

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan EPS 6871 v.  
Amadon Westwater Projects Ltd.*,  
2026 BCSC 48

Date: 20260114  
Docket: S230698  
Registry: Victoria

2026 BCSC 48 (CanLI)

Between:

**The Owners, Strata Plan EPS 6871**

Plaintiff

And:

**Amadon Westwater Projects Ltd.;**  
**Axis Asset Management Ltd., dba Westwater Construction Management**  
**and Amadon Westwater Projects Ltd.; Tenfold Projects Inc.;**  
**David Andrew Price and Miroslaw Wladyslaw Tomaszewski**

Defendants

Before: The Honourable Justice Young

## **Reasons for Judgment**

Counsel for Plaintiff: J.A.S. Legh

Counsel for Defendants: D. W. Wu and E. L. Chan

Place and Date of Hearing: Victoria, B.C.  
November 6, 2025

Place and Date of Judgment: Victoria, B.C.  
January 14, 2026

## Table of Contents

<b>INTRODUCTION .....</b>	<b>3</b>
<b>PARTIES' POSITIONS .....</b>	<b>4</b>
Plaintiff's Submissions.....	4
Defendants' Submissions .....	5
<b>LEGAL PRINCIPLES .....</b>	<b>7</b>
Rule 6-2(7)(b) .....	8
Rule 6-2(7)(c) .....	9
Representative Proceedings .....	10
Striking Claims Against Defendants .....	11
<b>ANALYSIS.....</b>	<b>11</b>
Rule 6-7(2)(b) .....	11
Rule 6-7(2)(c) .....	11
Striking Claim Against Defendants .....	14
<b>CONCLUSION.....</b>	<b>14</b>

**Introduction**

[1] This action deals with the development of a building at the intersection of Pandora and Cook Streets in Victoria called the Wade. In a disclosure statement and amended disclosure statements prepared by the defendants, the defendants represented that certain amenities would be included in the construction. The defendants have failed or refused to install those amenities. The plaintiff Strata Corporation claims that the defendants made misrepresentations in the disclosure statements and sues for breach of contract and negligent or fraudulent misrepresentations. The plaintiff commenced this action alleging that the development of the Wade was subject to the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 (“*REDMA*”). Most importantly, s. 22(3) of *REDMA* provides:

- (3) If a developer files a disclosure statement respecting a development property and the disclosure statement contains a misrepresentation, a purchaser of a development unit in the development property, whether the purchaser received the disclosure statement or not,
  - (a) is deemed to have relied on the misrepresentation, and
  - (b) has a right of action for damages against
    - (i) the developer,
    - (ii) a director,
    - (iii) a person who consented to be named, and was named, in the disclosure statement as a developer or director,
    - (iv) a person who authorized the filing of the disclosure statement, and
    - (v) a person who signed the disclosure statement.

[2] The plaintiff commenced the action pursuant to s. 171 of the *Strata Property Act*, S.B.C. 1998, c. 43 (“*SPA*”). The action includes a claim pursuant to s. 22 of *REDMA*, as well as claims for breach of contract, fraudulent misrepresentation and negligent misrepresentation.

[3] At the time the action was commenced, there was no authority for the proposition that a strata corporation could not commence an action pursuant to s. 22 of *REDMA* on behalf of the individual owners if authorized to do so pursuant to s. 171 of the *SPA*.

[4] On August 21, 2024, the BC Court of Appeal issued reasons for judgment in *The Owners Strata EPS401 v. Findlay*, 2024 BCCA 305 (“*Findlay CA*”). The court ruled that the strata corporation lacks standing to bring a claim under section 22 of *REDMA* and that such a claim must instead be brought by the individual original purchasers of the units from the developer. This case reversed the prior ruling of the Supreme Court of British Columbia: *The Owners Strata EPS401 v. Findlay*, 2023 BCSC 500 (“*Findlay BCSC*”).

[5] The plaintiff applies under R. 6-2(7)(b) or alternatively, R. 6-2(7)(c) to add the individual owners as additional plaintiffs.

[6] The defendants apply under R. 9-5 or alternatively, R. 9-6 to strike the claim without leave to amend. The defendants also apply to strike the claim against two of the defendants Axis Asset Management Ltd. (“Axis”) and Tenfold Projects Inc. (“Tenfold”). The plaintiff consents to striking the claim against Axis only.

[7] For the reasons below, I deny the defendants’ application to strike the entire claim. I allow the plaintiff’s application to add the individual owners as plaintiffs. I strike the claim against Axis with the consent of the plaintiff. I do not strike the claim against Tenfold.

