 - d. designed and constructed free from any defects;
 - e. designed and constructed in a manner suitable for habitation; and,
 - f. designed and constructed to be reasonably durable.
16. Wanas and Precision breached their respective contract, duties of care and were negligent in the provision of their services and their breaches and negligence caused or contributed to the

plaintiff's loss, damage and expense. Particulars of those breaches include but are not limited to:

- a. Failing to properly design, assess, evaluate, and/or provide recommendations required for the construction of the Home;
- b. Failing to properly advise on the structural conditions applicable to the construction of the Home;
- c. Failing to properly monitor, inspect, and review the construction of the Home so as to ensure compliance with the requirements of its use;
- d. Failing to assess or evaluate, adequately or at all, the effect of the design decisions involved in the construction of the Home and how these decisions interacted with the material structural conditions; and
- e. Such further and other particulars as become known to the Claiming Parties.

- [6] On February 5, 2024, the Cube Defendants served the third party notice on what it understood to be Precision Engineering Ltd.'s registered and records office, namely 201-19 Dallas Road, Victoria, BC, which is also the address of the law firm Pearlman Lindholm.
- [7] The Cube Defendants subsequently learned that the company originally known as "Precision Engineering Ltd." had been voluntarily dissolved on May 21, 2020, and thereafter on June 6, 2023, a different company had assumed that name.
- [8] The Cube Defendants took steps to restore the original dissolved "Precision Engineering Ltd." entity. In the course doing so, it reverted to its numbered company name, 091 BC. The restoration was completed on June 13, 2024, as reflected in a certificate issued by the BC Registrar of Companies.
- [9] The Cube Defendants now wish to amend their third party notice to correct the misnomer of "Precision Engineering Ltd." to 091 BC.

The Victoria Action

- [10] On October 3, 2022, the registered owners of the Sidney Property, Jeffrey Green and Micheal Harper (collectively, the "Homeowners") previously filed a notice of civil claim in Victoria action no. S-223115, Green and Harper v. Cube Project Management Ltd. and others (the "Victoria Action"). They claim against the Cube Defendants and others for alleged construction defects and deficiencies in the construction of the Sidney Property. As noted, part of their claim was settled through the New Home Warranty settlement they reached with Echelon. They continue to pursue a claim for the damages over and above that settlement amount directly from the Cube Defendants and others.
- [11] On January 26, 2024, the Cube Defendants filed a response to civil claim in the Victoria Action. On January 29, 2024, they filed a third party notice, claiming for contribution and indemnity from various entities and individuals, including "Precision Engineering Ltd." The claim against it includes the following:
13. The third party, Precision Engineering Ltd. ("Precision"), was a company registered pursuant to the laws of British Columbia, with a registered office located at 201 - 19 Dallas Road, Victoria, British Columbia.
 14. At all material times, Precision carried on business as, inter alia, a consulting structural engineering firm and at all material times represented itself as an engineering firm qualified to design and construct residential homes.
 15. The third party, Bahig Wanas ("Wanas") was at all material times a professional engineer. Wanas present address is unknown to the Claiming Parties.
 16. At all material times, Wanas was an employee or agent of Precision and was acting within the scope of his employment or agency.
 17. At all material times, Wanas and Precision provided structural engineering services for the construction of the Home.
 18. Wanas and Precision owed the plaintiffs and the Claiming Parties a duty (contractual, statutory, common law, or otherwise) to use all reasonable skill, care, diligence, and competence of a reasonably prudent professional engineer, and engineering firm, as applicable.
 19. Wanas and Precision, among other duties, owed the plaintiffs and the Claiming Parties a duty (contractual, statutory, common law, or otherwise) to ensure that the Home was:
 - a. designed and constructed in a good and workmanlike manner;
 - b. designed and constructed with suitable materials;
 - c. designed and constructed in compliance with the Building Code, all other applicable codes, regulations, bylaws, enactments and industry standards;

