IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Humphrey v. B.L. Resort Ltd.,*
2026 BCSC 443

Date: 20260316
Docket: 223851
Registry: Victoria

Between:

**James Lyman Humphrey, H6 Enterprises Ltd.,
and Breanne Catherine Humphrey**

Plaintiffs

And:

**B.L. Resort Ltd., Cory Manton, David Buettel, Twyla Biller, Casey Koster,
Janice Koster, Matthew Woods, and Wanda Falck**

Defendants

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment on the Defendants' Application to Strike the Amended Notice of Civil Claim

Counsel for the Plaintiffs:	J. Bloomenthal
Counsel for Defendants:	G. Deshon
Place and Date of Hearing:	Victoria, B.C. July 29-30, 2025
Place and Date of Judgment:	Victoria, B.C. March 16, 2026

[1] The Defendants apply under R. 9-5(1)(a) of the *Supreme Court Civil Rules* to strike all, or alternatively portions of, the Amended Notice of Civil Claim ("ANOCC"). As will be seen, the issues on this application engage not only R. 9-5(1)(a), but also subrules (1)(b), and (1)(c), which read:

> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
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> (a) it discloses no reasonable claim or defence, as the case may be,
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> (b) it is unnecessary, scandalous, frivolous or vexatious,
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> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding,
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> …
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> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[2] The action relates to management of a campground/resort on Vancouver Island owned by the defendant B.L. Resort Ltd. ("BLR"). The personal defendants are shareholders in BLR. The plaintiffs were also shareholders, and the personal plaintiff James Lyman Humphrey ("Mr. Humphrey") provided management services under contract to BLR through his company, the plaintiff H6 Enterprises Ltd. ("H6").

[3] Generally, the plaintiffs allege they have sustained damages and loss due to a wide range of alleged misconduct on the part of the defendants. These allegations include bullying and harassment; numerous specific incidents of defamation of each of the plaintiffs, chiefly occurring in the second half of 2019 and in particular during the BLR annual general meeting on October 5, 2019; wrongful termination of H6's management contract, and termination of H6's exclusive rights, in or about February and March 2020; unjust enrichment; and conversion. Mr. Humphreys and H6 have brought parallel proceedings in this Court by way of Petition under Victoria Registry No. S230654 (the "Petition"), claiming oppression remedy relief under s. 227 of the *Business Corporations Act*, S.B.C. 2002, c. 57.

[4] The original Notice of Civil Claim in the within Action was filed in December 2022. The defendants filed Responses to Civil Claim in January and February 2023.

Among the defences raised are that the claims are time-barred under the *Limitation Act*, S.B.C. 2012, c. 13. In response, in January 2024 the plaintiffs filed their ANOCC. Its amendments plead postponement of the limitation period governing the defamation claims of Mr. Humphrey and H6, by reason of three circumstances: the suspension of the running of time for a period when Mr. Humphrey was under a disability; further suspensions due to various COVID-related Acts, Orders-in-Council, and Ministerial Orders; and Mr. Humphrey being the principal and operating mind of H6. The plaintiffs take the position that cumulatively, these factors led to the running of time being suspended for up to 18 months.

[5] On this application, the plaintiffs concede that the claims directly arising out of alleged bullying and harassment, and the defamation claims of Breanne Humphrey ("Ms. Humphrey") are time-barred.

[6] The defendants say that the ANOCC violates the requirements of R. 3-1(2)(a), that a notice of civil claim contain a concise statement of material facts, and R. 3-7(1), that a pleading not contain evidence. In its current form, the defendants say the ANOCC does not promote the fair, orderly, logical, and proportionate litigation of the real issues between the parties. They submit that it contains unnecessary narrative of events going back decades and confuses allegations that are clearly statute-barred with those that are not. They ask that the ANOCC be struck in its entirety, with the plaintiffs being at liberty to restructure their pleas. Alternatively, they seek to have struck select portions of the ANOCC, as either being time-barred or disclosing no reasonable cause of action.

