

CANADA / JUDGMENT

Owners, Strata Plan LMS 3851 v. Homer Street Development Limited Partnership

2011 BCSC 274

COURT

Supreme Court of British Columbia

DECIDED

7 March 2011

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2011 BCSC 274 Owners, Strata Plan LMS 3851 v. Homer Street Development Limited Partnership
IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Owners, Strata Plan LMS 3851 v.
Homer Street Development Limited Partnership, 2011 BCSC 274 Date: 20110307 Docket: S76792
Registry: New Westminster Between: The Owners, Strata Plan LMS 3851, and others Plaintiffs
And Homer Street Development Limited Partnership, formerly Cressey (Homer) Limited
Partnership, and others Defendants And O'Neill Hotels & Resorts Ltd., and others Third Parties
Before: The Honourable Mr. Justice Truscott Reasons for Judgment Counsel for Plaintiffs: B.W.
Dixon, S.T.C. Warnett Counsel for Defendant Developer: D.C. Harbottle Counsel for Third Parties
O'Neill Hotels & Resorts Ltd., OHR Grand Management Ltd., Robert F. O'Neill and John C. O'Neill
A. Borrell Place and Date of Hearing: New Westminster, B.C. December 13 and 14, 2010 Place and
Date of Judgment: New Westminster, B.C. March 7, 2011

- [1] These Reasons will deal with the application of the plaintiffs, other than the plaintiff Lan Fun Pau, for orders severing the claim of Lan Fun Pau from the claims of the other plaintiffs, declaring that Borden Ladner Gervais has ceased to act for her, and amending the Statement of Claim to delete her name as plaintiff and to discontinue the claims of the other plaintiffs against the defendants O'Neill Hotels & Resorts Ltd. and OHR Grand Management Ltd. without costs and by consent of those defendants.
- [2] The affidavit tendered by the plaintiffs' law firm says that it has had no direct contact with Ms. Pau since prior to 2006, that on or about February 1, 2006 it sent correspondence to her to the address it had on file which was returned labelled "moved/unknown/return to sender", that in March 2006 an updated address in Ontario was obtained for her from the strata property manager of the hotel, but that follow-up attempts to contact her in Ontario by email, fax and correspondence to Ontario have all been unsuccessful.
- [3] I am satisfied that the law firm has made all reasonable efforts to contact Ms. Pau but has not met with any success.

- [4] The developers oppose any order that Borden Ladner Gervais cease to be the address for service for Ms. Pau because they are concerned that if the law firm ceases to be her address for service they will have no ability to serve Ms. Pau in the litigation as they have no better idea where she might be contacted.
- [5] I think the developers' concern can be adequately addressed by declaring that Borden Ladner Gervais' office is no longer the address for service of Ms. Pau and its fax number and email address are no longer to be used for service of her, and ordering that under the authority of Rule 4-2(7) a document may be served on Ms. Pau by mailing a copy of the document by ordinary mail to her at her last known address.
- [6] It appears from the affidavit of the law firm that a last known address is probably 22 Josiah Court, Markham, Ontario, as it would appear that it matches the postal code of L3R 8Z9 which was listed with the strata property manager for the hotel.
- [7] Accordingly I order that documents may be served on her by mailing a copy by ordinary mail to 22 Josiah Court, Markham, Ontario, L3R 8Z9.
- [8] While I have had no problem granting the application of the plaintiffs other than Lan Fun Pau for leave to discontinue their claims against the defendants O'Neill Hotels & Resorts Ltd. and OHR Grand Management Ltd. without costs and by consent of those defendants I find myself unable to allow the amendments to the Second Further Amended Statement of Claim as sought in the attached Schedule to the Notice of Application.
- [9] While the plaintiffs' law firm no longer acts for Lan Fun Pau, she remains a plaintiff until her claim is dealt with and her name cannot be deleted from the style of cause.
- [10] As far as I know this is the only claim that she has and to delete her name from the style of cause would be to delete her entire claim for which there is no present application to do so.
- [11] Further I am unable to amend the body of the Second Further Amended Statement of Claim as proposed because that is a Statement of Claim that must stand in its present form for the benefit of Ms. Pau while her claim continues. There is no indication that she wishes to discontinue her claims against the defendants O'Neill Hotels & Resorts Ltd. and OHR Grand Management Ltd. and this being the only Statement of Claim for her benefit that I know of it cannot be changed as it affects her claims without her instructions or without further order of the court.
- [12] This is not to say that the plaintiffs other than Lan Fun Pau cannot have leave to discontinue their claims against those defendants without costs by consent, but it means that the Second Further Amended Statement of Claim cannot be amended as proposed until her claim is dealt with. "The Honourable Mr. Justice Truscott"

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Prepared on 27 October 2026 · Esheria