IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Stoeff v. Stephenson,* 2025 BCSC 737

Date: 20250422
Docket: S216209
Registry: Vancouver

Between:

Taylor Stoeff

Plaintiff

And

Cindy-Lea Stephenson, carrying on business under the firm name and style of T's Once upon a Leaf, Music Heals Charitable Foundation, and DB Prakash Properties Ltd.

Defendants

Before: The Honourable Justice Underhill

Reasons for Judgment

Counsel for the Plaintiff:	R. Thomas
Counsel for the Defendant, Cindy-Lea Stephenson under the firm name and style of T's Once upon a Leaf and DB Prakash Properties Ltd. :	J.B. Abrioux
Counsel for the Defendant, Music Heals Charitable Foundation:	B. Folarin
Place and Date of Hearing:	Vancouver, B.C. March 31, 2025
Place and Date of Judgment:	Vancouver, B.C. April 22, 2025

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Introduction

[1] The defendants brought two applications under Rule 9-7 of the *Supreme Court Civil Rules* seeking dismissal of the claims brought against them by the plaintiff Taylor Stoeff arising out of a trip and fall accident on August 10, 2019.

[2] During the course of the hearing, the plaintiff agreed to discontinue her claim against the defendant Music Heals Charitable Foundation ("Music Heals"). Accordingly, these reasons will only address the application brought by the defendants Cindy-Lea Stephenson carrying on business under the firm name and style of T's Once Upon a Leaf ("Ms. Stephenson") and DB Prakash Properties Ltd. ("Prakash").

[3] For the reasons that follow, I have determined that the issue of liability is suitable for summary disposition under Rule 9-7, and that the action should be dismissed against Ms. Stephenson and Prakash.

Background

[4] The background facts are relatively straightforward and for the most part not contested. Indeed, the applicants rely primarily on the plaintiff's own evidence on this application.

[5] On August 10, 2019, the plaintiff and her husband attended a charitable event put on by T's Once Open a Leaf, a small store in Langley which sells tea and tea accessories (the "Store"), and which operates as a sole proprietorship registered under one of its co-founders, Ms. Stephenson. Prakash is the owner of the land and building upon which the Store operates.

[6] The event, known as the Annual Pop-Up Tea-Ki Bar Social, was in its second iteration, and was designed to promote the Store and raise money for charity. Music Heals was the title beneficiary of the fundraising efforts at the event.

[7] The event was held in the evening, from approximately 6:30 p.m. to 10:30 p.m., in a parking lot and alleyway immediately adjacent to the Store. It featured,

among other things, carnival games, a silent auction, food vendors and a bar. One of the carnival games was a beanbag toss game commonly known as "cornhole". It is that game which is the alleged cause of the plaintiff's accident.

[8] On the record before me, it is not clear when the plaintiff and her husband arrived at the event. What is known is that the plaintiff was provided with two alcohol drink tickets upon arrival, and that she consumed one drink approximately one hour before the accident. She had not consumed any alcohol before arriving at the event, and was wearing contact lenses. She had her second (still full) drink in hand at the time of the accident.

[9] The plaintiff and her husband had played the cornhole game twice before the accident without incident, and the plaintiff had not noticed during those games that a reusable tote bag was placed immediately beside one of the platforms towards which the bean bags are tossed. The purpose of the bag was the subject of some discussion during the hearing, but in my view, nothing turns on why it was placed there. From the photographs in the record, it appears that at least some exterior lighting had come on at the time of the accident, although the area of the game was not directly illuminated from above. The tote bag is plainly visible in all of the relevant photographs, and the plaintiff confirmed that there was sufficient lighting to play the game at the time of the accident.

[10] The accident occurred after the plaintiff and her husband decided to play the game for a third time, and were walking from one platform in the direction of the other platform that had the bag beside it. The plaintiff had her drink in hand, but was not drinking from it. She was not using her cell phone at the time. The plaintiff's right foot got caught up in the handles of the bag (which was weighted down with some bean bags at the time) and she fell to the ground, with her elbows, hips, knees and hands hitting the ground.

[11] The plaintiff provided an expert report from a biomechanical engineer, Mr. Cimich, who addressed, among other things, the issue of whether the plaintiff's accident was biomechanically consistent with gait mechanics and the dimensions of

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the tote bag. However, I do not find it necessary to address any of his opinions and conclusions here. Nor do I find it necessary to address the evidence regarding the sequence of events after the accident, although I will briefly return to the significance of alleged inconsistencies in that evidence below.

