

CANADA / JUDGMENT

Smartt Inc. v. Siphon Enterprises Corp.

2025 BCSC 1864

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1864 Smartt Inc. v. Siphon Enterprises Corp. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Smartt Inc. v. Siphon Enterprises Corp., 2025 BCSC 1864 Date: 20250925 Docket: S234864 Registry: Vancouver Between: Smartt Inc. Plaintiff And: Siphon Enterprises Corp., Michael Romaniuk and Katherine Romaniuk Defendants

- and - Docket: S238808 Registry: Vancouver Between: Michael Ernie Romaniuk Plaintiff And: Smartt Inc. Defendant
- and - Docket: S245095 Registry: Vancouver Between: Siphon Enterprises Corp. Petitioner And: Smartt Inc. Respondent
- and - Docket: S253094 Registry: Vancouver Between: Smartt Inc. Plaintiff And: Solution Effect Inc. Defendant Before: The Honourable Justice LeBlanc Reasons for Judgment Counsel for Smartt Inc.: D. Dalke S. Sandhu, Articled Student Counsel for Siphon Enterprises Corp., Michael Romaniuk, Katherine Romaniuk, Solution Effect Inc.: J. Tam Place and Date of Hearing: Vancouver, B.C. September 10, 2025 Place and Date of Judgment: Victoria, B.C. September 25, 2025 Table of Contents INTRODUCTION.. 4 SUMMARY OF PROCEEDINGS. 4 The Fiduciary Breach Action. 4 The Employment Action. 5 The Petition. 5 The Solution Effect Action. 5 Procedural Status. 6 SMARTT'S APPLICATIONS. 6 The Applications. 6 Smartt's Position. 7 Position of Siphon and the Romaniuks (the "Respondents") 9 Applicable Legal Principles. 9 Analysis. 11 Step 1: Are there common claims, disputes and relationships?. 11 Step 2: Are the proceedings so interwoven as to make separate trials undesirable and fraught with problems?. 12 RESPONDENTS' APPLICATIONS. 13 SUMMARY OF ORDERS MADE. 14 Appendix A.. 16

INTRODUCTION

- [1] The four applications before the court pertain to the following proceedings (collectively the "Proceedings"):
- a) Smartt Inc. v. Siphon Enterprises Corp., Michael Romaniuk and Katherine Romaniuk, Vancouver Action No. S-234864, filed July 10, 2023 (the "Fiduciary Breach Action");

- b) Michael Romaniuk v. Smartt Inc., Vancouver Action No. S-238808, filed December 29, 2023 (the "Employment Action");
 - c) Siphon Enterprises Corp. v. Smartt Inc., Vancouver Action No. S-245095, filed July 29, 2024 (the "Petition"); and
 - d) Smartt Inc. v. Solution Effect Inc., Vancouver Action No. S-253094, filed April 23, 2025 (the "Solution Effect Action").
- [2] Smartt Inc. ("Smartt") seeks to have certain proceedings consolidated and to have all four proceedings heard at the same time. Siphon Enterprises Corp. ("Siphon") and Michael Romaniuk each apply to compel a representative of Smartt to attend examinations for discovery.
- [3] Smartt applies to have the Petition converted to an action and Siphon has consented to that relief.
- [4] For the purpose of clarifying the relationship between the parties, I have appended to these reasons, as Appendix A, an organization chart prepared jointly by counsel at my request.
- SUMMARY OF PROCEEDINGS The Fiduciary Breach Action
- [5] Smartt alleges that the defendants, Siphon, Michael Romaniuk and Katherine Romaniuk directly or indirectly competed with Smartt through Solution Effects Inc. ("Solution Inc.") in violation of their non-disclosure agreement and in breach of their fiduciary duties.
- [6] The defendants deny competing or soliciting customers from the plaintiff and plead that the plaintiff failed to negotiate Mr. Romaniuk's employment agreement in good faith. The Employment Action
- [7] Michael Romaniuk alleges he was wrongfully dismissed by Smartt in connection with the ending of his employment with Smartt. Smartt disputes the claims against it and says that Mr. Romaniuk resigned. The Petition
- [8] Siphon alleges it was opposed by Smartt. The oppression complained of includes, among other things, passing resolutions relating to CEO salary and vacation entitlement, and breaches of a shareholders agreement.
- [9] Smartt denies the allegations made against it in the Petition on the basis that the conduct complained of is not oppressive or a breach of the shareholders agreement. Smartt pleads that the conduct of Mr. Romaniuk is to be considered in assessing whether the conduct complained of is oppressive and whether the petitioner is entitled to relief. The Solution Effect Action
- [10] In this action, Smartt makes similar allegations against Solution Effect Inc. ("Solution Inc.") as those alleged against the defendants in the Fiduciary Breach Claim.