[7] As to the verbosity and lack of clarity in the ANOCC, the defendants in their Notice of Application refer to *Workers' Compensation Board v. Sort*, 2022 BCCA 318, wherein Justice Abrioux, at para. 102, endorsed Justice Baird's summary of the purpose of pleadings, set out in *K.O. v. British Columbia (Ministry of Health)*, 2022 BCSC 573, aff'd 2023 BCCA 289, which in turn drew from *Mercantile Office Systems Private Ltd. v. Worldwide Warranty Life Services Inc*., 2021 BCCA 362 [*Mercantile Office Systems*]. In particular, the defendants cite the following principles:

a) Pleadings must "give concrete, succinct and specific notice to the opposing party of the case to be answered" (*K.O*., para. 9);

b) "Drafting a notice of civil claim is a legally disciplined exercise" (*K.O.,* para. 9);

c) "Pleadings are foundational. They guide the litigation process" (*Mercantile Office Systems*, para. 21); and

d) They "must state the material facts succinctly" (*Mercantile Office Systems,* para. 23).

[8] More recently, in *Lover-Peace v. Erickson*, 2026 BCCA 53, the Court of Appeal clarified that an application to strike a pleading by reason of it being unduly verbose is properly brought under R. 9-5(1)(b), which allows the Court to grant that remedy if pleading is found to be "unnecessary, scandalous, frivolous or vexatious":

> [46] In *FORCOMP* [*Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465] at para. 23, this Court endorsed the following description of R. 9-5(1)(b):
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> > [52] A pleading may be embarrassing or scandalous within the contemplation of the Rule where it: does not state the real issues in an intelligible form; is overly prolix; includes irrelevant facts; is calculated to confuse the opposing party and make it difficult, and perhaps impossible, to answer; or contains arguments or evidence ….
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> > [53] That being said, so long as the pleadings do not confuse the opposing party or make it difficult for that party to understand the case that must be met, sheer verbosity does not ordinarily provide sufficient justification for striking a claim ….
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> > [*The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388, aff'd 2017 BCCA 59 [*Johnston*], emphasis added.]

[9] It may also be noted that the specific criterion of a pleading being "embarrassing", is found not in subrule 1(b) but in subrule 1(c); Madam Justice Ballance's summary in *Johnston*, approved of in *FORCOMP*, was not limited to subrule (1)(b), but was speaking to deficiencies of pleading contemplated by R. 9-5(1) as a whole. These include those described in R. 9-51(c), pleadings which "may prejudice, embarrass or delay the fair trial or hearing of the proceeding". That subrule is referenced in a decision cited by Ballance J. at para. 52 of *Johnston*,

McNutt v. A.G. Canada et al., 2004 BCSC 1113 at para. 41, where Madam Justice Allan said:

> [41] A pleading is embarrassing if it does not state the real issue in an intelligible form. It is also embarrassing if it is prolix, includes irrelevant facts, argument or evidence. It is prejudicial if it is constructed in a manner calculated to confuse the defendants and make it difficult, if not impossible, to answer…
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> [Emphasis added.]

[10] The defendants did not refer specifically to R. 9-5(1)(b) or (c) in their application, but nevertheless the principles underlying those subrules as they apply to prolix pleadings were thoroughly canvassed at this hearing on both sides.

[11] The ANOCC is anything but concise. It is not entirely unintelligible. It is, however, dense, prolix, and not well-structured. It is 76 pages long. Part 1, the Statement of Fact, consists of 330 paragraphs spanning 66 pages. Part 3, the Legal Basis, is in 40 paragraphs, spanning a further six pages. It contains scattershot allegations of wrongdoing which, in some cases, do not clearly delineate which of the plaintiffs have been wronged by which defendants, and which of the various legal theories advanced those alleged wrongs relate to. Some of the allegations refer to the plaintiffs collectively, which is problematic given the plaintiffs' concession as to claims by Ms. Humphrey being time-barred. As an example, at Part 3, para. 14, the plaintiffs – collectively – "plead and rely on the principles of unjust enrichment and quantum meruit, and claim restitution", without specifying against which of the defendants' restitution is sought.

