

Court of King's Bench of Alberta

Citation: Roberge v Revera Inc., 2025 ABKB 416

Date: 20250708
Docket: 2001 06293
Registry: Calgary

Between:

Marijke Roberge As Representative Plaintiff

Applicant

- and -

**Revera Inc operating as Mckenzie Towne Continuing Care Centre, AXR (Mckenzie/Miller)
Inc., AXR Operating (National) LP and Revera LTC Managing GP Inc.**

Respondents

**Reasons for Decision
of the
Honourable Justice M.H. Hollins**

[1] The Applicant is the representative Plaintiff in a proposed class action proceeding. She claims damages arising from the alleged negligence of the Respondents/Defendants in their operation of a Calgary seniors' home, McKenzie Towne Continuing Care Centre (McKenzie Towne Centre), during the COVID pandemic. The application to certify the action has not yet been heard.

[2] She seeks a stay of proceedings pending the outcome of other trials that she argues will be determinative of issues in this action. The Plaintiff says that either or both of the Ontario action, *Pugliese v Chartwell* ("Pugliese Action") or the Alberta action, *Kaiser v Brentwood Care Centre* ("Brentwood Action"), both of which are further advanced than this one, will provide

rulings that can be expected to shorten these proceedings. The Defendant objects, saying it will be prejudiced by the delay in awaiting these other trial outcomes.

[3] I agree with the Plaintiff and direct a stay of proceedings on the conditions set out at the end of these Reasons.

The Legal Test

[4] The test for the stay of a class action proceeding is:

- (a) Are the issues in the other action(s) substantially similar to the subject Action?
- (b) If so, would it be oppressive, vexatious or abusive to the moving party if the stay is not granted? and
- (c) Will there be an injustice visited on the non-moving party¹ if the stay is granted?

Alberta v AUPE, 1984 ABCA 130 at paras.9 and 13

[5] The authority to grant a stay is found in Rules 1.4(h), 3.72(1)(c) and (2) of the *Alberta Rules of Court* and in s.5(3)(f) of the *Judicature Act*, RSA 2000, c.J-2. The rationale for granting a stay, where appropriate, is generally to maximize the efficient use of the resources of the courts and the parties.

A. The Issues are Substantially Similar

[6] The Plaintiff says that both the Pugliese and Brentwood Actions will require the adjudication of substantially the same issues as this Action. Before looking at those lawsuits, I will summarize the pleadings in this Action, specifically the Amended Statement of Claim filed June 30, 2021.

[7] The proposed class of plaintiffs are current or former residents of McKenzie Towne Centre who became infected with COVID-19 and their immediate family members. The proposed representative plaintiff is Marijke Roberge, whose mother moved into McKenzie Towne Centre in February of 2020. After March 14, 2020, Ms. Roberge was not allowed to see her mother in person. Her mother was diagnosed with COVID on March 28, 2020 and died on April 4, 2020.

[8] The Defendants are the owner, operator, licensee and/or manager of the McKenzie Towne Centre. There may be a dispute as to the proper naming or description of one of the Defendants, but that is not relevant to this application.

[9] The Plaintiff claims that the Defendants are directly and vicariously liable for damages under the following causes of action: negligence/gross negligence, breach of contract, breach of fiduciary duty, breach of s.7 of the *Canadian Charter of Rights & Freedoms (Charter)*, breach of the *Occupiers' Liability Act (Alberta)* and of the *Human Rights Act (Alberta)*. The Plaintiff also challenges the validity of the *COVID-19 Related Measures Act*, SA 2021, c.C-31.3 (the "*COVID-19 Act*").

¹ I have used "moving" and "non-moving" party here as most recitations of this test identify the moving party as the defendant, which is most often the case but not here. Even though that is more typical, either party can move for a stay of proceedings; *Waud v Dawson-Dixon*, 2023 ABKB 158 at para.19.

[10] The Defendants deny any negligence and any breach of fiduciary duty, contract or statute. They say they were duly diligent and complied with all federal and provincial health orders and with operational standards. The Defendants also plead that the Plaintiff's claim is barred by the *COVID-19 Act*.

The Pugliese Action

[11] This class action is the consolidation of eight separate class actions, all seeking damages for deaths or infections of people in long term care homes in Ontario during the pandemic. One of the included actions is *Hannon v Revera Inc et al*, with one or more common defendants to this Action.

[12] In the certification decision, Justice Morgan identified the causes of action as negligence, breach of fiduciary duty, breach of contract, breach of the *Occupiers Liability Act (Ontario)* and breach of s.7 of the *Charter*; *Pugliese v Chartwell*, 2024 ONSC 1135 at para.18 (leave to appeal refused, 2024 ONSC 4671 (Div Ct)).

