CANADA / JUDGMENT

Rabinowitz v. The Owners, Strata Plan BCS 183

2025 BCSC 2653

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Supreme Court of British Columbia

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2025 BCSC 2653 Rabinowitz v. The Owners, Strata Plan BCS 183

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rabinowitz v. The Owners, Strata Plan BCS 183,

2025 BCSC 2653

Date: 20251031

Docket: S1913429

Registry: Vancouver

Between:

Alan Rabinowitz

Plaintiff

And:

The Owners, Strata Plan BCS 183, Rancho Management Services (BC) Ltd., Five Star Building Maintenance Ltd., and Zenaida San Juan

Defendants

And:

The Owners, Strata Plan BCS 183, Rancho Management Services (BC) Ltd., Five Star Building Maintenance Ltd., and Zenaida San Juan

Third Parties

Before: The Honourable Justice Whately

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

L.L. Seneviratne

Counsel for Attendee CMI Concierge & Security Inc.:

E. Pitre

Place and Date of Hearing:

Vancouver, B.C.

October 30, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 31, 2025

[1] THE COURT: The parties appeared before me in civil chambers on October 30, 2025. This is an oral decision. If a transcript is ordered, I will edit for clarity and errors and add in any case quotes or legal cites that I may not read out today in the interests of time. The substantive decision will remain the same, however.

[2] This is an appeal from a decision of an associate judge of this Court, which was made on September 18, 2025. In that decision, the associate judge dismissed the application of the appellant to add a defendant to an action after the expiry of a limitation period, as well as the associated application to amend the notice of civil claim.

[3] The notice of civil claim at issue pertains to a slip-and-fall action that was filed by the plaintiff against certain defendants in November of 2019. Other defendants were subsequently added to the action in October of 2021. I am advised that all of the listed defendants have filed responses to the notice of civil claim denying that the slip and fall incident was caused by, or contributed to by their negligence.

[4] The appellant in this appeal is the plaintiff in the action, Mr. Rabinowitz. Mr. Rabinowitz is a resident of the building where he claims to have suffered injuries when he slipped and fell, he says, as a result of an accumulation of water and cleaning chemicals on the floor of the building. The current defendants are Strata Plan BCS 183, Rancho Management Services (BC) Ltd., Five Star Building Maintenance Ltd., and Zenaida San Juan, who is a maintenance worker employed by the defendant maintenance company. A 15-day trial was set for August 2023, but it was adjourned by consent in April of 2023. A new trial has now been set to begin on February 23, 2026.

[5] At the September 16, 2025 hearing in front of the associate judge, the plaintiff sought to add the respondent to this appeal, CMI Concierge & Security Inc. ("CMI") as a party to the action. CMI is a company the plaintiff says was retained by the strata of the building to provide concierge services at the building, and whose employee, according to the plaintiff, received a complaint by the plaintiff regarding the accumulation of water two weeks prior to the incident but failed to take appropriate action, thereby causing or contributing to the plaintiff's loss.

[6] For the purposes of this application, the parties agree that the plaintiff's claim against CMI is deemed to have been discovered on the date of the loss, which is February 25, 2018. Therefore, the limitation to commence the separate action against CMI has long passed.

[7] The plaintiff served the application to add CMI to the action in November of 2024. The parties agreed to an application hearing date of February 10, 2025. CMI subsequently brought a cross-application, seeking to cross-examine on an affidavit sworn by the plaintiff's former counsel, and for an adjournment of the application to join. The parties attempted to be heard in chambers on February 10, February 14, March 7, March 24, and April 2, 2025.

[8] The matter was finally heard in chambers on May 6, 2025. On that day, CMI's application was granted, and the cross-examination on the affidavit took place shortly thereafter.

[9] A new date was set for the plaintiff's application to add CMI as a party, September 16, 2025, wherein the plaintiff's application was dismissed. This is the decision that is the subject of this appeal.

