

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Coburn v. Turner Bay Fishing Ltd.*,  
2025 BCSC 259

Date: 20250219  
Docket: S15362  
Registry: Campbell River

Between:

**Allison Coburn**

Plaintiff

And

**Turner Bay Fishing Ltd., Kathleen Anne Stoeckner and Lindsey Samantha  
Stoeckner**

Defendants

Corrected Judgment: The cover page of the judgment was corrected on February  
21, 2025.

Before: The Honourable Justice J. Hughes

On appeal from: An order of the Supreme Court of British Columbia, dated May 27,  
2024 (*Coburn v. Turner Bay Fishing Ltd.*, Campbell River File No. S15362).

## Reasons for Judgment

Counsel for the Plaintiff/Appellant:

J. Marrie

Counsel for the Defendants/Appeal  
Respondents, Kathleen Anne Stoeckner  
and Lindsey Samantha Stoeckner:

S.H. Grant

No other appearances

Place and Date of Hearing:

Campbell River, B.C.  
September 17, 2024

Place and Date of Judgment:

Campbell River, B.C.  
February 19, 2025

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**Overview**

[1] This is an appeal from the order of an associate judge granting the respondents', Kathleen Anne Stoeckner and Lindsey Samantha Stoeckner, application to have themselves added as defendants in this action.

[2] In the underlying action, the appellant, Allison Coburn, advances claims against the defendant company, Turner Bay Fishing Ltd. ("Turner Bay") in breach of contract and unjust enrichment. Ms. Coburn alleges that she contributed towards Turner Bay acquiring an interest in a prawn licence and provided bookkeeping services to the company for 19 years without being compensated for those services.

[3] Turner Bay was wholly owned by Ms. Coburn's common law spouse, Alfred George Stoeckner. Mr. Stoeckner died in January 2023.

[4] The respondents are Mr. Stoeckner's daughters from a common law relationship he had prior to his relationship with Ms. Coburn. Turner Bay was wholly owned by Mr. Stoeckner. In his last will and testament, Mr. Stoeckner left Turner Bay to the respondents by bequeathing them his shares in the company.

[5] Mr. Stoeckner's sister, Maria Pezzetta, is the executrix of Mr. Stoeckner's estate. She resides in Ontario. In her capacity as executrix, Ms. Pezzetta has been appointed a director of Turner Bay and consequently, has conduct of Turner Bay's defence of this litigation. Probate of Mr. Stoeckner's estate has not been sought, and Ms. Coburn's claim is not brought under the *Wills, Estates and Succession Act*, S.B.C. 2009, c. 13 [WESA].

**Associate Judge's Decision**

[6] The respondents applied to be added as defendants in this action under Rule 6-2(7)(c) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [Rules] on the basis that as beneficiaries of Mr. Stoeckner's shares in Turner Bay, their interests are directly affected by the outcome of the appellant's claims, and they are the best parties to either settle, defend or resolve this action: *Coburn v. Turner Bay Fishing Ltd.* (27 May 2024), Campbell River S15362 (B.C.S.C.) [Reasons] at para. 9. The

appellant opposed the application. She took the position that the appropriate way for the respondents to become involved in the litigation was for the executrix to use the provisions of the *Business Corporations Act*, S.B.C. 2002, c. 57 [BCA] to have the respondents appointed as directors of Turner Bay: *Reasons* at para. 10.

[7] The associate judge noted the fact of Mr. Stoeckner's death and the distribution of his interest in Turner Bay to the respondents:

[6] The company is the main asset of the estate of the deceased other than some vehicles and chattels which are in the possession of the [appellant] and ownership is disputed. All other assets owned by the deceased devolved to the [appellant] through survivorship.

[7] Ms. Pezzetta is now the sole director of the company and holds the shares in trust for the [respondents]. The parties agreed to a certain pipeline transaction in January 2024 to deal with the company shares. It is understood there will be tax consequences that must be managed in the future. The parties have agreed an application for probate is not necessary as they try to resolve the outstanding issues.

[8] This claim relates to an action for unjust enrichment by the [appellant] against the company. The only parties with an interest in the company are the [respondents]. Ms. Pezzetta, as the executrix, is currently the holder of the shares as at the date of the death of the deceased.

[8] In the circumstances, the associate judge concluded that it was appropriate to add the respondents as defendants in the action, reasoning as follows:

[11] I have considered all of the positions put forward including the [appellant]'s arguments with respect to why she believes the [respondents] should not be added as defendants to this action. I have considered those submissions. It is apparent that the outcome of the application turns on one important issue: whether or not these proposed defendants have a significant interest in the outcome of the proceeding such that their participation in the action will facilitate effective adjudication on all of these issues.

