IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Spark Event Rentals Ltd. v. Apple Inc.,* 2025 BCSC 1860

Date: 20250926
Docket: S218036
Registry: Vancouver

Between:

Spark Event Rentals Ltd.

Plaintiff

And

Apple Inc. and Apple Canada Inc.

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page on October 3, 2025.

Before: The Honourable Justice Thomas

Reasons for Judgment

Counsel for the Plaintiff:	R. Mogerman, K.C. M. Segal
Counsel for Apple Inc. and Apple Canada Inc.:	J.M. Young N. Campbell W. Wu D.G. Burchart
Place and Date of Trial/Hearing:	Vancouver, B.C. July 18, 2025
Place and Date of Judgment:	Vancouver, B.C. September 26, 2025

[1] This is an interlocutory application by Apple Inc. and Apple Canada Inc. (“Apple”) to strike the plaintiff's second amended notice of civil claim for failure to disclose a reasonable claim, pursuant to Rule 9-5 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, prior to the certification hearing scheduled to occur over five days beginning on July 20, 2026.

[2] The plaintiff claims a conspiracy between Google LLC, Google Canada Corporation (“Google”) and Apple, where Apple allegedly agreed not to compete with Google in terms of general Internet search engines and search advertising services. The plaintiff asserts that this conspiracy led to Google charging advertisers in Canada supra-competitive prices for search ads.

[3] The plaintiff alleges that a series of agreements between Google and Apple, under which Apple made Google the default search engine on various Apple devices and Google paid Apple a share of the revenue generated from the searches, amounted to a breach of ss. 45-46 of the *Competition Act*, R.S.C. 1985, c. C-34 [*Competition Act*].

[4] The plaintiff seeks to recover damages under s. 36 of the *Competition Act*, as well as damages for the common law tort of unlawful means conspiracy, restitution for unjust enrichment, exemplary and punitive damages, and, for class members in Québec, recovery of damages under the extra-contractual liability provision of the *Civil Code of Québec*, C.Q.L.R. c. CCQ-1991.

Jurisdiction

[5] As the case management judge, I have jurisdiction to make appropriate orders for the just and expeditious determination of matters, including precertification sequencing orders.

[6] There is no longer a presumption that the certification application must be the first procedural matter to be heard in a proposed class proceeding. This presumption was rejected by our Court of Appeal in *British Columbia v. Jean Coutu Group (PCJ) Inc.*, 2021 BCCA 219 at para. 37.

[7] Each precertification motion must be decided based on its own merits. Each application must be assessed in the context of the specific case before the court. The court's discretion should be exercised in a way that promotes judicial efficiency and the timely resolution of the dispute.

[8] The factors summarized in *Shaver v. Mallinckrodt Canada ULC*, 2021 BCSC 455 at para. 10 [*Shaver*], set out the factors to be considered in determining such an application:

> [10] … Combined, the non-exhaustive list of factors is:
>
> a) any delay by the plaintiff in proceeding to certification;
>
> b) the extent to which a preliminary application may dispose of the whole proceeding or narrow the issues to be determined, taking into account the strength of the applicant's arguments on the proposed applications and the breadth of the applications;
>
> c) the cost to the parties of participating in pre-certification procedures and the potential to avoid exposing the defendants to costs of a full certification hearing if the matter will be resolved on the basis of the s. 4(1)(a) requirement alone;
>
> d) the potential for delay arising from interlocutory appeals;
>
> e) the complexity and interplay of the issues that may arise in and between the pre-certification and certification applications;
>
> f) whether the outcome of the motion will promote settlement;
>
> g) the interests of economy and judicial efficiency (including whether the parties agree the motion will be determinative of the s.4(1)(a) aspect of the certification motion); and
>
> h) the fair and efficient determination of the proceeding.

[9] The *Shaver* factors are not a checklist to be reviewed by rote. It is not necessary to weigh all the factors on each application. Whether any individual factor needs to be considered will depend on the nature of the application.

Application of the Shaver Factors

Delay

[10] This matter has a complex background. The case was filed in September 2021, and I was assigned as the case management judge in March 2022. The procedural steps involved consist of the following:

a) On June 10, 2022, I directed the plaintiff to deliver certification application materials on October 2, 2022. In 2022, the parties attended multiple judicial management conferences at which a schedule for precertification and certification applications was set.

b) On June 30, 2022, the plaintiff served an application for production of documents on the defendants. On August 31, 2022, the applicant served an application for a stay of proceedings. At the hearing of the document application on October 13, 2022, I ordered that the application for document production be adjourned until after the stay application.

c) In November 2022, the plaintiff notified the defendants that they intended to seek a substitute for the representative plaintiff. On November 14, 2022, the respondent delivered their unfiled certification materials to the defendants, including an affidavit from the new proposed representative plaintiff.

