

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0939558 B.C. Ltd. v. Hoekstra*,
2026 BCSC 936

Date: 20260427
Docket: S232179
Registry: Vancouver

Between:

0939558 B.C. Ltd.

Plaintiff

And:

Pamela Hoekstra and Nanaimo Athletic Club Ltd.

Defendants

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

L.L. Seneviratne

Counsel for the Defendant Pamela
Hoekstra:

L.J. Perry

No other appearances

Place and Date of Hearing:

Vancouver, B.C.
April 27, 2026

Place and Date of Judgment:

Vancouver, B.C.
April 27, 2026

[1] **THE COURT:** The plaintiff brings this application to renew the notice of civil claim in this debt action. These reasons were issued orally in chambers. I have edited them as to grammar and to provide context including as to the citations made when the reasons were given.

Background

[2] The subject debt arises out of two promissory notes totalling \$170,000 that were granted to secure payment of a purchase price in respect of the defendant, Nanaimo Athletic Club Ltd. ("NAC") in 2015. Specifically, NAC entered into an agreement to purchase the assets of an athletic centre from the plaintiff 0939558 B.C. Ltd. ("093").

[3] The purchase price was partially funded by way of vendor takeback financing secured by these promissory notes, guaranteed by both Robert Lindgren and Pamela Hoekstra. At the time, there was a romantic relationship, as well as a professional one, between Mr. Lindgren and Ms. Hoekstra. In 2016 that relationship broke down with Ms. Hoekstra's share interest then being bought out by Mr. Lingren.

[4] At that time the payment terms under the promissory notes were being met, and a share purchase agreement was entered into between Mr. Lindgren and Ms. Hoekstra. While the entirety of the share purchase agreement is not before me, there is reference in the partial version in evidence to there being mutual releases. I am going to infer or assume that there were indemnity provisions in there as well. However, it is not necessary for me to find that such a provision existed in the agreement itself as, regardless of its inclusion, s. 34 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253 (the "*LEA*") provides for an equitable right to seek indemnity from a co-surety.

[5] In any event, and why that becomes relevant is in 2021, Mr. Lindgren made an assignment in bankruptcy. At that time the promissory notes were in default and in fact a demand letter had been issued. The demand letter was sent, or is dated, December 16, 2020, some five and a half years ago, so before the bankruptcy.

[6] The irregularity in the demand letter is that it was sent, or addressed only to NAC, with it being to the “attention” of Mr. Lindgren and Ms. Hoekstra, care of what appears to be the company’s registered and records office.

[7] I am going to assume for the purpose of these Reasons that Mr. Lindgren has now been discharged from bankruptcy and his debts compromised, given the date of his bankruptcy. However, regardless of whether there is a discharge, the effect of the bankruptcy is that any claim that Ms. Hoekstra has for indemnity against Mr. Lindgren has been affected. In addition to the stay provisions as a result of the filing itself, the effect of a discharge is that claims, including contingent claims, which could include the claims of not only 093 but the defendant Ms. Hoekstra under any indemnity provision in the share purchase agreement or under s. 34 of the *LEA*, is compromised and no longer enforceable.

[8] It appears that both Ms. Hoekstra and the plaintiff were listed as creditors on the statement of affairs. It is not clear whether proofs of claim were filed and whether any distribution to, or realization by, creditors was effected or available through the bankruptcy process.

[9] Nonetheless, the notice of civil claim was ultimately filed on March 23, 2023. While that was approximately 2 and one half years after the demand letter was sent, I am advised it was, using the demand letter date as the date when the action arose, still within the limitation period as had been extended by virtue of the COVID emergency regulations.

[10] The notice of civil claim expired, therefore, on March 23, 2024, without being served on Ms. Hoekstra. Ms. Hoekstra did not receive notice of this action until she received a letter on September 11, 2025 regarding this matter. As noted, prior to that, the demand letter had not been sent to her, so that was the first notice of these claims.

