

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *RVS Investments Inc. v. HH Maple Investments Ltd.*,  
2023 BCSC 758

Date: 20230505  
Docket: S2010347  
Registry: Vancouver

Between:

**RVS Investments Inc.**

Plaintiff

And

**HH Maple Investments Ltd.  
Adam Xu, CBRE Limited  
Satish Wadhera, Local Venture Corporation DBA Homeland Realty  
Steve Wadhera, Steve Wadhera Personal Real Estate Corporation  
Peter Nowak, Multiple Realty Ltd.**

Defendants

Before: The Honourable Mr. Justice Blok

## Reasons for Judgment

Counsel for the Plaintiff:

P. Samarakoone

Counsel for the Defendant, HH Maple Investments Ltd.:

E. Stockley

Place and Date of Hearing:

Vancouver, B.C.  
March 24, 2023

Place and Date of Judgment:

Vancouver, B.C.  
May 5, 2023

**I. Introduction**

[1] The plaintiff, RVS Investments Inc. (“RVS”), applies to set aside an order made September 27, 2022, by which its action was dismissed.

[2] On the day the order was made, the plaintiff failed to have anyone attend the hearing on its behalf despite having been properly served in accordance with the *Supreme Court Civil Rules* [Rules]. The plaintiff’s principal, Rajvir Parmar, says that nonetheless he did not receive actual notice of the hearing and so he applies pursuant to Rule 4-7 to have the order set aside.

[3] The defendant, HH Maple Investments Ltd. (“HH Maple”), opposes the relief sought.

**II. Background**

[4] This case arises out of two failed purchase and sale transactions between the same parties concerning the same apartment property in Vancouver’s west end. In those transactions, the defendant HH Maple was the owner of the property and the plaintiff RVS was the putative purchaser.

[5] The first transaction was entered into in or around April 2020, with the parties agreeing on a purchase price of \$8,200,000 and a completion date of August 31, 2020. Subjects were removed and RVS then paid a deposit of \$400,000.

[6] In its claim, the plaintiff alleges that after subjects were removed, the plaintiff came to learn of structural defects in the property that were said to have been caused by the demolition of an adjacent building. The presence of these defects caused the plaintiff’s financier to withdraw its financing. As a result, RVS failed to complete the transaction.

[7] RVS filed a notice of civil claim (the “First Action”) and filed a certificate of pending litigation (the “First CPL”) against title to the property on October 16, 2020. In its claim, RVS alleged that HH Maple “not only misrepresented and concealed

material facts but also fraudulently represented the sale price that was agreed of \$8,200,000 when the actual true price should have been substantially lower”.

[8] Aside from the application that is currently before the Court, this was the last step taken by RVS in the First Action.

[9] Six months later, RVS and HH Maple entered into an amendment and settlement agreement dated April 7, 2021. That agreement revived the original purchase contract and all of its terms, including the purchase price, but revised the completion date to June 30, 2021. The revival agreement also required RVS to discharge the First CPL registered against title to the property and discontinue the First Action.

[10] RVS did not tender the purchase monies on the completion date. HH Maple notified RVS that it accepted RVS’s repudiation of the contract and demanded that RVS remove the First CPL and discontinue the First Action. RVS did not comply with that demand.

[11] On October 15, 2021, HH Maple filed a notice of application seeking cancellation of the First CPL, the release of deposit monies (which were being held in trust), and special costs. Although represented by counsel, RVS did not file an application response.

[12] HH Maple’s application was heard on November 1, 2021. No one appeared on behalf of RVS despite being properly served and despite the fact that the hearing date had been selected by agreement between counsel. The Court ordered the cancellation of the First CPL on the grounds that the claim was for damages and return of the deposit only and did not give rise to a claim for an interest in land. Those reasons for judgment may be found at 2021 BCSC 2412.

[13] On November 12, 2021, RVS filed a second notice of civil claim (the “Second Action”) and a second CPL (the “Second CPL”) in relation to the same property and the same defendants.

