

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Murray v. Young*,
2026 BCSC 882

Date: 20260513
Docket: S95949
Registry: Nanaimo

Between:

Arthur John Murray

Plaintiff

And

Kim Leslie Young

Defendant

Before: The Honourable Justice Thompson

Reasons for Judgment

The Plaintiff, appearing in person:

J. Murray

Counsel for the Proposed Defendants:

E. Welle
(January 7, 2026)
D. Williams
(April 17, 2026)

No other appearances

Place and Dates of Hearing:

Nanaimo, B.C.
January 7, 2026
April 17, 2026

Place and Date of Judgment:

Nanaimo, B.C.
May 13, 2026

[1] This is the plaintiff's application to add Michael Holmes and Pemberton Holmes Ltd. as parties defendant to this action which involves failed efforts to open a retail cannabis outlet.

Background

[2] The store was to be opened on a property in Coombs owned by the defendant Young. In March 2018, the plaintiff and the defendant formed a business partnership to that end. Part of their arrangement included a five-year commercial lease of premises at Ms. Young's Coombs property.

[3] In August 2018, Coombs Cannabis Inc. (the "company") was incorporated. The plaintiff is its sole director, and he took on day-to-day management of the company. Ms. Young held 25% of the shares, with the other 75% held by four individuals, one of which was the plaintiff. Between 2018 and 2020, the company was engaged in work on the permits and approvals necessary to open the planned cannabis store.

[4] Issues arose with Ms. Young, including about entitlement to possession of the property and false assertions she allegedly made to the Liquor and Cannabis Regulation Branch. In fact, this action is the latest of three related proceedings. In February 2020, an action was commenced, S90500, Nanaimo Registry; the company is plaintiff, the defendant is Ms. Young. The relief claimed in this first proceeding includes enforcement of the possession terms of the lease, and damages for the cost of resubmitting its application for a cannabis retail license and the "opportunity cost" associated with delayed possession of the property. This action was settled in July 2020, and dismissed by consent order on 4 August 2020. It was a central term of the settlement that Ms. Young would grant a new lease to the company with the company's possession to begin on 1 October 2020.

[5] Mr. Holmes began acting as property manager for Ms. Young in or about October 2020, and was involved in efforts to formalize the specific terms of the new lease. These negotiations evidently broke down. In June 2021, a small claims action

was commenced in the name of the company against Ms. Young. The notice of claim asserts that Ms. Young failed to cooperate in the company's business development plan, and that on 30 November 2020 time expired for the company to meet commitments to the regional district regarding a development permit with the regional district withdrawing its approval for the cannabis store. The notice of claim further asserts that Ms. Young changed the locks on the premises in December 2020 and re-let the premises to a third party.

[6] The third proceeding – this action – was commenced against Ms. Young in June 2022. Unlike the previous two lawsuits, in this action Mr. Murray is the party plaintiff rather than the company. The essence of his claim against Ms. Young is that she breached their partnership agreement by her actions in relation to efforts to start up a retail cannabis business. Progress on the action has been very slow. The notice of civil claim was twice renewed, and Ms. Young was substitutionally served in March 2026. Her response to civil claim pleads that this action rehashes the same claims advanced in the dismissed action S90500, Nanaimo Registry, and that on 31 July 2020, Mr. Murray, on behalf of himself and the company, executed a final release by which:

Coombs Cannabis Inc and Arthur John Murray ("the Releasors") (for themselves, heirs, executors, administrators, or assigns) do hereby release and forever discharge Kim Leslie Young and her employees [sic], servants, agents, predecessors, successors, assigns, insurers and each of them ("the Releasees"), of and from any and all actions, causes of action, claims, proceedings, complaints, demands, damages, interest, costs, expenses, and compensation of every kind and however arising, whether known or unknown, and which the Releasors now have or at any time hereafter can, shall, or may have in any way resulting or arising from or in connection with a lease of premises and/or the operation of a retail cannabis outlet, all of which are the subject of an action commenced by the Releasor Coombs Cannabis Inc in the Nanaimo Registry in the Supreme Court of British Columbia under Action No. S 90500[.]