[12] The plaintiffs say that the detail in the ANOCC is justified on several grounds. First, they say that the detailed background as provided in Part 1, including paragraphs 29–67 and 75–115, is necessary to establish various of the causes of action pleaded. They submit that the past dealings, agreements, and historical relationship between the parties described in those paragraphs are foundational to the breach of contract and unjust enrichment claims, all of which "require an assessment of the historical framework giving rise to those claims", and "are relevant and essential" to determining whether BLR breached its duty of good faith, the

nature of the defendants' enrichment and the plaintiffs' corresponding deprivation, and the content of the plaintiffs' reasonable expectations. This approach to the pleading, unfortunately, reveals a lack of understanding as to the distinction between pleading a material fact, which is proper; and pleading evidence, which is not: see *Lover-Peace* at paras. 48–51. The alleged fact, for example, that Mr. Humphrey formed particular expectations by reason of the structure of the relationship between H6 and BLR, and their financial dealings, ought to be capable of being concisely summarized within two or three paragraphs, not dozens. The particulars of how and when those expectations arose are matters of evidence.

[13] The same difficulty underlies the details of alleged bullying and harassment of Ms. Humphrey and her husband, in Part 1, paras. 116-151. Though the claims of Ms. Humphrey are now conceded to be time-barred, the plaintiffs say that the allegations are still relevant to Mr. Humphrey's defamation claim, in that the events surrounding the alleged bullying and harassment later became the subject of defamatory statements aimed at Mr. Humphrey, in respect to him being in a conflict of interest. The plaintiffs say, to quote from their written submissions, that the pleaded details of those events "are intended to demonstrate that those impugned statements disseminated by the personal defendants regarding the bullying and harassment and related events were in fact false". Again, this is an impermissible pleading of evidence.

[14] Paragraphs 152–225 and 242–245, comprising 31 pages of pleadings, set out lengthy particulars of multiple alleged defamatory statements of each of the personal defendants, but also extensive narration as to the circumstances in which those statements were made. One example is the pleadings concerning the conduct of the defendant Mr. Manton in the course of a meeting on November 9, 2019. Paragraph 243 alleges that in that meeting Mr. Manton made false and malicious defamatory statements, and provides seven subparagraphs of detailed particulars. (Some of these statements are alleged to refer to particular plaintiffs, while others are said to refer to the plaintiffs generally.) The preceding para. 242, however, alleges that in that same meeting Mr. Manton "made a series of comments, false allegations and

misinformed legal threats", apart from the defamatory statements alleged in para. 243. These comments and threats are then particularized in eight subparagraphs, plus "such further and other particulars as counsel may advice [sic] at the trial of this matter". There is no plea that any those statements of Mr. Manton were actionable. These allegations of circumstance are simply evidence, and go far beyond necessary statements of material fact. They appear only to serve to embellish the narrative. The same pattern appears throughout those 78 paragraphs of Part 1.

[15] Furthermore, it must be said that in those paragraphs in which claims of defamation are explicitly advanced, it is in some cases difficult to comprehend, with respect to at least some of the statements attributed to various of the defendants, how they could possibly attract any liability.

[16] The plaintiffs say that the level of detail pleaded in these paragraphs is necessary to support the claim of defamation by way of innuendo. The defamatory meanings of certain statements imputed to various of the defendants on specific occasions are repeatedly pleaded as arising out of "their natural and ordinary meaning, and by innuendo". In each of those paragraphs setting out such plea, there are subparagraphs (e.g. (a)–(g), (a)–(w), (a)–(cc), plus "such further and other particulars as counsel may advise") setting out numerous particulars of the alleged defamatory meaning. The plaintiffs say the level of detail is necessitated by R. 3-7(21)(a), which provides:

> (21) In an action for libel or slander,
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> > (a) if the plaintiff alleges that the words or matter complained of were used in a derogatory sense other than their ordinary meaning, the plaintiff must give particulars of the facts and matters on which the plaintiff relies in support of that sense… .

[17] Read in context, the pleas of "innuendo" in the ANOCC appear merely to be assertions of what is sometimes called "false innuendo"–inferential meaning that arises out of the natural and ordinary meaning of the words used. Rule 3-7(21)(a), however, has no application to false innuendo. It only applies to "true" or "legal" innuendo, where the words alleged are contended to bear special meaning, other

than their natural and ordinary meaning, because of extrinsic facts or circumstances: *Dhami et al v. CBC et al*, 2001 BCSC 1811, paras. 30–31. Detailed particularization of inferences that arise out of false innuendo is improper argument: *Hynes v. Pro Dive Marine Services Limited*, 2014 NLTD(g) 81, paras. 24–32, aff'd 2016 NLCA 17.