[11] The relevant dates to consider on much of this application are the date on which the notice of civil claim expired and the date of this application. Simply, if the

notice of civil claim had been served by March 22, 2024, there would be no procedural bar to the defendants, except of course in respect of a limitation expiry. The parties did not argue if there was a limitation defence by virtue of the apparent failure to make demand on Ms. Hoekstra.

[12] Counsel for the plaintiff, who has sworn an affidavit in which he deposes that the failure to serve the notice of civil claim was solely through the inadvertence of counsel. Some of that happened due to the departure of the associate that was originally retained to handle this matter from the firm. Nonetheless, after her departure, it appears that it came to the notice of the firm itself upon a review of the file in December, 2024, at which point they realized that the notice of civil claim had expired and that it had not been personally served on Ms. Hoekstra.

[13] Notably, there is no real explanation of why this was not addressed by counsel at that time. The evidence is that they reached out to their client on January 2, 2025, meaning a ten-month delay occurred. On that date, counsel reached out to Mr. Falcon on behalf of 093 and sought instructions as to how to proceed. On January 9, 2025, Mr. Falcon responded that he would contact counsel with instructions at the end of January 2025, as he was out of town and considering retaining other counsel. Mr. Falcon did not do so.

[14] On July 19, 2025 counsel followed up with Mr. Falcon. At that time Mr. Falcon he confirmed that he wished to proceed with an application to renew the notice of civil claim.

[15] On July 30, 2025 counsel prepared a letter to be sent to Ms. Hoekstra with the notice of civil claim. That letter was not delivered to Ms. Hoekstra until September 2025. The plaintiff argues that it took some time to locate Ms. Hoekstra who had, by then moved from Nanaimo to Smithers. Ms. Hoekstra deposes, however, that she did not receive the cover letter at that time from the process server who delivered it, only the notice of civil claim.

[16] Further, Ms. Hoekstra's evidence shows that she was not taking any steps to evade service. Her address has been transparent through the search of a publicly available registry, namely, the manufactured home registry, which is ultimately, I suspect, how the process server found her.

[17] As Ms. Hoekstra did not consent to a renewal, this application was then filed on November 4, 2025.

[18] Ms. Hoekstra opposes this application on the basis that the delay in seeking this order is prejudicial to her. Notwithstanding the admission by counsel that it is largely due to counsel error, she argues that the plaintiff bears some responsibility for the delay with respect to bringing this application forward, namely the failure of Mr. Falcon to provide instructions once the issue was brought to his attention.

[19] This application took a few months to be heard. I am not counting the last four months or so to get this matter heard as that has been the unfortunate result of availability of chambers time, in terms of considering delay.

Analysis

[20] Rule 3-2 governs renewals of notices of civil claim.

Renewal of original notice of civil claim

(1) An original notice of civil claim does not remain in force for more than 12 months, but if a defendant named in a notice of civil claim has not been served, the court, on the application of the plaintiff made before or after the expiration of the 12 months, may order that the original notice of civil claim be renewed for a period of not more than 12 months.

Further renewal of notice of civil claim

(2) If a renewed notice of civil claim has not been served on a defendant named in the notice of civil claim, the court, on the application of the plaintiff made during the currency of the renewed notice of civil claim, may order the renewal of the notice of civil claim for a further period of not more than 12 months.

[21] As there has been no prior renewal, this application is brought under R. 3-2(1).

[22] In *Bearhead v. Moorhouse*, 1978 CanLII 360 (BC CA) the court of appeal has said that in renewal applications, the fundamental question is what is in the overall interests of justice as between the parties, with renewals to be allowed if that avoids an obvious and substantial injustice to the plaintiff, while not imposing a substantial injustice on or prejudice to the defendant, with the list of factors governing the courts discretion being the following:

- a) Was the application brought promptly?
- b) Did the defendant have notice of the claim from sources other than the writ?
- c) Has the defendant suffered prejudice?
- d) Was the failure to serve the [notice of claim] attributable to the actions of the defendant?
- e) Was the plaintiff or his solicitor at fault?

