

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Bradcat Homes Ltd. v. Reyes*,
2024 BCSC 1005

Date: 20240510
Docket: S235680
Registry: Vancouver

Between:

Bradcat Homes Ltd. and Bean Doc Holdings Ltd.

Plaintiffs

And

**Marcario Teodoro Reyes a.k.a. Tobi Reyes, Portfolio Asset (225Kingsway) Inc.,
Port Capital Development Inc., Port Capital Development (Marine) Inc.,
Portliving Development Corp., South Creek Vista Limited Partnership,
South Creek Vista Investments Inc., Port Capital Development (SCL) Inc.,
Living Marine Development Limited Partnership, Port Capital Theporter
Residences Development Limited Partnership, Port Capital Development
(Porter Sub) Inc., Theporter Residences Investments Inc., Theporter
Residences 2 Investments Inc., Dentons Canada LLP, Robert Quon,
ABC Company 1, ABC Company 2**

Defendants

Before: The Honourable Justice Hardwick

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs:

E.S. Bojrn

Counsel for the Defendants Dentons
Canada LLP and Robert Quon:

A. Peck
L. Gnanasihamany

No other appearances

Place and Date of Trial/Hearing:

Vancouver, B.C.
May 7, 2024

Place and Date of Judgment:

Vancouver, B.C.
May 10, 2024

[1] **THE COURT:** These are my oral reasons for judgment arising from an interlocutory hearing which proceeded earlier this week. Unfortunately, due to limited judicial resources, it has taken longer than would have been ideal to be heard, notwithstanding that there is capable and well-prepared counsel involved. Having regard to these circumstances, I have drafted these reasons somewhat more concisely than I might otherwise have done, but I consider it in the interests of all the parties to not delay the litigation further and, more importantly, having concluded that while my reasons for judgment might be more articulately stated with the benefit of a longer reserve, that is not of material benefit to the parties. The parties need a decision on this application to determine how to proceed.

[2] The applicants in the present application are the plaintiffs Bradcat Homes Ltd. (hereinafter "Bradcat") and Bean Doc Holdings (hereinafter "Bean Doc"). The relief sought as set forth in the notice of application filed February 6, 2024 (hereinafter "the application"), is as follows:

- a) an order pursuant to Rule 6-2 of the *Supreme Court Civil Rules* that the proposed plaintiff, Portfolio Asset Group (225 Kingsway) Limited Partnership (hereinafter the "Partnership"), be added as a plaintiff to the within proceeding and the style of cause be amended accordingly;
- b) secondly, an order that the plaintiffs be granted leave to amend and file their amended notice of civil claim filed August 11, 2023, in the form which is attached to Schedule "A" to said application; and
- c) finally, there is obviously the issue of costs.

[3] Of significance, certain of the proposed amendments set out in Schedule "A" of the application are not opposed by the participating respondents represented by Ms. Peck. The proposed amendments set out at Schedule "A" are not opposed at all by any of the other respondents, as evidenced by their lack of participation in the application, despite notice having been appropriately provided.

[4] Turning to the facts. Bradcat and Bean Doc are both companies appropriately registered pursuant to the *British Columbia Corporations Act*. They are, I glean from the evidence, companies in good standing in accordance with the legislation in terms of filing annual reports and so forth. They each have a separate operating mind.

[5] The proposed plaintiff, Portfolio Asset Group (225 Kingsway) Limited Partnership (which I already defined as "the Partnership") is a British Columbia limited partnership. The proposed defendant Dentons Canada LLP ("Dentons"). Dentons, as I will refer to it, is a law firm with more than one physical location, but Dentons appropriately has an address for service in British Columbia and offers legal services within the Province of British Columbia.

[6] The defendant Mr. Robert Quon (hereinafter "Mr. Quon") is an individual who practices as a lawyer at Dentons and who, from the evidence admissible for the purposes of an interlocutory application, practices predominantly from the Lower Mainland area of British Columbia. At all material times, I accept that Dentons were the lawyers for the Partnership. Mr. Quon was, in particular, the primary responsible lawyer at all material times.

[7] I do note that for the purposes of this application, it is unnecessary to wade into whether there were other lawyers at Dentons who may have assisted Mr. Quon during the material times, as that is not disputed that Mr. Quon was the primary responsible lawyer. The application is opposed on the legal merits of the claim and not on semantics or nuances.

[8] The Portfolio Asset is the general partner of the Partnership and the plaintiffs Bradcat and Bean Doc are the limited partners of the Partnership. This is established based upon the evidentiary record before me.

[9] At all material times, I accept for the purposes of the application that Mr. Reyes was the principal and directing mind of the Portfolio Asset. There is a limited partnership agreement dated March 14, 2016. There are many other defendants named in the notice of civil claim, the majority of which, it is not disputed,

are various corporations and legal entities operated by Mr. Reyes. This is not a conclusory statement for the purposes of any ultimate determination of the various matters in issue on their merits, but was not disputed by the relevant participating parties to this application to be an incorrect assumption upon which to proceed for the specific relief sought.