The Associate Judge's Decision

[10] The Associate Judge remarked at the outset of her decision that the time estimate for hearing the matter was, at 30 minutes, insufficient for the application before her.

[11] I pause to comment the following. The issue of inadequate time estimates is endemic in chambers and puts the adjudicator in an untenable position in terms of deciding these matters, because submissions are rushed and the parties invariably cut corners in terms of bringing the judge to the evidence or explaining the law. I also acknowledge that when parties are faced with repeated attempts to get heard in chambers only to be bumped time and time again, the temptation may be to underestimate the time required for a matter, in order to improve one's chances of being heard.

[12] My decision in this matter is made with these unfortunate realities in mind.

[13] The associate judge outlined the rule pertaining to adding parties, that being Rule 6-2(7)(b) and (c) of the Supreme Court Civil Rules, B.C. Reg. 168/2009. She referred to the legal test as stated in several cases, including Boake v. Blair, 2019 BCSC 830, which references several other cases that discuss when and how to determine whether the new party's participation in the proceeding is necessary to ensure that all matters are effectually adjudicated and the exercise of the court's discretion to add a party on the basis that it is just and convenient to

do so.

[14] She correctly identified the factors for the court to consider in exercising its discretion, including the extent of the delay, the reasons for the delay, the prejudice caused by the delay, and the degree of connection between the existing action and the new parties. She remarked that the trial had been set twice, once in 2023 and now set for February 2026. She observed that the deadline for expert reports was coming up in November of 2025 and commented that, if added, it would be unlikely that CMI could obtain its own independent IME and deliver expert reports before that deadline.

[15] In their response to the application to join them as a party, CMI said that if they are added, the court should also adjourn the trial. It appeared that the associate judge was advised by counsel for the plaintiff that the existing defendants took no position on the addition of CMI, but it was not clear that this was also the case with respect to the Strata. However, all of the existing defendants opposed an adjournment of the trial.

[16] In terms of her analysis of the factors, the associate judge's decision focused largely on the prejudice to the existing defendants, given the likelihood that the trial date would be lost. She briefly commented on the fact that a representative of CMI had retired in 2022 but only in reference to how long it may take CMI to locate her in advance of the trial. She observed that CMI would likely issue its own third-party notices, which would lead to new examinations for discovery, and that CMI would also have to retain counsel available for a 15-day trial to be heard in February of 2026.

[17] The associate judge went on to state that the plaintiff's proposed amendments with respect to CMI were generic, non-specific, and not clear. She stated that because the application itself was rushed, she was not able to review the amendments in advance, she was not taken through them in detail during the hearing, and she could not determine in her later review what the allegations against CMI were. She found that the proposed amendment failed to set out material facts that would complete the cause of action against CMI.

[18] At para. 27 in Rabinowitz v. The Owners, Strata Plan BCS 183, 2025 BCSC 1971, the associate judge stated:

The proposed amendment in paragraph 6 of the Legal Basis in the proposed amended notice of civil claim fails to set out the material facts that would complete the cause of action against CMI. There are no facts that flow from failing to communicate complaints. Does the plaintiff mean to allege that if the concierge had reported complaints to the other defendants, those other defendants would have done something? If so, what? What does "failing to act on complaints" mean? Did CMI owe the plaintiff a duty of care? If so, what is it? In short, what is the plaintiff's theory of liability?

[19] The associate judge also found that if the amendments were permitted and CMI was added, CMI would be within its rights to apply to strike the pleadings for failing to disclose a cause of action. Again, she commented, this would take time.

[20] The associate judge was not prepared to rule definitively on whether the amendments failed to disclose a cause of action because the matter was not adequately addressed at the hearing. However, she stated that her concerns regarding the proposed amendments added to her reasoning that permitting CMI to be added as a defendant with the proposed amendments in place will cause nothing but delay.