[23] Those factors were confirmed in *Stuart v. Patterson*, 2010 BCSC 1236 at para. 10. The list is, of course, non exhaustive.

[24] I have no hesitation finding on these facts that there is no fault on the part of the defendant in terms of the failure to effect service. She was not evasive. She simply had no knowledge of this claim. Further, it is apparent on the evidence before me that the defendant had no notice of the claim before the notice of claim expired. In fact, by the time the demand letter was sent and the notice of civil claim was filed Ms. Hoekstra had been well distanced from the company and Mr. Lindgren. As such, it is entirely plausible that service on the company of a legal process did not make its way to her attention.

[25] Thus, the issues on this particular application comes down to whether the application to renew was made promptly, at whose feet does the fact that the claim expired lie, and whether the defendant is prejudiced, all under the question of the overall interests of justice.

Delay

[26] In terms of considering the level of promptness or delay in bringing the application there is some dispute as to whether or not the consideration is based on the time from when the plaintiff learned that the application had not been served or from the time of the expiry of the notice of civil claim.

[27] In this case, regardless of the starting point, there was a delay. The notice of civil claim expired March 22, 2024. The solicitor learned of the mistake in December 2024. This application was filed either 11 or 20 months from those two benchmark dates.

[28] Either delay is, with respect, inexcusable from the perspective of what the solicitor ought to have done. Even taking the December 2024 date, rather than addressing it in the diligent and urgent circumstance that is warranted for such an expiry, the counsel allowed it to once again get lost. Although, I note that the evidence as to the time period between December and January is absent, in terms of why the client was not emailed immediately. Then, again, they allowed the matter to sit for another 6 months, not following up with their counsel until July 2025.

[29] Turning to the delay from January to July 2025, that cannot be solely said to be attributable to the counsel. Rather, the plaintiff was not diligent in pursuing this to get the file on track. That notably appears to have been consistent with a general lack of attention to this matter. In this respect, one of the reasons why this matter came back on the radar from the law firm's perspective was that they attempted to return retainer funds that were held in trust with respect to this matter which appears to have become dormant from the firm's perspective.

[30] When reached to ask for particulars for the return of those retainer funds, the plaintiff appears to have not even known what action counsel was referring to. It was only after some back and forth emails with the plaintiff then asking for confirmation that the claim had been commenced in the small claims court (which would suggest a much lesser amount being claimed than \$170,000), that the plaintiff indicated a desire to proceed. But there is nothing to suggest that the plaintiff was diligently

moving this forward, nor does it appear that the plaintiff expected that it was being diligently prosecuted through the Supreme Court processes.

Prejudice

[31] Turning then to the prejudice, as noted in *Seeliger v. Eagle Ridge Hospital*, 2007 BCCA 582 at para. 39, a delay does not necessarily amount to prejudice. The relevant delay is one that impairs a defendant's ability to mount an adequate defence.

[32] As noted in *Krytskyy v. Canil*, 2025 BCSC 2080 at para. 32, the defendant does not have to show any particular prejudice, with prejudice to be presumed from the passage of time. However, it is rebuttable, as noted at para. 34, with the question remaining whether on a balance of probabilities prejudice or the absence thereof has been established.

[33] Ms. Hoekstra argues that one basis for prejudice is the bankruptcy of Mr. Lindgren, the effect of which is that she has lost the ability to seek indemnity from him, either under the share purchase agreement or the *LEA*.

[34] Notably, however, that prejudice may have arisen prior to the expiry of the notice of civil claim, given his 2021 bankruptcy was filed before the notice of civil claim was filed. Assuming this was a summary administration bankruptcy he would have received an automatic discharge after 9 months (unfortunately there is no evidence on his discharge date), he would have been discharged before the notice of civil claim was filed in March 2023. Even assuming an opposition was filed such that he was not entitled to an automatic bankruptcy, there was sufficient time for him to have been discharged prior to March 2023.

