

CANADA / JUDGMENT

Hudson v. Strata Corporation VIS201

2021 BCSC 1309

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Supreme Court of British Columbia

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2021 BCSC 1309 Hudson v. Strata Corporation VIS201

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hudson v. Strata Corporation VIS201,

2021 BCSC 1309

Date: 20210706

Docket: S14279

Registry: Campbell River

Between:

Shelley Anne Hudson

Plaintiff

And

Strata Corporation VIS201 aka Harbourview Manor VIS201

and Yvonne Taffe, Michael Naharnie, John Englehart,

Shaun Englehart, Douglas McAlpine

Defendants

Before: The Honourable Mr. Justice Mayer

Reasons for Judgment

The Plaintiff, appearing in person:

S. Hudson

Counsel for the Defendant, Strata Corporation VIS201:

D. Wheaton

Place and Date of Trial/Hearing:

Campbell River, B.C.

May 4-7, 2021

Place and Date of Judgment:

Campbell River, B.C.

July 6, 2021

Table of Contents

Introduction. 3

Background. 4

Issues. 9

Applicable Law.. 9

Analysis: Is there a basis to set aside the Notices of Discontinuance?. 13

Conclusion. 17

Introduction

- [1] The plaintiff, Shelley Anne Hudson, brings this summary trial application, filed April 8, 2021, seeking amongst other things, an order enforcing the terms of an alleged settlement agreement made June 29, 2018, (the "Settlement Agreement") with the defendant, Strata Corporation VIS201 (the "Strata Corporation").
- [2] Under the Settlement Agreement Ms. Hudson agreed to settle all claims against the Strata Corporation arising from the alleged wrongful termination of an agreement (the "October 2017 Contract") under which Ms. Hudson was to provide caretaking services to the Strata Corporation at a residential strata property located at 7450 Rupert Street in Port Hardy, British Columbia ("Harbourview").
- [3] The October 2017 Contract was executed by Ms. Hudson and two members of the executive of the Harbourview strata council, including the council's president, Steven Tinkham, who is Ms. Hudson's ex-husband. The strata council in place at that time had been elected in April 2017 (the "April 2017 Strata Council").
- [4] In this summary trial application, in addition to her claims arising from the alleged wrongful termination of the October 2017 Contract, Ms. Hudson seeks damages against the Strata Corporation and a number of individual defendants, each of whom were owners of

units at Harbourview (the "Individual Defendants"). She alleges various tortious conduct before and after she was hired to provide the caretaking services. Finally, Ms. Hudson seeks declaratory relief concerning her standing under the Strata Property Act, S.B.C. 1998, c. 43, to challenge the legitimacy of, and actions by, subsequent strata councils elected in October 2017 and May 2018.

- [5] It is necessary to note at the outset that Ms. Hudson filed a notice of discontinuance discontinuing all of her claims against the Strata Corporation in this action on July 30, 2018, and a notice of discontinuance discontinuing all claims against the Individual Defendants on August 11, 2020, (collectively, the "Notices of Discontinuance"). In this summary trial application, Ms. Hudson seeks, as alternative relief, an order that the Notices of Discontinuance be set aside. For the reasons set out below I find that there is no basis to set aside the Notices of Discontinuance. As a result, Ms. Hudson's summary trial application must be dismissed because this Court lacks the jurisdiction to provide relief in an action that has been discontinued.

