

CANADA / JUDGMENT

Rogers v. LeClair

2024 BCSC 308

COURT

Supreme Court of British Columbia

DECIDED

19 January 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 308 Rogers v. LeClair

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rogers v. LeClair,

2024 BCSC 308

Date: 20240119

Docket: S217129

Registry: Vancouver

Between:

Patricia Haldene Rogers

Bruce Gregory Rogers, and Richard Dale Rogers

Plaintiffs

And

Gabriella Rosemarie LeClair, in her capacity as Executor of the Estate of Wallace Halcyon Rogers, Deceased, and Gabriella Rosemarie LeClair in her personal capacity

Defendants

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

B. Morley

Counsel for the Defendants:

M. Stacey

L. Dinwoodie

Place and Date of Trial/Hearing:

Vancouver, B.C.

January 19, 2024

Place and Date of Judgment:

Vancouver, B.C.

January 19, 2024

- [1] THE COURT: The application before the court today is two-fold, although somewhat dependent upon each other, with the primary relief being an adjournment of the trial scheduled to commence on January 29, 2024 and the secondary, which is relevant if the adjournment is not granted, being an order declaring a comparative market analysis valuation ("CMA") with respect to lands that are the subject of this proceeding inadmissible for the purposes of trial.
- [2] As these reasons were given orally, I have made the appropriate edits to address syntax or clarity where necessary, and to add citations as appropriate, without affecting the substance or final disposition in any way.

Background

- [3] By way of very general background, the underlying action involves a wills variation claim. Given the common names, I will refer to the parties by their first names to the extent that I need to refer to them specifically but I mean no disrespect by that.
- [4] The plaintiffs are the three biological children of Halcyon (the "Deceased"):
- a) Dale, who is currently 62; and
 - b) Bruce, who is currently 68;
 - c) Patricia, who is now deceased herself, but would be 70 (prior to passing she gave evidence by way of a video deposition);
- [5] The Deceased died in 2017, leaving a 2014 will (the "2014 Will") that appointed Gabriella LeClair, the Deceased's stepdaughter, as executor. Probate was issued to Gabriella on May 14, 2021. Gabriella passed away and her estate is represented by her son, as executor, Mark. It is Mark who brings the subject application.

- [6] The issues in dispute in these proceedings relate to the 2014 Will, by which the Deceased left the entirety of the estate to Gabriella, effectively disinheriting his three biological children with whom he was estranged at the time of his death
- [7] There appears to be a significant background with respect to the family dynamics leading up to the Gabriella's passing which Mark believes, rightly or wrongly, was caused to some degree by the stress of this action. Although much of that is not technically relevant to the application before the court, it did assist with some context for the adjournment being sought, including as to the length of time the parties have been embroiled in these disputes and whether or not the trial can be done in the five days currently allotted. Specifically, there was some discussion as to why the witnesses that are noted on the defendant's witness list are essential and why it may be that such evidence cannot be done as quickly as one would otherwise assume to enable the parties to meet the five-day trial schedule.
- [8] On applications for trial adjournments, however, the role of the court is not to micromanage how parties plan to conduct their trial, or interfere with their trial strategy. Parties are entitled to lead the evidence as they see fit at a trial. Nonetheless, some review will assist the court in determining if there are obvious over estimates or duplications in time estimates, which parties may not wish to revisit if they are hoping for an adjournment on the basis that trial length is insufficient.
- [9] That is not to say that that is the case today. While trial time is one of the reasons for the adjournment being sought, it is not the only one. Nor do I believe that the defendant has artificially set times in a strategic manner to make an adjournment inevitable.
- [10] The secondary basis for the adjournment is the late filing of valuation evidence with respect to the primary main asset.
- [11] The estate's assets, or assets which are claimed to be an estate asset, include funds from TFSA's and RRSP's that have already been conveyed pursuant to designated beneficiary declarations, and other less valuable assets that were dealt with outside of the estate or gifted. Although not fully detailed on this application, the indication was that the designated funds were distributed to Gabriella, then to Mark upon her passing, and may no longer be traceable.
- [12] The main estate asset is a property referred to as "Swan's Point". I am advised by the parties that Swan's Point is a park-like, or recreational, property that has an unusual ownership structure. Given the disposition of the other claimed estate assets, this is the only viable asset that can be looked to if the plaintiffs' claims are successful.
- [13] Swan's Point is neither a strata nor a time-share, but a combination of sorts. Ownership is based on a share allotment. Mark is the current registered owner of a shares in Swan's Point, which entitles him to designated use of the property.

