COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Airbnb Inc. v. Ware,*
2025 BCCA 298

Date: 20250731
Docket: CA50368

Between:

Airbnb Inc., Airbnb Canada Inc., Airbnb Travel, LLC, Airbnb Stays Inc., Airbnb Ireland Unlimited Company, and Airbnb Payments UK Ltd.

Appellants
(Defendants)

And

Margot Ware

Respondent
(Plaintiff)

Before: The Honourable Madam Justice Horsman
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated December 11, 2024 (*Ware v. Airbnb, Inc.*, 2024 BCSC 2240, Vancouver Docket S223172).

Oral Reasons for Judgment

Counsel for the Appellants:	G. Dingle
Counsel for the Respondent (appearing via videoconference):	S. Lin A.S. Majidi
Place and Date of Hearing:	Vancouver, British Columbia July 31, 2025
Place and Date of Judgment:	Vancouver, British Columbia July 31, 2025

Summary:

The appellants apply for a stay of proceedings pending their appeal of the decision below certifying the action as a class proceeding and dismissing the jurisdictional challenge of two of the appellants. Held: Application dismissed. The appellants did

not demonstrate that irreparable harm would result from the refusal of a stay, and the balance of convenience favours the respondent. The prejudice to the respondent, and class members, in delaying their presumptive entitlement to proceed with the class action outweighs any inconvenience to the appellants in having to engage in limited discovery steps before their appeal is determined.

[1] **HORSMAN J.A.**: The appellants (defendants in the court below) apply for a stay of the underlying proceeding pending their appeal of an order of the British Columbia Supreme Court certifying the action as a class proceeding and dismissing a jurisdiction application by two of the defendants.

Background

[2] The appellants (who I will collectively refer to as "Airbnb") are part of the Airbnb group of companies. The Airbnb platform allows guests to connect with individuals who have accommodations to offer for rent.

[3] The respondent (plaintiff in the court below) filed her first notice of civil claim on April 14, 2022. The proceeding was brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [*CPA*]. The respondent alleges that the defendants were statutorily prohibited from providing accommodation rental services in Canada under legislation that regulates real estate, travel, and money services. The respondent maintains that the appellants were required to be registered under these licensing schemes, but were not. The relief sought is comprised of the commissions or fees collected by the appellants in providing the allegedly prohibited services, and restitution and disgorgement of benefits. The respondent's amended notice of civil claim, filed July 17, 2023, pleads four causes of action: unjust enrichment, provision of services in a manner that is "deceptive" or "unconscionable" under consumer protection legislation, breach of contract, and "statutory illegality".

[4] Two of the appellants—Airbnb Inc. and Airbnb Canada Inc.—brought an application disputing the territorial jurisdiction of the British Columbia courts over them. These jurisdictional applications were heard at the same time as the certification application.

[5] On December 11, 2024, the chambers judge released reasons for judgment in *Ware v. Airbnb, Inc.*, 2024 BCSC 2240 (the "Reasons"). The judge dismissed the jurisdictional application, and granted the application for certification. It is of

relevance to the present application to note that while the chambers judge did certify common issues in relation to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2, she found that insufficient facts were pleaded in relation to consumer protection legislation in other Canadian provinces. She granted the respondent leave to further amend her claim to plead the necessary material facts to support claims in other jurisdictions.

[6] The appellants filed a notice of appeal of this decision on January 10, 2025, and an amended notice of appeal on June 17, 2025.

[7] The parties disagreed on the form of order that should be entered following the release of the Reasons. Their disagreement turned on whether the scope of the class and common issues should be limited to accommodations physically located in British Columbia, based on competing readings of the chambers judge's reasons. In March 2025, the parties requested a judicial management conference ("JMC") with the chambers judge to address the draft order. This was scheduled for June 10, 2025.

[8] In the meantime, the parties attended a mediation on April 15 and 16, 2025. The mediation was not successful.

[9] The parties attended the JMC on June 10, 2025, to, among other things, settle the terms of the draft order. The chambers judge delivered her judgment in the form of an order at a JMC on June 17, 2025. That order has now been entered and reflects, among other things, the chambers judge's approval of a litigation plan for the class proceeding (the "Litigation Plan"). The Litigation Plan includes dates for various procedural steps, such as the closing of pleadings, discovery of documents, and the scheduling of examinations for discoveries. I will return to the Litigation Plan in addressing the test for a stay.

[10] One of the items listed in the parties' joint agenda for the June 10 JMC was "Adjusting the timetable in the approved litigation plan for the next steps". The respondent was proposing to truncate some of the timelines in the Litigation Plan, for example, in relation to the production of document lists. This item was not addressed by the chambers judge.

[11] On June 24, 2025, the respondent filed her further amended notice of civil claim, which attempts to plead the necessary material facts relevant to the

consumer protection claims outside British Columbia.