Background

- [6] Although all of the background facts concerning Ms. Hudson's claims are not strictly relevant, given my decision to dismiss her claims on the basis that the Court lacks the jurisdiction to rule on a discontinued action it is necessary to set out some of the relevant history.
- [7] In or about April 2017 a conflict arose amongst the owners of units at Harbourview shortly after the election of the April 2017 Strata Council. The conflict concerned the management of the Strata Corporation and, of relevance, the provision of caretaker services at Harbourview.
- [8] On or about October 3, 2017, a petition was circulated calling for a special general meeting on October 31, 2017. The purpose of the meeting was to hold a vote to replace the April 2017 Strata Council. Two days later, on October 5, 2017, the April 2017 Strata Council voted to terminate its contract for caretaker services with its then caretaker, Crystal Walker, and to replace her with Ms. Hudson. Mr. Tinkham did not participate in this vote.
- [9] Ms. Hudson alleges that on or about October 5, 2017, pursuant to an interim verbal agreement, she began to provide caretaker services at Harbourview. The October 2017 Contract which formally set out the terms under which Ms. Hudson would supply caretaking services was executed on or about October 25, 2017, by, as I have stated above, Ms. Hudson and her ex-husband Steven Tinkham, in his role as president of the strata council, as well as another member of the executive of the April 2017 Strata Council.

- [10] Ms. Hudson drafted the October 2017 Contract which was exceedingly favourable to her. It provided that the contract would automatically renew for an unlimited number of consecutive one-year terms and that if the agreement was terminated by the Strata Corporation, Ms. Hudson would be entitled to lump sum damages equivalent to the maximum amount payable for one year of service.
- [11] The removal of Ms. Walker as caretaker and her replacement with Ms. Hudson did not go over well with a number of the members of the Strata Corporation. At the special general meeting of the members of the Strata Corporation held on October 31, 2017, the members of the April 2017 Strata Council were removed and replaced with a new strata council (the "October 2017 Strata Council"). One week later, on November 6, 2017, the October 2017 Strata Council voted to terminate the October 2017 Contract and to reinstate Ms. Walker as caretaker at Harbourview. Ms. Hudson disputes the legitimacy of the October 2017 special general meeting, and as a result the legitimacy of the election of the October 2017 Strata Council and any steps taken by it thereafter.
- [12] The members of the April 2017 Strata Council continued to take the position that they were the legitimate strata council for Harbourview. On or about November 2017, the April 2017 Strata Council purported to reinstate Ms. Hudson as caretaker, which reinstatement was refused by the Strata Corporation's strata manager and the Individual Defendants.
- [13] Ms. Hudson commenced her claims against the Strata Corporation and the Individual Defendants on May 4, 2018. In a 49 page notice of civil claim, Ms. Hudson alleged, in summary, that the October 2017 Strata Council was not duly elected and therefore, the purported termination of the October 2017 Contract was invalid. In addition, she made numerous generalized allegations of wrongdoing by the Individual Defendants which she alleged occurred before and after her appointment as caretaker. These allegations included the following: various illegal conduct by the Individual Defendants carried out at Harbourview and related to their role as members of Harbourview's strata council; tortious interference with contractual relations and inducing breach of contract; harassment and assault; and, damage to her personal property. Ms. Hudson alleged that the Strata Corporation was vicariously liable for the actions of the Individual Defendants on the basis that they were acting as its agents or employees. Ms. Hudson sought damages against all of the defendants, on a joint and several basis, arising from the alleged breach of the October 2017 Contract and for psychological injury, damage to her personal property, and losses arising from her inability to complete the purchase of one of the strata units at Harbourview. Ms. Hudson also sought a declaration that she was entitled to seek relief under the Strata Property Act, in respect of various actions and alleged wrongdoings on the part of the Strata Corporation.