[14] On December 9, 2021, HH Maple filed an application, on short leave, seeking dismissal of the Second Action and cancellation of the Second CPL as an abuse of process. RVS was served with that application on December 10, 2021.

[15] The application came for hearing on December 14, 2021. No one appeared on behalf of RVS. Justice Fitzpatrick ordered the Second Action struck as an abuse of process and ordered the Second CPL cancelled. She also ordered special costs against RVS.

[16] On August 30, 2022, HH Maple served RVS with a notice of application to dismiss the First Action by way of summary trial. I will return to the subject of service shortly. RVS filed no application response nor any other responsive materials.

[17] The summary trial application was heard on September 26, 2022. RVS did not appear. In reasons given the following day, the Court granted the relief sought and ordered the dismissal of the First Action, the forfeiture of the deposit and special costs against RVS.

### **III. Service of the Summary Trial Application**

[18] Although RVS concedes that the summary trial notice of application and associated materials were served in accordance with the *Rules*, it is nonetheless relevant to review those details.

[19] The notice of civil claim for the First Action provided the address of a law firm, Equity Law Group, 4128 Fraser Street, Vancouver, as the address for service for RVS.

[20] On October 26, 2021, Naushad Ahmed of Equity Law Group filed a notice of intention to withdraw as lawyer, giving the address for RVS as 205-6628 Fraser Street, Vancouver. However, Mr. Ahmed did not perfect that withdrawal by filing an actual notice of withdrawal until August 31, 2022. Accordingly, the address for service for RVS remained as the law firm address until the notice of withdrawal was served on all parties: Rule 22-6(7).

[21] HH Maple's notice of application for judgment by summary trial was delivered as follows: (1) to Mr. Ahmed, by email; (2) by courier to 205-6628 Fraser Street, Vancouver; and (3) by email to rvsingh@shaw.ca. The email to counsel bears a time stamp of 9:12 am on August 30, 2022.

[22] Mr. Ahmed responded at 11:17 am the same day, saying "I will take instructions, but my recollection of this matter was that I was off the record".

[23] HH Maple's counsel responded as follows at 11:36 am:

You are not technically off the record yet as you have only filed the notice of intention and not the actual withdrawal. We are obliged to provide notice to counsel of record and at the moment you still are.

[24] At 12:56 pm, Equity Law Group emailed an unfiled notice of withdrawal of lawyer to HH Maple's counsel, who responded by email that the document was still not effective and "until it is effective we will proceed as if Mr. Ahmed is the solicitor of record".

[25] Counsel for HH Maple noted, at the time, that the address shown in the unfiled notice of withdrawal (208-6628 Fraser Street) was different from that shown in the notice of intention to withdraw (205-6628 Fraser Street). Counsel then couriered the application materials to the "208" address. The courier slip indicates that delivery was effected on September 2, 2022.

[26] The notice of withdrawal was filed on August 31, 2022. Counsel for HH Maple received a copy of the filed notice of withdrawal on September 8, 2022.

[27] On November 24, 2022, counsel for HH Maple performed a corporate record search for RVS. The search results show RVS's registered and records office, with respect to both its delivery and mailing addresses, as follows:

#205-6628 Fraser Street  
rvsingh@shaw.ca  
Vancouver BC V5X 3T9  
Canada

[28] Mr. Parmar's evidence relating to the service or notice issue is given in two affidavits. In his first affidavit, filed on November 17, 2022, he said "I did not receive any documents from the defendant". In his second affidavit, filed on March 20, 2023, he said that when his counsel, Mr. Ahmed, filed a notice of intention to withdraw as lawyer, Mr. Ahmed provided an erroneous address (205-6628 Fraser Street). He deposed that this was the *former* registered office of RVS, as it had ceased to be the registered office of RVS around June 2020. Mr. Parmar deposed that he himself had used the correct address for service (3929 Knight Street, Vancouver) when he filed the Second Action in November 2021.

[29] In his second affidavit he reiterated that he did not receive any application materials:

I nor any other agent of the Plaintiff received any of the material to do with the September Application and as such was not able to provide any response materials.

