

CANADA / JUDGMENT

Maycock v. Maycock Estate

2025 BCSC 1225

COURT

Supreme Court of British Columbia

DECIDED

30 June 2025

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2025 BCSC 1225 Maycock v. Maycock Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Maycock v. Maycock Estate,

2025 BCSC 1225

Date: 20250630

Docket: 202617

Registry: Victoria

Between:

Joelle Maycock

Plaintiff

And:

The Estate of Elizabeth Anne Maycock, deceased,

and Geoffrey Ronald Maycock, in his personal capacity and in

his capacity as Executor of the Estate of Elizabeth Anne Maycock

Defendants

Before: The Honourable Justice LeBlanc

Reasons for Judgment

Counsel for plaintiff/applicant:

F. K. Walton, K.C.

Counsel for the defendant, Geoffrey Ronald Maycock, in his personal capacity and in his capacity as Executor of the Estate of Elizabeth Anne Maycock:

M. R. Mark

Place and Date of Hearing:

Victoria, B.C.

June 25, 2025

Place and Date of Judgment:

Victoria, B.C.

June 30, 2025

Introduction

- [1] The plaintiff seeks to further amend the Second Amended Notice of Civil Claim to add an additional claim against Mr. Maycock for occupation rent related to the property located on Seaview Road. Mr. Maycock opposes the relief sought.
- [2] The claim was initiated on August 11, 2020 and sought a declaration that the Will dated April 15, 2019 of Elizabeth Anne Maycock, deceased (the "Deceased"), did not make adequate provision for the plaintiff and for an order for variation. This claim was prepared and filed by the plaintiff's lawyer at that time, Mr. Rachert.
- [3] On February 2, 2024, an Amended Notice of Civil Claim was filed that supplements the facts related to the will variation claim and adds a claim for a certificate of pending litigation against the Seaview property. This amendment was prepared and filed by Mr. Walton, K.C., as were the subsequent amendments.
- [4] On April 24, 2024, the parties appeared before Associate Judge Bouck on a contested application. The plaintiff was seeking leave to file a Second Amended Notice of Civil Claim. In reasons indexed as *Maycock v. Maycock Estate*, 2024 BCSC 813, Associate Judge Bouck permitted the filing of the Second Amended Notice of Civil Claim.
- [5] The Second Amended Notice of Claim was filed on June 27, 2024 and pleads claims against Mr. Maycock for undue influence, suspicious circumstances and unjust enrichment relating to the transfer by the Deceased to Mr. Maycock of two antique vehicles. It did not include claims related to occupation rent.
- [6] It does not appear to be disputed that Mr. Maycock and his family moved into the cottage at the Seaview property in June, 2019. Following the death of the Deceased on September 27, 2019, Mr. Maycock and his family moved into the main house of the Seaview property. For the purposes of this application, the parties agree that the limitation period has expired with respect to the new claim for occupation rent.

- [7] A seven-day trial has been scheduled to commence on December 8, 2025. The parties have not conducted examinations for discovery.

Legal Considerations

- [8] The parties agree that the following factors concerning the adding of causes of action after the expiry of the limitation period, as set out in *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.*, 1996 CanLII 3033 (BC CA) at para. 67 and adopted in *Amezcuca v. Taylor*, 2010 BCCA 128 at para. 36, are to be considered in determining whether to exercise discretion to permit the new causes of action:
- (a) length of the delay;
 - (b) the reasons for the delay;
 - (c) any explanation put forward to explain the delay;
 - (d) the degree of prejudice caused by the delay; and
 - (e) the overriding consideration of what is just and convenient in the circumstances.