- [14] On May 5, 2018, the Strata Corporation held a vote at its annual general meeting and elected a new strata council (the "May 2018 Strata Council"). Ms. Hudson disputes the legitimacy of the May 2018 annual general meeting, and as a result the legitimacy of the May 2018 Strata Council.
- [15] On May 24, 2018, then counsel for the defendants, who I understand was retained by the May 2018 Strata Council or the Strata Corporation's insurer, sent a letter to Ms. Hudson inviting her to amend her notice of civil claim to accord with the requirements of Rules 3-1(2), 3-7, and 9-5 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. The letter also gave her notice of the defendants' intention to apply to strike her claim.
- [16] On June 22, 2018, then counsel for the defendants filed an application seeking to strike Ms. Hudson's notice of civil claim. On July 9, 2018, Ms. Hudson filed a response alleging, amongst other things, that the defendants' counsel should be removed on the basis that they had previously represented Mr. Tinkham and therefore were in a conflict of interest.
- [17] Three days later, on June 25, 2018, Ms. Hudson submitted a formal offer to settle all of her claims against the Strata Corporation on terms including, payment for caretaking services provided by her to that date and reinstatement as caretaker. In her offer, Ms. Hudson sought to preserve her claims against the Individual Defendants. It is unclear whether Ms. Hudson delivered this formal offer to the April 2017 Strata Council or the May 2017 Strata Council.
- [18] On June 29, 2018, Mr. Tinkham and two other members of the April 2017 Strata Council voted to accept all of the terms of Ms. Hudson's June 25 settlement offer. Further, they voted to authorize Mr. Tinkham to negotiate and execute a final settlement agreement with Ms. Hudson and if required, to file a response to the notice of civil claim. The same day, Mr. Tinkham and Ms. Hudson signed the Settlement Agreement, with Mr. Tinkham purporting to do so as a duly authorized signatory of the Strata Corporation.
- [19] It is noteworthy that all of the activity leading to the execution of the Settlement Agreement took place within one week of the defendants filing an application to strike Ms. Hudson's claims. In addition, I note that under s. 32(d) of the Strata Property Act a council member who has a direct or indirect interest in a contract or matter that conflicts with their duty as a council member is prohibited from voting on the contract or matter at issue. In my view, even if the April 2017 Strata Council remained in place in June 2018, given Mr. Tinkham's relationship with Ms. Hudson, he should not have voted to approve the Settlement Agreement.
- [20] On July 10, 2018, Mr. Tinkham filed a response to Ms. Hudson's notice of civil claim, purporting to do so on behalf of the Strata Corporation, effectively conceding to all of Ms. Hudson's claims against the Strata Corporation but taking no position on the claims against the Individual Defendants.

- [21] On July 19, 2018, the defendants filed an amended application, which, in addition to seeking to strike Ms. Hudson's claim, also sought a declaration that the response filed by Mr. Tinkham on July 10, 2018 was not authorized by the Strata Corporation and for an order that the response be struck.
- [22] On July 30, 2018, Ms. Hudson signed a notice of discontinuance discontinuing all of her claims against the Strata Corporation.
- [23] On August 20, 2018, Justice MacNaughton adjourned the hearing of the amended application filed by the defendants on July 19, 2018, and ordered that Mr. Tinkham proceed with his application to remove defendants' counsel before further pleadings were filed in the litigation. It is not known whether any of the parties advised MacNaughton J. that Ms. Hudson's claims against the Strata Corporation had been discontinued in July 2018.
- [24] On September 4, 2018, Mr. Tinkham filed an application for removal of defendants' counsel. On September 13, 2018, new counsel were appointed on behalf of the defendants and on November 2, 2018, Mr. Tinkham withdrew his application for removal of previous counsel. On November 22, 2018, a response to civil claim was filed by the Individual Defendants seeking dismissal of Ms. Hudson's claims against them.
- [25] A year and one-half later, on April 9, 2020, counsel for the Individual Defendants wrote to Ms. Hudson inviting her to discontinue her claims against the Individual Defendants in exchange for a waiver of costs. On June 8, 2020, Ms. Hudson replied confirming that she would do so and then filed a notice of discontinuance on August 11, 2020.
- [26] Also on August 11, 2020, Ms. Hudson filed a notice of application seeking substantially the same relief sought in the present application, with the exception that at that time she only sought to set aside the July 2018 notice of discontinuance. On August 19, 2020, Ms. Hudson filed an amended notice of application which added an order for declaratory relief and an order enforcing what was described as a settlement agreement reached with the Individual Defendants on August 11, 2020. On September 2, 2020, the defendants filed a response in which they sought, amongst other things, dismissal of Ms. Hudson's application on the basis that the action had been discontinued against all parties.
- [27] No further steps were taken in the action until March 10, 2021, when Ms. Hudson filed a further amended notice of application to which the defendants responded on March 18, 2021. On April 8, 2021, Ms. Hudson filed the present notice of application seeking substantially the same relief set out in her previous application, with the addition of seeking to invoke the inherent jurisdiction of this Court and seeking as additional relief, an order setting aside the August 2020 notice of discontinuance.