[7] Ms. Young also pleads that the company failed to pay the December 2020 rent and had expressed its intention not to pay rent going forward, and that she advised the company that she would be looking for another tenant to mitigate her losses.

Joinder of Parties

[8] The conditions necessary to give rise to a discretion to add parties are set out in R. 6-2(7):

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

[9] Rule 6-2(7)(b) has been interpreted narrowly, as being concerned with remedying defects in the proceedings: *Madadi v. Nichols*, 2021 BCCA 10 at para. 21. The case as presently pleaded is an action to enforce obligations allegedly owed by Ms. Young to Mr. Murray. It was not necessary to include the proposed defendants when the claim was commenced, nor necessary to add them at this stage to ensure all matters relating to the existing claim versus Ms. Young is fully and properly adjudicated upon.

[10] Rule 6-2(7)(c) is of wider scope, and its requirements were described by Chief Justice Bauman in *Smithe Residences Ltd. v. 4 Corners Properties Ltd.*, 2020 BCCA 227:

- [49] The judge may order a person be added as a party if two conditions are met: first, 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; and second, that in the opinion of the court, it would be just and convenient to determine that question or issue.

[50] As this Court stated in *Neilson Architects*, the threshold to meet the first condition is a low one; the party seeking to join the new person must establish “simply that there is a real issue between them that is not frivolous, or that the plaintiff has a possible cause of action against the proposed party” (at para. 45).

[51] As to the second condition, though determining the interests of justice and convenience is at the judge’s discretion and should be assessed with “flexibility” (*Cementation* at para. 8), the jurisprudence has provided guiding factors to consider in the specific circumstances of adding a party after a limitation period has expired. As the judge highlighted, these include the extent of delay in bringing the application to add, reasons for it, any explanation put forward, degree of prejudice caused by the delay, and the extent of the connection between the claims (*Letvad* at para. 29 citing *Teal Cedar*; *Neilson Architects* at para. 47).

[Emphasis in original.]

[11] The assessment whether the threshold to meet the first condition is satisfied was articulated this way in *Madadi*:

[54] As discussed above, the application of the threshold requires an examination of the pleadings for the purpose of determining whether the claim sets out material facts sufficient to establish a real and not frivolous issue between the plaintiff and the proposed defendants. This standard is similar to that applied to strike a pleading as frivolous, but it is focused on a possible cause of action against the proposed defendants, and the onus is on the plaintiff to establish the required connection.

Analysis

[12] The proposed defendants submit that any case against them is of dubious merit because of their role as agents and advisors to the defendant Young, and in any event that the limitation period for bringing claims against them has expired. However, their principal point is that any conceivable duty or obligation owed by either of the proposed defendants would have been owed to the company and not to an individual shareholder such as Mr. Murray. They submit that the plaintiff has no standing to advance these claims in his own name.

[13] The proposed defendants contend that an examination of the plaintiff’s pleadings, his proposed amendments, and his affidavit material discloses no allegation of an independent relationship between the plaintiff and the proposed defendants or any loss to him independent of any loss to the company. Referring to

Robak Industries Ltd. v. Gardner, 2007 BCCA 61, and the Supreme Court of Canada jurisprudence discussed in *Robak*, the proposed defendants submit that the rule in *Foss v. Harbottle* applies and the plaintiff has no cause of action against them. Accordingly, they submit the plaintiff has not satisfied the first condition necessary to trigger the exercise of the R. 6-2(7)(c) discretion to add parties: there is no real issue that is not frivolous, nor a possible cause of action against them.

[14] The plaintiff cites *Stiller v. Parsons*, 2023 BCSC 872, for the proposition that where a proposed party's role is disputed, the proper course is to permit joinder so the issues may be determined on a full evidentiary record. The plaintiff is correct that this is not the time for a close examination of the merits of his case against the proposed defendants. However, either the material facts alleged in the proposed amended pleadings or a limited examination of the affidavit evidence must disclose a real issue or a possible cause of action against the proposed parties.

[15] The plaintiff submits that the proposed defendants are "part of the same story." He argues that the proposed defendants owed he and other company shareholders a fiduciary duty, and that Mr. Holmes acted in bad faith and played a role in denying him access to his property.