- [11] Solution Inc. was incorporated in April 2022, while Mr. Romaniuk was a director and Mrs. Romaniuk was an employee of Smartt. Smartt alleges that Solution Effect was the vehicle used by Mr. and Mrs. Romaniuk to breach their fiduciary duties to Smartt.
- [12] Solution Inc. denies the allegations and pleads under the additional facts that the claim is substantially identical to the Fiduciary Breach Action, with the exception that Solution Inc. is not a party to the Fiduciary Breach Action. Solution Inc. also pleads that the alleged losses in the Solution Effect Action are the same as those sought in the Fiduciary Breach Action.
- Procedural Status
- [13] All four actions are at an early stage. The parties have exchanged pleadings and lists of documents, but no other significant steps have taken place.
- [14] Notices of trial have recently been filed. The trials appear to be set in response to Smartt's applications. On July 7, 2025, Mr. Romaniuk set a three-day trial beginning March 30, 2026 in the Employment Action and a three-day trial beginning August 24, 2026 in the Solution Effect Action. On August 18, 2025, the defendants set a 15-day trial beginning on February 22, 2027 in the Fiduciary Breach Action.
- [15] There have been attempts by Mr. Romaniuk to schedule an examination for discovery starting in or around February 2025. Appointments were taken out and Mr. Romaniuk obtained a certificate of non-attendance of Smartt in the Fiduciary Breach Claim and the Employment Claim. SMARTT'S APPLICATIONS The Applications
- [16] In the Fiduciary Breach Action, Smartt applies to have the Fiduciary Breach Action consolidated with the Solution Effect Action (the "Proposed Consolidated Claim") and to have the Fiduciary Breach Action heard together with the Petition and the Employment Action.
- [17] Smartt also applies to convert the Petition to an action and have it heard together with the Proposed Consolidated Claim and the Employment Action.
- [18] As stated above, conversion of the Petition to an action is consented to. Smartt's Position
- [19] Smartt submits that each of the Fiduciary Breach Action, the Employment Action, the Petition and the Solution Effect Action arise from a common factual matrix concerning: (a) the January 1, 2022 amalgamation (the "Amalgamation") of Smartt and Rent a Nerd Computer Services Inc. ("Rent a Nerd"), and its aftermath; (b) negotiations of Mr. Romaniuk's employment with Smartt; (c) the circumstances giving rise to Mr. Romaniuk's employment ending at Smart; and (d) Siphon's allegations of oppression.
- [20] Counsel for Smartt provided a detailed summary of the common issues which I will summarize here:

- a) In the Employment Action, Mr. Romaniuk pleads the amalgamation agreement as being the source of Smartt's obligation to negotiate a new employment agreement in good faith. In its response to civil claim, Smartt also relies on the terms of the amalgamation as governing the relationship.
 - b) In the Fiduciary Breach Action, Smartt and the Romaniuks plead and rely on the amalgamation agreement.
 - c) In the Petition, the amalgamation agreement is referenced as a material fact. In Smartt's response to petition, Smartt pleads the amalgamation agreement and alleges a breach of it by Mr. Romaniuk.
 - d) Smartt alleges that as part of the amalgamation, Mr. Romaniuk was to become an employee of Smartt and there were to be negotiations over the terms of his employment. Those negotiations are described in the Employment Action with Mr. Romaniuk asserting that Smartt did not negotiate in good faith, and Smartt denying the allegations.
 - e) In the Fiduciary Breach Action, the terms of Mr. Romaniuk's employment with Smartt pursuant to the amalgamation are in dispute. Smartt pleads that the principles of *Rent a Nerd* would execute further agreements and become employed by Smartt post-amalgamation. Smartt also pleads that Mr. Romaniuk did not negotiate his employment in good faith and never intended to continue employment with Smartt. Mr. Romaniuk, in his response to civil claim, alleges that Smartt did not negotiate the terms of his employment in good faith.
 - f) The manner in which Mr. Romaniuk came to leave the employment of Smartt is an issue common to all four proceedings. In the Fiduciary Breach Action, Smartt pleads that Mr. Romaniuk resigned from his employment and in his response to civil claim, Mr. Romaniuk denies those allegations and asserts he was constructively dismissed. Whether Mr. Romaniuk resigned or was constructively dismissed is the central issue in the Employment Claim. In the Petition and Solution Effects Action, the manner in which Mr. Romaniuk left the employment of Smartt is plead throughout.
 - g) In the Petition, Siphon connects its oppression claims to litigation against Siphon and the Romaniuks. Siphon pleads that board meetings were used to obtain evidence against Siphon for the purpose of seeking additional damages against the Romaniuks in relation to the claims against them. In its response to the Petition, Smartt pleads that the conduct of Mr. Romaniuk ought to be considered in the factual matrix concerning the allegations of oppression.
- [21] Smartt further submits that separate trials at different times before different judges will require additional time and expense, may lead to inconsistent results, and would be undesirable in all of the circumstances.