[12] Regarding the appeal, the appellants have filed their appeal record, factum, and appeal book. The appeal has been scheduled for hearing on October 31, 2025. While it is impossible to predict the time of the judgment, I assume for the purpose of this application that a judgment is likely to be issued by this Court before the end of April 2026.

Discussion

[13] The appellants seek a stay of the class proceeding pending the determination of their appeal. Alternatively, they seek a stay of the proceeding as against the two appellants (Airbnb Inc. and Airbnb Canada Inc.) who brought the jurisdictional challenge.

[14] Section 33(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6 gives a justice of this Court the power to "order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought".

[15] The test to be applied is set out in *RJR-MacDonald v. Attorney General (Canada)*, [1994] 1 S.C.R. 311, 1994 CanLII 117. The applicant must show that: (a) there is merit to the appeal in the sense that there is a serious question to be tried; (b) the applicant will suffer irreparable harm if the stay is not granted; and (c) on balance, the inconvenience to the respondent is not higher than to the applicant.

Merits

[16] The threshold for the merits criterion is not high. An applicant need only show that the appeal is neither frivolous nor vexatious. The court should generally avoid a prolonged exploration of the merits: *RJR-MacDonald* at 337–338. The appropriate question is whether there is a serious question to be tried, not whether the applicant can establish a strong *prima facie* case: *RJR-MacDonald* at 335.

[17] Having reviewed the appellants' factum, I am satisfied that they meet the low merits threshold, both in relation to the chambers judge's dismissal of the jurisdictional challenge and to her certification of the action as a class proceeding. No deference is owed to the chambers judge on the main issues raised. The question of whether a provincial superior court has jurisdiction over a matter is

generally considered a question of law reviewable on a standard of correctness: *Ewert v. Höegh Autoliners AS*, 2020 BCCA 181 at paras. 42–44, leave to appeal to SCC ref'd, 39403 (29 April 2021). Many of the grounds of appeal concern the chambers judge's conclusion that the pleadings disclosed reasonable causes of action. This conclusion is also reviewable on a standard of review of correctness: *Situmorang v. Google, LLC*, 2024 BCCA 9 at para. 52. Particularly as viewed through the lens of the applicable standard of review, the grounds of appeal raised are not frivolous or vexatious.

Irreparable harm

[18] The appellants argue that they will suffer two forms of irreparable harm from the refusal of a stay:

(a) requiring Airbnb Inc. and Airbnb Canada Inc. to participate in the litigation process will give the false impression that they have attorned to the jurisdiction of the British Columbia courts; and

(b) the appellants will be required to participate in a costly discovery process that may prove unnecessary if they succeed on their appeal, and such costs will be unrecoverable due to the operation of s. 37 of the *CPA*.

[19] I should add that in their written argument, the appellants also identified mootness as form of irreparable harm. Specifically, they argued that the appeal will be rendered moot (particularly in regard to their *forum non conveniens* argument) if the appellants are subjected to "virtually the entire B.C. litigation process" before this Court can consider if the claim should proceed at all. In oral submissions, counsel for the appellants confirmed that they do not rely on mootness as an independent basis for irreparable harm, but rather that these arguments relate to the unrecoverable costs of discovery.

[20] In their submissions at the hearing of the stay application, the appellants clarified that the first form of irreparable harm they allege is not based on the assertion that Airbnb Inc. and Airbnb Canada Inc. will have attorned to the jurisdiction of the British Columbia courts by participating in the discovery process. It is common ground that there is no risk of attornment due to the protection provided by para. 4 of the Litigation Plan, which tracks R. 21-8(5) of the *Supreme*

Court Civil Rules, B.C. Reg. 168/2009. Instead, the irreparable harm is said to consist of the risk that third parties may assume that Airbnb Inc. and Airbnb Canada Inc. have attorned to jurisdiction, and start proceedings against these entities in British Columbia between now and the end of April 2026, which will then have to be defended.

[21] I am not persuaded that this constitutes irreparable harm. There is a public record in this proceeding that Airbnb Inc. and Airbnb Canada Inc. dispute the jurisdiction of the British Columbia courts in relation to the matters in issue in this proceeding, and that they have appealed the decision finding that there is jurisdiction. I cannot see how the refusal of a stay creates any realistic risk that Airbnb Inc. and Airbnb Canada Inc. would be subject to further claims they would not otherwise have faced before judgment in this appeal is rendered. The appellants' hypothetical concern is entirely speculative.

[22] The issue of unrecoverable discovery costs as a form of irreparable harm evolved over the course of the hearing. The parties agree that regardless of my decision on the stay application, the following procedural steps will complete:

a) the appellants will file a response to civil claim by August 8, 2025;

b) the respondent may thereafter file a reply to the response to civil claim;

c) the parties will then exchange written submissions on whether the respondent has adequately pleaded consumer protection claims in other jurisdictions; and

d) the issue will, as necessary, be decided by the chambers judge.