Position of the Plaintiff

- [9] The plaintiff attributes the delay in making the new claim for occupation rent to Mr. Rachert, as she says he failed to consider such a claim would be required and to Mr. Walton, K.C., as he required time to research whether such a claim was available in B.C.
- [10] Mr. Walton, K.C. submits that a claim for occupational rent in estate matters is not well settled in B.C. and it took him time to research the matter before he could establish that a claim was available.
- [11] Mr. Walton, K.C. was retained by the plaintiff on June 7, 2023, and after repeated requests, received the plaintiff's file from Mr. Rachert in October 2023.
- [12] The plaintiff directs the court to the decision of Justice Rogers, as he then was, in *Morice v. Toronto-Dominion Bank*, 2014 BCSC 380 to support her position that where the moving party has been let down by their lawyer, the courts have tended towards leniency to that party provided the delay has not caused irremediable prejudice to the other party.
- [13] The plaintiff relies on s. 22(5) of the Limitation Act, [SBC 2012] Chapter 13 which permits the court on terms it considers just, allow the amendment of a pleading to raise a new claim even though, at the time of the amendment, a court proceeding could not, under sections 6, 7 or 21, be commenced with respect to that claim.
- [14] The plaintiff submits that the general approach to these types of applications is "generous and non-technical" and amendments that are necessary to determine the real issues between the parties should be permitted considering the interests of justice.

- [15] The plaintiff submits that the delay is not significant and that Mr. Maycock has known about the possibility of the claim since approximately November 2023 and no prejudice will be suffered whereas the plaintiff will be considerably prejudiced by the inability to bring forward this new claim.

Position of the Defendant, Mr. Maycock

- [16] Mr. Maycock submits that there is no reasonable excuse to justify a further amendment following the amendment permitted by Associate Judge Bouck and the reasons being advanced in this application are a recycling of what was previously argued.
- [17] It is the position of Mr. Maycock that the excuse of further research being required is unsupportable. First, Mr. Maycock submits that a claim related to occupation rent or unjust enrichment in B.C. in estate litigation is well known and would have taken 10 minutes of research to find. Second, Mr. Walton, K.C. was in a position by October 2023 to conduct the research necessary to determine whether a claim existed. Third, the plaintiff has known since September 2023 that Mr. Maycock was residing in the Seaview property and has not taken any steps to ensure a claim for occupation rent was included in her filed claim. Fourth, the plaintiff filed a claim against her lawyers in February 2025 for failing to properly advance her claim and this application was not brought until June 2025.
- [18] Mr. Maycock relies on a November 28, 2023 without prejudice letter from Mr. Walton, K.C. which has been redacted with the exception of the following passage:

Continued litigation would also involve investigation into Geoff's potential undue influence on Anne's estate, including his influence in the construction of his residence on the property and its effect on estate value and liquidity, rent owed to the estate for his occupancy of that residence, non-payment of the Toyota truck loan to the estate, and the transfer of Bruce's valuable classic automobiles prior to Anne's death. These matters, if pursued, may expose Geoff to legal risks and increased legal fees.

[Emphasis Added]

- [19] Mr. Maycock submits that the letter confirms that the plaintiff knew of the possibility of a claim for occupation rent by at least November 2023 and before the April 2024 application before Associate Judge Bouck. Based on this, Mr. Maycock further submits that it can only be assumed that the plaintiff made an informed decision not to pursue the claim for occupation rent and has now simply changed her mind.
- [20] Mr. Maycock has not lead evidence of prejudice should the plaintiff's application be granted. Instead, he argues that in the circumstances of this case it would be unjust to permit the amendment and relies on the judgment of Locke, J.A (as he then was) in *Bank of Montreal v. Ricketts et al.*, (1990), 44 B.C.L.R. (2d) 95, as not seeking to advance the claim earlier was a "deliberate decision, taken with knowledge of the facts".

[21] In his reasons, Locke, J.A. starting at page 10:

The necessity of bringing an action within reasonable time is deeply ingrained in our law and so is the concept of due diligence. Limitation statutes were passed with these concepts in mind. As recently as *Kamloops v. Nielsen* (1984), 2 S.C.R. 2 Wilson, J. reminded us of the doctrine of diligence.

The point to be decided in the case at bar is whether the addition of the party is "just" in view of the long delay. On the one hand is the school of thought which says bluntly if there is no prejudice the reason does not matter. On the other hand is the view that the reason is a matter for investigation.