- [28] The matter came before Justice Shergill on April 15, 2021. After hearing the parties for approximately one day, Shergill J., determined that the application could not proceed and adjourned it. In addition, Shergill J. granted Ms. Hudson leave to apply to have the issue of whether the Notices of Discontinuances should be set aside determined separately from the other relief set out in Ms. Hudson's application. Despite this order, Ms. Hudson did not take up the opportunity to first bring an application to set aside the Notices of Discontinuance.
- [29] This proceeding can be described as a procedural morass.

Issues

- [30] Despite the fact that Ms. Hudson seeks to set aside the Notices of Discontinuance as alternative relief, the threshold issue is whether the Notices of Discontinuance should be set aside. This is because at this time, there is no existing action under which an application can be brought.
- [31] If the Notices of Discontinuance are set aside, the Court will be required to determine if the Settlement Agreement is enforceable and if so, what damages arise from its breach, and Ms. Hudson's additional claims against the Individual Defendants and the Strata Corporation. If the Notices of Discontinuance are not set aside Ms. Hudson's summary trial application must be dismissed.

Applicable Law

- [32] The defendants submit that Ms. Hudson's notice of application is barred because she has wholly discontinued her action against all of the parties. The defendants rely on three cases for this position.
- [33] The first is *Adam and Adam v. Insurance Corporation of British Columbia et al.* (1985), 66 B.C.L.R. 164 (C.A.) [Adam]. While this case is over thirty-five years old, it remains one of the leading cases concerning when it is appropriate for the court to set aside a notice of discontinuance
- [34] At trial, the plaintiffs had sued the defendants and a trial date was set. Two months before the trial date the defendants told the plaintiffs they were barred from bringing the action pursuant to a provision of the regulations of the Insurance (Motor Vehicle) Act, R.S.B.C. 1996, c. 231. A week later the plaintiffs filed a notice of discontinuance. Subsequently, after the applicable limitation period expired, the plaintiffs became aware of some case law they thought supported their claim. The plaintiffs asked the defendants if they would consent to setting aside the notice of discontinuance. The defendants did not consent. The plaintiffs brought an application for an order setting aside their notice of discontinuance which was granted by the application judge.

[35] The Court of Appeal overturned the application judge's decision, finding, in the circumstances of the case, that the notice of discontinuance should not have been set aside. Justice Esson stated as follows at pages 170-171:

The Supreme Court has a wide inherent jurisdiction over its own process. There must be a discretionary power to relieve against the consequences of discontinuance, that is, that the action is forever at an end except for the matter of costs.

The question, then, is as to the basis upon which the power can be exercised. I do not propose to attempt to catalogue the circumstances which would justify its exercise. I do think, however, at least where a limitation period has gone by, that the circumstances must be very special and that they may not go beyond the kind of inadvertence, mistake or misapprehension relating to the procedural aspects which were referred to by the master in the Cusack case. There may well, however, be other grounds.

I think that the standard may well be more relaxed where the limitation period has not gone by. In those circumstances it is open to the plaintiff to bring another action on the same cause of action, and it might well be a proper consideration that to require the commencement of a new action would tend to waste the effort that had already gone into the existing action. Here, however, we are dealing with a different situation. The limitation period arose after the discontinuance. The effect of setting aside the notice would be to give a cause of action which would otherwise be clearly statute-barred. There are other elements of prejudice to the defendant which can be observed. Had the plaintiff continued on to trial at the time the action was set, the matter would have been resolved long ago. In any event, it is my view that where, as here, the grounds are simply a change of heart, based on some greater consideration of the law or the facts, as to the possibility of success, that is not enough.