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Positions of the Parties

[12] The defendants rely on Rule 9-7(2) of the *Supreme Court Civil Rules*, which allows for one issue to be determined separately on a summary trial application. They say the issue of liability can be dealt with on a summary basis, and that I should conclude that defendants are not liable and the action should be dismissed.

[13] The plaintiff argues that the issue of liability is not suitable for determination under Rule 9-7, and must instead be determined at a full trial with her damages claim. Alternatively, she says that I can make a finding of liability against the defendants.

Severance and Suitability

[14] Rule 9-7 of the *Supreme Court Civil Rules* provides in part:

> **Application**
>
> (2) A party may apply to the court for judgment under this rule, either on an issue or generally, in any of the following:
>
> > (a) an action in which a response to civil claim has been filed; …
>
> **Judgment**
>
> (15) On the hearing of a summary trial application, the court may
>
> > (a) grant judgment in favour of any party, either on an issue or generally, unless
> >
> > > (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
> > >
> > > (ii) the court is of the opinion that it would be unjust to decide the issues on the application, ...

[15] I understood both parties to make submissions to the effect that a two-stage process should be followed when addressing the question of whether it is

appropriate to solely address the issue of liability in a summary trial application. First, I need to consider the question of whether liability is appropriately severed from damages, and second, whether it is suitable to deal with liability on a summary basis.

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[16] For her part, the plaintiff initially argued that the test for severing an individual issue for determination on a summary trial requires extraordinary, exceptional or compelling reasons, citing *O'Neill v. John Doe*, 2016 BCSC 2056 at paras. 24–25 and *Chun v. Smit*, 2011 BCSC 412 at para. 16.

[17] The applicants, however, pointed out that this line of authority has been overtaken by the Court of Appeal's decision in *Ferrer v. 589557 B.C. Ltd.*, 2020 BCCA 83, where Justice Groberman noted that the "extraordinary, exceptional or compelling reasons" test was borrowed from the test for bifurcating a trial under Rule 12-5, and held as follows:

> [30] It is not clear to me that the considerations used to determine whether individual issues are suitable for summary determination under Rule 9–7 need to be identical to those that are used, under Rule 12–5, to determine whether a conventional trial should be bifurcated. Often, the two situations will present quite different contexts, in terms of the efficiency of trial management and the allocation of judicial and litigant resources.
>
> [31] We are concerned, on this appeal, only with the considerations to be applied under Rule 9–7, and nothing that I say should be taken as reflecting on the proper tests or practices under Rule 12–5.
>
> [32] In my view, the "extraordinary, exceptional or compelling reasons" test, at least when applied under Rule 9–7, is a curious one. It is not clear why we should describe the concept using three near-synonyms in a disjunctive test. Nor does the test give us a clear picture of what it is about the reasons for severance that makes them "extraordinary", "exceptional," or "compelling".
>
> [33] <u>The case law under Rule 9–7 and its predecessor, Rule 18A, makes it clear that, absent good reason, courts should not isolate individual issues in a proceeding and decide them separately from the rest of the litigation</u>. If that is all that is meant by the use of the phrase "extraordinary, exceptional or compelling reasons", then it is not objectionable, though I am not convinced that the phrase itself provides much in the way of guidance.
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> [Emphasis added.]

[18] Earlier in his reasons (at para. 26), Justice Groberman cited the following paragraphs of *Hryniak v. Mauldin,* 2014 SCC 7, where the Supreme Court of

Canada endorsed the summary trial procedure as a means of improving access to justice:

> [27] There is growing support for alternative adjudication of disputes and a developing consensus that the traditional balance struck by extensive pre-trial processes and the conventional trial no longer reflects the modern reality and needs to be re-adjusted. A proper balance requires simplified and proportionate procedures for adjudication, and impacts the role of counsel and judges. This balance must recognize that a process can be fair and just, without the expense and delay of a trial, and that alternative models of adjudication are no less legitimate than the conventional trial.
>
> [28] This requires a shift in culture. The principal goal remains the same: a fair process that results in a just adjudication of disputes. A fair and just process must permit a judge to find the facts necessary to resolve the dispute and to apply the relevant legal principles to the facts as found. However, that process is illusory unless it is also accessible — proportionate, timely and affordable. The proportionality principle means that the best forum for resolving a dispute is not always that with the most painstaking procedure.