[12] I am satisfied that it is appropriate as they have established their nexus. There has not been significant delay. The parties are trying to work towards an efficient resolution and there is a significant correlation between the claims and the parties. The addition will allow an effective determination of the issues without further delay, inconvenience or increased costs.

[13] I am also satisfied that this is the most efficient way to move matters forward. If there is not going to be a probate action, this will allow the parties to be able to move forward and look to resolve the issue which is ultimately what the parties want.

[9] The associate judge thus concluded that there was a question or issue between the appellant and the respondents that related to the relief, remedy, or subject matter of the proceeding; and that it would be just and convenient to decide the issue between the parties in this proceeding: *Reasons* at paras. 14-15.

**Issues on Appeal**

[10] The appellant asserts that the associate judge erred in her application of Rule 6-2(7)(c) by:

- a) finding the existence of a question or issue relating to or connected with any relief claimed in the proceeding or the subject matter of the proceeding; and
- b) failing to consider and apply the apposite provisions of the *BCA* in determining whether it was just and convenient to add the respondents as defendants in the within action.

[11] The appellant abandoned her third alternative ground of appeal that, if the respondents were proper parties to the action, then the associate judge erred in naming them as defendants instead of third parties.

**Standard of Review**

[12] The standard of review on an appeal from an associate judge’s order depends on whether the order appealed from is purely interlocutory, or raises matters vital to the final issue in the case. An appeal from an associate judge’s decision on a purely interlocutory matter is subject to the “clearly wrong” standard of review, while a matter vital to the final issue proceeds by way of a rehearing: *Abermin Corp. v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188, 1990 CanLII 1352 (B.C.S.C.); *Kondori v. New Country Appliances Inc.*, 2017 BCCA 164 at paras. 16-18; *Savage v. Savage Estate*, 2024 BCSC 678 at para. 27 [*Savage Estate*].

[13] The parties agree that the present appeal involves a purely interlocutory matter such that the applicant must establish that the associate judge’s decision was “clearly wrong”. An order will be “clearly wrong” where an associate judge: (a) abuses their discretion by acting arbitrarily or capriciously; (b) exercises their discretion under a mistake of law; (c) errs in law or principle; (d) misdirects themselves; (e) disregards a principle; (f) misapprehends facts or considers irrelevant factors; or (g) the order would result in an injustice: *Genesis Fertility Centre Inc. v. Yuzpe*, 2017 BCSC 1037 at para. 17.

**Analysis**

[14] Rule 6-2(7)(c) provides:

**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),

...

(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.

[15] The two conditions that must be met for the court to exercise its discretion under Rule 6-2(7)(c) are set out in *Smithe Residences Ltd. v. 4 Corners Properties Ltd.*, 2020 BCCA 227 at para. 49, which was recently cited with approval in *Ridley Island Energy Export Facility Limited Partnership v. Trigon Pacific Terminals Limited*, 2024 BCCA 398 at para. 21 [*Ridley*]:

- a) There may exist between the person and any party to the proceeding a question or issue relating to or connected with any relief claimed in the proceeding or the subject matter of the proceeding; and
- b) It would be just and convenient to determine that question or issue.

[16] The first condition establishes a threshold. If an applicant cannot establish a sufficient connection to the litigation, then there is no need to consider the second condition because it necessarily follows that it cannot be just and convenient to add them if they do not have a connection to the litigation: *Ridley* at para. 25. This is a low threshold and is confined to determining whether the question or issue between the applicant and a party to the litigation is real, rather than frivolous. There is no assessment of the merits of the claim: *Ridley* at para. 22; see also *Madadi v. Nichols*, 2021 BCCA 10 at para. 22.

[17] The threshold requirement of establishing a question or issue between the applicant and a party is usually met solely on the basis of proposed pleadings. Affidavit evidence may also be provided, but the court’s examination of the evidence is limited to determining if the required issue between the parties exists. In either case, the court must examine the pleadings to determine whether the material facts pleaded set out a real and not frivolous issue between the applicant and the existing parties: *Madadi* at para. 23.

[18] The second condition is a fact-specific inquiry that requires assessment of whether it would be just and convenient to determine the question or issue in the litigation. This requires consideration of the following non-exhaustive factors: the extent of, reasons for, and any prejudice caused by delay in bringing the application; the extent of the connection between the existing claims and the party seeking to be added; the nature of the proceeding; the appellant’s position on the proposed addition; and the impact on the action of adding the proposed party, including uncertainty, expense, and delay: *Ridley* at para. 23.

