

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *John Doe v. Edgewood Holdings (2013) Ltd.*,  
2025 BCSC 185

Date: 20250205  
Docket: S219922  
Registry: Vancouver

Between:

**John Doe**

Plaintiff

And

**Edgewood Holdings (2013) Ltd., Dr. Gary Richardson, Dr. Mel Vincent, and  
The Estate of J.B.**

Defendants

Before: Associate Judge Harper

## Reasons for Judgment

Counsel for the Plaintiff:

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The Defendant, The Estate of J.B.:

No appearance at this hearing

Place and Date of Hearing:

Vancouver, B.C.  
December 16, 2024

Place and Date of Judgment:

Vancouver, B.C.  
February 5, 2025

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**Introduction**

[1] The plaintiff seeks leave to file a third amended notice of civil claim pursuant to Rule 6-1(1) of the *Supreme Court Civil Rules*.

[2] Some of the proposed amendments are unopposed. These reasons will address only the amendments that are opposed.

[3] The original notice of civil claim was filed December 21, 2020. An amended notice of civil claim was filed October 27, 2021. The most recent amended notice of civil claim was filed December 7, 2021.

[4] The facts as pleaded are assumed to be true for the purposes of an application to amend. I take the facts set out below from the existing further amended notice of civil claim.

[5] The plaintiff, anonymized as “John Doe”, was admitted to a private, for-profit addiction rehabilitation facility (the “Treatment Centre”) operated by the defendant, Edgewood Holdings (2013) Ltd. (“Edgewood”), between October 11, 2016 and December 7, 2016 for 58 days at a cost of \$28,000 USD (the “Admission”).

[6] The Admission followed an “intervention” orchestrated by the plaintiff’s then-spouse. There was no pre-Admission medical assessment by a qualified physician diagnosing the plaintiff with a substance use disorder. The plaintiff alleges that the physician defendants, Dr. Gary Richardson and Dr. Mel Vincent (together, the “physician defendants”), misdiagnosed him as having a substance use disorder of requisite severity to justify a residential stay.

[7] The plaintiff travelled to and stayed at the Treatment Centre under psychological duress, namely the threat of losing his family, and on arrival at the Treatment Centre, his personal effects were confiscated from him. His perception was that he was unable to leave.

[8] The plaintiff further alleges that during the Admission, he was sexually assaulted by his assigned roommate, J.B.

[9] The proposed amendments are to pursue a claim of lack of informed consent as against the physician defendants and Edgewood, and a claim of vicarious liability as against Edgewood for the torts committed by the physician defendants.

[10] I have determined that I should not decide the merits of the application based on the proposed amended notice of civil claim in its present form. Therefore, I will refrain from assessing the likelihood of success of any future application.

**Applicable Legal Principles**

[11] Rule 6-1 provides that a party may amend a pleading with leave of the court.

[12] The court has discretion to allow a party to amend a pleading to introduce a new cause of action after the expiration of a limitation period. Section 22(5) of the *Limitation Act*, S.B.C. 2012, c. 13 provides:

(5) In any court proceeding, the court may, on terms as to costs or otherwise that the court considers just, allow the amendment of a pleading to raise a new claim even though, at the time of the amendment, a court proceeding could not, under section 6, 7 or 21, be commenced with respect to that claim.

[13] The general principles that apply to applications to amend pleadings are:

- 1) amendments should be permitted as necessary to determine the real issues between the parties;
- 2) a party is not required to adduce evidence in support of a pleading before trial;
- 3) on an application to amend, the facts alleged are taken as established; and
- 4) the discretion to grant leave to amend is to be exercised judicially in accordance with the evidence adduced and the guidelines of the authorities.

See: *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2018 BCSC 1141 at para. 27

**The Proposed Amendments**

[14] The proposed amendments are contained in the following paragraphs (the objected-to portions are italicized):

**PART 1: STATEMENT OF FACTS**

[...]

**Negligent admission, breach of fiduciary duty, and false imprisonment**

14. The defendant Edgewood admitted ~~accepted~~ the plaintiff for ~~admission~~ to its inpatient program at its Treatment Centre through coercion, in the absence of any independent diagnosis of moderate or severe substance use disorder by a qualified medical doctor, in the absence of informing the plaintiff of alternative level of care options, and/or any or any adequate assessment of his concurrent medical condition(s) by its medical director and onsite physician, Dr. Gary Richardson, or its director of psychiatry, Dr. Mel Vincent.

[...]

19. The plaintiffs Admission to the Treatment Centre was not voluntary, in that it was procured without his fully informed consent as to alternatives  
[...]

[...]

**PART 3: LEGAL BASIS**

[...]

29. At all material times, the defendants Edgewood, Dr. Mel Vincent, and Dr. Gary Richardson, individually and together, owed a duty of care to the plaintiff to keep him reasonably safe from harm and not to cause him harm, and to provide him with a reasonable standard of care in their assessment of his diagnoses. The Admission was the result of the defendant physicians' negligence in failing to diagnose the severity of the plaintiffs disorders, and in failing to properly inform the plaintiff of the appropriate level of care for his diagnoses and treatment alternatives, such that he did not provide his properly informed consent to inpatient treatment. The defendant physicians' negligence was closely and materially related to the risk introduced or enhanced by Edgewood such that Edgewood is vicariously and jointly and severally liable for the defendant physicians' negligence.

[...]

31. The particulars of the breach of fiduciary duty and/or negligence of the defendant physicians, Dr. Mel Vincent and Dr. Gary Richardson, presently known include:

[...]

(j) Failing to inform the plaintiff of or to recommend a lower level of (outpatient) care, in lieu of a costly and arduous nearly two-month Admission to a residential facility alongside patients suffering from

severe substance use disorder, including J.B., who suffered from a severe addiction to fentanyl and other street drugs.