### **Parties’ Positions**

[8] There is no dispute between the parties that strata corporations have no standing to sue for misrepresentations under s. 22(3) of *REDMA* by relying on s. 171 of the *SPA*: *Findlay CA*, para. 55. If the court orders that individual owners be added to the matter, then a defendant’s application to strike the claim must fail.

### **Plaintiff’s Submissions**

[9] The plaintiff submits that per previous case law, including *The Owners, Strata Plan LMS 1463 v. Krahn Bros. Construction Ltd.*, 2003 BCSC 903 and *Strata Plan LMS 1564 v. Odyssey Tower Properties Ltd.*, 2008 BCCA 509 (“*Odyssey CA*”), the individual owners should be added as plaintiffs to the action to preserve the action. The additional plaintiffs all:

- i. are original purchasers and current owners of a strata lot in Strata Plan EPS 6871;
- ii. purchased their units directly from Amadon Westwater Projects Ltd. by way of a contract of purchase and sale;
- iii. relied on all or some of the representations set out in the amended notice of civil claim when deciding to purchase a unit; and
- iv. claim the same damages and relief initially claimed on their behalf.

[10] The plaintiff states that the defendants were aware this action was being brought on behalf of the individual owners by way of the Strata Corporation and therefore, there is not any prejudice by adding them as parties to the action. The plaintiff also submits that there is no conclusive authority outlining whether the Strata Corporation has standings for the claims of contract, fraudulent misrepresentation and negligent misrepresentation, which are triable and should be determined at trial: *Odyssey CA*, paras. 7–12.

[11] The plaintiff consents that the claim against Axis be dismissed. It submits that Tenfold should be included as a defendant because Tenfold was directly involved in the sale of six units in the Wade which were held back and released for sale as part of a ‘developer’s release’.

### **Defendants’ Submissions**

[12] In support of finding that the proceeding be ruled a nullity, the defendants rely upon *Ari v. Insurance Corporation of British Columbia*, 2021 BCCA 180 (“*Ari*”) and *Madadi v. Nichols*, 2021 BCCA 10 (“*Madadi*”). Both cases support the conclusion that proceedings started by a party without standing be ruled a nullity. The new plaintiffs would only be parties in name, as the Strata’s counsel would still advance the matter.

[13] In response to R. 6-2(7)(c), the defendants submit that adding the individual owners as parties to the action would prejudice them from relying on a limitation

defence. They also submit that prior to the court's decision in *Findlay CA*, the plaintiffs knew or ought to have known there was significant risk that their claim would fail based on standing and failing to add the individual owners was a strategic choice. The defendants ask the court to infer that this decision was calculated and deliberate, based on the existing case law and a plain reading of *REDMA*.

[14] The defendants submit that the delay in bringing this application should be calculated from the time of filing based on the court's inference that not adding the owners was a calculated decision. The existence of a limitation period in *REDMA*, which does not include an exception for adding parties after the limitation period like that in the *Limitation Act*, S.B.C. 2012, c. 13, should weigh heavily in favour of dismissing the application.

[15] The defendants argue that there is no basis for the plaintiff's claim that they may have standing based on s. 171 of the *SPA* for the breach of contract and misrepresentation claims. They submit that reliance on the Court of Appeal's comment in *Findlay CA* that standing for these claims is arguable and would fall into the same category of errors as the trial judge's decision in *Findlay BCSC*. Other representative actions have failed when based on misrepresentation claims because of the varied nature of the claims: *Gray v. 1534 Harwood Street (St. Pierre) Ltd.*, 2024 BCSC 1345 at para. 48. The defendants claim that the plaintiff does not have standing to make claims in misrepresentation or contract in its own capacity. They state that the plaintiff cannot make their claim for the following reasons:

- i. The claims asserted by the plaintiff do not rest on sufficiently drawn facts or law to allow a representative action in misrepresentation or breach of contract.
- ii. The claims pled are based on misrepresentations of the proposed plaintiffs' evidence which shows they all received different representations.

- iii. There is no common basis to adjudicate a misrepresentation claim or breach of contract based on misrepresentation.

[16] The defendants submit that if the court does not add the additional plaintiffs, it should not allow the action to continue as a representative proceeding on the basis of the breach of contract and negligent misrepresentation claims.

[17] Lastly, the defendants submit that Amadon Westwater Projects Ltd. (“Amadon”), Mr. Price and Mr. Tomaszewski are the proper defendants in this case. They were the only defendants who had a role in developing or marketing the Wade, which the other two defendants had no role in. Amadon is the property developer responsible for filing the property disclosure statement and marketing the Wade.