**Ground #1: Was there a sufficient nexus to add the respondents as defendants under Rule 6-2(7)(c)?**

[19] The appellant’s first ground of appeal engages the threshold question under Rule 6-7(2)(c). The associate judge found that the respondents had “established their nexus” to the litigation and that there was “a significant correlation between the claims and the parties”: *Reasons* at para. 12.

[20] However, it is unclear on what basis this finding was made, or what issue the associate judge identified as arising as between the appellant and the respondents on the pleadings or the evidence. Presumably, she accepted the respondents' submission that their interests would be directly affected by the outcome of the litigation such that they were the best parties to defend or settle this action: *Reasons* at para. 9.

[21] In doing so, the associate judge appears to have treated the respondents in their capacity as shareholders in Turner Bay as synonymous with the company itself. Indeed, the respondents confirmed on appeal that the only connection they assert for the purpose of meeting the test under Rule 6-2(7)(c) is their status as beneficial owners of Mr. Stoeckner's shares in Turner Bay. In the respondents' submissions, the appellant's claim against Turner Bay directly impacts them—and thus creates a sufficient nexus between them and the matters in issue in this litigation—because it puts the Turner Bay's assets at risk, which in turn impacts them as shareholders.

[22] The associate judge appears to have accepted this assertion when she found that the respondents were “[t]he only parties with an interest in the company”, and concluded that they had therefore established a sufficient “nexus” or “correlation between the claims and the parties” to be added as defendants: *Reasons* at paras. 8, 12. In so concluding, the associate judge erred by conflating the respondents' interests as shareholders of Turner Bay with Turner Bay itself.

[23] It is well-settled that a corporation is, in law, an entity separate and distinct from its shareholders: *Salomon v. Salomon*, [1897] A.C. 22 (H.L.) as cited in *Edgington v. Mulek Estate*, 2008 BCCA 505 at paras. 20-21; see also *Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109 at para. 27. Respect for the corporate form is strict, and the separate legal personality of a corporation is not to be lightly disregarded. As the Court of Appeal stated in *Edgington*:

[21] On the whole, the Canadian and English courts rigidly adhere to the concept set out in *Salomon*, supra, that a corporation is an independent legal entity not to be identified with its shareholders.

[24] By conflating the respondents' interests as shareholders of Turner Bay with Turner Bay itself, the associate judge failed to respect the separation between a corporation and its shareholders. This in turn prevented the associate judge from identifying the question or issue arising on the pleadings as between the *respondents* and the appellant, as required at the threshold stage of the test under Rule 6-2(7)(c). While the lack of any proposed form of pleading from the respondents rendered the task before both the associate judge more difficult, a consideration of the pleadings was nonetheless required to determine whether the material facts set out a real and not frivolous issue between the appellant and the respondents, separate and apart from Turner Bay: *Madadi* at para. 23.

[25] The material facts pleaded in the notice of civil claim illustrate that the appellant's alleged contributions to Turner Bay form the basis of her claim. The respondents' entitlement to Mr. Stoeckner's shares in Turner Bay is not in issue. Consistent with this, the relief sought by the appellant sounds in damages against Turner Bay or a constructive trust "over Turner Bay". She does not seek any relief against the respondents, nor does she seek a constructive trust over the shares in Turner Bay.

[26] As the respondents accept, their only connection with the questions or issues in this litigation is by way of their status as shareholders of Turner Bay. In this respect, the respondents stand in no different position than any other shareholder of any other corporation against which a claim is brought. The respondents adduced no authority that this type of nexus is sufficient to be added as a party under Rule 6-2(7)(c). In my view, the respondents' connection with the issues in this litigation, considered in light of the pleadings, does not meet even the low bar required at the threshold stage of the analysis under Rule 6-2(7)(c).

[27] The respondents analogize their circumstances to those in *Ridley* and *Savage Estate*. In my view, their reliance on these decisions is misplaced as in both instances, the context within which parties were added as defendants was materially different from the present circumstances.

[28] In *Ridley*, the Court of Appeal found that the threshold requirement under Rule 6-2(7)(c) was met because the resolution of the litigation would require interpretation of the applicant’s contractual rights. No such issue of contractual interpretation involving the respondents’ rights—either to the shares in Turner Bay or otherwise—arises here. The respondents’ status as beneficial owners of Mr. Stoeckner’s shares in Turner Bay is not challenged in this action. None of considerations set out in para. 33 of *Ridley* that militated in favour of an order adding the applicant as a defendant in that case are present here.

