

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Interior Lumbermen's Pension Plan v. M.L. Brown Lumber Ltd.*,
2025 BCSC 693

Date: 20250331
Docket: S2210171
Registry: Vancouver

Between:

Trustees of the Interior Lumbermen's Pension Plan

Plaintiffs

And

M.L. Brown Lumber Ltd.

Defendants

Before: The Honourable Madam Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

G. Brandt
J. Mayfield

Counsel for the Defendant, M.L. Brown Lumber Ltd. and the Respondents, Jim Lind Logging Ltd. (Action No. S248920), Arlene Brown and Donald Brown (Action No. S240038 and S247516), Lindwest Holdings Ltd. (Action No. 248921), Don Brown Trucking Ltd. (Action No. S2210172 and S247516), Buff Lumber Ltd. (Action No. S235960):

A. Ho

Place and Date of Hearing:

Vancouver, B.C.
March 31, 2025

Place and Date of Judgment:

Vancouver, B.C.
March 31, 2025

Introduction

[1] **THE COURT:** The Interior Lumbermen's Pension Plan (the "ILPP") is a multi-employer pension plan regulated under the *Pension Benefits Standards Act*, SBC 2012, c. 30. The ILPP provides benefits to eligible employees of participating employers in the logging industry in BC who have non-unionized logging and sawmill operations.

[2] In December 2022, the Trustees of the ILPP (the "Trustees") brought this action against the defendant, M.L. Brown Lumber Ltd. ("ML Brown"), to recover what counsel describes as a "solvency deficiency payment", being an amount said by the Trustees to be due and owing by ML Brown in respect of unfunded liabilities associated with ML Brown's employees benefits under the ILPP.

[3] The action against ML Brown is one of 12 actions brought by the Trustees against various participating employers. Four other actions filed by the Trustees against participating employers, seeking to recover "solvency deficiency payments", include:

- a) Action no. S2210172 against Don Brown Trucking Ltd. (a related company to ML Brown, also filed in December 2022);
- b) Action no. S235960 against Buff Lumber Ltd. (filed in 2023);
- c) Action no. S248920 against Jim Lind Logging Ltd. (filed in December 2024); and
- d) Action no. S248921 against Lindwest Holdings Ltd. (filed in December 2024).

(together with the ML Brown action, the "Common Actions")

[4] All five of the above defendant/employers have filed substantive responses to civil claim in addition to counterclaims. All of these employers deny the Trustees' allegation that the solvency deficiencies are owed by them. In addition, they have all

made substantive allegations against the Trustees alleging mismanagement of the ILPP funds and that, as such, the Trustees are responsible for any solvency deficiency either by way of set-off or as a defence to the action.

[5] In addition to these five actions, the Trustees have filed two other actions against the two above named Brown companies, and their principals, Donald and Arlene Brown. In these actions, the Trustees allege that the defendants participated in certain fraudulent conveyances by which Mr. and Mrs. Brown received funds from the companies (the "Fraudulent Conveyance Actions").

The Application

[6] ML Brown now applies for an order that the Common Action and the Fraudulent Conveyance Actions be tried at the same time. In addition, ML Brown seeks what I would describe as the usual trial or pre-trial procedures to ensure that the issues, to the extent that they are common, are addressed efficiently. Those procedural provisions relate to the production and use of documents, conduct of the examinations for discovery, use of transcripts from examinations for discovery, interrogatories and notices to admit.

[7] All of the defendants in the Common Actions and the Fraudulent Conveyance Actions consent to having the matter heard at the same time. They are all represented by ML Brown's counsel who appears on this application.

[8] The Trustees agree that two Brown actions should be tried at the same time on the proposed terms, but they oppose the application with respect to the other five actions. The Trustees in particular point to the fact that the ML Brown action is currently scheduled to proceed to a 10-day trial in September 2025. Those trial dates had been set earlier March 2024 which was, of course, when three of the actions had been filed (the two Brown actions and the Buff Lumber action), but not the Jim Lind and Lindwest actions and the Fraudulent Conveyance Actions.

[9] ML Brown's counsel also refers to what he describes as "Parallel Actions", which are another eight actions filed by the Trustees against various companies who

I assume are or were involved in the logging industry. Those actions were filed between 2022-2024. Only one of those defendants - Esselink Holdings Ltd. - has defended the action by filing a response to civil claim. Counsel advises that the remainder of those defendants have not yet responded to the claims if, in fact, they intend to respond at all.

Discussion

[10] The legal basis for the relief sought is set out in Rule 22-5(8) which provides:

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.

