

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Yenal v. Sahota*,  
2023 BCSC 1022

Date: 20230614  
Docket: S1910540  
Registry: Vancouver

Between:

**Bora Yenal**

Plaintiff

And

**Gurdeep Sahota, Kamaljit Sahota, Sukhwant Singh Takhar, Balvinder Sahota, Amaroo Estate (2017) Ltd., ABC Construction Company, John Doe, The Corporation of the Township of Langley, Ronald Zaruk, Norm-Ron Construction (1988) Ltd., Norm-Ron Construction (1998) Ltd., Dennis Murphy, Yajun Chen, Zi Li Chen (also known as Li Zi Chen or Zi Li), Sanjeevneel Kaur Takhar, and Jasbir Kaur Sahota**

Defendants

And

**The Corporation of the Township of Langley, ABC Construction Company, John Doe, Jaswinder Garcha, Ronald Zaruk, Norm-Ron Construction (1988) Ltd., Norm-Ron Construction (1998) Ltd., Dennis Murphy, Yajun Chen, Zi Li Chen (also known as Li Zi Chen or Zi Li), Home Planners LLC, John Doe No. 1, John Doe No. 2, ABC Contractor #1, ABC Contractor #2, ABC Contractor #3, ABC Consultant #1, ABC Consultant #2, West Coast Professional Building Reports Ltd. and Ivan Wright**

Third Parties

And

**Gurdeep Sahota, Kamaljit Sahota, Amaroo Estate (2017) Ltd., The Corporation of the Township of Langley, Ronald Zaruk, 0347015 B.C. Ltd. and Norm-Ron Construction (1998) Ltd.**

Fourth Parties

Before: The Honourable Mr. Justice N. Smith

**Reasons for Judgment**

Counsel for the Plaintiff: S.E. Gibson

Counsel for the Defendants/Third Parties,  
Yajun Chen and Zi Li Chen (also known as  
Li Zi Chen or Zi Li): N.J. Muirhead  
J.F. Gray

Counsel for the Defendants, Sukhwant  
Singh Takhar, Balvinder Sahota,  
Sanjeevneel Kaur Takhar and Jasbir Kaur  
Sahota: S. Cordell

Counsel for the Plaintiffs in related Actions,  
Baljit Kaur Boparai, Kulvir Kaur Gondara,  
Jagtar Kaur Dhillon, Chandanjit Kaur  
Gondara, and Serat Kaur Dhillon, an infant  
by her litigation guardian, Sukhjinder Singh  
Gondara, in Actions No. S1911218,  
S1911219, S1911220, S1911221 and  
S211147: T.N. Lucyk

No other appearances

Place and Date of Hearing: Vancouver, B.C.  
May 31, 2023

Place and Date of Judgment: Vancouver, B.C.  
June 14, 2023

[1] This action is one of 44 personal injury actions arising from the collapse of a deck at a residential property during a social event. There are multiple defendants, third parties and fourth parties. This application by the plaintiff is to amend the Notice of Civil Claim (“NOCC”) to add claims of negligent and fraudulent misrepresentation against the defendants, Yajun Chen and Zi Li Chen (the “Chen defendants”).

[2] It has been agreed that a liability decision in the trial of this action will determine identical liability issues in all of the other actions, although the order to that effect has not yet been entered. The pleadings in this action, including any further amendments, will be mirrored in amended pleadings in the other actions.

[3] The Chen defendants are former owners of the house where the deck collapsed, having purchased it in 2010 and sold it to the defendants, Gurdeep and Kamaljit Sahota (the “Sahota defendants”) in 2016. The deck collapse occurred in 2019.

[4] The original allegations against the Chen defendants were that they failed to properly maintain or repair the deck while they owned the property. An amendment adding further particulars of negligence was allowed by order on January 26, 2023. Those amendments allege that when the Chen defendants purchased the property, they had access to an inspection report that identified deficiencies in the deck, but failed to review the report or failed to act on it, and failed to disclose the deficiencies when they sold the property. I understand the order allowing those amendments has been appealed, but this application must be considered on the basis of the pleadings as they now stand.

[5] The current application seeks to add further particulars alleging that the Chen defendants negligently or fraudulently misrepresented the condition of the property to the Sahota defendants. That appears to expand upon or further particularize the existing allegation that the Chen defendants failed to disclose deficiencies when they sold the property.

[6] Amendments to pleadings should be permitted as are necessary to determine the real question in issue between the parties. They will not be allowed when the proposed pleading discloses no reasonable cause of action, which is considered on the basis of the same test used on an application to strike claims already pleaded: *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 at para. 166. That test is whether it is “plain and obvious” that the claim has no reasonable prospect of success: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64.