[29] *Savage Estate* was also an appeal of an associate judge’s order adding a party as a defendant. In that case, the plaintiff, Stephanie Kelly, was the niece of the deceased, Linda Savage. In her will, Ms. Savage bequeathed 70 of her shares in Savage Holdings Ltd. to Ms. Kelly, and the remainder to a friend, Brian Vicario. Ms. Kelly claimed against the executor under s. 150 of *WESA* seeking to reverse the effect of an alleged lapsed gift of the shares held by Mr. Vicario. Mr. Vicario was not named as a defendant and applied to be added in that capacity.

[30] The associate judge added Mr. Vicario as a defendant, concluding that this was necessary so that all matters in the proceeding could be effectively adjudicated. This was because Mr. Vicario had “a significant interest in the outcome of the proceeding”, and his participation as a party would facilitate the effective adjudication of the matters in issue: *Savage Estate* at para. 24, citing *Savage v. Savage Estate*, 2023 BCSC 2052 at para. 25. Mr. Vicario was found to have a significant interest in the litigation because Ms. Kelly was claiming that the entirety of the residue of the estate that was bequeathed to him was subject to trusts or agreements in her favour: *Savage Estate* at para. 61.

[31] The respondents argue that the present case is on all fours with *Savage Estate*, and thus the same result should follow. I disagree. *Savage Estate* is distinguishable in material respects.

[32] First, ownership of the disputed shares in Savage Holdings Ltd. as between Mr. Vicario and Ms. Kelly was central to the litigation in *Savage Estate*. In the case

at bar, the subject matter of the dispute is the appellant's alleged contributions to Turner Bay, not the respondents' shares in Turner Bay. Resolution of the appellant's claim will not affect the respondents' beneficial ownership of Mr. Stoeckner's shares in Turner Bay. The respondents themselves recognize this in their statement of argument on appeal:

[1] The Appellant's claim relates only to a remedy from the Company, and there is no relief sought which would have the effect of disentitling the Appeal Respondents from their right to become shareholders pursuant to the terms of the Will. If the Appellant is successful in her action, she could be entitled to a remedy from the Company, but has no entitlement to be named as a shareholder of the Company based on the claims in the Action.

[33] The respondents did not argue before the associate judge or on appeal that their shares in Turner Bay are the subject matter of this action, or that any proprietary relief is being sought in respect of those shares. The application below proceeded on the same basis as this appeal, namely that the respondents' nexus to the litigation arises from their interest in Turner Bay as shareholders.

[34] The lack of connection between the respondents and the appellant's claims in this litigation is also evident in the evidence. Consistent with her pleadings, the appellant's evidence is that she does not have any claims to make against the respondents in this action. Kathleen Stoeckner's evidence is that she and Lindsey Stoeckner are "the two persons interested in defending the interests of the Company" (emphasis added). Similarly, the executrix Maria Pezzetta's evidence is that the respondents are the proper parties to defend the action because they "have a direct interest in the Company" (emphasis added), not because claims are being advanced against them in their personal capacities or their status as shareholders of Turner Bay is put in question in this action.

[35] Second, and unlike *Savage Estate*, this action is not a *WESA* claim against Mr. Stoeckner's estate. The appellant and respondents are not competing beneficiaries in respect of Mr. Stoeckner's shares in Turner Bay in the same way as Mr. Vicario and Ms. Kelly were in *Savage Estate*.

[36] These key factual distinctions render both *Ridley* and *Savage Estate* distinguishable from the present circumstances. The circumstances in which those respondents were added as defendants were materially different such that the same outcome is not mandated here.

[37] By conflating the respondents' interests with those of the corporate defendant, the associate judge erred in law by failing to respect Turner Bay's separate corporate personality. Consequently, she failed to identify what question or issue relating to or connected with the subject matter of or relief claimed in the proceeding she found arose as between the appellant and the respondents in their individual capacities, and thereby erred in her application of the threshold condition under Rule 6-2(7)(c).

**Ground #2: Was it just and convenient to add the respondents as defendants in the within action?**

[38] As noted in *Ridley*, if the first condition of establishing a sufficient connection to the litigation is not met, then there is no need to consider the second condition because it necessarily follows that it cannot be just and convenient to add a person who does not have a connection to the litigation: at para. 25.

