

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hoffman v. 1719349 Alberta Ltd.*,
2026 BCSC 271

Date: 20260127
Docket: S232837
Registry: Victoria

Between:

Terence Robert Hoffman

Plaintiff

And:

**1719349 Alberta Ltd., Check Realty Ltd.
dba RE/MAX Check Realty, and Jesse May**

Defendants

-and-

Docket: S245063
Registry: Victoria

Between:

Stephen Alfred Watts and Jennifer Louise Watts

Plaintiffs

And:

Terence Robert Hoffman

Defendant

Before: The Honourable Justice G. Morley

Oral Reasons for Judgment

(In Chambers)

Counsel for Terence Robert Hoffman:

D. M. Wheaton

Appearing for Stephen Alfred Watts
and Jennifer Louise Watts:

W. Sweeney
(Agent)

Counsel for Check Realty Ltd.
and Jesse May:

S. U. Hamilton

Place and Date of Trial/Hearing:

Victoria, B.C.
January 27, 2026

Place and Date of Judgment:

Victoria, B.C.
January 27, 2026

[1] **THE COURT:** I have before me today four applications arising out of two actions in the Victoria Registry.

Nature of Overall Proceedings

[2] The underlying situation is a cascading failure to complete sales of property.

[3] Terence Robert Hoffman (“Mr. Hoffman”) was both the seller of property to 1719349 Alberta Ltd. (“the Alberta Numbered Company”) and the buyer of property from Stephen Alfred Watts and Jennifer Louise Watts (the “Watts”). Neither purchase completed.

[4] In Victoria Registry No. S232837 (“S232837”), Mr. Hoffman is the plaintiff. He sues the Alberta Numbered Company for breach of contract and Check Realty Ltd. (which does business as RE/MAX Check Realty) and Jesse May (the “Realtor Defendants”), his realtors in the sale, for failing to warn him of risks involved in the transaction (the “Realtor Negligence Claims”). Mr. Hoffman is the defendant in Victoria Registry No. S245063 (“S245063”) in which the Watts are suing him for breach of contract.

[5] For both sales, the completion dates were initially postponed together, suggesting some recognition of interrelationship. Subsequently, the Alberta Numbered Company appears to have said it was unable to complete because of a fire. Mr. Hoffman says this failure on the Alberta Numbered Company’s part was the reason he did not complete his purchase from the Watts. The Realtor Negligence Claims are for any loss Mr. Hoffman is unable to recover against the Alberta Numbered Company, on the theory that the Realtor Defendants breached the standard of care they owed Mr. Hoffman in failing to warn him about the risks in entering these transactions.

Nature of Applications

[6] One of the applications before me is for documents from the Alberta Numbered Company. That is going by way of consent, so I will not speak about it further.

[7] Two of the applications are by Mr. Hoffman asking that the actions be tried together and the evidence in one shall be admissible in the other “joinder” applications. There are two such applications because they are brought in both actions.

[8] The fourth application is brought by the Realtor Defendants for severing and staying of the Realtor Negligence Claims pending final disposition of the breach of contract claim against the Alberta Numbered Company.

The Legal Tests

[9] In substance, there are two symmetrical applications: one to *join* the two actions together and the other to *separate* the Realtor Negligence Claims against the Realtor Defendants from the contractual claims against the Alberta Numbered Company in S232837.

[10] Two actions may be ordered to be tried together (“joinder”) under Rule 22-5(8) of the Supreme Court Civil Rules. As set out in *Lee v. UpMeals Technologies Inc.*, 2024 BCSC 888 at paras. 51–52, an applicant for joinder must establish:

- a) Based on the pleadings, the proceedings involve common claims, disputes and relationships.
- b) Separate trials at separate times would be undesirable and fraught with problems.

[11] Claims or parties in a proceeding may be addressed in separate trials or hearings (“separation”) under Rule 22-5(6), as supplemented by s. 8(2) of the *Law and Equity Act* and the court’s inherent jurisdiction. The leading case here is *Johnston Estate v. Johnston*, 2017 BCCA 59 at para. 69.

[12] Although the tests are stated differently, since they are symmetrical orders, there is a great deal in common. In both types of orders, there is a threshold question, as to whether it is even conceptually sensible to put the claims together (or

pull them apart). In the joinder context, this is “commonality”; in the separation context, it is “distinctness”. And in both cases, there is a second stage at which a number of factors are considered to determine what is in the “interests of justice” or “balance of convenience”, but ultimately it comes down to how best to determine the issues between the parties in a way that is as fair and cost- and time-effective as possible.

[13] I believe I not only can, but should, consider the two applications together, in the context of the ongoing litigation as a whole, to first ask the threshold question of whether the relief sought is available, and then, if they are, by trying to find the best solution to determine the real issues, on the merits, with as little procedural waste as possible.

Threshold Questions

[14] I can deal quickly with the threshold issue for both tests. It is clear to me that there is commonality between the two actions and also relatedness between the Realtor Negligence Claims and the contractual claims.

[15] Mr. Hoffman’s argument is that he would have been able to complete had the Alberta Numbered Company completed, and so he would not be facing any liability against the Watts at all if the Alberta Numbered Company had not breached its contract. That liability is part of what he says are his damages for contractual breach and also what he alleges to be the consequences of the negligence of the Realtor Defendants. He is also seeking indemnity from the Realtor Defendants for whatever he is liable for to the Watts. There is thus sufficient *commonality* that joinder can be considered.

[16] There is also sufficient *distinction* between the Realtor Negligence Claims and the contractual claims, such that separation can be considered. The defendants are different, the breach of contract claims could succeed even though the Realtor Negligence Claims do not, and different evidence would be necessary in each case.