- [14] The unusual nature of the ownership and entitlement to use has created some complication in terms of valuing it as an asset, a point made by Mark as a reason for the adjournment being sought.
- [15] Specifically, the plaintiffs obtained the CMA (given its ownership, they could not obtain an appraisal) and served it upon Mark recently, I believe around December 19, 2023, following a trial management conference that took place on December 15, 2023. Mark argues that he requires time to be able to obtain rebuttal evidence with respect to the opinion of value as contained in the CMA.
- [16] A third basis relates to Mark's mental state. In particular, Mark's evidence in his affidavit is as follows:
- [17] I have suffered immensely as a result of the deaths of my family members and as a result of the ongoing action.
- [18] As a result, I have been hospitalized for treatment a number of times since September 2023.
- [19] I am continuing to seek medical treatment for my psychological conditions and do not know whether I am mentally or emotionally able to attend the trial of this action scheduled to start on January 29, 2024.
- [17] Such vague evidence on its own with nothing in support, such as a medical report or letter from a treating physician, is generally not persuasive as a basis for an adjournment of a trial. Counsel for the defendant argues that the evidence, despite being vague, highlights the emotional impact to the defendant if the trial proceeds while he feels forced to participate without the evidence he believes he needs. Put another way, the defendant is more acutely sensitive due to his mental vulnerability to the need to feel that the trial is conducted fairly, with him having a full opportunity to be heard.

Legal Framework and Analysis

- [18] The parties do not disagree as to the test on applications such as this. It has been set out quite clearly in *Navarro v. Doig River*, 2015 BCSC 2173. Specifically:
- [19] There are numerous factors to be considered on an adjournment application. However, the paramount consideration is the interest of justice in ensuring that there will remain a fair trial on the merits of the action (*Cal-Wood Door* at para. 13; *Graham v. Vandersloot*, 2012 ONCA 60 at para. 12 (*Graham*)). Because the overall interests of justice must prevail at the end of the day, courts are generous rather than overly strict in granting adjournments, particularly where granting the request will promote a decision on the merits (*Graham* at para. 12). The natural frustration of judicial officials and opposing parties over delays in processing civil cases must give way to the interests of justice, which favours a claimant having his day in court and a fair chance to make out his case (*Graham* at para. 12).
- [20] Other factors or considerations include (in no particular order of priority):

- the expeditious and speedy resolution of matters on their merits (Rule 1-3(1); Sidoroff at para. 10);
- the reasonableness of the request (Dhillon at para. 16);
- the grounds or explanation for the adjournment (Dhillon at para. 16; Toronto-Dominion Bank at para. 38);
- the timeliness of the request (Dhillon at para. 16);
- the potential prejudice to each party (Dhillon at paras. 16-17);
- the right to a fair trial (Dhillon at para. 16);
- the proper administration of justice (Dhillon at paras. 16 and 39; Toronto-Dominion Bank at para. 36);
- the history of the matter, including deliberate delay or misuse of the court process (Toronto-Dominion Bank at para. 38); and
- the fact of a self-represented litigant (Toronto-Dominion Bank at para. 39).