[10] As noted, the notice of civil claim in this action was originally filed on August 11, 2023. It is thus relatively fresh from a litigation perspective, even though the hearing of this particular application was procedurally delayed. I am advised there is no trial date presently scheduled. Examinations for discovery have not been conducted and are, based upon my notes, not even scheduled as of present date and have not been conducted.

[11] I pause to add at this juncture that, given my intention in drafting these oral reasons in a very timely way, I have not gone back through the DARS recording for the purposes of expressly confirming whether any discoveries are scheduled. That is what my notes reflect, but I acknowledge I might have not fulsomely probed the issue, given the multitude of defendants involved. More significantly, given there are multiple defendants, even if my notes are absolutely not correct and some of the discoveries have been scheduled but have not yet proceeded, there are multiple parties and my conclusion that this is a complicated litigation which is in its relative infancy remains unchanged.

[12] Returning now to the factual matrix of the matter.

[13] In or about 2012, Bradcat and Bean Doc invested in a development of a property located at 225 Kingsway, Vancouver, British Columbia (the “Kingsway Development”). The total combined investment was some \$400,000. This does not appear to be in dispute.

[14] The Kingsway Development was completed in or about 2017 and there was a commercial retail unit containing three separate commercial units, which I accept is

helpfully specifically defined in the materials as “CRU”, purchased in the name of the partnership.

[15] In 2017 and 2018 respectively, two mortgages were secured as against the CRU.

[16] For the purposes of the application, I am again not making any express findings of fact as to what occurred regarding these transactions. I accept, however, that it is submitted that the first mortgage, which is listed in the name of an entity called South Creek Inc., was put forth as the registered owner of the CRU instead of the Partnership.

[17] In 2018, there was a second mortgage placed on the CRU by, it is alleged, Mr. Reyes. It is alleged that none of the funds of this mortgage were ever used for the benefit of the Partnership and the mortgage was affected without the knowledge of Bradcat or Bean Doc.

[18] Mr. Reyes then, it is alleged, increased the amount of the second mortgage substantially, including the transfer of his own, what is asserted to be, personal mortgage of some approximately \$500,000 onto the CRU. This is again asserted to have been done without the knowledge or consent of Bradcat and Bean Doc. At all material times, I accept that Dentons was the registered address for the partnership and Mr. Quon was the partnership's lawyer.

[19] Mr. Quon was the individual, I also accept for the limited purposes of this application, the solicitor who drafted the limited partnership agreement.

[20] The claim at its core is that Mr. Quon, on the instruction from Mr. Reyes, and contrary to the best interests of the limited partnership, completed the transfer of the second mortgage, including some of the \$500,000 personal loan of Mr. Reyes secured against his personal property onto the CRU. It is further alleged that Mr. Quon did so without instruction or approval, nor even any consultation with Bradcat and Bean Doc. This, it is asserted, was contrary to the best interests of the Partnership.

[21] Within that context, the proposed order sought, stated in simple terms, is to amend the notice of civil claim originally filed in August of 2023 to allow the Partnership to be added as a plaintiff by virtue of a common law derivative action claim. There are also certain material facts contained in the new draft pleading attached as Exhibit “A” to the application which are consistent with same.

[22] Pursuant to *Supreme Court Civil Rules* 6-2(7) [the *Rules*], the court may order that a person be added or substituted as a party to an action. Specifically, I will read into the record, for the benefit of these oral reasons if transcribed, the text of the relevant rule:

Adding, removing or substituting parties by order

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

- (a) order that a person cease to be party if that person is not, or has ceased to be, a proper or necessary party,
- (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.

[23] There is a two-part test that must be applied to determine from the court's perspective if a party should be added pursuant to Rule 6-2(7)(c). As set out in *The Owners, Strata Plan v. John Neilson Architects*, 2010 BCCA 329, in particular paragraphs 45 to 46, this is set out as follows:

[45] . . . [the applicant] . . . must show that there is a question or issue between the proposed plaintiff and the defendants that relates to the relief sought or the subject matter in the proceeding. . . .

[46] If this first requirement is met, the court must determine whether it would be just and convenient to decide the issues between the parties in this particular proceeding. . . .

[24] With respect to the first part of the test, I accept that the following principles are to be applied:

- a) The discretion to add parties should be generously exercised.
- b) In exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful, other than to be satisfied that there must exist an issue or question between the applicant and the party to be joined.
- c) Evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties.
- d) Where an applicant relies on pleadings alone, the facts alleged which, if assumed to be true, must disclose a cause of action.
- e) And finally, unless there is prejudice, amendments should be granted liberally to enable the issues to be tried.

[25] These are relatively trite propositions, but I accept they are helpfully set out in the authority relied upon which is *Meade v. Armstrong (City)*, 2011 BCSC 1591, and in particular paragraph 16 of *Meade*.