- d. designed and constructed free from any defects;
 - e. designed and constructed in a manner suitable for habitation; and,
 - f. designed and constructed to be reasonably durable.
20. Wanas and Precision breached their respective contract, duties of care and were negligent in the provision of their services and their breaches and negligence caused or contributed to the plaintiffs' loss, damage and expense. Particulars of those breaches include but are not limited to:
- a. Failing to properly design, assess, evaluate, and/or provide recommendations required for the construction of the Home;
 - b. Failing to properly advise on the structural conditions applicable to the construction of the Home;
 - c. Failing to properly monitor, inspect, and review the construction of the Home so as to ensure compliance with the requirements of its use;
 - d. Failing to assess or evaluate, adequately or at all, the effect of the design decisions involved in the construction of the Home and how these decisions interacted with the material structural conditions; and
 - e. Such further and other particulars as become known to the Claiming Parties.
- [12] On December 3, 2024, the Cube Defendants filed an amended third party notice in the Victoria Action, pursuant to an Order made by Associate Judge Scarth on October 29, 2024. The amendment deleted "Precision Engineering Ltd." and added 091 BC. At para. 13.1, 091 BC is described as "0917917 B.C. Ltd., formerly known as Precision Engineering Ltd."
- [13] On April 16, 2024, 091 BC filed a response to third party notice in the Victoria Action, in which it acknowledged it having provided structural engineering services for construction of the Sidney Property.

Efforts to Obtain Consent - Vancouver Action

- [14] On February 19, 2025, the Cube Defendants requested that 091 BC consent to substitution of its post-restoration name in the third party notice in the Vancouver Action. On March 13, 2025, 091 BC refused the request, taking the position that the third party notice in the Vancouver Action improperly duplicated the third party relief already being sought in the Victoria Action, and as such would constitute an abuse of process.

Applicable Law - Misnomer

- [15] The application is made pursuant to Rule 6-1(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 ("SCCR"):

When pleadings may be amended

- (1) Subject to Rules 6-2 (7) and (10) and 7-7 (5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,
 - (a) once without leave of the court, at any time before service of the notice of trial, or
 - (b) after the notice of trial is served, only with
 - (i) leave of the court, or
 - (ii) written consent of the parties.
- [16] A misnomer can be corrected under Rule 6-1 [Amendment of Pleadings], as distinguished from the addition or substitution of a party, which must be done under Rule 6-2 [Change of Parties].
- [17] The test for what constitutes a misnomer is set out in *Jackson v. Bubela*, [1972] B.C.J. No. 736, 28 D.L.R. (3d) 500, 1972 CanLII 978 (C.A.) at para. 7:

The test must be: How would a reasonable person receiving the document take it? If, in all the circumstances of the case and looking at the document as a whole, he would say to himself: "Of course it must mean me, but they have got my name wrong", then there is a case of mere misnomer. If, on the other hand, he would say: "I cannot tell from the document itself whether they mean me or not and I shall have to make inquiries", then it seems to me that one is getting beyond the realm of misnomer. One of the factors which must operate on the mind of the recipient of a document, and which operates in this case, is whether there is or is not another entity to whom the description on the writ might refer.

- [18] A more recent summary is found in *Boake v. Blair*, 2019 BCSC 830 at paras. 28-31:

28 The first issue to be resolved is whether the plaintiff's application is a proper application for substitution rather than the correction of a misnomer. This is significant because if either application is to substitute a defendant, then any accrued limitation periods must be addressed. If the application is to correct a misnomer, no question concerning the limitation period arises.

Misnomer

29 The plaintiff contends that the names used on the NOCC were misnomers that could be readily corrected by substituting the proper names of Braylin Contracting Ltd. for Ian Curtis Blair dba Braylin Contracting and Ian Blair Curtis for Ian Curtis Blair. The plaintiff relies on principles discussed in *Jackson v. Bubela* (1972), 28 D.L.R. (3d) 500 (B.C.C.A.), in which the Court of Appeal said:

Although "misnomer" usually has reference to a wrong naming by mistake, whereas the wrong naming here was deliberate, I think the tests above set out with respect to misnomer generically have full application in this case. I can see no compelling reason why an inadvertent misnaming of a clearly identified person should be any less subject to the test relative to misnomer than an

inadvertent one. This is particularly so when the conduct of that person has caused or contributed to the situation. I therefore conclude that the application was one of amendment to correct a misnomer and not for the addition or substitution of a new or different party.

30 This case is similar to *Jackson* which dealt with the naming of an unidentified motorist as John Doe "at a time when the identity of that person was not known to the plaintiff". In *Jackson*, the court, referring to *Davies v. Elsby Bros. Ltd.*, [1960] 3 All E.R. 672 (C.A.) described the test differently; it said if the person receiving the document cannot tell whether it refers to the recipient or not, and has to make inquiries on that point, the case is beyond the realm of misnomer. The court in *Davies* at 676 said "one of the factors which operate on the mind of the recipient of a document, and which operates in this case, is whether there is or is not another entity to whom the description on the writ might refer".

