

CANADA / JUDGMENT

Rabinowitz v. The Owners, Strata Plan BCS 183

2025 BCSC 1971

COURT

Supreme Court of British Columbia

DECIDED

18 September 2025

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2025 BCSC 1971 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 1971

Date: 20250918

Docket: S-1913429

Registry: Vancouver

Between:

Alan Rabinowitz

Plaintiff

And

The Owners, Strata Plan BCS 183, Rancho Management Services (B.C.) Ltd.,

Five Star Building Maintenance Ltd., and Zenaida San Juan

Defendants

And

The Owners, Strata Plan BCS 183, Rancho Management Services (B.C.) Ltd.,

Five Star Building Maintenance Ltd., and Zenaida San Juan

Third Parties

Before: Associate Judge Harper

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

L. Seneviratne

For the Defendants and Third Parties:

No Appearance

Counsel for the Attendee CMI Concierge & Security Inc.:

E. Pitre

Place and Date of Trial/Hearing:

Vancouver, B.C.

September 16, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 18, 2025

- [1] THE COURT: These are my oral reasons for judgment. If a transcript is required, I reserve the right to edit for clarity.
- [2] This is the plaintiff's application to add a party to the proceeding after the limitation period has expired.
- [3] The application was referred to me from the regular Associate Judge's chambers list because I was available for a very short period of time between other scheduled matters. The time estimate for the application was 30 minutes. I was not able to review the materials before the hearing and relied on counsel to walk me through the materials as required. Thirty minutes was too short a time estimate for this application which meant that I was required to review the materials in detail after the hearing was concluded and without hearing the submissions that, in retrospect, I needed to hear as revealed by my review of the materials after the hearing.
- [4] The action arises from an incident that occurred on February 25, 2018, when the plaintiff allegedly slipped and fell on an unduly slippery surface while exiting an elevator at a condo building in Vancouver (the "Premises").

- [5] The existing parties are the strata, which is the registered owner of the Premises; Rancho Management Services (B.C.) Ltd., which was the property management company retained by the strata; Five Star Building Maintenance Ltd., who was the independent contractor retained by the strata to provide building maintenance services to the Premises; and Ms. San Juan, who was the janitor or maintenance worker employed by Five Star, who allegedly was the cleaner who left the water and cleaning products on the floor, thus creating the slippery surface.
- [6] The plaintiff seeks to add CMI Concierge & Security Incorporated ("CMI") as a defendant. The plaintiff alleges that he complained to the concierge prior to the incident about the hazard created by Five Star employees leaving liquids on the floor while cleaning.
- [7] The applicable rule is Rule 6-2(7)(b) and (c):

Adding, removing or substituting parties by order

- (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),

...

- (b) order that a person be added or substituted as a party if
- (i) that person ought to have been joined as a party, or
- (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
- (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
- (i) any relief claimed in the proceeding, or
- (ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

- [8] The legal test appears in many forms in many different case authorities, but is not controversial. *Boake v. Blair*, 2019 BCSC 830, at paras. 48-52, sets out the applicable test:
- [48] The test governing addition and substitution of parties under Rule 6-2(7)(b)(i) and (ii) is whether a person ought to have been joined as a party or whose participation in the proceedings is necessary to ensure that all matters in the proceeding are effectually adjudicated. Use of the term "ought" in Rule 6-2(7)(b)(i) encompasses all those cases in which joining the person is a necessity and may even be broader, as noted by Madam Justice Smith in *Lawrence Construction Ltd. v. Fong* (2001), 2001 BCSC 813 (CanLII), 18 C.P.C. (5th) 377 (B.C.S.C.), to include situations in which joining the person may be more than mere convenience but less than a necessity": see *Kitimat (District) v. Alcan Inc.*, 2006 BCCA 562 at

para. 29 [Kitimat].