[35] In other words, without specific evidence that he was discharged between March 2024 and the date of this application, it cannot be definitely said that the prejudice in that respect arises from the delay in bringing this application or in serving the notice of civil claim prior to its expiry.

[36] The second ground of the prejudice arises through the passage of time coupled with her extraction from the business and Mr. Lindgren. The evidence supports that Ms. Hoekstra was not involved in the business after July 15, 2016. The business was no longer operating after Mr. Lindgren's bankruptcy in 2021.

[37] The effect of that is that Ms. Hoekstra has no direct access to documents, and, she argues, there is a real likelihood that the documents relating to this debt are not available at all. As she is no longer affiliated with the company, she has no independent authority to request copies of business documents, assuming they do exist.

[38] While business records may not be relevant to the threshold issue as to the debt itself given the legal effect of a promissory note, records will be relevant to determine the amount owing under the promissory note. As noted, when Ms. Hoekstra extricated herself from the business, the periodic payments owing under the promissory notes were up to date, and, based on the demand letter not being issued until 2020, presumably payments were made for many years thereafter.

[39] The inability to obtain accounting records is made more problematic by the drafting of the claim itself. Specifically, the notice of civil claim seeks damages for the amount owed under the promissory notes without any statement as to what is claimed to be due and owing. This is unusual for what is otherwise a simple debt claim, it being a claim for a liquidated, or sum ascertainable, amount. Simply, the plaintiff should have known what was owing on March 23, 2023 when the claim was filed. The fact that he apparently did not include it in the claim suggests that the amount due (or date of the last payment made, or other accounting matters) may be in issue.

[40] Adding to that concern is that the statement of affairs filed by Mr. Lindgren in his bankruptcy indicates that the debt amount was \$130,000, which would suggest that there is some amount other than \$170,000 that might be due and owing. In addition, as noted, in the email exchange between the plaintiff and his counsel when

they made inquiries as to the return of retainer funds, there was a suggestion by the plaintiff that it was a small claims matter, which would mean a significantly less amount being due.

[41] Ms. Hoekstra's evidence is that records cannot be obtained by her. There is nothing before the court from the plaintiff to rebut that. The ability to obtain records is generally diminished by the passage of time, i.e. it is less likely that they exist now, than it would have been 2 years ago.

[42] I agree that having raised an inability to answer the claim as to the amount due and owing, and established some prejudice in being able to do so, the onus shifted to the plaintiff to show that there is no such prejudice. There is no evidence that accounting records are available or, as noted, any evidence from the plaintiff as to what the debt is.

[43] Notably, there is no direct evidence from the plaintiff at all, only counsel and staff at counsel's office.

Overall Interests of Justice

[44] Ultimately, in order to exercise its discretion, the court must be satisfied that it is in the interest of justice to allow the claim to continue to exist notwithstanding these delays.

[45] There is obvious prejudice to the plaintiff if the claim cannot proceed, namely that the plaintiff could lose what is potentially a valid claim that they would otherwise have. That is the same prejudice that arises when a plaintiff misses a limitation period. When, as is the case here, most of that loss arises due to the inaction of their solicitor, it is obviously more of a consideration of the court of whether the litigant ought to be prejudiced by the inaction of their solicitor. However, as noted, the loss here arises due to the lack of the plaintiff's attention to this matter, which is entirely unexplained.

[46] Ultimately, given the concern I have with respect to the potential inability to determine the actual amount of the claim given that no accounting has been provided by the plaintiff and presumed inability of Ms. Hoekstra to obtain any documents to assist on that issue to enable Ms. Hoekstra to answer and defend the claim on that basis, the interests of justice lies ever so slightly in favour of the defendant Ms. Hoekstra.

Conclusion

[47] The application is dismissed.

“Associate Judge Robertson”