#### **IV. Positions of the Parties**

##### **A. RVS**

[30] Counsel for RVS acknowledged the deficiencies in the plaintiff's current notice of application, noting that it had been filed by Mr. Parmar, on behalf of RVS, when the plaintiff did not have counsel. Counsel had prepared an unfiled notice of application, handed it up to the bench (without objection from defence counsel), and used it as a form of outline of his submissions.

[31] RVS emphasizes that its principal did not have notice of the application that was heard on September 26, 2022. RVS says this was the fault of its former lawyer, who put the wrong address in one or both of the withdrawal documents.

[32] RVS spent some time on the merits of the claim, noting that there is a \$400,000 deposit at issue here, a very large sum for the plaintiff. RVS says the first transaction failed due to the failure of HH Maple to disclose structural issues, and the second failed because HH Maple was late in providing information necessary to complete the closing and would not agree to extend the closing date. The plaintiff

says that this delay was deliberate bad faith on the part of HH Maple, as another party had made a better offer in the interim.

[33] RVS submits that this case falls within the ambit of Rule 4-7. The application did not come to its notice, the application was undefended as a result, the plaintiff's claim is meritorious, and so this is an appropriate case for the Court to provide relief.

[34] RVS referred to three cases, *Rangi v. Rangi*, 2007 BCCA 352; *Wang v. Huang*, 2022 BCSC 149 [*Huang*]; and *Bhasin v. Hrynew*, 2014 SCC 71.

[35] Although *Rangi* had been included in the plaintiff's own brief of authorities, RVS sought to distinguish it. While *Rangi* involved an analogous situation (an application under what is now Rule 22-1(3)), and the Court in that case declined to reconsider the order that had been granted, RVS noted that the case is distinguishable because the applicant failed to show a meritorious defence or one worthy of investigation.

[36] RVS relies instead on *Huang*, where the Court found a plausible explanation why the applicant did not get notice, the defendant had a "potential defence" (at para. 42), and the general object of the *Rules* ("the just, speedy and inexpensive determination of every proceeding on its merits" (Rule 1-3(1))) weighed in favour of setting aside the default judgment.

[37] RVS also relied on *Bhasin* as part of its argument that it has a meritorious claim for breaches of what it described as the "duty of honest performance" and the "equitable doctrine of good faith".

## **B. HH Maple**

[38] HH Maple emphasizes that an application under Rule 4-7 involves different considerations than does an application to set aside a default judgment. Importantly, it does not involve a consideration of the merits: *Schlieper v. The Owners, Strata Plan VR59*, 2022 BCCA 375 [*Schlieper BCCA*], aff'g 2021 BCSC 1997 [*Schlieper BCSC*].

[39] HH Maple notes that service of its summary trial application was effected in accordance with the *Rules* and, in fact, HH Maple went much further than it had to by delivering the application documents not just to counsel of record but also to the address indicated in the notice of intention to withdraw, even though it was not the effective address for delivery. As it turns out, the latter address was also the registered and records office of the plaintiff, as confirmed by a company search. Not only that, but when counsel for HH Maple received the actual filed notice of withdrawal, they also delivered the application documents to the address indicated in that document.

[40] HH Maple also emphasized the various defaults and other adverse litigation behaviour on the part of the plaintiff. These included:

- a) failing to appear in Court on three separate occasions: November 1, 2021 (application to cancel the First CPL); December 14, 2021 (application to strike the Second Action) and September 26, 2022 (the subject summary trial application). In the case of the November 1, 2021 application, the hearing date had been agreed to by counsel for RVS;
- b) filing the Second Action and filing the Second CPL, a clear abuse of process, which was ultimately dismissed with special costs against the plaintiff. Counsel argued this constitutes “unclean hands” and disentitles the plaintiff from discretionary relief;
- c) failing to take any steps whatsoever to advance the First Action and only reacting when that claim was dismissed;
- d) failing to provide an updated address for delivery; and
- e) having no current lawsuit that concerns the second purchase and sale transaction.

[41] HH Maple says these matters demonstrate a pattern of conduct by RVS of using the litigation process to bring harm to it. This is conduct worthy of rebuke.