[26] With respect to the second part of the test, there are various factors that this Court must consider in determining whether or not it is just and convenient to add a party. Those include:

- a) the extent of the delay;
- b) the reasons for the delay;
- c) any explanation put forward to account for the delay;

- d) the prejudice caused by the delay, or in particular the degree of prejudice caused by the delay; and
- e) the extent of the connection, if any, between the existing claims and the proposed new causes of action.

[27] The crux of the argument in support of the application is that the Partnership ought to be joined as a plaintiff to the relief sought in the notice of civil claim as the participation of the Partnership is necessary to ensure that all matters in the proceedings may be effectively adjudicated upon.

[28] It is further submitted that no prejudice is occasioned to the existing parties or the Partnership by its addition as a party to this proceeding because joinder is also consistent with the interests of justice and will prevent a multiplicity of proceeding.

[29] There are, however, potential limitation issues which I addressed during submissions from counsel.

[30] I do accept that pursuant to s. 22(1) of the *Limitation Act*, S.B.C. 2012, c. 13, new parties may be added as plaintiffs, even where a limitation period has expired, where there is an existing court proceeding.

[31] A key consideration in this regard is prejudice with respect to the passage of time. I will deal with this by making clear that the orders that I am making are without prejudice to any *Limitation Act* arguments that may be advanced.

[32] I will make specific note that I was referred to a very helpful Court of Appeal decision in *McIntosh v. Nilsson Bros. Inc.*, 2005 BCCA 297, and specifically paragraph 8 of that decision:

[8] In my opinion, that analysis is correct. The prejudice that must be presumed should surely be restricted to situations where the period which has passed since the cause of action arose is the length of the limitation period plus one year for service of the Writ. Because, within that time, a Writ could have been filed within the limitation period and served after the limitation period expired for up to a year, without any prejudice to the defendant. And the same is true, as pointed out by Mr. Justice Macdonald, with respect to actual prejudice by destruction of evidence or failure of

recollection. If these occur within the limitation period plus the year allowed for service of the Writ, then any prejudice to the defendant sought to be added is not caused by the plaintiff. The defendant should not have conducted himself, herself, or itself in such a way as to pass the detriment caused by the passage of time on to the plaintiff.

[33] I accept for the purposes of this application that Dentons and Mr. Quon were retained by the Partnership as their legal counsel. Dentons and Mr. Quon therefore owed duties, including fiduciary duties, to the Partnership. There was I find, again for the purposes of this application only, the basis for a duty of good faith required to the general partner to exercise its duties with appropriate regard to the best interests of the Partnership and the limited partnership. It is obviously not before me at this juncture to determine if Mr. Reyes' conduct breached said duties to the Partnership.

[34] On the basis of this factual matrix, Bradcat and Bean Doc seek to bring a common law derivative action in the name of the Partnership.

[35] I accept that leave of the court is not required to start a common law derivative action in British Columbia, and I specifically refer to the decision of *1115380 B.C. Ltd. v. Treasure Bay HK Ltd.*, 2022 BCCA 380, and counsel also referred me to *Asher Place Senior Residency Limited Partnership v. Balcom*, 2021 BCCA 162. These are, as is apparent, both Court of Appeal authorities which are binding upon this Court.

[36] I accept for the purposes of this application, which as noted is simply to add a party and amend pleadings, that they stand for the proposition that limited partners may advance a derivative claim in the name of and on behalf of a limited partnership against the general partner alleged to have wronged the partnership. The claim and again, simply for the purposes of this application, need not be limited to the general partner and can be against third parties that I will say "knowingly participated" in such a breach of a fiduciary duty.

[37] Returning to the Rules, Rule 6-1(1) permits a party the opportunity to amend their pleadings at any time with leave of the court. Rule 6-1(8) provides that when an

amendment is granted at a trial or at a hearing, an order need not be taken out, nor the amendment pleaded and served.

[38] Amendments are generally granted liberally in order to allow the real issues to be determined and tried, unless there is actual prejudice to be shown by the party opposing the amendment.

[39] There are various different authorities for this fact. The authority that was relied upon by the applying party is *Langret Investments S.A. v. McDonnell* (1996), 21 B.C.L.R. (3d) 145 (C.A.) at paragraphs 34, 43, and 46.

[40] I only cite that for the benefit of the record, but that is well-established law which is not in controversy.

[41] In my conclusion, there is no prejudice which would be occasioned to the defendants in granting the relief sought, and accordingly I am granting the substantive relief sought in the application.

[42] I am very cognizant of the reality that the ability to prove the claims, which I have now permitted to at least proceed, is very much in issue. I was merely tasked at this juncture with determining if the claims should proverbially even leave the ground. Whether that is a successful departure remains very much unknown. The submissions from Ms. Peck, although unsuccessful, were very persuasive.

[43] Accordingly, although I granted the relief sought in the application, I am exercising my discretion in accordance with the *Rules* to simply order that the costs of this application shall be costs in the cause.

“Hardwick J.”