[11] In addition, counsel has referred me to one of the governing authorities on the issue, being *Wang v. Niu*, 2022 BCSC 1027. At para. 80 of *Wang*, citing *Merritt v. Imasco Enterprises Inc.*, 1992 CarswellBC 600 (BC SC) [*Merritt*], Justice Ahmad states that the questions to be determined on an application under Rules 22-5(8) are:

- a) Do common claims, disputes and relationships exist between the parties?
and
- b) Are they so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and economic expense?

[12] The Trustees allegations against the five companies in the Common Actions are common to the extent that they are based on the same pension plan (the ILPP) and subject to the same pension legislation. The calculations with respect to the alleged solvency deficiencies are, of course, different, arising from the specific circumstances of each company. However, I consider that it is fairly evident that the only substantive differences between them are the identity of the corporate defendant, the dates of the termination (what the Trustees' counsel describes as the "mini termination dates"), and finally, the calculation of the alleged solvency deficiency.

[13] Having said that, I agree with ML Brown's counsel that there are also common claims, allegations and defences arising from the responses to civil claims and counterclaims filed by all five defendants in the Common Actions. There are some individual differences, as ML Brown's counsel acknowledges and I accept that the substance of the defences and counterclaims are similar, but not identical.

[14] Accordingly, I find that the first issue identified in *Wang* is satisfied in the sense of identifying common claims and disputes between the parties.

[15] I then turn to the second issue: should these seven actions be heard at separate times or should they be heard at the same time?

[16] At paras. 81-83 of *Wang*, Ahmad J. sets out factors the case law, including *Merritt*, as relevant to the second question:

[81] ...

- (1) Will the order sought create a saving in pre-trial procedures, (in particular, pre-trial conferences)?;
- (2) Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?;
- (3) What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may have only a marginal interest?;
- (4) Will there be a real saving in experts' time and witness fees?

[82] ...

- (5) Is one of the actions at a more advanced stage than the other? [...];
- (6) Will the order result a delay of the trial of one of the actions, and, if so, does any prejudice which a party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have?

[83] ... "whether there is a substantial risk that separate trials will result in inconsistent findings on identical issues".

[17] Will the order create a savings in pretrial procedures? I consider the answer to that question to be "Yes". The same counsel represent both sides, which will create efficiencies. There are also going to be savings in terms of completing document production to some extent and conducting examinations for discovery,

although I appreciate there will be differences in the separate actions to some degree in relation to both of those procedures.

[18] The Trustees have produced lists of documents in three of the actions with two to come. Document production has not even begun in the Fraudulent Conveyance Actions. The litigation of all five actions can be said to be in the early days. For example, examinations for discovery have yet to take place.

[19] Will there be reduction in the number of trial days? The Trustees' counsel believes that 10 days will be sufficient with respect to the two Brown actions. He estimates that the Buff Lumber action will take about five days and the two Jim Lind/Lindwest actions will take between 5-10 days. Accordingly, the Trustees' counsel estimates a total of 20 days for trials in all of the Common Actions, versus a substantially higher estimate by defence counsel.

[20] Will a party be seriously inconvenienced by being required to attend a trial at which the party may only have a marginal interest? I consider the answer to that question to be "No", because all of the defendants in the Common Actions are advancing the same issues in terms of their responses and/or counterclaims.

[21] Will there be real savings in expert time and witness fees? Again, in my view, the answer is "Yes". It is unclear whether there will be expert evidence, although counsel suggest that actuaries may be involved and expert evidence may be required with respect to industry practice. That will also be a common issue as between the Common Actions.

[22] Witnesses are another issue. ML Brown's counsel letter dated February 17, 2025 refers to him being "inclined" to call all defendants as witnesses in any individual trial, if that is what is required. That state of affairs would obviously not be a very desirable situation.

[23] Is one of the actions at a more advanced stage than the other? The answer is "No". As I have already outlined, none of the Common Actions and Fraudulent Conveyance Actions have essentially advanced beyond the pleadings stage, other

than the scheduling of the trial date in the ML Brown Action and the delivery by the Trustees of some lists of documents.

[24] Will the order result in a delay of the trial in one of the actions and, if so, does the prejudice which the party may suffer as a result of that delay outweigh the potential benefits which a combined trial might otherwise have? I accept the Trustees' counsel's submission that, if this application succeeds, it will likely result in a delay of the September 2025 trial dates that are currently scheduled. I accept that this represents an element of prejudice to the plaintiffs.