d) The stay application was heard on May 10 and 11, 2023. Reasons for judgment were released on June 28, 2023. The action was stayed against Google.

e) The plaintiff appealed the stay first to the British Columbia Court of Appeal and then sought leave to the Supreme Court of Canada. This process ran from July 4, 2023 to December 12, 2024.

f) On February 5, 2025, the plaintiff served an application to lift the stay of the proceedings in this matter and a further amended notice of civil claim, in accord with the reasons for judgment issued in the stay.

g) On March 13, 2025, the plaintiff served the defendants with a further affidavit in support of their certification application. This affidavit attaches trial exhibits from a US action that were not publicly available at the time that the plaintiff delivered their certification materials in 2022.

h) On May 30, 2025, the applicant has served their application materials to strike the pleadings.

i) On July 18, 2025, I heard the sequencing application. The application took two days.

[11] In my view, there has not been significant delay by the plaintiff in proceeding to certification, nor has there been undue delay by the defendant in setting down the application to strike.

The extent to which the application may dispose of the whole proceeding or narrow the issues to be determined

[12] The consideration of the nature and strength of the defendant's application should not be lengthy or involved but rather limited to a threshold inquiry.

[13] This does not appear to be a conspiracy in which the alleged agreement is denied. I am not certain of this as the defendants have not yet filed a response. However, I understand the application to strike does not appear to dispute the actual agreements in question.

[14] The issue raised in the defendant's application is whether the pleadings satisfy the numerous required elements of the various causes of actions which include breach of the *Competition Act*, civil conspiracy and unjust enrichment; and with respect to the alleged violations of the *Competition Act*, whether the required elements are met both before and after significant amendments were made to the *Competition Act*.

[15] In addition, I understand that the defendant intends to raise some complex issues with respect to:

a) The extent that documents are incorporated into the pleadings;

b) The application of rulings made in the United States on related proceedings to each of the individual allegations; and

c) The impact the documents and decisions have on the alleged violations of the *Competition Act* before and after the amendments to the *Competition Act*.

[16] The complexity of the applications to strike, as it should more appropriately be termed, was demonstrated by the fact that the hearing of the sequencing application took a full day.

[17] This is not a situation where a narrow issue will decide whether the action proceeds or not; such as whether there was an agreement. Looking at the application holistically, in my view, it is more of a shotgun approach, where the defendant is raising related but different concerns to each of the causes of action.

[18] In my view, given the broad view of the applications provided to me, it does not appear likely that all of the actions would be dismissed. This is not to say that there is an obvious flaw in the applications; rather, this is a threshold assessment based on the bird's-eye view I was provided. It is not an assessment of the merits.

[19] It is not at all clear that if the defendant were successful on one or two of their arguments that the certification issues would be more efficiently managed. Having looked at the applications to strike holistically, it is far from clear that any actions struck would be significantly unrelated to remaining actions such that certification would be simplified. In my view, the defendants are bringing piecemeal applications challenging each cause of action on a variety of grounds, some related, some unrelated.

[20] Given that the applications to strike parallel the test for certification in s. 4(1)(a) of the *Class Proceeding Act*, there is some time-saving potential in that this part of the test may be determined prior to certification.

[21] However, there are two potential complicating factors raised by proceeding with the determination of s. 4(1)(a) prior to certification. The first is that the plain and obvious standard requires the court to consider the pleadings as they may be amended. Certification could be granted on the basis of amendments to pleadings

and/or common issues. It may be that in considering how pleadings may be amended, the court would benefit by being informed by the entirety of the certification record, including the expert reports.

[22] The second is that the US decisions that the defendant wishes to rely upon at their applications to strike, may also be submitted and relied upon by the parties (particularly if the court applies a two-step commonality test requiring some basis in fact for the existence of common issues). This may require the court to conduct a duplicate review of the US decisions and considerations of what use they may be put to at the certification hearing.

Cost and potential delay

[23] The sequencing application took a full day. In this time only a broad overview of the various applications was provided. In my view, given the apparent complexity of the issues raised, the applications to strike would take at least three days to be heard.

[24] Even if the defendant's applications could be heard more efficiently, proceeding with the application prior to certification would inevitably lead to an adjournment of the currently scheduled certification hearing. It is clear that the unsuccessful party in the application would appeal.

[25] In my view, given the piecemeal nature of the applications to strike, it is likely that costs of defending and prosecuting the claim will be increased, and the certification hearing will not be avoided, but adjourned and further delayed, if the application to strike were to proceed prior to the certification hearing.

Judicial efficiency and timely resolution of disputes

[26] I have identified the relevant shaver factors. In evaluating these factors, it is clear that both judicial efficiency and the timely resolution of disputes support dismissing the defendant's application and having those applications to strike heard within the context of the currently scheduled certification hearing.

[27] The defendant's application is dismissed.

"Thomas J."