[39] My conclusion on the first ground of appeal is therefore dispositive of the appeal. It is thus unnecessary to consider the appellant's secondary ground of appeal, namely whether the associate judge erred in failing to consider and apply the apposite provisions of the *BCA* when she determined that it was just and convenient to add the respondents as defendants.

[40] That said, if I am wrong in my conclusion on the threshold issue, I find that the associate judge's conclusion that it was just and convenient to add the respondents as defendants was clearly wrong. On this issue, the associate judge found that adding the respondents as defendants would "allow an effective determination of the issues without further delay" and was "the most efficient way" to move matters forward in the absence of a probate action.

[41] The respondents' position was and remains that they sought to be added as defendants to defend Turner Bay. Their submissions on appeal were to the same effect, namely that they are the only parties with an interest in Turner Bay and are therefore "the best parties to either settle, or defend this action". In light of this, the appellant took the position before the associate judge that the derivative action provisions under the *BCA* provided a clear path for the respondents to assume conduct of Turner Bay's defence in this action. While she accepts that a further application would likely be necessary, she says that would nonetheless be preferable to the additional complexity occasioned over the course of the entire litigation that would arise from adding the respondents as individual defendants.

[42] I agree. The respondents' stated interest in participating in this action for the purpose of defending Turner Bay brings them squarely within s. 232(4) of the *BCA*, which provides that "With leave of the court, a complainant may, in the name and on behalf of a company, defend a legal proceeding brought against the company." The term "complainant" is expansively defined, and includes not only shareholders and directors of a company, but "also any other person the court considers appropriate": *BCA*, s. 232(1); *Bhuthal v. Sahsi*, 2024 BCCA 73 at para. 22.

[43] Respectfully, and while the associate judge's attempt to achieve efficiencies in moving matters forward is commendable, by adding the respondents as defendants under Rule 6-2(7)(c) for the purpose of defending Turner Bay, the associate judge did not apply the principle of statutory interpretation that special legislation overrides general legislation: *Bhuthal* at paras. 18-19. In so concluding, I note that while the appellant submitted that the preferred route for the respondents' involvement in this litigation was through the derivative action provisions of the *BCA*, she did not bring *Bhuthal* to the associate judge's attention.

[44] The issue in *Bhuthal* was somewhat different in that it did not involve the addition of parties under Rule 6-2(7); the applicants and the company in issue were all already parties to the litigation. Rather, the applicants in that case sought to have an independent person appointed to defend the defendant company under Rule 20-

3(15), which provides that “the court may give the conduct of a proceeding to any person the court considers appropriate”. The order was granted by the chambers judge but overturned by the Court of Appeal on the basis that Rule 20-3(15) did not authorize the appointment of a person to defend or prosecute proceedings on behalf of a company: *Bhuthal* at paras. 20-21. As the Court of Appeal noted, the general grant of power under Rule 20-3(15) must give way to the specific regime for appointment of a person to represent a company under ss. 232 and 233 of the *BCA*: *Bhuthal* at para. 21.

[45] In the case at bar, given that the respondents sought to be added as defendants for the stated purpose of defending the litigation on Turner Bay’s behalf, the appropriate avenue for doing so per *Bhuthal* is for an application to be brought under s. 232(4) of the *BCA*, not the more general grant of authority in Rule 6-2(7). The associate judge’s conclusion that it was just and convenient to add the respondents was therefore clearly wrong because she utilized the general powers under Rule 6-2(7), when in the present circumstances, s. 232 of the *BCA* provides a specific means of achieving their goal of defending the litigation on Turner Bay’s behalf. By analogy to *Bhuthal*, the general grant of power under Rule 6-2(7) must “give way” to the specific regime provided in s. 232(4) of the *BCA*.

### **Conclusion**

[46] In the result, I find that the associate judge’s order adding the respondents as defendants in this action was clearly wrong because she erred in law when she failed to respect Turner Bay’s separate legal personality from the respondents. Further, given the respondents’ stated intention of defending the litigation on Turner Bay’s behalf, it was also an error in principle to utilize the general grant of power under Rule 6-2(7)(c) to add the respondents as defendants when such relief is specifically provided for in s. 232 of the *BCA*.

[47] The appeal is therefore allowed and the associate judge’s order adding the respondents, Kathleen Anne Stoeckner and Lindsey Samantha Stoeckner, as defendants in this proceeding is set aside.

[48] The appellant is entitled to her costs of this appeal.

“Hughes J.”