[36] In *Cusack et al. v. Garden City Press Ltd.* (1978), 22 O.R. (2d) 126 at 128 (S.C.), referenced in the above extract from Adam, a master of the Ontario Supreme Court set aside the plaintiffs' notice of discontinuance, explaining, in a brief judgment, that it is "always open to the Court in proper circumstances to relieve against an act done either by way of inadvertence or misapprehension and that this should be particularly so when no real prejudice to the other side is demonstrated". The master found that no real prejudice would result from setting aside the notice of discontinuance, in part, because the parties had proceeded as though the action had not been discontinued and the limitation period had not expired.

[37] The defendants also refer to the recent decision of our Court of Appeal in *DLC Holdings Corp. v. Payne*, 2021 BCCA 31, reversing 2019 BCSC 965. In *DLC*, the defendants applied for an order that the plaintiff's notice of discontinuance stand as a complete defence in any subsequent proceeding for the same or substantially the same cause of action. They also applied for special costs. The defendants' application was brought two months after the plaintiff filed its notice of discontinuance and heard over half a year later. The motions judge granted both of the orders sought by the defendants. The plaintiff appealed this decision and was successful. The Court of Appeal concluded that the motions judge did not have the

jurisdiction to make the orders he did because the effect of the notice of discontinuance was that the action was "forever at an end".

- [38] In DLC the Court of Appeal addressed the circumstances under which the court could set aside a notice of discontinuance. Writing for the panel, Justice Grauer stated, after referring to the decision in Adam, that a discontinuance could be set aside, for instance, where "there had been a misapprehension by the lawyer as to his or her instructions, and there was no real prejudice to the other side--in short, to prevent an injustice" (at para. 30).
- [39] Justice Grauer next referred to the decision of Madame Justice Fenlon, then of the Supreme Court, in Moon v. Sails at the Village on False Creek Developments Corp., 2012 BCSC 1999. He agreed with her conclusion that the court has the inherent jurisdiction to set aside a notice of discontinuance where that notice amounts to an abuse of process, in the sense of being manifestly unfair to a party in the litigation, or when not setting aside the discontinuance would otherwise bring the administration of justice into disrepute (at para. 31).
- [40] Justice Grauer summarized the authorities addressing the basis on which a notice of discontinuance could be set aside stating that:
- [33] [O]ther than "the matter of costs", a discontinued action is "forever at an end", subject to the inherent jurisdiction of the court to set aside the notice of discontinuance to prevent the perpetration of an injustice, or an abuse of process, including the sorts of problems discussed by Justice Anglin in Lye: where discontinuance amounts to fraud, or would deprive a defendant of rights arising from interlocutory applications. The categories are certainly not closed, but all involve matters sufficiently serious to move the court to invoke its inherent jurisdiction in the interests of justice.
- [41] Justice Grauer went on to comment that a plaintiff's unfettered right to discontinue an action comes with two catches. First, a plaintiff will be liable for the costs of the defendant up to the time of discontinuance, regardless of the merits of their claim, and second, a plaintiff is re-exposed to the running of time under the Limitation Act, S.B.C. 2012, c. 13, which is no longer suspended by the commencement of the action, and the limitation period runs as though no action had ever been commenced (at paras. 56-57).
- [42] Justice Grauer then pointed out that "apart from the running of time and exposure to costs, the presumption is that the discontinuance is without prejudice", in that although the action disappears, the claim does not and a discontinuance does not constitute a defence to any further proceedings on the same cause of action (at para. 58).
- [43] In summary, pursuant to the reasons of the Court of Appeal in Adam and DLC, when a notice of discontinuance has been filed an action is "forever at an end". It is simply not possible to bring an application under a proceeding that has been discontinued unless the court exercises its discretion to set the discontinuance aside in order to protect its own processes.