31 A different perspective on the application was articulated in *Sperling v. "Queen of Nanaimo" (The)*, 2014 BCSC 326 at para. 23, the court cited *Broom v. Royal Centre*, 2005 BCSC 1630, describing the difference between misnomer, and how the court should exercise discretion:

[8] In *Oldridge* the important distinction between misnomer and an application to substitute a correct defendant is discussed at p.340. It is noted that the distinction is often vital because a limitation period may have accrued in favour of a defendant sought to be added, which would not apply in the case of misnomer, where a defendant has been mis-described. An amendment to the style of cause to correct a misnomer of one of the parties will be allowed after the expiration of the limitation period. The correction of the misnomer does not prejudice the other party because he was an identifiable party in the pleadings at the time that the action was commenced. The amendment simply corrects the misnomer by setting out his actual name.

...

[37] It seems to me, on the basis of *Jackson*, that in the case of an advertent misnaming of a party as John Doe, an amendment substituting the correct name should be almost automatic, provided, of course, that John Doe is sufficiently described in the pleading as an identifiable person or corporation, although not by name; for example, the driver of a motor vehicle involved in a particular accident, or a corporation responsible for the cleaning and maintaining of particular premises at the time that a person was injured allegedly as a result of the condition of those premises; provided also that the other party is not substantially prejudiced or injured, a situation which generally speaking is difficult to envisage. This Court has always considered misnomer to be an irregularity only, not a nullity, and has always allowed amendments which could be made without injustice to the other side. See for example *B.C. Furniture Company v. Tugwell* (1900), 7 B.C. Law Reports 361 (C.A.).

[19] See also *Strata Plan EPS1133 v. National Home Warranty Group Inc.*, 2024 BCSC 524 at paras. 26-32.

Analysis

- [20] The Cube Defendants say this is a clear case of misnomer. They made an inadvertent error concerning the identity of "Precision Engineering Ltd.", unaware that following construction of the Sidney Property, it had been voluntarily dissolved and its name assumed by a different company. Upon discovering this, they took steps to restore the original company and now seek to substitute its proper name in the third party notice in the Vancouver Action. A reasonable person looking at the original third party notice would recognize that the reference to "Precision Engineering Ltd." in that document refers to the company which became 091 BC Ltd. post-restoration.
- [21] 091 BC agrees there has been a misnomer, but it opposes the application on the basis that the Cube Defendants already have a third party claim pending against it in the Victoria Action. A second third party claim in the Vancouver Action would duplicate the third party relief already sought in the Victoria Action and constitute an abuse of process.
- [22] The Victoria Action is focused on allegations of negligence and breach of contract in relation to construction of the Sidney Property. The Vancouver Action is focused on allegations of breach of a contract of insurance (in Cube's case) and breach of a personal guarantee (in Mr. Davies' case), related to the New Home Warranty which Echelon provided for the Sidney Property. It settled the Homeowners' home warranty claim and now seeks to recover the settlement amount from the Cube Defendants. 091 BC argues that the third party claim against it in the Vancouver Action is also based on allegations of negligence and/or breach of contract arising from engineering services it provided in relation to construction of the Sidney Property. Since that subject matter is already being addressed in the Victoria Action, that is the appropriate action in which to address all relevant contribution and indemnity issues.
- [23] 091 BC says that allowing a second third party claim to proceed against it in the Vancouver Action would be contrary to the purposes underlying Rule 3-5 [Third Party Claims], which are to avoid a multiplicity of proceedings and to avoid the possibility that different conclusions might be reached on the same issue in two different actions.
- [24] The Cube Defendants says in reply that correction of a misnomer does not require that the court consider the merits of the claim involved.
- [25] I agree this is a clear case of misnomer. It is understandable, given the unusual series of events, that "Precision Engineering Ltd." was inadvertently mistaken for 091 BC. I also agree that it is normally not necessary on a misnomer application to embark on an analysis of the underlying merits of the claim involved. This is not an application to add a new claim, but rather an application to correct the name of a party to an existing claim. Here, the third party claim was filed on January 26, 2024. 091 BC has been aware of it for a considerable period of time. If 091 BC wishes to argue the claim is an abuse of process, it can apply to strike the claim under Rule 9-5(1)(a) [Striking Pleadings].