### **Legal Principles**

[18] Rule 6-2 deals with the change of parties to an action. Rule 6-2(7) addresses the adding, removing or substitution of parties and says:

(7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),

....

- (b) order that a person be added or substituted as a party if
  - (i) that person ought to have been joined as a party, or
  - (ii) that person's participation in the proceeding is necessary to ensure that all matters in the proceeding may be effectually adjudicated on, and
- (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
  - (i) any relief claimed in the proceeding, or
  - (ii) the subject matter of the proceeding

that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[19] The modern approach is to treat procedural errors or defects as irregularities instead of nullities: *Ari* at paras. 47-48. In *Roy v. The Calgary Airport Authority*, 2025 BCSC 481 (“*Roy*”) (aff’d *Prince George Airport Authority Inc. v. Roy*, 2025 BCCA 442), the plaintiff’s lack of standing to bring a class action proceeding did not make

the proceeding a nullity, despite him not meeting the residency requirement to commence the certification proceeding: paras. 42–46. Justice Warren held that the issue could be cured by granting a *nunc pro tunc* order, backdating the addition of a B.C. resident as the representative plaintiff, but this was unnecessary to apply for certification: *Roy* at paras. 81–82.

[20] Warren J. relied on *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60 (“*Green*”), where the court noted that the court’s discretion to back date orders arises from its inherent jurisdiction. The factors to be considered in granting a *nunc pro tunc* order include whether the opposing party will be prejudiced by the order, the order would have been granted if sought at the appropriate time, the irregularity is not intentional, the order will effectively achieve the relief sought or cure the irregularity, the delay has been caused by an act of the court, and the order would facilitate access to justice: *Roy* at para. 81, citing *Green* at para. 90. None of these factors are determinative and it is a discretionary decision by the judge to grant a *nunc pro tunc* order: *Green* at para. 90.

[21] In *Findlay CA*, the court contemplated what remedies are available to a purchaser of a development unit, stating that subject to limitations issues, purchasers can be added to an existing action: para. 99, citing *Odyssey CA*.

### **Rule 6-2(7)(b)**

[22] Rule 6-2(7)(b) has a narrow application: *Madadi* at para. 21. To succeed, the applicant must show that it is necessary to add the parties to remedy a defect in the pleadings or that their participation is necessary because the issues raised cannot be adjudicated without them: *Katz v. Kosikar*, 2025 BCSC 34 at para. 98 (“*Katz*”), citing *Madadi* at para. 21 and *Alexis v. Duncan*, 2015 BCCA 135 at para. 15 (“*Alexis*”). There must be a triable issue between the existing parties: *Letvad v. Fenwick*, 2000 BCCA 630 at para. 17 (“*Letvad*”).

[23] Both conditions must be met to add the parties, there is no discretion of the court to allow the application: *Alexis* at para. 15, citing *Enterprise Realty Ltd. v. Barnes Lake Cattle Co. Ltd.*, 13 BCLR 293 at 296, 1979 CanLII 612 (B.C.C.A.).

**Rule 6-2(7)(c)**

[24] If not added under R. 6-2(7)(b), the court may elect to add the additional plaintiffs under R. 6-2(7)(c), which has a broader application: *Katz* at para. 101.

[25] The test for establishing whether a party should be added to an action under R. 6-2(7)(c) is twofold. First, an applicant must establish a “real issue” between the parties that is not frivolous: *0848052 B.C. Ltd. v. 0782484 B.C. Ltd.*, 2023 BCCA 95 at para. 39. This is a low threshold, like that applicable to striking pleadings under R. 9-5(1)(b): *Madadi* at para. 22. Affidavit evidence may be examined to determine whether there is an issue between the parties: *Madadi* at para. 23.

[26] If there is a real issue between the parties, the court must then determine whether it is just and convenient to decide the issue between the parties: *Madadi* at para. 24. Adding parties after the expiration of the limitation period is guided by the factors outlined in *Letvad*. These include the extent of the delay, the reasons and any explanation for the delay, the expiry of a limitation period, the degree of prejudice caused by the delay, and the extent of the connection, if any, between the existing claims and the proposed new cause of action: *Madadi* at para. 24, citing *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.*, 19 BCLR (3d) 282 at para. 67, 1996 CanLII 3033 (B.C.C.A.) (“*Teal Cedar*”) and *Letvad* at para. 29. However, this list is not exhaustive, and the overriding consideration is whether the amendment is just and convenient and is ultimately a discretionary decision: *Krytskyy v. Canil*, 2025 BCSC 2080 at para. 51, citing *Chouinard v. O’Connor*, 2011 BCCA 161 at para. 21.