[44] In order to justify setting aside the Notices of Discontinuance, this Court would need to be satisfied that they were filed as a result of, for example, inadvertence, mistake, or misapprehension. The list of bases is not closed. The Court may also consider whether a limitation period has expired, and therefore whether the defendants would suffer prejudice resulting from the loss of a limitation defence if the action is resuscitated, or whether the defendants would suffer prejudice for any other reason. The ultimate question is whether not setting aside the Notices of Discontinuance will result in an injustice.

Analysis: Is there a basis to set aside the Notices of Discontinuance?

- [45] Ms. Hudson submits that the Court should first determine whether the Settlement Agreement should be enforced and if the Court determines that the agreement is not enforceable, should set aside the Notices of Discontinuance to allow her to revive her original claims and to file amended pleadings. With all due respect, Ms. Hudson fails to appreciate that because this action no longer exists, this Court must first determine whether the Notices of Discontinuance should be set aside. The Court is not able to rule on a matter in the air.
- [46] During Ms. Hudson's submissions the Court inquired as to the basis on which Ms. Hudson considered that the Notices of Discontinuances should be set aside. Ms. Hudson submits that, with respect to her claims against the Strata Corporation, she only filed the July 2018 notice of discontinuance discontinuing her claims against that party as she expected that the Settlement Agreement would be honoured. She submits that since the Strata Corporation is refusing to do so she should be able to continue with her original claim.
- [47] With respect to her claims against the Individual Defendants, Ms. Hudson submits that it is appropriate to set aside the August 2020 notice of discontinuance discontinuing her claims against those parties because, in her view, she had reserved the right to seek costs against them, and, as well, she only discontinued against those parties because she expected that the Settlement Agreement would be honoured.
- [48] Finally, Ms. Hudson refers to the Law and Equity Act, R.S. B.C. 1996, c. 253, and in particular s. 4, on the basis that she is seeking relief against a deed, instrument, or contract. In this respect, she submits that the Notices of Discontinuance are an "instrument" under s. 4. With respect to Ms. Hudson, she misconstrues the application of s. 4 of the Law and Equity Act, which concerns claims or rights founded in equity. This provision has no application to the case at bar.
- [49] The defendants contend that there is no basis to set aside the Notices of Discontinuance.
- [50] With respect to Ms. Hudson's submission that the July 2018 notice of discontinuance should be set aside because when it was filed she expected that the Settlement Agreement would be honoured by the Strata Corporation, the defendants submit, in essence, that the evidence demonstrates that this contention is false. I agree with this submission.

- [51] On May 24, 2018, then counsel for the defendants wrote to Ms. Hudson advising of the defendants' intention to apply to strike the notice of civil claim and on June 22, 2018, filed their application to do so. Within a week, by June 29, 2018, Ms. Hudson and Mr. Tinkham executed the Settlement Agreement, purporting to bind the Strata Corporation. Approximately two weeks later, on July 10, 2018, Mr. Tinkham filed a response to Ms. Hudson's notice of civil claim, conceding to all of the claims against the Strata Corporation. The timing is significant and suggests strongly that Ms. Hudson and Mr. Tinkham actively took steps to make it more difficult for the Strata Corporation to defend against Ms. Hudson's claim.
- [52] In addition, the evidence establishes that Ms. Hudson knew that there was a dispute regarding whether the April 2017 Strata Council remained in place when she negotiated and signed the Settlement Agreement with Mr. Tinkham in June 2018. She was aware of the election of new strata councils in October 2017 and May 2018 and conceded during submissions that she simply chose to take the position those elections were not legitimate. In addition, Ms. Hudson was aware that the Strata Corporation intended to apply to strike her claim.
- [53] In these circumstances, I find it impossible to see how Ms. Hudson could reasonably have expected that the Settlement Agreement would be honoured and on that basis filed the notice of discontinuance. There is simply no legitimacy to Ms. Hudson's contention that she expected to be paid pursuant to the Settlement Agreement, which in my view rested on exceedingly shaky ground.
- [54] Further, there is no basis on which Ms. Hudson could have expected after the July 2018 notice of discontinuance was filed, that the Strata Corporation would honour the terms of the Settlement Agreement. Her actions suggest that she did not think that the Strata Corporation would do so. As the defendants point out, after July 2018, Ms. Hudson did not issue a demand to the Strata Corporation that they honour the terms of the Settlement Agreement. In addition, there were numerous steps taken by the defendants in the litigation after the Settlement Agreement was signed, including their July 2018 application to strike Ms. Hudson's claim.
- [55] With respect to Ms. Hudson's contention that she only discontinued her claims against the Individual Defendants with the expectation that she would be able to seek costs against them, I find this argument to be confusing. On this application, Ms. Hudson does not seek to set aside the August 2020 notice of discontinuance to only seek costs, but rather she seeks to revive all of her claims in the action against the Individual Defendants. Further, Rule 9-8 preserves the right of a party against whom a claim or response is discontinued or withdrawn to seek costs and therefore this provision does not apply. Ms. Hudson discontinued her claim against the individual defendants--they did not withdraw their response. If they had withdrawn their response, Ms. Hudson would potentially have a right to claim costs.