- [22] Smartt asserts there will be no inconvenience to any party arising from the orders it is seeking and that witnesses will only have to attend once instead of multiple times during each of the trials. Position of Siphon and the Romaniuks (the "Respondents")
- [23] The Respondents submit that Smartt's application is tactical and being used to further delay the progress of these proceedings.
- [24] The Respondents further submit that the proceedings are not similar and each deal with a separate and distinct legal issue. The Respondents assert that in each proceeding the legal capacity of the parties is different whereby they are wearing different hats.
- [25] The Respondents assert that the common facts do not equate to commonality of issues and there will be no savings of time if the proceedings are heard together.
- [26] Lastly, the Respondents submit that they will be prejudiced as they will not be able to move the proceedings forward with the trial time that has been reserved. Applicable Legal Principles
- [27] Rule 22-5(8) provides that proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day. Orders under Rule 22-5(8) are discretionary and their purpose is to avoid multiple proceedings: *Globalnet Management Solutions v. Aviva Insurance Company*, 2013 BCSC 829 at para. 36, citing *Shah v. Bakken*, (1996), 20 B.C.L.R. (3d) 393.
- [28] In *Raymond James Investment Counsel Ltd. v. Clyne*, 2018 BCSC 720, the court set out a two-step analysis to determine whether proceedings should be tried together:
1. whether the proceedings involve common claims, disputes and relationships upon review of the pleadings; and
 2. whether the proceedings are so interwoven as to make separate trials undesirable and fraught with expense.
- [29] In assessing the second question, the court may consider a number of the following non-exhaustive factors, as applicable:
- a) whether hearing the matters together will save pre-trial procedures;
 - b) whether doing so will reduce the number of days of trial;
 - c) whether hearing the matters together will seriously inconvenience a party by being required to attend a trial in which they have little interest;
 - d) whether one proceeding is more advanced than the other;
 - e) whether hearing the matters together will result in delay of trial of one of the proceedings, including the prejudice of that delay;
 - f) whether there is a serious inconvenience to a party of marginal interest;

- g) the risk of inconsistent findings on identical issues;
 - h) whether there will be savings in expert time and fees. See *Callan v. Cooke*, 2020 BCSC 290 at paras. 122-124; *Merritt v. Imasco Enterprises Inc.* (1992), 2 C.P.C. (3d) 275; *Hashimi v. Miki*, 2019 BCSC 2287 at paras. 7-8; and *Grewal v. Grewal*, 2017 BCSC 291 at paras. 40-41.
- [30] There is a distinction to be made between an application to join trials from an application to consolidate multiple proceedings into one. Consolidation is most appropriate where the commonality in issues and parties in the multiple actions "will mean that the disposition of one action will necessarily dispose of the issues in the other": *Liu v. Tsai*, 2017 BCSC 221 at para. 3; *Raymond James* at para. 39; *Discovery Enterprises Inc. v. Ebco Industries Ltd.*, 2001 BCSC 235 at para. 23.
- [31] The court must ultimately decide whether the degree of commonality and intertwinement of the issues outweighs prejudice to the party opposing joinder. The ultimate question is whether an order joining actions, to be heard together "makes sense" and is in the interests of justice: *Simmonds v. The Corporation of the City of Victoria*, 2016 BCSC 951 at para. 25; *Wu v. Li*, 2023 BCSC 1205 at para. 20.

Analysis

Step 1: Are there common claims, disputes and relationships?

- [32] I begin by addressing the first stage in the analysis: are there common claims, disputes and relationships?
- [33] It is clear to me that the Proceedings have an interconnected relationship arising out of the same factual matrix.
- [34] Among others, the Proceedings share the following core overlapping factual and legal issues:
- a) the question of what fiduciary and contractual duties the parties owed to each other and whether any of those duties were breached;
 - b) the question of whether Mr. Romaniuk was constructively dismissed from his employment with Smartt or whether he voluntarily resigned;
 - c) interpretation of the amalgamation agreement and how it impacts the party's positions;
 - d) whether the Romaniuks unlawfully competed with Smartt; and
 - e) whether Smartt's conduct was oppressive towards Siphon;
- [35] Accordingly, after reviewing the pleadings in the Proceedings, I have no difficulty in concluding that Smartt has satisfied the first step of the test under Rule 22-5(8). Step 2: Are the proceedings so interwoven as to make separate trials undesirable and fraught with problems?