[21] Securing a fair trial on the merits of the action is the ultimate goal. This requires consideration of the nature of the claim. If the claim is novel, then the prospect for success is one factor to consider (*Sangha v. Azevedo*, 2005 BCCA 184 at para. 15 (*Sangha*)). However, the prospect for substantive success should not be the sole basis for refusal of an adjournment (Toronto-Dominion Bank at para. 41).

[22] The expeditious and speedy resolution of a matter raises the question of whether there has been a previous adjournment and, if so, the reasons for that prior adjournment. If the circumstances have not changed, a subsequent application will likely not be successful (*Kendall v. Sirard*, 2007 ONCA 468 at para. 46).

[19] Applying the above factors to this matter, this is not a matter where litigation has been unduly delayed or where there is a history that suggests undue delay.

[20] There may be arguments about delays in the probate process itself being completed. However, the request for an adjournment in respect of this matter or issue is not, on its face, an unreasonable request.

[21] When looking at the above factors, most are neutral such that the determination really does come down to the balancing of the prejudice that would be suffered by the plaintiffs if the court grants an adjournment of the trial and the prejudice suffered by the defendant if not. Although, I do acknowledge that much of the prejudice of the defendant may be addressed if an order was made to deem the expert report inadmissible.

- [22] In this respect, to comment briefly on the issue of Mark's mental stress, in addition to that evidence in support being vague, the stress of a trial is a factor that will exist no matter when the trial takes place, and therefore is not a factor for consideration.
- [23] Thus, the questions as to whether it is in the interests of justice to adjourn the matter, or whether there can be a fair trial on the merits if not, comes down to how best to address the CMA including the ability to obtain rebuttal opinion, and the length of time for the trial and whether or not five days is sufficient in any event.
- [24] From the plaintiffs' perspective, their prejudice is mostly as a result of the length of time that this has taken already. They argue that they are deserving of their day in court, that the ages of the parties are such that they ought to be able to enjoy the benefit of the estate to which they argue they have been entitled to since 2017 and not been able to use, and, perhaps more significantly, the fact that Mark continues to make use of the one remaining estate asset, Swan's Point, without any regard to the interests of the other parties who have claims in and to it.

Disposition and Order

- [25] Having regard to the balancing of the prejudice, I reluctantly agree with the defendant that this is a matter that ought to be adjourned.
- [26] The parties have assembled a helpful, colour coded, trial schedule that I have reviewed. Even if I make some adjustments, which I am hesitant to do given my previous comments, and even if I give the benefit of the doubt to the plaintiffs' position that many of these estimates could be scaled down, I am not in a position to say that the defendant's witnesses are unnecessary or do not have relevant evidence.
- [27] I could envision the trial being slightly more streamlined, but even so it would still be two or three days over the five-day estimate. Counsel for the defendant is not available the following week. If there was only one day in issue, I may be persuaded to put the parties to the task of working the schedule out in some way, including by implementing pre-trial measures that could assist such as a statement of agreed facts, but I cannot see that that would address the time overage.
- [28] As such the adjournment application is granted. The parties are to schedule a new trial date on the first mutually agreeable date. Such date will be peremptory on the defendant.
- [29] Given the adjournment, I dismiss the application with respect to the CMA's admissibility as an expert report, but do so without prejudice to any arguments as to admissibility that may be made at trial. I am dismissing it only because it is largely rendered moot as a result of the adjournment of the trial and issue as to time to obtain any rebuttal.
- [30] The plaintiffs will also be entitled to their costs for trial preparation thrown away.
- [31] Finally, costs of this application will be in the cause.

[32] Turning back to the costs being thrown away, was the CMA effective as of the date of death, or the current date, or both?

[33] CNSL B. MORLEY: Both were obtained for that, Your Honour.

[34] THE COURT: Thank you. Then I will include in the costs thrown away any disbursements incurred for having to obtain any updated expert opinion as to value, to bring it current to the trial date.

"Associate Judge Robertson"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/03/2024BCSC0308.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rogers-v-leclair-2024>

Prepared on 29 October 2026 · Esheria