## **Discussion**

### **The Informed Consent Amendments**

[15] The requirements for establishing a claim of lack of informed consent are set out in *Liu v. Chuo*, 2019 BCSC 109 at para. 81:

- 1) the plaintiff was not fully informed of the risk, benefits, and alternatives to a proposed treatment;
- 2) a reasonable person in the plaintiff's position, properly informed, would not have proceeded with the treatment with knowledge of the risks, benefits and alternatives; and
- 3) an undisclosed risk actually materialized and caused the plaintiff damage.

[16] An absence of informed consent is not battery or false imprisonment, but negligence: *Reibl v. Hughes*, [1980] 2 S.C.R. 880 at 891–892.

[17] The physician defendants argue that the plaintiff now seeks to advance an allegation that he was not provided with the information necessary to decide whether he wanted to stay at the Treatment Centre. In his existing amended notice of civil claim, the plaintiff alleges that he was falsely imprisoned and could not have left the Treatment Centre even if he had wanted to.

[18] The physician defendants say that the new allegation of lack of informed consent raises new issues that the physician defendants were not anticipating and that it changes the tenor of the case.

[19] A party must not plead an allegation of fact or a new ground or claim inconsistent with the party's previous pleading: Rule 3-7(6). However, a party may make allegations in the alternative: Rule 3-7(7).

[20] The plaintiff argues that the lack of informed consent pleading is not inconsistent with the facts already pleaded. The physician defendants argue that the claim of false imprisonment is inconsistent with the proposed claim of informed

consent because the former claim requires the plaintiff to say “I couldn’t leave” because of his mental state, while the latter claim requires the plaintiff to say “I would have left” if he had received proper advice.

[21] Edgewood agrees with the physician defendants that the proposed amendments based on lack of informed consent amount to a new cause of action. Edgewood argues that the proposed allegation of lack of informed consent is separate and distinct from the existing claims of false imprisonment, breach of fiduciary duty, and negligence.

[22] The proposed amendments do not comply with the test in *Liu*. I do not see in the proposed amendments the material facts to support a claim of informed consent as against either the physician defendants or Edgewood.

[23] In oral submissions, counsel for the plaintiff advised that she wished an opportunity to redraft the proposed amendments. Paragraph 14 of the proposed third amended notice of civil claim is particularly problematic in that the phrase “in the absence of informing the plaintiff of alternative level of care options” is plunked down in the middle of a sentence that seems to have nothing to do with facts in support of an informed consent claim. I cannot make sense of paragraph 14 as written.

### **The Vicarious Liability Amendments**

[24] Edgewood argues that the amendments that allege Edgewood is vicariously liable for the wrongdoing of the physician defendants should not be allowed because the cause of action is time-barred by operation of the *Limitation Act*.

[25] The new facts are contained in paragraph 29 of the proposed third amended notice of civil claim:

29. [...] The defendant physicians’ negligence was closely and materially related to the risk introduced or enhanced by Edgewood such that Edgewood is vicariously and jointly and severally liable for the defendant physicians’ negligence.

[26] Edgewood says there are no facts that support a claim of vicarious liability citing the contract between the physician defendants and Edgewood, showing that neither of the physician defendants was an employee of Edgewood at the material time. Edgewood says there is no viable claim for vicarious liability. As I understand the plaintiff's position, however, the plaintiff does not assert the claim of vicarious liability on the traditional ground of employer/employee relationship. Rather, the plaintiff asserts the claim based on "material closeness". The plaintiff says that the facts in support of the claim of vicarious liability are "derivative" to the existing facts. But derivative to what facts?

[27] I have difficulty identifying the material facts on which the claim of vicarious liability is based. The proposed amendment in paragraph 29 is a legal conclusion as it appears in the Legal Basis section of the proposed third amended notice of civil claim. It is not a statement of material fact.

[28] A further issue on the vicarious liability amendment is whether it is time-barred. If it is time-barred, should the court permit the amendment after the limitation period?

### **New Causes of Action after the Expiration of the Limitation Period**

[29] The plaintiff concedes that the physician defendants and Edgewood should be permitted to maintain their limitation defence at trial if the court permits the amendments.

[30] Because of the drafting issues I have identified, I cannot determine whether or not the limitation period has expired.

### **Conclusion**

[31] I have concluded that I am unable to analyze the informed consent amendments and, consequently, the limitation period arguments without a proper pleading before me. Counsel for the plaintiff requests an opportunity to improve the drafting of the proposed amendments. I have determined that the plaintiff should be

given an opportunity to renew his application with the best version of his pleading that he can muster placed before the court.

[32] Edgewood’s position on vicarious liability might be successful, but I think Edgewood’s position ought to be examined in light of the re-drafted amendments.

[33] It is not the court’s role to draft pleadings on behalf of a party. I decline to set out in detail the defects of the current proposed third amended notice of civil claim. Suffice it to say that material facts to support the claim are critical, and the plaintiff needs to tackle the defence argument of inconsistent pleading versus alternative pleading. I cannot predict whether, on a renewed application, the plaintiff will be successful. Nothing in these reasons should be interpreted as fettering the discretion of the presiding judge or associate judge who hears the next application or implying how the next application should be decided.

[34] I am not imposing a deadline on the plaintiff for filing a new application. The plaintiff runs the risk, in the same way that he ran the risk on the current application, that the position the defendant physicians and Edgewood take regarding delay and expiration of the limitation period may prevail.

[35] The application is dismissed with liberty to re-apply.

[36] I am not seized of any further application.

**Costs**

[37] Costs will be to the physician defendants and Edgewood in the cause.

“Harper A.J.”

