

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Gallagher v. Matis*,
2025 BCSC 1358

Date: 20250716
Docket: S254638
Registry: Vancouver

Between:

Steve Gallagher

Plaintiff

And:

Eran Matis and PestBoss Business Software Inc.

Defendants

Before: The Honourable Madam Justice Forth

Reasons for Judgment

Counsel for the Plaintiff:

B. Loewen

Counsel for the Defendant Eran Matis:

R. Eichler

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
July 9, 2025

Place and Date of Judgment:

Vancouver, B.C.
July 16, 2025

Introduction

[1] On July 9, 2025, the defendant, Eran Matis, brought an application seeking to have the law firm representing the plaintiff, Webster Hudson & Coombe LLP (“WHC”), disqualified for acting as counsel for the plaintiff in this proceeding (the “Disqualification Application”).

[2] On July 4, 2025, the defendant Matis obtained short leave to have this application heard on Wednesday, July 9, 2025. The reason for the urgency was that the plaintiff had filed an application for an interlocutory and permanent injunction against the defendant Matis (the “Injunction Application”), which was scheduled to be heard on June 30, 2025. The parties consented to having the Injunction Application heard on July 9, 2025.

[3] On July 9, 2025, the Disqualification and Injunction Applications came before me in general chambers. I proceeded to hear the Disqualification Application and reserved my decision. These are my reasons on whether WHC should be disqualified from acting for the plaintiff. The Injunction Application was adjourned generally pending these reasons.

Relevant Facts

[4] I have a limited amount of facts regarding the relationship of Mr. Matis and the plaintiff, Steve Gallagher, in respect to their business relationship.

[5] I understand that at some point the two agreed to incorporate a company, being PestBoss Business Software Inc. (“PestBoss”), where each were a 50 percent shareholder.

[6] Mr. Gallagher was responsible for retaining and instructing WHC to incorporate PestBoss. In addition to incorporating PestBoss, WHC filed its annual reports.

[7] At no time did Mr. Matis attend any meetings at WHC or instruct any WHC lawyer. WHC conducted a client search in WHC’s database, and the results indicate

that at no time did WHC or any lawyers for WHC act for Mr. Matis. WHC did not provide any legal advice to Mr. Matis.

[8] On June 19, 2025, the same day that the Injunction Application was filed, the plaintiff filed a notice of civil claim (“NOCC”) naming Mr. Matis and PestBoss as defendants. Of significance is para. 1 of the NOCC:

1. This is a common law derivative action to recover damages that [PestBoss] has incurred as a direct result of the unlawful actions taken by the Defendant Eran Matis (“Matis”) and as a result of the Defendant Matis’ breach of the fiduciary duties he owed to PestBoss. The action is brought for and on behalf of PestBoss by a holder of 50% of the shares, Steve Gallagher (“Gallagher”).

[9] Under Part 3, Legal Basis, in the NOCC, it again states that this is a common law derivative action brought by Mr. Gallagher on behalf of PestBoss. The claim is that as a result of the acts of Mr. Matis, PestBoss has suffered and will continue to suffer damages.

Legal Principles

[10] A law firm owes a duty of loyalty to clients, with that duty having three salient dimensions: 1) a duty to avoid conflicting interests; 2) a duty of commitment to the client’s cause; and 3) a duty of candour: *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39 at para. 19 [*McKercher*].

[11] The Courts have recognised a “bright line” rule that provides that a lawyer or law firm may not concurrently represent clients adverse in interest, even when the retainers are unrelated, without obtaining their clients’ consent: *McKercher* at para. 38.

[12] The Court has an inherent jurisdiction to order the removal of counsel in the circumstances where there is a “substantial risk that the lawyer’s representation of the client would be materially and adversely affected by the lawyer’s own interests or by the lawyer’s duties to another current client, a former client or a third person”: *Barrows Capital Inc. v. Storm Mountain Development Corporation*, 2020 BCSC 255 at para. 52 [*Barrows Capital*].

[13] The onus is on the party asserting a conflict to establish the existence of it: *Barrows Capital* at para. 53.

[14] The remedy of disqualification is generally the only appropriate remedy to avoid the risk of improper use of confidential information and/or to avoid the risk of impaired representation: *McKercher* at paras. 61-62; *Barrows Capital* at para. 55.

Position of the Parties

[15] The defendant Matis submits that he was a client of WHC since he is a 50 percent shareholder of PestBoss and WHC was retained to incorporate PestBoss. He submits that he remains a current client of WHC as he is a director of PestBoss and PestBoss is a current client of the firm. As a current client there is a clear prohibition against concurrent representation of clients unless consent is obtained. Mr. Matis has not consented to WHC acting in these proceedings. Mr. Matis relies on the Alberta Court of Kings Bench decision in *Jeffers v. Calico Compression Systems*, 2002 ABQB 72, where a corporate solicitor who had endeavoured to act for the two shareholders in preparing a shareholders' agreement was required to withdraw from representing the company when the shareholders had a falling out.