[21] The associate judge concluded that all of the likely steps CMI would take could not reasonably be concluded before the trial, and she did not agree that the trial should be adjourned. The associate judge found that the plaintiff failed to demonstrate that CMI and the existing defendants would not be prejudiced by the orders sought, and therefore dismissed the application with costs to CMI.

Standard of Review

[22] The standard of review for appeals from associate judges is set out in Abermin Corp. v. Granges Exploration Ltd., [1990] B.C.J. No. 1060. On a purely interlocutory matter, the associate judge's order will only be set aside or overturned where it is "clearly wrong". However, on questions that are "vital to the final issue in the case" or that results in a final order which an associate judge is permitted to make, a "rehearing is the appropriate form of appeal." Where there is a rehearing, the judge hearing the appeal may quite properly substitute their own view for that of the associate judge.

[23] The parties appear to agree that one potential standard of review of the decision before me is a rehearing on the merits. The plaintiff states that this is the appropriate standard of review and should be applied. CMI concedes that recent case law appears to confirm this standard, but states that even if this Court applies the clearly wrong standard of review to the associate judge's decision, the decision is not clearly wrong and should be upheld in any event.

[24] I was referred to the decision of Justice Morley in Ningbo Zhelun Overseas Immigration Service Co. Ltd. v. USA-Canada International Investment Inc., 2024 BCSC 682, at paras. 63 to 65:

[63] In my view, the best way to reconcile the (admittedly difficult) case law on the subject of the standard of review of associate judge's decisions on adding parties is to say that appeals are on a rehearing basis if a limitation period is lost (or established) and not otherwise. Limitation periods are substantive, not procedural, questions of law and thus it is the loss of that defence under s. 22(1)(d) of the Limitation Act that is "vital to the final issue in the case", namely whether the respondents to the application are substantively liable to the applicant: See Tolofson v. Jensen, [1994] 3 S.C.R. 1022, 1994 CanLII 44 (SCC). I would thus distinguish Strother, decline to follow Isman and Gairdner and follow Unosi instead.

[64] I do this with some reluctance because it makes little sense to me to substitute my own act of discretion for a considered decision of the associate judge. I view it as unfortunate that the standard of review took more argument time in this appeal than the underlying issues. But this is a problem with Abermin, not with its application. The effective loss of a limitation period is a question vital to a final issue in the case, if anything is.

[65] I therefore conclude that the ultimate issue here is whether I think adding the new plaintiffs was "just and convenient" and not whether the associate judge was clearly wrong in his conclusion on the same question.

[25] Given the regrettable circumstances of the hearing before the associate judge in this case, where it was clear that given the time pressures, the issues were not fully canvassed in front of her, I am content to rely on the conclusion of Justice Morley that it would be appropriate for me to proceed as if this is a hearing de novo.

[26] I can decide whether I should exercise my discretion differently than the associate judge without determining whether the parties have shown an error in principle in the associate judge's reasons, when it is not at all clear what was brought to her attention and what was not in the limited time.

Analysis

[27] In employing my discretion, I am to employ a two-part test. I need to determine that there is a question or issue between the parties relating to the relief, remedy, or subject matter, and then I must determine if it is just and convenient to determine the issue in the proceedings in question. See Bader v. British Columbia (Minister of Public Safety), 2015 BCSC 715.

[28] This is not a high threshold. The first part of the test is met simply on the basis of the relationship between the parties and CMI's role as a concierge at the building at the time of the incident with, as claimed by the plaintiff, some involvement or knowledge of the circumstances leading up to the incident. I need not examine the evidence with respect to whether this is a strong question or connection or the likelihood of success, given the nature of the legal relationship between the parties or the other facts that may be at play.

