

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rayner v. Dhaliwal*,
2025 BCSC 461

Date: 20250317
Docket: S02954
Registry: Abbotsford

Between:

Danielle Rayner

Plaintiff

And

**Harjinder Singh Dhaliwal, John Doe #1,
Quantum Properties Tamarind Westside Inc.,
Quantum Properties Inc.,
Quay Pacific Property Management Ltd.,
Elite Fire Protection Ltd.,
City of Abbotsford, Abbotsford Fire Rescue Service,
ABC Co. #1, Stantec Consulting Ltd.,
ABC Co. #3, ABC Co. #4, Westley Friesen,
John Doe #3, John Doe #4 and John Doe #5
and Pamela Ramrup**

Defendants

And

**Harjinder Singh Dhaliwal, John Doe #1,
Quantum Properties Tamarind Westside Inc.,
Quantum Properties Inc.,
Quay Pacific Property Management Ltd.,
Elite Fire Protection Ltd.,
City of Abbotsford, Abbotsford Fire Rescue Service,
ABC Co. #1, Stantec Consulting Ltd.,
ABC Co. #3, ABC Co. #4, Westley Friesen,
John Doe #3, John Doe #4 and John Doe #5
and Pamela Ramrup**

Third Parties

Before: The Honourable Justice Gibb-Carsley

**Supplemental Reasons for Judgment Re: Clarification of Limitation
Period Issue**

Counsel for the Plaintiff:	I. Ashley
Counsel for the Defendants City of Abbotsford and Abbotsford Fire Rescue Services:	T. Stone
Counsel for the Defendants Quantum Properties Tamarind Westside Inc. and Quantum Properties Inc.:	M. De Wolde, Articled Student
Counsel for the Defendant P. Ramrup:	F. Cabanos N. Moallem
Counsel for the Defendant W. Friesen:	J. MacDonald
Counsel for the Defendant Quay Pacific Property Management Ltd.:	T. Newnham Z. Klassen
Counsel for the Defendant Elite Fire Protection Ltd.:	H. Khan
Counsel for the Defendant Stantec Consulting Ltd.:	R. Moore
Place and Date of Hearing:	Abbotsford, B.C. February 11, 2025
Written Submissions Received from the Defendants City of Abbotsford:	February 20, 2025
Place and Date of Judgment:	Abbotsford, B.C. March 17, 2025

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I. Introduction

[1] On November 7, 2024, an application was brought before me by the plaintiff, Danielle Rayner. The primary relief sought by the plaintiff was to convert her conventional civil claim to a class proceeding in respect of damages allegedly suffered by the plaintiff and other renters and owners of a residential apartment building in Abbotsford, British Columbia, resulting from a fire that occurred on May 3, 2022. The defendants opposed the application.

[2] On January 13, 2025, I issued my reasons for judgment (the “Reasons”) and granted the relief sought by the plaintiff. I ordered, amongst other things:

- a) The herein proceeding be converted to a class action proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50;
- b) The Plaintiff be granted leave to file a Further Amended Notice of Civil Claim in the form attached as Schedule "A" to the Notice of Application with any modifications referenced during the oral hearing; and
- c) The Plaintiff be granted leave to bring an application for an order certifying the proceeding as a class proceeding pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.

[3] After I issued the Reasons, the parties contacted the Court through Supreme Court Scheduling. The parties, as I understand it, primarily the defendants, sought clarification on issues relating to whether and how I had intended to address a limitation period issue in the application before me and as the proceeding moved forward as a class proceeding.

[4] I convened a brief appearance with the parties by video on February 11, 2025. The purpose of that appearance was to ensure that I understood the parties’ concerns and their request for clarification as it was not entirely clear to me based on their communication with Supreme Court Scheduling.

[5] At that appearance, I indicated what I had intended in respect to the issues of limitation periods as the parties moved forward in their litigation as a class proceeding. At the end of the appearance, I granted leave to the defendant City of Abbotsford, who took the lead at the appearance, and the plaintiff to provide brief

written submissions to articulate their concerns and the issues upon which the parties required clarification.

[6] By memorandum to counsel dated February 12, 2025, I informed all parties that they had leave to file brief written submissions if they so wished. Specifically, I informed the parties:

Further to the appearance in this proceeding on February 11, 2025, I wish to inform the parties that although the invitation to provide brief written submissions in respect of the clarification of the limitation period issue was made to Mr. Stone (on behalf of all of the defendants) and Mr. Ashley (for the plaintiff), should other parties wish to provide written submissions on this issue, they have liberty to do so.