[18] If, however, the plaintiffs do mean to plead true innuendo, the pleading is insufficient. In that case, their claim must identify those particular statements which are alleged to be defamatory in their innuendo; and, for each such particular statement, must specify which of the plaintiffs is alleged to have been defamed, and must identify both the innuendo and the particular facts or matters which give rise to it.

[19] The ANOCC as a whole is embarrassing or scandalous within the meaning of R. 9-5(1)(b) and (c).

[20] As to the limitations defence issues, the defendants submit that while Mr. Humphrey may have been a person under a disability, such that the limitation period governing his claims was suspended for a period of up to 18 months, H6 cannot benefit from the same suspension of time, as such provisions are only available to natural persons. Chief Justice Hinkson relied on this principle in his April 2, 2024 decision in the Petition, disallowing amendments that would have pled postponement of the limitation period in respect of H6's claims. In his oral reasons, he said:

> [7] Given the distinction in the [*Limitations*] *Act* between personal parties and corporate parties, I see no basis upon which I can grant the proposed amendments insofar as H6 Enterprises Ltd. Is concerned. So I will permit the amendments insofar as they relate to Mr. Humphrey only.

[21] However, after those reasons of Hinkson C.J.S.C. were pronounced, the Supreme Court of Canada issued its decision in *Scott v. Golden Oaks Enterprises Inc.*, 2024 SCC 32, in which the Court affirmed the Ontario Court of Appeal's ruling that the trial judge in that case had improperly failed to exercise her discretion whether to attribute to a one-shareholder corporation in receivership, for the purpose

of determining whether or when a limitation period had commenced, the knowledge of its shareholder. Justice Jamal, delivering the majority opinion, stated:

> [71] I agree that there is no rule that the knowledge or state of mind of the directing mind of a one-person corporation must invariably be imputed to the corporation. Context and purpose always serve as the primary considerations. The guiding principles for corporate attribution outlined in *Aquino* [*v. Bondfield Construction Co*., 2024 SCC 31 at para. 7: that the doctrine "must be applied purposively, contextually, and pragmatically to give effect to the policy of the law under which attribution is sought"] apply to all corporations, including one-person corporations.

[22] On the strength of that decision, the plaintiffs submit:

> Given that corporations can only act through their authorized representatives with corporate authority (i.e. officers and directors), the discoverability analysis must account for the practical issues in cases where the corporation is left without any directing mind with the capacity to act on behalf of the corporation. In our submission, assuming H6 Enterprises is not entitled to the benefit of s. 25 of the *Limitation Act* notwithstanding the suspension of the limitation period vis-a-vis Mr. Humphrey, the court could and arguably should address the facially arbitrary prejudice to H6 Enterprises arising on the unique facts of this case by declining to exercise discretion to attribute Mr. Humphrey's actual or objective knowledge of the criteria in s. 8 of the *Limitation Act* to H6 Enterprises.
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> …
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> In effect, allowing the limitation period to run as against H6 Enterprises based on the imputed knowledge of Mr. Humphrey in circumstances where it was paralyzed by Mr. Humphrey's disability for 6 to 18 months of that basic limitation period arbitrarily precludes H6 Enterprises from advancing its claim due to the expiration of a limitation period which occurred during a period when it could not have realistically brought a claim due to the disability of its directing mind. In our submission, this outcome is inconsistent with the purpose of the discoverability rule.

[23] An action may be dismissed under R. 9-5(1)(a) where it is plain and obvious that the claim has been extinguished by a limitations period. In *Aubichon v. Grafton* 2022 BCCA 77, aff'g 2021 BCSC 1183, however, the Court of Appeal reaffirmed the principle that limitations defences should generally not be the subject of strike applications under R. 9-5(1)(a), absent exceptional circumstances. I am persuaded that *Scott* raises considerations that remove the limitations defence in the present case, as it applies to H6, from the category of "plain and obvious" cases. I decline to order that the H6 claims be dismissed.

[24] In the circumstances, the appropriate order is that the action be, and the same hereby is stayed, pending the filing by the plaintiffs Mr. Humphreys and H6 of a further amended notice of civil claim that comports with the requirements of the Rules as to pleading. The parties did not address the mechanics of how the claims of Ms. Humphrey are to be concluded, and will be at liberty to apply for directions if necessary.

[25] The defendants will have their costs of this application in any event of the cause.

"A. Saunders, J."