[16] The plaintiff submits that at no time did WHC act for Mr. Matis. All communications were between Mr. Gallagher and the firm. The retainer agreement was strictly with PestBoss. The plaintiff argues that this is a common law derivative action which is brought on behalf of PestBoss, and as a derivative action, it is brought on behalf of the company by the shareholder in the shareholder's name. As such, the interests of PestBoss and the plaintiff are aligned. The company is named only as a nominal defendant.

Analysis

[17] The onus is on Mr. Matis to establish that a solicitor/client relationship exists at this time: *Barrows Capital* at para. 61. On the evidentiary record before me, there has never been any solicitor/client relationship between WHC and Mr. Matis. I am not persuaded that simply as a result of Mr. Matis being a shareholder of PestBoss,

this creates a solicitor/client relationship between him and the law firm which incorporated the company.

[18] As noted, the only connection that Mr. Matis has to WHC is that WHC is the law firm that incorporated PestBoss and filed its annual returns. It was conceded that Mr. Matis never spoke to any lawyer at WHC and the instructions to incorporate PestBoss were given by Mr. Gallagher to WHC.

[19] As such, there can be no allegation, nor is one asserted by Mr. Matis, that any confidential information was shared by him to WHC.

[20] I accept that PestBoss was and is a client of WHC and that PestBoss is a named defendant in the NOCC. If the plaintiff was seeking relief against PestBoss, then there would be a conflict in having WHC act for the plaintiff contrary to the interests of PestBoss. However, that is not the type of action brought in these proceedings.

[21] This case is distinguishable from the type of action brought in *Mottershead v. Burdwood Bay Settlement Company Ltd.*, [1991] B.C.J. No. 2554 (SC), in which the action was a shareholder's oppression case brought under s. 224 of the *Company Act*, R.S.B.C. 1979, c. 59, now s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57. There is a distinction between a derivative action intended to address harm to the company and an oppression remedy to address harm to an individual shareholder.

[22] As stated in the NOCC, this is a common law derivative action in which relief is being sought on behalf of PestBoss for alleged losses sustained as a result of actions taken by Mr. Matis. There is no relief sought by the plaintiff against PestBoss; rather, the plaintiff is seeking to claim on behalf of PestBoss.

[23] In these circumstances, I am not persuaded that WHC, as the corporate solicitors for PestBoss, should be prohibited from acting on behalf of the plaintiff to pursue remedies on behalf of the corporation. I agree with the plaintiff's submission that the interests of the plaintiff and PestBoss are aligned.

[24] I accept that PestBoss has been named as a defendant not for the purpose of seeking relief against it but, in essence, as a nominal defendant. This is akin to the situation in *1115830 B.C. Ltd. v. Treasure Bay HK Limited*, 2022 BCCA 380, where Treasure Bay, a minority shareholder, brought a common law derivative action on behalf of the company, GM International Holding Limited (“GMIH”). The Court of Appeal stated:

11. Treasure Bay and GMIH are Hong Kong companies. GMIH is named as a defendant only so it receives notice of the action below; no one has a claim against GMIH. The plaintiff does not sue in the name of GMIH, although it asserts rights belonging to GMIH.

[25] In the case of *Jeffers*, the Court concluded that there existed a solicitor/client relationship between Mr. Jeffers and the lawyer acting for the other shareholder and the company. The Court concluded that such a relationship existed, after considering the various *indicia* that might exist, including:

[8] ...a contract or retainer; a file opened by the lawyer; meetings between the lawyer and the party; correspondence between the lawyer and the party; a bill rendered by the lawyer to the party; a bill paid by the party; instructions given by the party to the lawyer; the lawyer acting on the instructions given; statements made by the lawyer that the lawyer is acting for the party; a reasonable expectation by the party about the lawyer’s role; legal advice given; and legal documents created for the party. Not all *indicia* need to be present....

[26] Most of the *indicia* do not exist here. Based on the evidentiary record before me there was: no retainer, no bill rendered to Mr. Matis, no communications or meetings between Mr. Matis and any WHC lawyer, no instructions given, and no legal advice provided. The only thing that might be argued is that a legal document was created for the party in that PestBoss was incorporated and some corporate documents would have been prepared. I am not persuaded that this is a ground to support the finding of a solicitor/client relationship between Mr. Matis and WHC.

[27] In *Jeffers*, there was the further concern that the lawyer was highly likely, if not inevitably, to be called as a witness: *Jeffers* at para. 18. It was correctly conceded by counsel for Mr. Matis that this is not a concern that exists in this proceeding.

[28] There is no basis, arising from the nature of this proceeding and the lack of any type of solicitor/client relationship with Mr. Matis, to have WHC removed as counsel for the plaintiff.

Disposition

[29] The following orders are made:

- 1) The defendant Matis' application to disqualify Webster Hudson & Coombe LLP from acting as counsel for the plaintiff in this proceeding is dismissed.
- 2) The plaintiff is entitled to costs of defending this application in any event of the cause.

“Forth J.”