[16] The fact that the proposed defendants were in an agency relationship with the defendant Young is not sufficient to make out a cause of action against them. On this application, Mr. Murray must clear the low bar of establishing that he – as opposed to the company – has a real and non-frivolous case against the proposed defendants.

[17] The plaintiff's draft amended notice of civil claim outlines the plaintiff's case against the proposed defendants thus:

13. At all material times, Mike Holmes ("MH") was KLY's business partner in Pemberton Holmes Real Estate offices and acted as her agent and property manager in relation to the Property and the Settlement Agreement. MH is a lawyer and was involved in the prior litigation and settlement discussions in S90500.

14. MH, acting as KLY's agent and as property manager through Pemberton Holmes Ltd., doing business as Pemberton Holmes Real Estate ("PHL"), was responsible for drafting the lease required by the Settlement Agreement and for arranging possession of the Property.
15. MH drafted a lease that was late, complex, and inconsistent with the Settlement Agreement and with the commercial expectations of the parties. Despite, repeated requests from the plaintiff, MH failed or refused to finalize a reasonable lease in a timely way.
16. On or about October 1, 2020, CCI was to receive possession of the Property under the Settlement Agreement. MH failed to make possession reasonably available, imposed unreasonable conditions on access, threatened eviction, and delayed or denied the plaintiffs use of the Property, despite rent being paid.
17. Over the following months, MH continued to:
 - (a) refuse to finalize the lease;
 - (b) deny or restrict access to the Property for its approved use;
 - (c) threaten eviction or legal action without lawful justification; and
 - (d) act in a manner inconsistent with the Settlement Agreement and with duties of good faith and honest performance.
18. In late 2020, without lawful basis, MH caused the locks to be changed and permitted new occupants to move into the Property and use utilities paid for by the plaintiff, effectively excluding CCI from any benefit of the Settlement Agreement.
19. As a result of KLY breach of the lease and Settlement Agreement, and MH's conduct as KLY's agent and as manager for PHL, CCI was unable to operate, lost the benefit of the Development Permit and regulatory approvals, and was forced to cease business. The plaintiff and subordinate shareholders lost their investment and the anticipated value of the project.

[18] As in *Robak*, the plaintiff makes wide-ranging claims against the proposed defendants including breach of contract, breach of fiduciary duty, misrepresentation, conspiracy, and unjust enrichment. I doubt the viability of most if not all these claims where, as here, the proposed defendants were acting as agents for the defendant Young. Moreover, the terms of the release executed by Mr. Murray on 31 July 2020 encompasses Ms. Young's agents. Furthermore, there may well be limitations issues. That said, I put these complications aside to return to the fundamental question of whether the rule in *Foss v. Harbottle* stands in the plaintiff's way.

[19] In *Robak*, Justice Levine affirmed that the principles established by Supreme Court of Canada in *Haig v. Bamford*, [1977] 1 S.C.R. 466, and *Hercules*

Managements Ltd. v. Ernst and Young, [1997] 2 S.C.R. 165, apply to bar claims by individual shareholders unless the shareholder can establish that there is (1) a relationship between the shareholder and the alleged wrongdoer independent of the relationship between the alleged wrongdoer and the company, and (2) a loss separate from that of the company, i.e. not a loss which is derivative of a loss to the company.

[20] The plaintiff's draft pleadings do not allege the required independent relationship. This is not surprising, because it is difficult to conceive how it could be maintained that Mr. Holmes or Pemberton Holmes Ltd., instructed by Ms. Young to attempt to negotiate on her behalf as the property owner the terms of the lease with the company called for by the litigation settlement, formed a relationship independent of any relationship the proposed defendants may have had with the company that their principal, Ms. Young, was negotiating with.

[21] The plaintiff has not established that there is a real issue between him and the proposed defendants or that he has a possible cause of action against them. Returning to the material provisions of R. 6-2(7), he has therefore not crossed the threshold of showing "there may exist ... a question or issue relating to or connected with (i) any relief claimed in the proceeding or (ii) the subject matter of the proceeding."

[22] The plaintiff has failed to discharge his onus of establishing the required connection necessary to bring the proposed defendants into this litigation. The application is dismissed, with costs to the proposed defendants on Scale B payable forthwith after assessment.

"Thompson J."