[19] As to what constitutes a "good reason" to determine a single issue in a summary trial proceeding, Justice Groberman (at para. 34) cited the decisions of this Court in Coast *Foundation v. Currie*, 2003 BCSC 1781 and *Greater Vancouver Water District v. Bilfinger Berger AG*, 2015 BCSC 485. as providing an appropriate "analytical approach". In *Greater Vancouver Water District*, Justice Griffin (as she then was) distilled from the cases the following list of factors to be considered:

> [110] In summary, the authorities in BC, including *Hryniak*, make clear that the factors the court must consider on applications to determine by summary trial only part of the issues in the lawsuit are:
>
> a) whether the court can find the facts necessary to decide the issues of fact or law;
>
> b) whether it would be unjust to decide the issues by way of summary trial, considering amongst other things:
>
> i. the implications of determining only some of the issues in the litigation, which requires consideration of such things as:
>
> (1) the potential for duplication or inconsistent findings, which relates to whether the issues are intertwined with issues remaining for trial;
>
> (2) the potential for multiple appeals; and
>
> (3) the novelty of the issues to be determined;
>
> ii. the amount involved;
>
> iii. the complexity of the matter;

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iv. its urgency;

v. any prejudice likely to arise by reason of delay; and

vi. the cost of a conventional trial in relation to the amount involved.

[20] Justice Groberman observed that not all of these factors will be relevant in every case, and they should not be approached as a checklist: *Ferrer* at para. 28.

[21] As noted above, the applicants took the position that after applying this test to the question of severance, I should then go on to determine the question of suitability as a second step.

[22] In my view, it is clear from *Ferrer* that a two-stage process is not required and that a single question is being answered: is the individual issue – in this case, liability – suitable for summary determination under Rule 9-7? There is no need to conduct a second suitability analysis, as the consideration of the relevant factors is to be approached flexibly and generously, and can incorporate the more general list of factors discussed in cases such as *Gichuru v. Pallai*, 2013 BCCA 60 at paras. 30-31.

[23] Ultimately then, I understand the Court in *Ferrer* to be saying that in determining whether there is a "good reason" to decide an individual issue on a summary basis, the court is essentially asking itself, by looking at all relevant factors, whether it is "fair and just" to do so, and consistent with the proportionality principle as described in *Hryniak*.

[24] I will now briefly consider what I see to be the relevant factors in assessing whether there is a good reason, and if it is fair and just, to solely determine liability in this summary trial application.

[25] First, can I find the facts necessary to decide any issues of fact or law on liability? The plaintiff says there is conflicting evidence from the defendant Ms. Stephenson that gives rise to issues of credibility which cannot be resolved on this application. I will address each of these in turn:

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(a) There is said to be an inconsistency in the purpose for the tote bag being placed where it was at the time of the accident. I do not find there is any significant inconsistency between the defendant's evidence on discovery about the bag being provided by the supplier of the cornhole game, and her affidavit evidence that the bag was left beside the cornhole game to reduce the potential hazards associated with bean bags being littered around the playing area. In any event, nothing turns on any such inconsistency when it comes to the issue of determining liability.

(b) Similarly, nothing turns on any alleged inconsistency in the defendant Ms. Stephenson's evidence about how and when she was advised of the accident for purposes of determining liability.

(c) I also find that the evidence regarding what steps the defendant Ms. Stephenson took to assist the plaintiff after the accident, including whether she offered her a glass of wine, is not relevant to the issue of liability.

(d) Likewise, the evidence about what steps were taken to move the bag, or when the game was taken down entirely, is not relevant to the liability analysis.

(e) Finally, the fact that evidence provided at the examination for discovery of Ms. Stephenson was not included in her affidavit on this application does not give rise to any conflict or credibility issue.

[26] I therefore conclude that it is possible to make the necessary findings of fact to determine liability on this application.

[27] Next, I do not see any reason why it would be unjust to solely determine liability on this application. The issues of liability and damages are not intertwined such that there is any risk of duplicative or inconsistent findings. While the plaintiff argued that there are additional witnesses and evidence to be adduced on the issue

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of liability, it was incumbent on her to bring forward all such evidence on this application (*Gichuru* at paras. 32–35), and in any event, I do not see anything material that is missing that would preclude a proper liability analysis. To the contrary, I see the issue of liability as being relatively straightforward and that it can be determined on the evidence adduced on this application.

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[28] In respect of potential prejudice from a further delay, the defendant points to the affidavit evidence of Ms. Stephenson that she is unable to get insurance to hold liquor licensed events while this litigation is extant. The plaintiff says there is no corroborating or supporting evidence to back up that claim of prejudice, but I do not find the defendant was required to adduce any such evidence and note that the plaintiff has not contested it in any way.

[29] Finally, while the quantum of the claim is not clear on the record on this application, there will be significant costs associated with a conventional trial on liability and damages, including the likely need for both parties to adduce expert evidence.