- [36] The second step of the analysis has me consider whether the Proceedings are so interwoven that it would make separate trials undesirable and fraught with problems.
- [37] On review of the pleadings, the Proceedings are not as discrete, clear and independent from one another as the Respondents assert. I have addressed earlier in these reasons, the interwoven nature of the issues and factual matrix between each of the Proceedings.
- [38] I am satisfied, given the interconnected nature of the Proceedings that having them heard together will streamline pre-trial proceedings and will reduce the number of days of trial. As the underlying factual matrix is similar throughout the Proceedings, there will be a savings in time in not having to repeat the facts through witness testimony in each of the individual Proceedings. The need to call and recall witnesses multiple times to speak to overlapping and related matters will be eliminated, or at the very least, reduced. I am also satisfied that having the matters heard together and having the Fiduciary Breach Action and Solution Effect Action consolidated will streamline pre-trial discovery procedures.
- [39] With respect to consolidating the Fiduciary Breach Action into the Solution Effect Action, the allegations of wrongdoing are the same and the factual matrix underpinning the claims is the same. Disposition of the Fiduciary Breach Claim will dispose of the issues in the other.
- [40] I find that any prejudice the Respondents may have by consolidating the Fiduciary Breach Action and the Solution Effect Action and having the Proceedings heard together is significantly outweighed by the efficiencies of having the Proceedings heard and tried together.
- [41] While notices of trial have been filed, the Proceedings are all at relatively early stages, and I am of the view that having the Proceedings heard together will reduce the risk of inconsistent findings.
- [42] Granting the relief sought by Smartt will promote the just, speedy and inexpensive determination of the Proceedings on their merits and is consistent with the proper administration of justice.
- [43] Accordingly, I make the following orders:
- a) By consent, the Petition will be converted to an action and referred to the trial list (the converted Petition to be referred to as the "Oppression Action"). The parties have leave to file amended pleadings, as necessary, to convert the petition to the court and the response to petition into a notice of civil claim and response to civil claim, respectively.
 - b) The Solution Effect Action will be consolidated into the Fiduciary Breach Action (hereinafter referred to as the "Consolidated Claim").
 - c) The Consolidated Claim, the Oppression Petition, and the Employment Action will be tried together with documents, transcripts, evidence and testimony being available and used interchangeably throughout.
- RESPONDENTS' APPLICATIONS

- [44] The Respondents seek an order in the Fiduciary Breach Action and the Employment Action to compel Smartt to attend examination for discovery. I have summarized above the efforts undertaken by the Respondents to move forward with this examination, including attending the examination and obtaining a certificate of non-attendance.
- [45] Smartt argues that the applications to compel discovery are premature and it is neither necessary nor appropriate to conduct examinations while a consolidation application is pending and while pleadings may need to be finalized pending the outcome of its applications. Smartt submits that if the consolidation applications are successful, it will work with the Respondents to set down examinations.
- [46] It is clear that the parties were at a procedural stalemate with Smartt wanting to address the consolidation and concurrent trial issue and the Respondents wanting to move forward with their rights of discovery.
- [47] While finding no wrongdoing on the part of the Respondents to move the Proceedings forward, I do agree with Smartt's position that the question on consolidation and concurrent trials ought to have been decided first so that the pre-trial efficiencies could be properly realized.
- [48] With consideration to the orders I have made with respect to Smartt's applications, I find it reasonable to adjourn generally the applications of the Respondents at this time. In the event that the Respondents continue to experience difficulties in scheduling an examination of a representative of Smartt, they have leave to reset their applications. SUMMARY OF ORDERS MADE
- [49] Below is a summary of the orders I have made:
- a) By consent, the Petition will be converted to an action and referred to the trial list (the converted Petition to be referred to in this order as the "Oppression Action"). The parties have leave to file amended pleadings, as necessary, to convert the filed petition to the court and the filed response to petition into a notice of civil claim and response to civil claim, respectively.
 - b) The Solution Effect Action will be consolidated into the Fiduciary Breach Action (hereinafter referred to in this order as the "Consolidated Claim").
 - c) The Consolidated Claim, the Oppression Petition and the Employment Action will be tried together with documents, evidence and testimony being available and used interchangeably.
 - d) The Respondents' applications will be adjourned generally and the issue of costs can be spoken to either at a future hearing of the applications or at trial.
 - e) Costs of Smartt's applications will be granted to Smartt as costs in the cause and will be restricted to one set of costs.

- f) Counsel will prepare one form of order and it will be entered in the Proceedings. "Justice LeBlanc" Appendix A
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