[13] Of these, the only cause of action that survived the certification motion was negligence. The Ontario *Supporting Ontario's Recovery Act (SORA)*, SO 2020, c.26 Schedule 1 (*SORA*) – which mirrors Alberta's *COVID-19 Act* - was interpreted as precluding recovery on any claim other than proven gross negligence, although no express challenge appears to have been made to the validity of the Ontario legislation.

[14] On this point, Justice Morgan cited *Robertson v Ontario*, 2022 ONSC 5127 which also interpreted *SORA* to preclude all claims but gross negligence. *Robertson* was upheld by the Ontario Court of Appeal; 2024 ONCA 86, leave to SCC refused, 2024 CarswellOnt 14478.

[15] The common issues certified for trial in *Pugliese* (and *Hannon*) were: (1) whether the Defendants owed the Plaintiffs a duty of care?; (2) if so, what was the applicable standard of care?; and (3) if the answer to (1) is yes, did the Defendants or any of them breach the duty of care owed and if so, when and how did the breaches occur?; para.177.

The Brentwood Action

[16] The *Kaiser v Brentwood Care Centre Action* (No: 2001-16467) is an Alberta proceeding. The Representative Plaintiff, Kathy Kaiser, has a very similar story to Ms. Roberge. Her mother began residing at Brentwood in February of 2020, went into lockdown on March 15, 2020 and passed away from COVID on May 20, 2020, although she had never tested positive while at Brentwood.

[17] The original Statement of Claim in the Brentwood Action alleged only negligence. However, this was amended on November 21, 2021 to add claims of gross negligence, breach of fiduciary duty, breach of the *Charter* (s.7), the *Occupiers' Liability Act*, the *Alberta Human Rights Act* and breach of contract. A second amended claim, March 6, 2024, added a constitutional challenge to the *COVID-19 Act*. A third amended claim added an alleged breach of the *Alberta Bill of Rights*.

[18] However, by way of a fourth Amended Statement of Claim, filed March 18, 2025, counsel for the Plaintiffs (the same counsel as for Ms. Roberge) took everything out of the claim except for negligence/gross negligence. This was reflective of a Consent order for Certification

signed on July 26, 2024, so this last amendment was simply “catching up” with the agreement to proceed on the gross negligence claims only.

[19] That Consent Order in the Brentwood Action certified the following common questions:

- (a) Did the Defendant owe a duty of care to the [class] related to COVID-19 outbreaks in the Brentwood Care Centre?
- (b) If yes, what was the applicable standard of care?
- (c) If the answer to (a) is yes, did the Defendant breach the duty of care owed?
- (d) If the answer to (c) is yes, when and how did the breaches occur?
- (e) If the answer to (c) is yes, did the breaches amount to gross negligence?

[20] Thus, the issues for trial in Brentwood are the same as those certified in the Pugliese Action. Both are different from the current pleadings in this Action in that they are now narrowed to only the determinations around negligence, or more accurately, gross negligence.

[21] It may be that the plaintiffs in this Action will similarly narrow their issues, although no indication of that was given by counsel at this application. Thus, the Plaintiff’s claim here still contains the additional statutory, fiduciary duty and contract claims. While on its face, this might distinguish this Action from the Pugliese and Brentwood Actions, the jurisprudence to this point seems clear that the statutory immunity of *SORA* – and therefore potentially of the *COVID-19 Act* – has held.

[22] If Ms. Roberge, whether voluntarily or otherwise, is thereby limited to advancing this Action on the grounds only of gross negligence, there would be virtually no difference between the issues in this Action and in the Pugliese and Brentwood Actions. If she opts to maintain the additional claims, that may complicate the certification application, although I am not pre-judging the outcome of such application.

[23] The Defendant also raises the “*Ragoonanan* problem” discussed in *Pugliese*, focusing particularly on Justice Morgan’s reference to the necessary “commonality”; para.96. However, that arose in the context of certifying a common class, not determining whether separate actions were substantially similar. The *Ragoonanan* problem arises where a plaintiff advances claims against a group of defendants, while having a factual basis to claim only against one, also called the problem of the “missing representative plaintiff” tied to a particular defendant; *Pugliese* at paras.84-116 (discussing *Ragoonanan Estate v Imperial Tobacco Canada Ltd*, 2000 51 OR (3d) 503 (SCJ) at para 54). It is not applicable here.