[42] HH Maple answers the plaintiff's argument that it should have used the Knight Street address listed in the Second Action by noting that when they served that address with their application to strike that claim, no one appeared. HH Maple submits that it is therefore not believable that had RVS been served at that address, RVS would have participated in the summary trial application.

[43] Finally, HH Maple submits the burden is on the plaintiff, through its principal Mr. Parmar, to satisfy the Court that RVS did not get the documents, and the evidence is very unsatisfactory on this issue. There is no evidence, for example, about what transpired with RVS's counsel, who said in his August 30, 2022 email that he would take instructions. The plaintiff was duty-bound to provide that explanation, but no explanation was given.

**C. RVS Reply**

[44] In answer to the argument of HH Maple that there is no outstanding action concerning the second purchase and sale transaction, RVS says that this can be addressed by an application to amend pleadings.

**V. Discussion**

**A. Legal Principles**

[45] Rule 4-7, reproduced below, allows a party to apply to set aside an order where service, though properly made, is alleged to have been ineffective:

(1) If a document has been served in accordance with this Part but a person can show that the document

- (a) did not come to his or her notice,
- (b) came to his or her notice later than when it was served, or
- (c) was incomplete or illegible,

the court may set aside an order, extend time, order an adjournment or make such other order as it considers will further the object of these Supreme Court Civil Rules.

[46] The onus is on an applicant to provide the Court with a "plausible explanation" for their lack of knowledge of the proceeding: *Huang* at para. 29; *Wang v. Liu*, 2019

BCSC 1983 at para. 39. This is the same test as was applied under the former Rule 12(11): *Jamieson v. Moskaleva*, 2012 BCSC 695 at para. 23, citing *Grinnell Supply Sales Co. v. Heger Contracting Ltd.*, 2001 BCSC 1105 [*Grinnell Supply*]. Put another way, the applicant must establish that, despite the document having been served in accordance with the *Rules*, they were not aware of the hearing and setting aside the order “is an appropriate remedy for any lack of notice”: *Schlieper BCSC* at para. 12.

[47] In this case, there was a debate between the parties about the significance of the merits in an application under Rule 4-7. HH Maple relies on the Court of Appeal’s decision in *Schlieper BCCA* where, at para. 24, the Court said the merits or lack of merits of the applicant’s position is “not a factor that is to be considered in an application under Rule 4-7(1)”, citing *Jamieson* at paras. 21–23.

[48] RVS argues that the merits are to be considered, noting that the Court did so in *Huang* (at para. 42), relying on the fact that Rule 4-7 refers specifically to the furtherance of the object of the *Rules*, which emphasizes “the just, speedy and inexpensive determination of every proceeding on its merits”.

[49] In my view, these decisions are reconcilable if interpreted in their correct context. First, it is clear that some of the authorities have strayed into a discussion of factors relevant to other types of applications, particularly applications to set aside default judgments, where the test is the well-known (and much more widely known) *Miracle Feeds* test: *Miracle Feeds v. D. & H. Enterprises Ltd.* (1979), 10 B.C.L.R. 58, [1979] B.C.J. No. 1965 (Co. Ct.). The *Miracle Feeds* test requires, among other things, that the applicant show they have a meritorious defence or at least a defence worthy of investigation.

[50] *Grinnell Supply*, cited in *Jamieson* (in turn cited by the Court of Appeal in *Schlieper BCCA*) was a case involving an application to set aside a default judgment. *Miracle Feeds* was found to be the applicable test (see para. 4) but the Court did not get to the point of considering the merits of any defence because the applicant failed on other *Miracle Feeds* grounds. For those reasons, *Grinnell Supply*

is not strong authority on which to rest a conclusion that the merits of a claim or defence are never relevant on a Rule 4-7 application.

[51] While the Court of Appeal in *Schlieper BCCA* rejected the consideration of “a meritorious defence ‘worthy of investigation’” as a factor on a Rule 4-7 application, the context of its discussion makes it clear the Court was correcting the lower court’s implicit comment that this *Miracle Feeds* factor applies on a Rule 4-7 application (see para. 24). The Court of Appeal did not address the “merits” issue in the context of the Court’s ultimate exercise of discretion. To the contrary, the Court noted that under Rule 4-7 the Court retains a discretion to refuse to set aside an order where it would not be in the interests of justice to do so (at para. 22).