I kindly requests that the parties together coordinate the timing for providing electronic versions of the submissions and have them sent to my attention through Supreme Court Scheduling. Please advise SCS the date after which I should not expect any further submissions. Further, please note that all parties are not required to provide written submissions. I simply wanted to ensure that all parties have the opportunity to provide submissions on this issue if they so wish.

[7] The plaintiff and the defendant, the City of Abbotsford, provided written submissions.

[8] I have considered the concerns of the parties and the issue for which they seek clarification as expressed at the February 11, 2025 hearing and in the written submissions. The purpose of these supplemental reasons is to provide clarification, in written form and with greater precision, what I had intended in the Reasons in respect to the limitation period issue.

II. Background

[9] As described in the Reasons, the application I heard on November 7, 2024, was brought by the plaintiff to convert her conventional notice of civil claim filed on October 3, 2022, to a class proceeding.

[10] The plaintiff's claim relates to losses she says she suffered as a result of a fire at a residential apartment building complex known as the Tamarind on May 3, 2022, located in Abbotsford, British Columbia (the "Fire"). The Fire caused extensive

damage and destroyed many of the units in the apartment building. The plaintiff asserts there are 124 units in the Tamarind and the units were occupied by both owners and renters.

[11] As a result of the Fire, the plaintiff filed an action against the defendants for their alleged cause or contribution to the plaintiff's loss. 16 other individuals filed conventional notices of civil claim before the expiration of the two year limitation period. All of the plaintiffs in those conventional actions at the time of filing were represented by the same law firm as the plaintiff, Ms. Rayner.

[12] In the underlying application, the plaintiff sought to convert her conventional action to a class proceeding by amending the notice of civil claim to invoke the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [CPA].

[13] As set out above, I concluded that the plaintiff had satisfied the test to convert the conventional claim to a class proceeding.

[14] One of the main issues raised in opposition to the plaintiff's application to convert the plaintiff's claim from a conventional action to a class proceeding was that the limitation period had expired after the plaintiff filed her conventional claim, but before the plaintiff had filed the application to convert the claim to a class proceeding.

[15] As I understand it, one of the reasons that the defendants seek clarification regarding the limitation period issue is that my conversion of the plaintiff's claim to a class proceeding effectively tolls the limitation period. As such, the defendants seek clarification as to what I found to be the effective date of the suspension of the limitation period because it may have implications on future claims by individuals either in the class proceeding or in terms of other individuals filing conventional claims that might otherwise be beyond the limitation period.

III. Discussion

[16] As I thought was clear from the Reasons, one of the primary purposes of allowing the conversion was to allow individuals who may not have filed conventional claims to participate in the class proceeding. In other words, I did not intend to limit the class to only those participants who had filed notices of civil claim before the limitation period expired. Nor did I intend to provide a substantive right for an individual to now, two years after the Fire, be able to file a conventional civil claim, without the defendants being able to raise a limitation defence should a new conventional action commence in respect of the Fire.

[17] Given the application before me dealt only with the issue of conversion, I also did not intend to preclude the defendants from raising a limitation period defence going forward, either at the certification hearing or in respect of other matters within the class proceeding. In my view, the matter before me was narrow in scope and concerned only whether the conventional claim could be converted to a class proceeding and whether other putative class members could participate in the class proceeding (if certification is ultimately granted).

[18] Put differently, whether issues of limitation periods arise in other contexts in the class proceeding will be an issue for the Court making those determinations. As such, I ordered the conversion but intended to do so without prejudice to the defendants from raising arguments respecting limitation periods at subsequent proceedings.

[19] As referenced above, the parties seek clarification as to what date the limitation period is suspended under s. 38.1 of the *CPA*. More specifically, the parties ask what date I concluded should be deemed the “commencement of the proceedings.” The importance of this determination is because s. 38.1 of the *CPA* provides that for a person with a cause of action, the applicable limitation period is suspended for the period beginning “on the commencement of the proceeding” and ending on either:

- (a) the date on which the court refuses to certify the action, or

- (b) the date on which the court orders that the person is not a member of the class.

[20] The defendants interpret the commencement of the class proceedings as the date that I pronounced the order converting the action to a class proceeding (January 13, 2025). The defendants also propose three alternate dates that might be considered as the “commencement of the proceeding” which are the date on which the plaintiff filed her Notice of Application (August 2, 2024), the date on which the application was originally scheduled (September 9, 2024), or the date of the hearing (November 7, 2024).

[21] The defendants’ concern is that if the commencement of the proceedings were deemed to be the date the plaintiff filed her notice of civil claim, it would provide a substantive right to other individuals to file conventional claims after the limitation period expired from the date of the Fire (or notice of the event) because it would effectively toll the limitation period from that date. This may unintentionally revive claims from individuals who may otherwise be statute-barred by the *Limitation Act*, S.B.C. 2012, c. 13. The defendants may also wish to argue a limitation defence at the class proceedings should the proceeding continue as a class action for some or all of the class members.