[27] In *The Owners, Strata Plan LMS 1564 v. Odyssey Tower Properties Ltd.*, 2009 BCSC 1024 (“*Odyssey BCSC*”), the court held that there was not such significant prejudice that would prevent the owners from being added. There was no finding by the court on the merits of the standing defence, only that it was not sufficient to overcome the factors in favour of adding the owners. Factors weighing in favour of adding the parties included that the scope of the claim would not change, there was a real issue between the parties, and that there is no surprise to

the defendants as the claim was always proceeding on behalf of the individual owners: *Odyssey BCSC* at paras. 30–34 and 39.

[28] In *Roy*, there was a 1.5-year delay between the release of a Court of Appeal decision on the representative plaintiff's standing to bring actions under the *Class Proceedings Act*, R.S.B.C. 1996, c.50 and the plaintiff's application to add an additional plaintiff. In that case, the court held that there was always an issue of standing, which was clear from a plain reading of the *Class Proceedings Act*. *Roy* at para. 67. However, there had never been a ruling on the residency requirement itself prior to the Court of Appeal's decision.

[29] Similar to *Roy*, the trial judge's decision was released in *Findlay BCSC* which upheld the strata corporation's right to sue under s. 22 of *REDMA*, less than one month after the notice of civil claim in this claim was filed.

### **Representative Proceedings**

[30] Rule 20-3 governs the requirements for a representative proceeding, where it states that

#### **Representative proceeding**

(1) If numerous persons have the same interest in a proceeding, other than a proceeding referred to in subrule (10), the proceeding may be started and, unless the court otherwise orders, continued by or against one or more of them as representing all or as representing one or more of them.

[31] The test for determining whether a representative action is a proper action is set out in *Pasco v. Canadian National Railway Co.*, 56 D.L.R. (4th) 404, 1989 CanLII 249 (B.C.C.A.), aff'd *Oregon Jack Creek Indian Band v. Canadian National Railway Co.*, [1989] 2 SCR 1069, 1989 CanLII 4 (S.C.C.). The test is threefold. First, the court must determine if the purported class is capable of a clear and definite definition. Second, the court must ask if the principal issues of fact and law are essentially the same for all of the members of the class. Last, the court must determine if assuming there is liability, there is a single measure of damages applicable to all members.

[32] Representative proceedings have been significantly narrowed in common law with the introduction of class actions legislation and doing away with common law class action proceedings: *Gray* at para. 33; see *Araya v. Nevsun Resources Ltd.*, 2016 BCSC 1856, aff'd 2017 BCCA 401, re-aff'd 2020 SCC 5. Representative proceedings may be available to owners in a housing development who seek a common statutory declaration or remedy, but they must have the same interests in the proceedings: *Moiseiwitsch v. Canadian National Railway Company*, 2025 BCSC 2377 at para. 273; *Parkers Cove Owners' Association v. Parker Cove Properties*, 2010 BCCA 100 at para. 42.

### **Striking Claims Against Defendants**

[33] To strike a claim pursuant to R. 9-6, the court must consider whether, after a limited review of the evidence, there is a complete answer to the plaintiff's case: *Beach Estate v. Beach*, 2019 BCCA 277 at paras. 48-49 ("*Beach Estate*"). If there is evidence to contradict the applicant's evidence in a material respect, the application must be dismissed: *Beach Estate* at para. 48, citing *B & L Holdings Inc. v. SNFW Fitness BC Ltd.*, 2018 BCCA 221 at para. 46. The court must be satisfied beyond a reasonable doubt that there is genuinely no issue for trial: *Beach Estate* at para. 65.

### **Analysis**

#### **Rule 6-7(2)(b)**

[34] Adding a party under R. 6-7(2) (b) is limited in scope to parties that ought to have been joined, or their participation is necessary to permit the issue to be adjudicated: *Letvad* at para. 17. It is a narrow rule for remedying defects. I find the more flexible discretionary R. 6-7(2)(c) to be more appropriate in this case.

#### **Rule 6-7(2)(c)**

[35] In this case, there is a question between the proposed plaintiffs and defendants related to relief claimed in the proceeding and the subject matter of the proceeding, fulfilling the threshold requirement under subrule (c). The plaintiff claims that the defendants misrepresented the material terms in the disclosure agreements

and bring a claim under *REDMA*, breach of contract, and negligent or fraudulent misrepresentations.

[36] The matter at hand mirrors that in both *Odyssey BCSC* and *Roy*.