[7] In *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372, Justice Davies said at para. 40:

[40] Applications for leave to amend pleadings are considered on the same basis as applications to strike pleadings with the question being whether it is plain and obvious that the proposed amendments are bound to fail. In assessing that question, it is not determinative that the law has not yet recognized a particular claim. In its analysis, the court must be generous and err on the side of permitting an arguable claim to proceed to trial. See: *McMillan v. McMillan*, 2014 BCSC 546 at paras. 13-14, and cases cited therein.

[Emphasis added.]

[8] The Chen defendants argue that the plaintiff has no standing to allege or advance a claim based on a misrepresentation that was allegedly made to the Sahota defendants and not to him. They rely on statements in Halsbury’s Law of Canada (online), *Civil Procedure* (2021 Reissue) (Markham, Ont.: LexisNexis Canada), at HCV-40 “Private interest standing”, that private interest standing is based on injury or damage from invasion of a legally protected interest, but there is no standing to take proceedings in respect of a wrong done to another person.

[9] I do not find that general statement necessarily creates a bar to the plaintiff’s standing in these circumstances. The plaintiff obviously has standing to allege a physical injury arising from violation of his legally protected interest to be reasonably safe when visiting the property. He has claimed against everyone, including the

Chen defendants, whose acts or omissions may have contributed to the unsafe conditions that caused the injury.

[10] The defendants also rely on *0956375 B.C. Ltd. v. Regional District of Okanagan-Similkameen*, 2020 BCSC 743 [*Okanagan-Similkameen*]. I do not find that case, which alleged various causes of action arising from a property downzoning, to be determinative. Justice Giaschi found that the plaintiff, as beneficiary of a trust, did not have standing to bring an action related to trust property because those claims ought to have been made by the trustee (para. 4). That is a very different issue from what arises in this case. Further, the standing issue was decided following a 20-day trial, not on a pleadings application like the one now before me.

[11] One of the plaintiff's claims in *Okanagan-Similkameen* — that of negligent misrepresentation — was not dismissed on the basis of standing. Justice Giaschi found there was standing for that claim because the alleged misrepresentation had been made to the plaintiff (paras. 93-94). However, he dismissed the claim on the facts, finding that the defendant regional district owed no private law duty of care to the plaintiff in the circumstances (paras. 156).

[12] In this case, the Chen defendants say that the plaintiff cannot rely on a representation allegedly made to the Sahota defendants, who have not specifically alleged negligent or fraudulent misrepresentation in their own third-party notice seeking contribution and indemnity. They argue that the plaintiff's claim as pleaded lacks the required elements of negligent misrepresentation and the required elements of fraudulent misrepresentation.

[13] The well-known elements of negligent misrepresentation are:

- (a) there must be a duty of care based on a "special relationship" between the representor and the representee;
- (b) the representation in question must be untrue, inaccurate, or misleading;

- (c) the representor must have acted negligently in making said misrepresentation;
- (d) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
- (e) the reliance must have been detrimental to the representee in the sense that damages resulted.

*Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 110.

[14] The elements of fraudulent misrepresentation are:

- (a) there is a false representation made by the defendant;
- (b) the defendant had the requisite level of knowledge that the statement was false, either through knowledge or recklessness;
- (c) the false representation caused the plaintiff to act; and
- (d) the plaintiff's actions resulted in a loss.

*Bruno Appliance and Furniture, Inc. v. Hryniak*, 2014 SCC 8 at paras. 18 and 19.

[15] For purposes of a pleading that alleges misrepresentation, both causes of action are introduced in the alternative by an allegation that the defendant “knew or ought to have known” certain facts. The difference between fraud and negligence is the difference between “knew” and “ought to have known.” Which one applies, if either does, is a matter for evidence at trial.

[16] Claims for negligent or fraudulent misrepresentation typically involve alleged economic loss. For example, the Sahota defendants might have had such a claim against the Chen defendants if they discovered the alleged defects in the deck after acquiring the property, and incurred repair or reconstruction costs.

[17] The plaintiff wants to allege misrepresentation as part of a factual chain of causation rather than as a discrete cause of action. He says a misrepresentation by silence when the Chen defendants sold the property eliminated an opportunity for defects in the deck to be identified and remedied, thereby causing or contributing to its ultimate collapse and the resulting injuries.

[18] The established elements of fraudulent and negligent misrepresentation are set out in the context of cases where the plaintiff was the person to whom the representation was made and had to prove that a loss resulted from their reliance on that representation. Those authorities do not and did not need to address the type of allegation made here — that a misrepresentation caused the representee to act or fail to act in a way that caused bodily injury to third person.

[19] The plaintiff’s claim may be a novel one. At trial, the court may find that the alleged misrepresentation is too remote to establish a duty owed by the Chen defendants to the plaintiff or that it is too remote in terms of causation. But, having regard to the generous approach that must be taken to amendments, the Chen defendants have not shown that it is plain and obvious the claim has no reasonable prospect of success at trial.

[20] The application for further amendments to the NOCC is allowed, with costs in the cause.

“N. Smith J.”