[25] On that score, the Trustees' counsel states that the result of these alleged solvency deficiencies in the ILPP have resulted in pension benefits being reduced by some 40%. I do not minimize the personal impact that may have had on pensioners. In addition, I do not disregard the Trustees' intention to have these actions heard as soon as possible for that reason. However, in reviewing the history of these matters, it does not appear that the actions have proceeded expeditiously in respect of avoiding or minimizing that prejudice to the pensioners.

[26] The reduction in pension benefits took place in November 2021, some three-and-a-half years ago. The ML Brown litigation began in December 2022 and the Trustees were, even up to December 2024, filing further claims against the Jim Lind and Lindwest companies. Accordingly, while I acknowledge that some prejudice may result from a delay arising from the order sought here, the overall litigation has not advanced at a rapid rate in any event.

[27] The other side of the prejudice equation, of course, relates to prejudice to the defendants. The defendants allege that they may in turn suffer prejudice if the ML Brown matter proceeds first. In his submissions, the Trustees' counsel indicated that they intended that the ML Brown action (and now perhaps both Brown actions) would stand as a "test case" of sorts in respect of what they consider to be the significant legal issues arising in respect of this matter. Counsel does not use the word "*estoppel*" in relation to the effect of obtaining the ruling they will seek; however, counsel indicates an intention to take the position that, if the Trustees are

successful in the Brown actions, they will advance those findings as having precedential value in respect of the determination on the legal issues as they relate to all of the Common Actions.

[28] In that respect, I accept that there is prejudice to the defendants other than the Brown defendants. They will, as their counsel says, be forced to “stand on the sidelines” and watch the litigation of these issues without having the ability to participate in this action as a party and advance their separate interests and perhaps common interests directly on what might be significant issues that affect the outcome of the litigation.

[29] I return to the element of prejudice that would arise from a delay of the trial. On that score, again ML Brown’s counsel’s letter, as above, indicates that he has spoken to Supreme Court Scheduling and confirmed availability for a three-week or even 19-day trial commencing in January or February 2026. On that score, ML Brown’s counsel has at least made some effort to determine availability.

[30] If those trial dates are available, and I accept that was what counsel was told, the delay from September 2025 to spring 2026 is not much of a delay at all and attenuates any prejudice to the Trustees in respect of the two Brown actions. In addition, as ML Brown’s counsel notes, any delay is answered to some degree by the recovery of interest on any amount found to be due.

[31] In my view, the overall prejudice to the defendants outweighs the prejudice that would be suffered by the Trustees by any delay.

[32] There is one final matter that I consider attenuates any prejudice arising from any delay. I have concluded that that it is not necessary at this time to litigate the Fraudulent Conveyance Actions until there is some determination on the main issues between the parties; namely, whether the Trustees are successful or not in respect of establishing any solvency deficiency that is payable by the two Brown companies. If the Trustees are not successful, then obviously there is no need to proceed with the Fraudulent Conveyance Actions at all.

[33] Is there a risk that separate trials will result in inconsistent findings on identical issues? It is unclear how that matter might be addressed given the Trustees' position that there is such precedential value in a finding in the Brown actions, such that there will be no need for any consideration of what are described as the common legal issues in respect of the ILPP. To the extent that there are individual legal issues or factual issues that may drive the determination, there would not appear to be any risk of inconsistent findings.

[34] Overall, the intention behind these types of applications is to find a reasonable way forward that makes sense, not only from the parties' point of view, but also from the Court's point of view in terms of a reasonable and appropriate use of judicial resources. ML Brown's counsel refers to the *Supreme Court Civil Rules* in terms of securing a just, speedy, and inexpensive determination of the proceedings on its merits. I accept that both parties want to achieve that result; however, the overarching concern is, what is in the interests of justice?

[35] I am satisfied that it is appropriate to have the Common Actions heard at the same time. I am ordering that, subject to the agreement of the parties, the trial of the Fraudulent Conveyance Actions will be held in abeyance pending a determination of the Common Actions.

[36] The Trustees' counsel took no issue with what I have earlier described as the ML Brown's proposed procedural orders. Those are so ordered.

[37] Finally, as sought by ML Brown in the application in para. 3, a copy of the order shall be placed in the file for every one of the other four Common Actions and the Fraudulent Conveyance Actions.

[38] The final matter is costs. ML Brown seeks costs in any event of the cause. Mr. Brandt, you did not address that issue, and I am not sure whether you wish to do so.

[Counsel's submissions on costs]

[39] I am ordering that costs of this application are in the cause.

“Fitzpatrick J.”