- [49] A party's participation will be "necessary" within the meaning of Rule 6-2(7)(b)(ii) where it has a direct interest in the precise outcome of the particular action between the certain parties: Kitimat at para. 31, citing *Canadian Labour Congress v. Bhindi* (1985), 1985 CanLII 384 (BC CA), 61 B.C.L.R. 85 at 94. If neither of those conditions are satisfied then there is no discretion to make an order under that subsection: see *Alexis v. Duncan*, 2015 BCCA 135 at para. 15 [Alexis].
- [50] Under Rule 6-2(7)(c) an order adding a party may be made if there is an issue related or connected with the relief claimed or subject matter in the original proceeding and, in the court's opinion, it would be just and convenient to do so. An order made under Rule 6-2(7)(c) is within the discretion of the court because it would be just and convenient in the case: see *Alexis* at para. 17.
- [51] An applicant to add a party must show there is a question or issue between it and the proposed defendant that relates to the relief, remedy or subject of the action. The low threshold is measured on the basis of a possibility that the cause of action is not a frivolous proceeding. There is no weighing of the evidence at this stage; the only question is whether the pleadings or evidence demonstrates an issue between the parties: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 [Neilson] at para. 45.
- [52] Consideration of the "just and convenient" basis for adding a party must be exercised judicially in accord with the evidence and the authorities. The court should consider the extent of any delay, the reasons and explanation for delay, prejudice arising from the delay and the degree of connection between the existing action and the new parties.
- [9] For the purposes of this application, the plaintiff concedes that the limitation period started to run on February 28, 2018. Therefore, the prejudice that is presumed runs from the two-year limitation period plus one year for service, which takes us to February 28, 2021. Given that the limitation period has expired, there is presumed prejudice to CMI. The plaintiff must demonstrate that CMI is not prejudiced: *McIntosh v. Nilsson Bros. Inc.*, 2005 BCCA 297, at para .8.
- [10] The trial has been set twice. The new trial date is February 23, 2026, for 15 days. The 84-day deadline for delivering expert reports is November 28, 2025. It is unlikely that CMI could obtain its own independent medical examinations and deliver expert reports before the deadline.
- [11] The application response of the strata makes it clear that adding CMI will cause prejudice and that the trial would likely have to be adjourned. In fact, CMI's position as set out in its application response is that if CMI is added as a defendant, the court should at the same time adjourn the trial.
- [12] All existing defendants take the position that they oppose an adjournment of the trial.

- [13] I was advised at the hearing by counsel for the plaintiff that all of the existing defendants take no position on the application to add CMI. I accepted that submission, but the application response of the strata is to the contrary and I am not able to determine whether I am correct in my understanding that the strata does not oppose CMI being added as a defendant as long as the trial is not adjourned.
- [14] There is prejudice to CMI because the concierge retired as of December 24, 2022. Although it is possible that CMI could take steps to locate her, that will take time with no guarantee of success. Further, CMI is likely to issue third party notices to the existing defendants. That will open up new examinations for discovery. Further, CMI would have to retain counsel who is available for a 15-day trial commencing February 23, 2026.
- [15] All of these steps cannot reasonably be concluded before the trial date. It is unfair to the existing defendants to have the trial adjourned, and I do not agree that the trial ought to be adjourned.
- [16] To conclude, the plaintiff has failed to demonstrate that CMI and the existing defendants will not be prejudiced by adding CMI as a party.
- [17] I turn now to the proposed amendments.
- [18] The existing notice of civil claim already refers to the prior complaints and includes allegations about failure to respond to complaints as against the strata, Rancho and Five Star. For instance, in paragraph 3 of the Legal Basis, it states:
3. The further particulars of the negligence of the defendant Strata include but are not limited to the following:
- ...
- b. failing to appropriately act on complaints pertaining to Five Star and their agents and employees.
- And similar allegations are made against Rancho and Five Star.
- [19] The service agreement between CMI and the strata provides that the client, in other words, the strata, agrees to keep its facilities in a safe condition. Although the evidence of the services agreement is not relevant on a pleadings application, by this stage in the litigation, with all of the examinations for discovery that have taken place, the evidence gleaned from that discovery process ought to have informed the drafting of the proposed amendments as against CMI.
- [20] The proposed amendments adopt the generic allegations set out in paragraph 2 of the Legal Basis. I venture an educated guess that because of the passage of time and the steps taken in the litigation, the parties have all worked their way through the overly broad allegations of negligence stated to be as against all defendants in paragraph 2 of the Legal Basis. However, the proposed amendments adopt these generic allegations of negligence.