[22] The plaintiff contends that the commencement of the proceeding for the purpose of the limitation period should be the date that Ms. Rayner filed her notice of civil claim, being October 3, 2022.

[23] As is clear from the Reasons, my intention in converting the plaintiff’s conventional action to a class proceeding was to allow other renters and owners of the Tamarind to potentially participate in the class proceeding. I found that converting the plaintiff’s claim to a class proceeding was consistent with or would advance the overriding objectives of a class proceeding: Reasons at paras. 48-75.

[24] While in the Reasons, I did not articulate a precise date of the “commencement of the proceedings” as considered in the *CPA*, in order to give

effect to the conversion of the plaintiff's claim to a class proceeding, the only logical date that could give effect to the remedy of conversion is October 3, 2022, the date that the plaintiff filed her notice of civil claim. In effect, my order deems the commencement of the class proceedings to be the date the plaintiff filed her claim.

[25] In the Reasons, I considered the issue of the limitation periods at paras. 33-37 and held at para. 37:

[37] That said, in this case, because the defendants have been served with notices of civil claims from a number of plaintiffs, it cannot be said that they would be taken by surprise by the proceeding, not have preserved evidence, or be less able to mount a defence to the claims. Indeed, given that the defendants will almost certainly mount the same defence against each of the individual claims, the expiration of the limitation period, in my view, is not a significant prejudice to the defendants. Further, and importantly, the NOCC (as well as the additional 16 actions) were filed before the expiration of the limitation period. While having the limitation period expire prior to seeking conversion to a class proceeding weighs against converting the proceeding, as I will explain below, I conclude that the prejudice against the potential members of a class by not converting the proceeding outweighs the prejudice to the defendants.

[26] The defendants' submission that the commencement of the class proceedings for the purpose of s. 38.1 of the *CPA* should be either the date the plaintiff filed the application to convert, the date of the hearing, or the date of my judgment, would frustrate the very purpose of the conversion of the plaintiff's claim to a class proceeding, namely, to allow her to pursue her claim as a class proceeding and allow other renters and owners of the Tamarind (regardless of whether or not they have filed a notice of civil claim) the opportunity to participate in the class proceeding.

[27] In coming to this conclusion, I recognize the somewhat unusual circumstances of this case in that it is brought as an application to convert a conventional action to a class proceeding. I am also aware that class proceedings are "merely procedural vehicles, designed to extend the substantive rights of the representative plaintiff to the entire class, not to create substantive rights for the class which an individual plaintiff would not otherwise enjoy since they do not exist": *Canadian Imperial Bank of Commerce v. Green*, 2015 SCC 60 at para. 49.

[28] In my view, by converting the plaintiff's conventional claim to a class proceeding and finding the date of the commencement of the class proceeding as the date the plaintiff filed her claim (October 3, 2022), I am not creating a substantive right for the plaintiff that she did not have already, because she filed her notice of claim within the limitation period. Nor do I consider that I am creating a substantive right for the putative members of the class other than extending the substantive rights of the plaintiff to the entire class.

[29] Justice Skolrood (as he then was) in *Great Canadian Gaming Corporation v. British Columbia Lottery Corporation*, 2017 BCSC 574 [*Great Canadian*], considered the issue of when the Court should determine the commencement of proceedings in an application to convert a conventional proceeding and the interplay between conversion and the issue of limitation periods. At para. 40, Skolrood J. held:

... While s. 2 refers to the *commencement* of a class proceeding, that refers to the point in time at which the *CPA* is invoked and the proceeding is brought on behalf of members of the class, which may be when the notice of civil claim is first filed, or may be when it is subsequently amended to include reference to the *CPA*.

[Underline emphasis added.]

[30] For the purposes of s. 38.1 of the *CPA*, I conclude that the "commencement of the proceedings" is October 3, 2022, the date that the plaintiff filed her notice of civil claim. However, I wish to be clear that, despite this clarification of when I have found the class proceeding to have commenced, I am not precluding the defendants from raising limitation period arguments at future applications or at trial in these class proceedings. It may be that as the class proceeding advances issues relating to limitation periods and prejudice will be better understood, ventilated, and considered than they were at the plaintiff's conversion application.

[31] Further, I am not tolling the limitation period for the purpose of allowing individuals who have not filed conventional claims within the limitation period to now file conventional claims against any of the defendants. In my view, the defendants would have a strong limitation defence should any renters or owners in the Tamarind now file conventional claims to take advantage of my conclusion that Ms. Rayner's

action should be converted to a class proceeding. This amounts to attempting to leverage a procedural determination to create a substantive right which is not my intention, nor is it the purpose of the CPA.