[29] In terms of the requirements of justice and convenience, the second branch requires the court to consider whether the requirements of justice and convenience are satisfied. In doing so, the court in Bader sets out some of the factors for consideration at para. 25:

(a) the stage of the proceedings at which the application is made;

(b) the length of a delay in bringing the application;

(c) the reason for the delay;

(d) whether a limitation period has expired;

(e) whether there is prejudice caused by the delay;

(f) the extent of any connection between the existing claims and the proposed new causes of action and whether it is suitable that the issues be tried together; and

(g) whether the proposed new claims will not only increase the number of parties but also the issues and overall scope of the litigation, with resulting costs and delay.

The Stage of the Proceedings

[30] The trial of this matter is set for February 2026. As such, we are very near to trial and only a month or so out from the deadline for expert reports. All things considered, including that discovery is complete, this application is taking place at what would be considered a late stage of the proceedings. However, I cannot ignore the fact that the application to add this party was filed in November of 2024, a full 14 months before the trial date and almost a full year before we are sitting here today.

[31] The delay in hearing the application was not the fault of the plaintiff. In saying this, I lay no fault at the feet of CMI either - they were entitled to take the procedural steps they took. It also was not CMI's fault that the 2024 application to join them was brought after years of delay caused by the plaintiffs' former counsel, which will be addressed below. Also, as I have already mentioned there were delays in getting heard in chambers. While we are now certainly at a later stage in the proceedings, I must acknowledge the nuances at play in getting to this point.

Length of Delay and expiry of Limitation Period

[32] With respect to the length of delay and expiry of the limitation period, there is no denying that there was delay in seeking to add CMI to this action. The loss occurred on February 15, 2018, which is over seven years ago. The two-year limitation period plus one year for service presumptively expired on February 25, 2021.

Reasons for Delay

[33] This is an area of inquiry, or a category of evidence that, as far as I can tell, was not canvassed in the associate judge's reasons.

[34] Former counsel for the plaintiff filed affidavits in the application to explain and to take responsibility for the delay in addressing the matter of adding CMI.

[35] Former counsel stated that:

· He became aware of the potential claim against CMI during an XFD on August 30, 2022.

· He gave notice to CMI of his intention to add it as a party to the action on Sept 27, 2022

· Despite the clear limitation issues, he believed he needed to conduct further review of certain documents before following through with the application to add. He did so, and on January 27, 2023, confirmed for himself (again) that it would be appropriate to add CMI.

· He realized in September of 2023 that, through his own inadvertence, he had not yet taken steps to add CMI, and once again provided notice to CMI that this was his intention.

· Despite this, he did not file the application to add CMI to the action until Nov 8, 2024, almost 14 months later.

· Counsel stated that the delay in applying to add CMI was due to his oversight.

[36] The total delay from February 25, 2021, to November 2024 is three years and eight months. This is the delay the plaintiff's former counsel takes responsibility for. The plaintiff states that he was not personally responsible for any part of that delay. The plaintiff also states that any delay after November 8, 2024 is not attributable to him, or to his new counsel.

[37] With respect to the three-year eight-month delay caused by his former counsel, the plaintiff says that the conduct of a party's lawyer counts against adding a party only if the prejudice is irremediable, Mcintosh v. Nilsson Brothers, 2005 BCCA 297 at para. 10:

The question of what is "just and convenient to determine as between the person and that party" within the concluding words of Rule 15(5)(a)(iii) requires a close focus on balancing the interests of the existing parties and the person sought to be added. It is important not to be diverted from the conduct of the parties to the conduct of their lawyers, except to the extent that the conduct of the lawyers may be at the heart of real prejudice to the other side. In this case, the plaintiffs were neither the cause of the failure to add Bavaria in the first instance nor the cause of any of the delays. They should not be prejudiced because of conduct on the part of their lawyer unless that conduct was the cause of irremediable prejudice to the other side. As I have said, that is not so here.