- [26] During the hearing, counsel acknowledged there had been discussions about having the Victoria Action and the Vancouver Action tried at the same time in Victoria. Both counsel on this application have offices in Victoria. They appeared to agree that trial of these two actions at the same time makes sense, but thus far no one has gotten around to applying. Counsel for 091 BC frankly admitted his client would not have opposed this application if there was such an order in place. His client wishes to avoid the added expense of defending a second claim which is being prosecuted in a different registry. I agree that having the two actions tried at the same time and before the same trial judge makes sense. I encourage the Cube Defendants to get on with making that application, on notice to the other affected parties.
- [27] In the event I am wrong in my conclusion that it is not necessary to consider the underlying merits of the third party claim against 091 BC for a misnomer application, I would still conclude it is appropriate to allow the Cube Defendants' application.
- [28] Echelon's claim against the Cube Defendants in the Vancouver Action is based it having made a determination that defects and deficiencies which were the subject of the Homeowner's warranty claim were covered by the New Home Warranty. In their response to civil claim, the Cube Defendants expressly deny that there were any defects or deficiencies in the construction of the Sidney Property. The response to civil claim includes:
12. In answer to the whole of the notice of civil claim, the Cube Defendants deny that there were any defects and/or deficiencies in the design, construction, or materials of the Home, as alleged in the notice of civil claim or at all, and put the plaintiff to strict proof thereof.
 13. At all material times, the Cube Defendants fulfilled their obligations with respect to the Home, and discharged any duty of care that they may have owed, whether at common law, by contract, by statute, or otherwise. In particular, the Cube Defendants constructed the Home and fulfilled their obligations:
 - a. pursuant to, and in accordance with, the terms of the Membership Agreement;
 - b. in a competent, good, workmanlike and professional manner;
 - c. using due care and diligence;
 - d. in accordance with all applicable standards, provincial and municipal building codes and municipal bylaws, regulations and industry standards in place during the relevant time;
 - e. using good and proper materials suitable for their intended purposes, that were safe and fit for their intended purpose; and
 - f. meeting or exceeding the standards of a builder practicing in or around the City of Sidney during the relevant time periods.

14. The Cube Defendants took reasonable care in the selection of all engineers, consultants and trade contractors for the design and construction of the Home, and acted in accordance with the advice of all of its engineers, consultants and trade contractors.
 15. In the alternative, to the extent that the Home contained any defects and/or deficiencies, which is not admitted but expressly denied, the Cube Defendants state that:
 - a. the Cube Defendants and their staff, employees, or agents, acted with reasonable care, skill and diligence and in accordance with standard and prevailing practices;
 - b. the defects and/or deficiencies did not pose a risk to the health and safety of the owners of the Home (the "Owners"), other occupants and/or other persons on the properties;
 - c. the defects and/or deficiencies did not occur as a result of any act, omission, fault, breach of contract or breach of duty on the part of the Cube Defendants and, or in the alternative, their agents, servants, or employees, as alleged in the notice of civil claim or at all; and
 - d. the defects and/or deficiencies did not involve design or construction that was contrary to the applicable building code or that did not meet the design or construction practices in effect at the material time, nor did or do they require repair or replacement.
- [29] If the Cube Defendants are eventually proven to be correct, it may mean that Echelon did not have a proper basis for accepting and settling the Homeowner's warranty claim. Accordingly, it will be necessary for the trial judge to consider whether there were defects and deficiencies in the Sidney Property, in order determine the merits of Echelon's claim against the Cube Defendants. 091 BC's role as structural engineer is part and parcel of that, including through the third party claim.
- [30] I disagree with 091 BC's argument that the third party claim in the Vancouver Action duplicates the third party claim in the Victoria Action. The Vancouver Action is focused on a sub-set of alleged damage and loss which the Homeowners say they suffered, namely the \$200,000 which was covered by the Warranty. This means that the Homeowners cannot claim this \$200,000 settlement amount as part of the damages they are seeking from Cube Defendants in the Victoria Action. They can only claim damages which are in excess of the Warranty settlement. Any claim by the Cube Defendants for contribution and indemnity from 091 BC in the Victoria Action accordingly will not duplicate the contribution and indemnity claim the Cube Defendants are advancing in the Vancouver Action. They are both concerned with Cube's construction of the Sidney Property. The Cube Defendants are not responsible for the fact that they are being sued for distinct sub-sets of damages arising from construction of the Sidney Property in two separate actions. They are entitled to seek contribution and indemnity in relation to both sub-sets.

Order Made

[31] The Cube Defendants are granted leave to file the amended third party notice in the form attached as Appendix "A" to their application filed June 26, 2025. The time for them to serve the amended third party notice is extended by 60 days from the date of release of these reasons.

[32] The Cube Defendants are entitled to costs of this application from 091 BC.

"Associate Judge Bilawich"

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