[37] The proposed plaintiffs do not seek to add any causes of action or claims of damages to the claim. Despite the defendants' assertion that there is no cause of action and the measure of damages would change between the plaintiffs, the principal issues of fact and law are essentially the same for the individual owners. The purported differences in the representations to each party differ slightly, but not in a material way. Each party relied on a combination of four possible sources for the representations, including the *REDMA* disclosure statement, the marketing materials, the contract of purchase and sale, and/or verbal representations. Nonetheless adding the additional parties remedies the issue of representative standing to pursue the claims based on the damages suffered by each additional plaintiff.

[38] Where delay is a factor to be considered for the purposes of adding a new party, the application should not be refused solely on the basis that the plaintiff's conduct was the result of a deliberate decision or "voluntarily dilatory": *Letvad* at paras. 24-29, citing *Teal Cedar*. In this case, there was a new decision clarifying the standing of the party to bring the proceeding. There is no evidence before the court to infer that the decision not to add the owners as plaintiffs was deliberate or to mislead the court.

[39] The delay in adding the parties is explained by the efforts of the plaintiff to get their consent to be added, ensure that all additional plaintiffs are original purchasers of the units they currently own and obtain evidence of the misrepresentations they each relied on. Between April and September 2025, when this application was provided to the plaintiffs and when it was filed, there were four individuals who sold their properties and therefore, no longer had an interest in this proceeding.

[40] The defendants' assertion that the choice not to add the individual owners was strategic has little basis after reviewing the caselaw and evidence before the court. Both *Odyssey CA* and *Odyssey BCSC* made no finding on the standing of a strata corporation to bring representative actions on behalf of owners for misrepresentation claims not brought under *REDMA*. In fact, the trial judge in *Findlay BCSC* found that a strata corporation did have standing.

[41] The expiration of the limitation period, while necessary to weigh, does not warrant finding this proceeding a nullity based on the factors in *Letvad*. There is no surprise that the individual owners are seeking to be added to the proceeding, as they were always represented by the strata corporation. This does not set a precedent permanently extinguishing the limitation period in s. 22(9) of *REDMA*, as this is a very specific factual scenario, applied in light of the timing of *Findlay CA*'s release. Additionally, the new plaintiffs do not seek to add causes of action or damages to the proceeding and intend to move forward as originally envisioned in the amended notice of civil claim.

[42] There is no evidence on either parties' behalf that the trial will be delayed by adding these plaintiffs. Lastly, the defendants submit that there is not a strong connection between the proposed parties and the defendants. While this could be the case, that is not for determination by the court on this application. All that is required is that there is a triable issue.

[43] Ruling this proceeding a nullity would mean that the individual owners are likely unable to seek a remedy for the dispute, as the limitation period of two years in *REDMA* has elapsed. The individual purchasers began moving into the building in 2021 and this is when these misrepresentations would have crystallized. The strata brought this action in 2023, prior to the expiration of the limitation period. If the purchasers brought an action now, it would fall outside of the two-year period, which would avoid a hearing of the matter on its merits.

[44] I accept the plaintiff's application to add the proposed individual owners as plaintiffs. Because I have determined that the additional plaintiffs are to be added to

the action, there is no need to determine whether this is a proper representative action. Each plaintiff's interests will be represented at trial for determination on their merits by the court.

### **Striking Claim Against Defendants**

[45] The defendants alternatively apply to dismiss the claim against Axis and Tenfold. The plaintiff consents to dismiss the claim against Axis.

[46] Under s. 22(3) of *REDMA*, a claim may only be advanced by a purchaser against a developer who files a disclosure statement. However, the plaintiff also has claims in negligent misrepresentation and breach of contract which may be advanced against Tenfold.

[47] The evidence put before the court by the plaintiff outlines that Tenfold was responsible for marketing and selling a "developer's release" of six units that were originally held back from sale. The defendants submit that Tenfold had no involvement in the development or marketing of the Wade. The only involvement was through the defendants Mr. Price and Mr. Tomaszewski, who serve as partners at Tenfold and directors of Amadon.

[48] I would not accede to striking the claim against Tenfold prior to the hearing of the claim on its merits, as there is an issue of whether Tenfold was partially responsible for the misrepresentations in this case.

### **Conclusion**

[49] I allow the plaintiff's application to add the individual owners as additional plaintiffs to the action.

[50] I dismiss the defendants' application to strike, aside from the dismissal of the claim against Axis.

[51] The plaintiff is the successful party in both applications and is entitled to its costs at Scale B.

“B. M. Young, J.”  
The Honourable Justice Young