[24] The common issues in the Pugliese and Brentwood Actions are whether the actions and/or omissions of those long-term care facilities, similarly situated to Revera, constitute gross negligence and if so, how. Those issues are substantially similar to the core issues in this Action.

A. It Would be Unjust to the Plaintiff to Refuse the Stay

[25] The Plaintiff says that all parties will benefit from the judicial economy of awaiting the outcome(s) of the Brentwood and/or the Pugliese litigation. She says that it is unjust to force her to incur the costs of running a parallel proceeding where the determination of the common issues already certified in these other actions will likely be dispositive, whether by consent or adjudication, of the issues raised in this Action. I agree.

[26] The importance of saving court resources, avoiding multiplicity of actions, reducing legal costs and encouraging settlement have always been recognized as legitimate and important objectives in stay applications generally; *Hamm v Canada (Attorney General)*, 2021 ABCA 329 at para 11.

[27] Where the other similar proceedings are not much farther advanced than the subject proceedings, there is less judicial economy to be had from a stay. The Defendants rely on *Yee v Aurelian Resources Inc*, where a stay was refused even though there were several other class proceedings with virtually identical claims. However, in *Yee*, the plaintiff had already filed his certification motion and supporting material and the other class proceedings had not yet been certified; 2007 ABKB 368. That is significantly different than this case, where the comparable class action proceedings have both already been certified.

[28] It seems inevitable that those common issues trials will occur before this Action can advance that far, given the status of the Brentwood (certified in June 2024) and the Pugliese Action (certified in March, 2024). While this is not a footrace, the determination of these substantially similar issues in these other proceedings may clear the way to consent certification here. Even absent resolution, those determinations will assist in how best to assess certification for these parties and, if appropriate, formulate common issues.

[29] *Yee*, along with other Alberta cases, have also rejected or limited a stay of proceedings where a plaintiff may lose the ability to advance a claim if his action is stayed, for example if he cannot join an existing class action proceeding or has opted or may opt out; see *Hamm v Canada (Attorney General)*, 2020 ABQB 765, affirmed 2021 ABCA 329 and *Wenslaw v Air Canada*, 2021 ABPC 185 at para.33.

[30] This case is somewhat unusual, in that the plaintiff is applying for a stay of proceedings, rather than the defendant. Typically, the defendant wants to pause the action against it in hopes that the findings made in a different case may obviate or reduce the cost and time of defending its own action. That is not the case here as the moving party is the plaintiff and so that rationale does not apply.

[31] There is no injustice to the Plaintiff in granting the stay.

B. It Would not be Unjust to the Defendants to Grant the Stay

[32] The Defendants are in the somewhat difficult position of having to argue that they will be unjustly disadvantaged by having to defend this suit now, rather than later.

[33] Counsel for the Defendants estimated that the Brentwood and/or Pugliese Actions might take another 6 years to reach trial, although it is unclear how that was calculated. In both, the classes and common questions are finalized and notices have been sent or posted.

[34] It is acknowledged that the Pugliese Action is much larger than either this or the Brentwood Action because it involves a number of discrete lawsuits and many parties. However, this also means that, even where there are some differences between the institutional responses to COVID, the collective findings on negligence can be expected to have broader application.

[35] Further, the Defendants would not be required to await the individual trials of damages in either similar proceeding but only the findings on the common questions, as it certainly appears that those will likely be the same or virtually the same as here.

[36] Lastly, although I put much less weight on this, I note that this Action was commenced in 2021. A Litigation Plan was approved in October of 2021, after which nothing happened at the instigation of either party until this motion. In other words, the Defendants were not particularly concerned with a timely defence of this Action until very recently.

[37] In all these circumstances, the Defendants are not unduly prejudiced by the imposition of a stay.

Conclusion

[38] The common issues already certified in the Pugliese and Brentwood Actions are substantially similar to those in this Action and thus, the decisions in those common issues trials can be expected to shorten these proceedings and ultimately, save time and money. It is not unjust to either party, in all the circumstances, to impose the stay of proceedings sought by the Plaintiff.

[39] Accordingly, these proceedings are stayed until the earliest of a decision on the common issues trial in either Pugliese or Brentwood. If appealed or if counsel cannot agree on whether or when to resume these proceedings, they may notify my office. The same applies to costs of this motion.

Heard on the 28th day of April, 2025.

Dated at the City of Calgary, Alberta this 8th day of July, 2025.

M.H. Hollins
J.C.K.B.A.

Appearances:

Nicole K. Keeler and Clint G. Docken, KC
for the Plaintiff/Applicant

J. Kate Foster and Don Dear, KC
for the Defendants/Respondents