This is a policy statute: but the matter is not *res integra* in British Columbia. There are in this court judicial statements barring abuse, requirements requiring a clear explanation for the delay, and drawing a distinction between mistake and dilatory conduct. It appears to me that a degree of "culpability" has been accepted by this court as a guiding factor which will in turn affect the weight to be given to this factor in considering what is "just". I do not accept that the present state of the law in this Province is to dispense completely with due care, and in particular when there is evidence of a voluntary, self-induced delay.

When it comes to "substantial" dilatoriness which smacks of voluntary delay, even were there no prejudice other than loss of the limitation defence, I think the factor can weigh large in the scale of justice. As to "substantial delay" I would adopt as a guide only the criteria set out in s. 6(3) of the Limitation Act: and my sense of the matter is that, if, considering all the circumstances the applicant could probably not qualify for a postponement of the time, I must seriously consider whether it is "just" that the party be added.

In the case at bar, the trial judge said:

"... The Court of Appeal has said through the language of Mr. Justice Lambert that the 'fundamental principles should be to balance the interests of justice and convenience in relation to all the parties.'

I think that the fundamental principle in this case dictates in favour of the application to add the two individuals as defendants being allowed. The matter of first importance is that the real issue amongst these litigants ought to be resolved in this litigation on the merits, and not be decided on the technical failure of the plaintiff to add them or to sue the defendants within the time limit. So for those reasons I would grant the application and give leave to the plaintiff to add Henry H. Rickets and Donald Herbert Evers as defendants, with the consequent relief that is claimed in the Notice of Motion...."

In my opinion the trial judge erred in law in not considering other factors. I think in this case the sparse evidence shows the whole was a deliberate decision, taken with knowledge of the facts, not to add a party. Ignorance of the law or a mistaken opinion is on principle no excuse and has been held on similar legislation not to be a "fact", within the meaning of s. 6(3). *Do Carmo v. Ford Excavations Proprietary Limited* (1984), 154 C.L.R. 234 (High Court of Australia). I do not believe

the policy of s. 4 of our Limitation Act was to authorize the luxury of change of mind. It was voluntary dilatory behaviour and on these facts to allow the application would be to render the concept of diligence meaningless.

Analysis

- [22] The plaintiff first blames Mr. Rachert for failing to plead the cause of action related to occupation rent. As Mr. Walton, K.C. has been retained since June 2023, any delay past October 2023, when Mr. Walton, K.C. received the file from Cook Roberts, cannot be blamed on Mr. Rachert, as he was no longer in a position to provide advice to the plaintiff.
- [23] The only other justification provided by the plaintiff for the delay relates to Mr. Walton, K.C. requiring time to research the availability of the claim. However, this justification falls flat as Mr. Walton, K.C. was aware of the possibility of a claim in November 2023 when such a claim was threatened in his without prejudice correspondence. It is simply not reasonable to say that this amount of time was required to conduct research on a relatively narrow and straightforward point of law. The research necessary to consider the merits of the claim could have easily been conducted between November 2023 and April 2024 so that it could have been included in the April 2024 application. The evidence demonstrates that the plaintiff threatened advancing a claim for occupational rent and then abandoned the same until now.
- [24] I find that the plaintiff made a deliberate decision not to advance the claim for occupation rent when she applied to amend her claim in April 2024.
- [25] The purposes of limitation periods is explained by the Supreme Court of Canada in *Novak v. Bond*, [1999] 1 S.C.R. 808 at para. 8:

Almost all applications of limitations statutes will seem harsh. But their finality should not obscure their value. They bring needed stability to society by enabling potential defendants to plan their affairs in the safe assumption that stale claims cannot be raised against them. They minimize the risk that evidence relevant to the claim will be lost. In addition, they are incentive for plaintiffs not to "sleep on their rights."

[Emphasis Added]

- [26] Absent a reasonable excuse to justify the delay, I find that granting the relief sought by the plaintiff would essentially render the concept of a limitation period meaningless and would reward the plaintiff for "sleeping on her rights" as she did here.
- [27] I find that it would not be just in all of the circumstances to permit the plaintiff to advance the new claim.
- [28] The application of the plaintiff is dismissed with costs to Mr. Maycock in the cause.

"LeBlanc, J"

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