What Course is in the Interests of Justice?

[17] Having satisfied myself that both joinder and separation are available, the real question is what is going to make most sense to have this determined in a way that is efficient and fair to all the parties?

[18] In my view, for reasons I will discuss, the best approach is to provide for joinder of the two actions (the relief sought by Mr. Hoffman), but also severance and stay of the Realtor Negligence Claims, until such time as there has been an opportunity to have a summary trial of the contractual claims of Mr. Hoffman against the Alberta Numbered Company and of the Watts against Mr. Hoffman.

[19] The most important reason, in my view, that this is likely the most efficient and fair course is that the Watts have already taken steps to schedule a one-day summary trial in September, and this could be expanded to include the contractual claims in Mr. Hoffman's action, but not the Realtor Negligence Claims. In my view, this is a practical and fair way to proceed.

[20] The Watts point out that their theory of liability is relatively straightforward because they are simply saying there was a contract of purchase and sale which required completion subject to financing being removed and there was a failure to complete, and that is all they really have to prove to establish a breach of contract and damages flowing from that. The contractual claim against the Alberta Numbered Company could be heard at the same time.

[21] If the Realtor Negligence Claims need to be heard first, or at the same time, a summary trial is unlikely to be possible, and even less likely to be heard in September. Any action for realtor negligence is going to involve findings of fact about the communications between the realtor and Mr. Hoffman, and that appears likely to require credibility findings and cross-examination. In addition, Mr. Hoffman is going to have to establish — and the realtors are going to dispute — the standard of care for a realtor in this circumstance. This is going to require expert evidence and probably cross-examination on that expert evidence. Expert reports are going to have to be prepared. It is abundantly clear to me that waiting for those would, from

the point of view of the Watts, increase the delay in their obtaining resolution and complicate and increase legal costs.

[22] On the other side of the balance, Mr. Hoffman points out that if there is a summary trial against him and he is found liable but has a claim against the realtor, that could prejudice him in the sense that he will have liability for that judgment without being able to recover from the realtors. He also says that there might be overlap in terms of the evidence that needs to be heard.

[23] In this case, I think that the overlap is actually a reason that the summary trial should happen first, since it will mean that there will be a relative certainty about what the magnitude of the claim is, at least against the realtors, because that claim basically amounts to the amount that is owed to the Watts, plus whatever cannot be recovered from the Alberta Numbered Company. Those are the damages if Mr. Hoffman can establish liability. So having that determined in a summary way will simplify a negligence trial against the realtors because it will set the potential damages. If the Realtor Defendants choose not to participate, then they will just be bound by what is found in the summary trial (assuming, without of course deciding, that the summary trial judge is able to make that finding). If they choose to participate, then they should let the other parties know right away.

[24] In terms of the possibility of execution of the judgment before Mr. Hoffman's claim against the realtors is heard, I think that to give this great weight at this stage would be essentially granting a stay of execution of a money judgment before it is even granted. There really is not sufficient evidence in the record before me to provide for that.

[25] The Watts obviously have no interest in obtaining a dry judgment, and therefore might wait to enforce anyway. But in any event, I do not think that that is a good reason not to try to sort out the issues between the Watts and Hoffman and between Hoffman and the Alberta Numbered Company, all of which are relatively straightforward from a liability perspective, and essentially the damages will amount to some appraisal evidence. To get those dealt with first I think is in everyone's

interest, and if a stay of execution is appropriate, that can be ordered at some future date.

[26] The Realtor Defendants will benefit from the summary trial in terms of knowing what they are facing in terms of the amount of potential damages. The order I am giving would enable Mr. Hoffman to rely on whatever findings a summary trial judge makes. The liability portion of the Realtor Negligence Claims is going to have to require a full trial with expert reports and cross-examination and so probably cannot be done in a summary way, but will be simplified by knowing what the losses in the transactions were.

[27] I would say that this stay does not mean that you cannot seek to agree and set down trial dates for the trial. If for some reason the summary trial judge finds that there are issues that they cannot determine without a full trial, that would be a material change in circumstances and could be a reason to set aside the stay to that extent and to have whatever those are heard in the trial. But it seems to me it is in the interests of justice for the parties to get an answer to the relatively straightforward contractual questions first and then have a trial of the negligence matter later.

[28] So the order will go as follows:

- a) First of all, I grant leave to Mr. Hoffman to bring his applications on short notice, to the extent that that was necessary. There was no objection taken to that.
- b) Second, I will make the unopposed order for disclosure of documents by the Alberta Numbered Company.
- c) Third, I order that the claims against the defendants Check Realty Ltd. doing business as RE/MAX Realty and Jesse May, referred to after this as “the realtors”, in Action No. S232837 be severed and stayed pending disposition of the summary trial of the proceedings against the remaining defendant, 1719349 Alberta Ltd.

- d) Fourth, I direct that if possible, that that summary trial be set down to be heard along with the summary trial of the claim in S245063, and direct Scheduling to attempt to find time in September for these two summary trial applications to be heard together.

- e) Finally, I order that subject to that stay, that action number S245063 and action number S232837 be tried together if a trial is necessary, and the evidence in one should be admissible in the other, subject to the directions of the trial judge or summary trial judge and subject to the right of any party to dispute the admissibility in one of the actions of evidence admissible in the other on the basis of relevance or otherwise.

[SUBMISSIONS ON COSTS]

[29] THE COURT: Each party will bear its own costs.

“J. G. Morley, J.”
The Honourable Justice Morley