[30] Considering all of these factors, I find that there is a good reason, and that it is fair, just and proportionate, to determine the issue of liability on this application. I turn to that issue next.

<u>Liability</u>

[31] I understand Ms. Stephenson to accept, at least for purposes of this application, that she is an occupier as that term is defined in the *Occupiers Liability Act*, R.S.B.C. 1996, c. 337. Section 3(1) of the *Act* states:

> An occupier of premises owes a duty to take that care that in all the circumstances of the case is reasonable to see that a person, and the person's property, on the premises, and property on the premises of a person, whether or not that person personally enters on the premises, will be reasonably safe in using the premises.

[32] The law is well-settled that an occupier has a duty to take reasonable care to ensure the safety of persons who enter the premises; a standard that does not

require "perfection" or a "guarantee of safety" on the part of the defendant, and requires a "modicum of awareness" on the part of the plaintiff. In *Coleman v. Yen Hoy Enterprises Ltd.*, 2000 BCSC 276, Justice Burnyeat said:

> [13] The question which must be first answered is whether the defendants took the care that is required of them under s.3(1) of the *Occupier's Liability Act*. It is clear that the steps taken must not approach "perfection." In this regard, McEachern C.J.S.C. (as he then was) stated in *Hunning v. Huang* [1984] B.C.J. (Q.L.) No. 2087 (B.C.S.C.):
>
>> . . . To impose liability upon the defendants in these circumstances could only be justified by a standard beyond reasonableness approaching perfection and would constitute not just reasonableness but a guarantee of safety. If the accident could have been avoided by a modicum of awareness on the part of the plaintiff, as I believe it could have been, then it cannot be said that the defendant breached its duty of reasonable care. at pp.4-5)

[33] In *Voje v. Teck Developments Ltd.*, 2022 BCSC 503, Justice MacNaughton (as she then was), stated at para.102:

> The fact of an injury does not create a presumption of negligence, and a plaintiff has a duty to keep a proper lookout for their own safety and to be aware of their surroundings. If the accident could have been avoided by a modicum of awareness on the plaintiff's part, a defendant will not have breached its duty of reasonable care.

[34] Notably, a modicum of awareness does not require the plaintiff to "glue her eyes to the ground": (*Coleman* at para. 18).

[35] Essentially, the plaintiff's argument on liability, relying principally on the expert report of Mr. Cimich, is that the placement of the bag in what she describes as a "busy, highly trafficked area" constituted a tripping hazard which "implies negligence" on the part of the defendant.

[36] I do not agree. I note that the plaintiff played the game twice before the accident without incident. While such evidence is not determinative (*Owens v. Steveston Waterfront Properties Inc.*, 2019 BCSC 746 at para. 73), in my view, it supports the conclusion that the placement of the bag beside the platform was reasonable and did not constitute a tripping hazard. Most importantly, it would have

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been plainly visible to the plaintiff throughout her journey from the far platform to the platform where the bag was located, and I find it could have been easily avoided with a "modicum of awareness" at the time. In my view, it was no more a hazard than the platform beside it, which the plaintiff would have also had to avoid.

[37] In my view, Mr. Cimich's report does not assist the plaintiff on this point. I do not doubt that the accident could have happened without the plaintiff doing anything out of the ordinary in terms of running or otherwise proceeding in an unsafe manner. However, Mr. Cimich does not address the indisputable fact that the bag (and its handles) were in plain sight throughout the material time period, including when the plaintiff was outside of what Mr. Cimich says is the "typical gaze pattern" of looking 2–3 metres ahead. This distinguishes a case like *Ramos v. South Coast British Columbia Transportation Authority*, 2023 BCSC 966, cited by the plaintiff, where the raised edge of a ramp was not plainly visible because it was obscured by grass (paras. 47, 56).

[38] In my view, this is a case like *Voje*, where had the plaintiff taken reasonable care, she would have observed the bag and avoided it. I agree with Ms. Stephenson that the following comments of this Court in *Bjerregaard v. Westfair Foods Ltd.*, 2003 BCSC 1755 are apposite:

> [46] However, an occupier is not an insurer. Persons coming on to its premises also have a duty to take care for their own safety. Every misadventure in life cannot be blamed on someone else. Occasionally, we all fail to look where we are going. Sometimes we just stumble. Other times we fall. Unfortunately, that is what happened here.

<u>Conclusion</u>

[39] The action against the defendants Ms. Stephenson and Prakash is dismissed. Unless there is something of which I am not aware, the defendants are entitled to their costs of the action on Scale B. If there is a need for submissions on costs, the initial submission should be made within 30 days, and any response should follow within 14 days.

"Underhill, J."