[52] Rule 4-7 specifically provides that the Court may make an order “as it considers will further the object of” the *Rules*. Under Rule 1-3(1), the object of the *Rules* is to “secure the just, speedy and inexpensive determination of every proceeding on its merits”. In my view, this means that the merits may be considered at the point when the Court is considering whether to exercise its discretion in favour of making an order under Rule 4-7.

## **B. Analysis**

[53] I agree with the submission of HH Maple that the plaintiff, through its principal, has failed to provide an adequate or plausible explanation for his asserted lack of notice. His evidence on the subject consists of two bald, unsupported statements that he did not receive the application documents despite the several ways in which HH Maple delivered those documents. Those methods included emailing the documents to Mr. Parmar’s email address, the same email address listed for him in the British Columbia corporate registry. In my view the plaintiff was obliged to explain why emailing these documents did not bring them to his attention.

[54] I digress for a moment to observe that while Mr. Parmar said the corporate registry information was out of date insofar as the registered and records office of the plaintiff ceased to be 205-6628 Fraser Street since approximately June 2020, the corporate search results indicate the plaintiff filed an annual report on August 14,

2021, which confirmed both that address and his email address. This contradiction was not explained.

[55] I also conclude that the plaintiff was obliged to explain why notice to his counsel, or former counsel, did not come to his attention, particularly in view of the lawyer's comment that he would take instructions on the matter. There is no affidavit from the lawyer explaining what he did or did not do, and Mr. Parmar is entirely silent on this subject.

[56] In brief, I conclude the plaintiff has failed to provide an adequate or plausible explanation for his assertion that the application materials did not come to his attention despite proper service.

[57] Although unnecessary to say more, I will also address matters relevant to the exercise of discretion.

[58] The plaintiff's litigation actions (and inaction) are of particular importance on this point. The plaintiff has done nothing at all to advance the First Action since the filing of its notice of civil claim in October 2020. It has also failed to attend Court on three occasions. The plaintiff filed the Second Action and registered the Second CPL, matters which were found to be an abuse of process. Finally, the plaintiff failed to maintain a proper and current address for delivery. All of these matters weigh against any exercise of discretion in the plaintiff's favour.

[59] The merits of the claim are very difficult to assess because the claim as presently pleaded challenges only the first transaction – a matter that was settled – and does not reflect the plaintiff's current civil grievance, which relates to the second purchase and sale transaction. Although the existing claim can be amended, there is little or no evidence on which an assessment can be made of the merits of that other claim. In submissions, the plaintiff described the as-yet-unpleaded claim as a breach of a duty of good faith and fair dealing on the part of HH Maple, based on an allegation that HH Maple had wanted the sale to collapse because it had received a better offer. None of that is reflected in the affidavit evidence, which merely refers to

the seller's refusal to extend the completion date together with a statement that "the Seller acted in bad faith". The plaintiff's affidavits contain no evidence of bad faith other than that bald assertion.

[60] All of these matters, taken together, cause me to conclude that even if the plaintiff had met the burden of providing the Court with a "plausible explanation" for its lack of knowledge of the summary trial application, I would not have exercised my discretion in its favour.

## **VI. Conclusion**

[61] The plaintiff's application is dismissed.

[62] In its application response, HH Maple sought special costs in the fixed amount of \$1,500, arguing the evidence demonstrates that RVS was using the litigation process in bad faith. In my view, that aspect has already been dealt with through the award of special costs made when the First Action was dismissed. I am not prepared to draw the conclusion that the current application was made in bad faith. RVS's litigation behaviour with respect to this application is equally consistent with that of an essentially self-represented litigant who has an extraordinarily sloppy and dilatory approach to litigation. I conclude that ordinary costs are called for here.

[63] I therefore award costs to HH Maple at Scale B.

"Blok J."