[32] In respect of the defendants ability to raise limitation arguments in the class proceeding as it moves forward, Skolrood J. in *Great Canadian* concluded that defendants may raise a limitation defence at the certification or common issues stage after a conversion hearing and that the CPA is sufficiently flexible to address different limitation periods applicable to different putative class members:

[45] Moreover, I agree with *Great Canadian* that an amendment to plead the CPA is procedural in nature and in no way impacts a defendant's ability to subsequently raise limitation issues at the certification or common issues stage. (*Bellefeuille* (Div. Ct.) at paras. 46-49). If the amendments result in a situation in which there may potentially be different limitation periods applicable to different class members, the CPA is sufficiently flexible to enable the court to deal with those differences.

[33] Despite Skolrood J.'s reference that limitation periods may be considered at a certification or common issues stage, I am aware that our Court of Appeal has held that it can be premature to consider limitation periods at a certification hearing and should be considered at certification in "exceptional circumstances, but generally should not.": *Godfrey v. Sony Corporation*, 2017 BCCA 302 at paras. 62-67.

[34] Additional support for my conclusions that (i) the date of the commencement of the proceedings is the date the plaintiff filed her claim; and (ii) that the defendants have the opportunity to raise limitation defences later in the proceeding is found in *Bellefeuille v. Canadian Pacific Railway Ltd.*, 2010 ONSC 5499 (cited with authority in *Great Canadian*):

56 The 55 original claims were all served within the limitation period. The limitations issue is raised with respect to the alleged new cause of action and the additional plaintiffs.

57 As I see it, there is no *Limitations Act* issue with respect to the proposed amendment to convert this action to a class proceeding. The *Bellefeuille* action was commenced within the limitation period. The amendment seeking to proceed under the CPA is simply a procedural change. Any limitations issues that arise, arise only in the context of the definition of the class and the claim made in proposed paras. 16 and 17 and these matters are best dealt with in the certification process.

58 The decision in *Egglestone v. Barker*, (2001) 9 C.P.C. (5th) 304 (Ont. S.C.) ("*Egglestone*") is instructive in this regard. In *Egglestone*, Cumming J. was faced with a motion to add a co-representative plaintiff in a proposed class action. This was opposed on the basis that the limitation period for the proposed co-representative plaintiff's claim had elapsed (at para. 12). In allowing the amendment, Cumming J. held that, while the limitations issue was live "in respect of any or all putative class members," it was not live on the motion, which was "merely a procedural step within the context of a procedural statute, the CPA" (at para. 14). For greater certainty, Cumming J. noted, at para. 21:

[21] [T]he Crown is free to raise the limitation of action issue in respect of any putative class member in its statement of defence, with that issue to be dealt with by the court with the necessary and proper record.

59 It is important to note that no amendment made at this stage is definitive, inasmuch as the definition of class is a live issue on the certification motion. This means, among other things, that the proposed class would be the subject of judicial analysis prior to the certification motion. The defendants are free to argue all issues with respect to the definition of the class or classes, including *Limitation Act* issues.

[35] Based on the foregoing, as should be clear from the Reasons and these supplemental reasons for judgment, my ruling does not bind the Court with respect to the certification of the class other than my determination that the limitation period is tolled pursuant to s. 38.1 of the *CPA* as of October 3, 2022. The conversion application was to allow the plaintiff to amend and convert her pleading to a class proceeding and to allow individuals impacted by the Fire as renters and owners an opportunity to seek to join the class. Whether certification of the class and who will make up that class should be left to the presiding judge at the certification application or other applications in the class proceeding.

[36] By way of summary, the limitation period is tolled as of October 3, 2022, the date the plaintiff filed her notice of civil claim. The purpose of this decision is to allow the renters and owners of the Tamarind the opportunity to seek to participate in a class proceeding, how that will ultimately develop will be a matter of future litigation. However, to reiterate, in tolling the limitation period, it is not my intention to allow additional renters and owners of the Tamarind who have not already filed conventional claims before the expiration of the limitation period to file conventional notices of civil claim and thus revive the limitation for individuals to seek damages in

a conventional action. In my view, that runs contrary to the purpose of my conversion which is to promote judicial economy in resolving this litigation. Further, it would create substantive rights to other plaintiffs to file conventional claims, which is not the purpose of my order.

[37] While I cannot prevent an individual from now filing a conventional claim beyond two years from the date of the Fire, I would expect that the defendants would raise a limitation defence to any such claim and ensure that the Court hearing the matter is aware of my conclusions and intent on this application.

IV. Conclusion

[38] I thank the parties for bringing these issues to the Court's attention and for their additional submissions.

"Gibb-Carsley J."