[23] Presently, there does not appear to be any schedule for these steps. Realistically, the parties agree that the pleading that will provide the basis for the common issues may not be finalized until well into the fall (at least), and may possibly require a further judgment from the chambers judge. Under the Litigation Plan, it is anticipated that the parties will serve lists of documents, and copies of the documents that are subject to production, in electronic form, within 90 days of the close of pleadings. As to examinations for discovery, the Litigation Plan simply states that they shall be completed by not less than 100 days before trial. No trial date has yet been scheduled.

[24] At the hearing of this application, counsel for the respondent acknowledged that, practically speaking, the only discovery step that might realistically be expected to occur before the end of April 2026 is the service of document lists and exchange of documents in electronic form. It is not anticipated that examinations for discovery will be scheduled before an appeal judgment is issued.

[25] Accordingly, the alleged irreparable harm crystallized into the possibility that the appellants may have to produce documents in advance of a judgment on their appeal. While acknowledging that this potential harm is less than what they anticipated at the time they filed their material, the appellants maintain that there is irreparable harm in requiring them to participate in discovery even to this limited extent, particularly for the appellants who have jurisdictional objections.

[26] The appellants rely on the affidavit of Dominick Huber, who is an employee of Airbnb Ireland Unlimited Company. Mr. Huber deposes that the allegations in the notice of civil claim “cover Airbnb’s entire business model”. However, Mr. Huber’s affidavit provides no information as to the anticipated costs and resources for the appellants if they are required to produce a list of documents, making it difficult to assess the magnitude of any potential harm. In making this point, I do not intend to be critical of the appellants’ affidavit evidence. It strikes me as difficult, if not impossible, to assess the costs and resources associated with document discovery at this stage, given that there is no clear picture as to the scope of production that will be required. This will no doubt be addressed through the ongoing case management process in the Supreme Court.

[27] To the extent that I am able to assess the potential harm at this stage, and on the record before me, I am not persuaded that the appellants will suffer irreparable harm due to the non-recoverability of their discovery costs. For the reasons I have stated, the discovery obligation on the appellants between now and the end of April 2026 can reasonably be anticipated to consist, at most, of the production of documents. It is true, as the appellants argue, that any costs it incurs will be unrecoverable in light of s. 37 of the *CPA*. However, it is clear from the case law that it is only in the “very rare case” where the bar on costs recovery in s. 37 could constitute irreparable harm under the second criterion of the *RJR* test: *Sharifi v. West Jet Airlines Ltd.*, (27 May 2021), Vancouver Docket CA47405 at para. 9 (Chambers); *Jiang v. Vancouver City Savings Credit Union*, 2019 BCCA 347 at para. 15. In my view, there is nothing exceptional in the present case that

would take it outside of the usual rule that these types of unrecoverable discovery costs in a class proceeding do not rise to the level of irreparable harm.

[28] I therefore conclude that the appellants have not demonstrated that they will suffer irreparable harm from the refusal of a stay.

Balance of convenience

[29] As to the balance of convenience, I accept there is some inconvenience to the appellants in being required to participate in discovery steps in the proceeding before their appeal is heard and decided, particularly for those appellants who have advanced jurisdictional challenges. However, in my view that is outweighed by the prejudice to the respondent if the parties are required to entirely halt discovery steps while the appeal is outstanding. To be clear, I do not accept the appellants' submission that there is no prejudice to the respondent or other class members if a stay is granted because they do not, in this action, allege that they suffered personal economic harm as result of Airbnb's business practices. That form of prejudice may be relevant to the merits of the appellants' arguments on appeal, but it is not relevant to the question of the balance of convenience on this stay application.

[30] The chambers judge found that the respondent's pleaded claims raised viable causes of action. This action has, at least for now, been certified as a class proceeding. The respondent, and other class members, are entitled to the fruits of their judgment, including an entitlement to have this matter proceed to trial as efficiently as possible: *Sharifi* at para. 12. A forced delay of up to nine months would cause prejudice to the presumptive entitlement of class members to proceed rather than to wait for the end of an appeal process that may or may not change the outcome.

[31] The same, or similar, prejudice would result from a partial stay relieving only Airbnb Inc. and Airbnb Canada Inc. from the obligation to participate in further discovery steps. Indeed, the prejudice could conceivably be greater as I would effectively be ordering a bifurcated discovery process without a full appreciation of the potential impacts of such a process on the proceeding as a whole.

[32] Finally, I note that, as in *Sharifi*, this case is being actively case managed. No schedule for litigation steps has been set in stone. It is open to the appellants

to raise any concerns they have about the timing of steps—including the timing and scope of document production—before the court best positioned to assess the fairness and practicalities of such scheduling decisions. This is another factor that weighs against the granting of a stay at the balance of convenience stage of the analysis.

[33] For these reasons, I conclude that the balance of convenience favours the refusal of a stay.

Disposition

[34] In the circumstances, the appellants have not established that it would be in the interests of justice to grant a stay of proceedings. Accordingly, the application for a stay is dismissed.

"The Honourable Madam Justice Horsman"