[38] The extent of the delay from the expiry of the limitation period to the application to add parties is, in my view, extreme under the circumstances. I am somewhat mystified as to the choices made by the plaintiff's former counsel in terms of adding this party, but as he has accepted responsibility and attributed the delay to his own personal inadvertence, oversight and his failure to act diligently, I will not comment further on that. I accept that the delay is not the fault of the plaintiff personally. In that respect, this factor weighs in favour of allowing the plaintiff to join CMI.

Prejudice Caused by the Delay

[39] The plaintiff argues that because CMI was given notice of the potential claim as early as September 2022 and then again in September of 2023, there ought to be no prejudice from the delay in terms of preserving evidence or knowing the potential claim against it.

[40] Significantly, the plaintiff also states that CMI's insurance broker advised that it began an investigation of the plaintiff's claim on October 12, 2022.

[41] Counsel for the plaintiff submitted that the evidence with respect to the retirement of the representative of CMI does not establish that the person cannot be found or that any efforts have been made or not made to find her and that no prejudice ought to be just assumed by virtue of her retirement.As such, the plaintiff says that there is no actual prejudice accruing to CMI as a result of the delay.

[42] Further, the plaintiff does not claim any wrongdoing by CMI or its counsel in the steps it has taken since the filing of the application to add, but he states that the steps that have been taken certainly added to the delay. He says that if the application to add CMI had been heard in late 2024, or even in the spring of 2025, the trial would not have been as threatened as it is now.

[43] The loss of the trial dates appears to be the primary area of prejudice found by the associate judge in this case. The plaintiff says that it would be unjust to penalize him for delay caused by his counsel, as well as for the delay after filing the application, and states that any prejudice suffered by the defendants or by CMI is outweighed by the prejudice he would suffer is by being unable to add CMI.

[44] For its part, CMI argues that the object of the rules is to ensure the just, speedy, and inexpensive determination of the proceedings on the merits. This includes conducting the proceedings in ways that are proportionate to the amounts involved, the importance of the issues, and the complexity of the proceedings. The delay in bringing the application in this case is not justifiable, and when an application to join parties after a limitation has expired, prejudice is presumed and it must be rebutted by the plaintiff.

[45] CMI states that the first notice of a claim was provided more than one year after the "two years plus one year for service" period had expired and that the actual application to add did not take place for another two full years after that. Prejudice should be presumed and parties cannot be expected to prepare a defence to a case that has not been pled. See Zhao v. Ai Kang Capital Inc., 2022 BCSC 2148.

[46] In stating that allowing the application would be to sanction the conduct of the plaintiff's former counsel, CMI referred me to para. 126 of Sampare v. 1199 Holdings Ltd., 2025 BCSC 234:

To allow the Plaintiff's application would be to countenance dilatoriness and to effectively render the Limitation Act meaningless in circumstances where a party or the party's counsel choose inaction over diligence. Just as actions have consequences, so too does inaction. An order allowing the Plaintiff to avoid those consequences would not further the interests of justice. I find it would be neither just nor convenient to grant the Plaintiff's application.

[47] I accept that the delay was not the fault of the plaintiff. I am concerned that it was not just one mistake of judgment by counsel. Given the chronology, it is not unfair to characterize the failure to take steps over a period of two years as dilatory. It is not sufficient, in my mind, to say that CMI had notice of a potential claim, when that claim was not forthcoming for years after that notice was given. I agree that CMI was under no obligation to act as a defendant and prepare a defence to a claim that did not yet exist.

[48] However, I am not convinced that CMI has demonstrated irremediable prejudice as distinct from the presumed prejudice arising from the loss of the limitation period. CMI references the retirement of their representative, but I take the plaintiff's point that without more, this does not suggest that evidence has been lost or that CMI is unable to mount a defence. I acknowledge that memories have likely faded over time, but the specific memory of, or the employment status of this employee has not been tested nor put to me as anything other than a notional issue. I agree with the plaintiff that the bare fact of her retirement is not enough to establish prejudice.

[49] This factor weighs in favour of adding CMI, given the lack of irremediable prejudice presented by CMI. I accept that the loss of the trial date is prejudicial to the existing parties and to the plaintiff, but I address that under the final factor.