- [56] In summary, for the reasons set out above I do not find that Ms. Hudson filed the Notices of Discontinuance because she expected that the Settlement Agreement would be honoured. For reasons that are unclear to me, Ms. Hudson did not, as she could have done, commence a new action seeking all the relief she claims in this application or a new action to enforce the Settlement Agreement. Her ability to do so now would be subject to the Limitation Act.
- [57] None of the bases submitted by Ms. Hudson to set aside the Notices of Discontinuance constitute inadvertence, mistake, or misapprehension in the filing of these documents. I am satisfied that Ms. Hudson knew or should have known that by filing the Notices of Discontinuance that she was forever discontinuing her action. In addition, I consider that there will be significant prejudice to the defendants if the Notices of Discontinuance are set aside as doing so would deprive them of a limitation defence.
- [58] In my view, in deciding whether it is just in all of the circumstances to set aside the Notices of Discontinuance, in addition to the factors set out above, the Court can consider, at a high level, the merits of the underlying claims. Ms. Hudson's claim for enforcement of the Settlement Agreement will depend upon, in particular, whether the Settlement Agreement was validly entered into. First, there is not a strong basis to find that the May 2018 Strata Council was not legitimate. This suggests that the April 2017 Strata Council did not have the authority to enter into the Settlement Agreement. In addition, even if the April 2017 Strata Council was still in place in June 2018, s. 32 of the Strata Property Act prohibited Mr. Tinkham from voting to approve the Settlement Agreement. I wish to be clear that I am not pronouncing on these issues but only providing a high level assessment of the merits of this portion of Ms. Hudson's discontinued claim.
- [59] With respect to the merits of Ms. Hudson's discontinued claims against the Individual Defendants and the Strata Corporation based on vicarious liability, Ms. Hudson's claims as pled are exceedingly weak. The pleadings do not set out material facts establishing a cause of action against each of the Individual Defendants but, as I said at the beginning of my reasons, set out generalized allegations of wrongdoing against all of them as a collective.
- [60] In her notice of application Ms. Hudson includes, as alternative relief, leave to file an amended notice of civil claim. Ms. Hudson has not prepared a draft amended notice of civil claim. During submissions she advised, in effect, that she would do so if the Court ordered, as alternative relief, that the Notices of Discontinuances be set aside. In these circumstances, there is no way for the Court to determine whether Ms. Hudson's claims could be salvaged through an amendment if the Notices of Discontinuance are set aside.

Conclusion

- [61] As set out above, Ms. Hudson has not demonstrated special circumstances justifying an order setting aside the Notices of Discontinuance. Given this finding, the Court lacks the jurisdiction to grant the relief set out in her notice of application.

[62] Ms. Hudson's summary trial application is dismissed with costs payable to the defendants. With respect to the period of time for which costs will be payable and the nature and amount of costs, if the parties are unable to agree on these points they may contact Supreme Court Scheduling to set a further hearing before me.

"Mayer J."

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