[21] More problematically, the proposed amendments in paragraph 6 state as follows:

6. The further particulars of the negligence of the defendant CMI include but are not limited to the following:
 - a. failing to appropriately act on complaints received pertaining to Five Star and their agents and employees;
 - b. failing to provide appropriate instructions and/or training to staff with respect to appropriate handling complaints of unsafe Premises;
 - c. failing to communicate prior complaints involving unsafe slippery surfaces to San Juan, the Strata, Five Star and/or Rancho; and
 - d. other negligence to be proven at trial.

[22] Importantly, none of the defendants has issued a third party notice as against CMI. CMI argues that the amendments fail to disclose a cause of action. This position has been known to the plaintiff since the application response was filed on January 30, 2025.

[23] Because of the rushed nature of the application and the limited time available, and because I had not been able to review the materials in advance, and because I was not taken through the proposed amendments in any detail at the hearing, it was not clear to me exactly what the allegations against CMI were. The focus of the plaintiff and CMI since the filing of the application has been on the addition of CMI as a party and not on whether the proposed amendments themselves should be permitted.

[24] In its application response CMI says, at paras.14-16, as follows:

14. In any event, the Plaintiff has not shown that there may exist, as between the Plaintiff and CMI, any question or issue relating to or connected with any relief claimed in the Action or in the subject matter of this proceeding. In particular, the Plaintiff has not shown that there is a real issue between the parties that is not frivolous or speculative or that he has a cause of action against CMI.
15. The Plaintiff's proposed claim against CMI is that CMI negligently provided concierge services by failing to appropriately act on prior complaints that it allegedly received relating to possibly negligent janitorial services provided by an employee of Five Star pursuant to its agreement with Rancho.
16. CMI did not retain or instruct Five Star's employees. Its role with respect to the Premises was limited to providing concierge services, which were provided in accordance with the agreement between the Strata c/o Rancho and CMI, dated February 27, 2017 . . .

And then the paragraph goes on to refer to the provision that I have already referred to.

[25] I heard no submissions from counsel for the plaintiff in reply to CMI's submissions on the issue of whether the proposed amendments disclose a cause of action.

- [26] The allegations against CMI are assumed to be true for the purposes of pleading, but it is clear from the evidence that even if CMI were added as a defendant it would third party the strata on the basis of the indemnity agreement. The strata's interests would not be served by CMI being added as a defendant or else CMI would consent to an adjournment of the trial. Similarly, if the other defendants had anything to gain by CMI being added they would have to acknowledge that the trial should be adjourned as a result.
- [27] 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?
- [28] There are too many gaps in the amendments for the court to conclude at this point that the proposed amendments adequately set out a cause of action.
- [29] If these amendments were permitted, CMI would be within its rights to apply to strike the pleading for failing to disclose a cause of action, or at the very least apply for an order for particulars. All of that will take time.
- [30] Unfortunately, the issue of the amendments was not adequately addressed at the hearing. Although I have concerns about the quality of the proposed amendments as to whether the material facts are set out which, if proved, would complete the cause of action, I am not prepared to rule definitively that the proposed amendments fail to disclose a cause of action. But the concerns I have about the proposed amendments add to my reasoning that permitting CMI to be added as a defendant with the proposed amendments in place will cause nothing but delay and will threaten the trial.
- [31] I hasten to add I do not think that the trial should be threatened. This trial ought to proceed. By the time the trial occurs, the incident would have been eight years old.
- [32] I have determined that CMI would be prejudiced by being added as a defendant this late in the proceeding.
- [33] In short, as I said, this trial needs to get on as scheduled.
- [34] The application is dismissed with costs to CMI.

"Associate Judge Harper"

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Prepared on 29 October 2026 · Esheria