Connection between existing claim and the proposed claims

[50] I am in a similar position to that of the associate judge in that there was insufficient time in the hearing to review the pleadings in any depth or explore the extent of the connection between the existing claims and the proposed new cause of action. Most of the argument pertained to the delay caused by the former counsel to the plaintiff, the circumstances surrounding the recent litigation history and the basis for the appeal of the associate judge's decision.

[51] I am therefore left with deciding this matter largely on the same basis as the associate judge, albeit with more detail regarding the cause of the delay. I must decide whether to add a party that could have and should have been added years ago, but whose ultimate connection to this matter in terms of liability or duty of care and the comparative significance of it remains largely as unclear to me as it was to the associate judge.

[52] To the extent that I am able, I accept and agree with the findings of the associate judge on this point, which can be found at para. 27 of her reasons, as I have mentioned.

[53] I find this factor nominally militates in favour of not joining CMI but note that the plaintiff will face the consequences of pleadings that are lacking in specificity or that cannot be proven.

The Effect on the Proceedings

[54] This is the factor upon which the associate judge appeared to largely base her decision; namely, that adding CMI at this late stage, which was then September of 2025, would threaten the trial date and therefore prejudice both CMI and the existing defendants. I do not see that the associate judge addressed or balanced the reasons for the delay, namely the conduct for the plaintiff's counsel, as against the potential loss of the trial date, which would presumably also negatively impact the plaintiff, who will have to face the likely result of adding a party this late in the game.

[55] Adding CMI will increase the number of parties, of course. It will not, in my opinion, expand the issues beyond all reason given the limited scope of the incident, aside from the likely exploration of the contractual relationship between the strata and CMI.

[56] Any delay to the trial will increase costs and delay. This factor, again, marginally militates against joining, but again, considering that the application was brought in late 2024, at a time when the trial date would not have been threatened, I struggle with laying the current stage of the proceedings and the effect on the proceedings solely at the feet of the plaintiff when I have already found that he is not to blame for the conduct of his counsel, or for the delay that followed the 2024 application to add.

Decision

[57] In considering the factors above I have concluded that this matter involved a more nuanced exercise in terms of balancing the factors of justice and convenience than was possible in the circumstances before the associate judge. On balance, the interests of justice and convenience militate in favour of granting the application of the plaintiff. I do so with some reluctance, given that I know exactly what will happen next, in terms of the likelihood that the trial date is in jeopardy, but that is now up to the parties, and impacts the plaintiff as well.

[58] I will set aside the orders and decision of September 16, 2025. CMI Concierge & Security Inc. will be added as a party, and the plaintiff has leave to amend their pleadings.

[59] I will not grant the order sought by CMI to adjourn the trial in the event that they were added. I did not hear directly from the other parties as to their position regarding the trial date. While I acknowledge this may lead to more court dates, there is only so much I can do with respect to managing this litigation from the vantage point of simply being asked to consider the issues on this appeal.

[60] I did not see in the plaintiff's application an issue about costs. The plaintiff has been successful. The costs would be awarded to them on the normal scale, but if anyone wants to make another submission on that point, I am willing to hear it.

[61] UNIDENTIFIED FEMALE SPEAKER: No, Justice.

[62] UNIDENTIFIED FEMALE SPEAKER II: No submissions.

[63] THE COURT: Okay. Costs to the plaintiff. Thank you.

[64] UNIDENTIFIED FEMALE SPEAKER II: And, oh, Justice, just one matter. On the limitation defence, I am assuming that order --

[65] THE COURT: Yes.

[66] UNIDENTIFIED FEMALE SPEAKER II: -- was also dismissed. Okay --

[67] THE COURT: Yes.

[68] UNIDENTIFIED FEMALE SPEAKER II: -- thank you.

"J. Whately, J."

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