

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Reid Developments Ltd. v. Hopkins*,
2023 BCSC 286

Date: 20230117
Docket: S218746
Registry: Vancouver

Between:

Reid Developments Ltd.

Plaintiff

And

Eric Quay Hopkins and Kandace Dawn Hopkins

Defendants

- and -

Docket: S219946
Registry: Vancouver

Between:

Ace Integrated Systems Ltd.

Plaintiff

And:

Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins

Defendants

And:

Reid Developments Ltd.

Third Party

- and -

Docket: S2110680
Registry: Vancouver

Between:

Sherwood Painting & Decorating Ltd.

Plaintiff

And:

Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins

Defendants

And:

Reid Developments Ltd.

Third Party

- and -

Docket: S221121
Registry: Vancouver

Between:

Laurent Bros. Woodwork Ltd.

Plaintiff

And:

Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins

Defendants

And:

Reid Developments Ltd.

Third Party

- and -

Docket: S226246
Registry: Vancouver

Between:

Allan Michael MacInnes doing business as MacInnes Landscaping
Plaintiff

And:

Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins
Defendants

And:

Reid Developments Ltd.
Third Party

- and -

Docket: S226406
Registry: Vancouver

Between:

J & R Excavation & Demolition Ltd.
Plaintiff

And:

Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins
Defendants

And:

Reid Developments Ltd.
Third Party

Before: Master Vos

Oral Reasons for Judgment

In Chambers

Counsel for Reid Developments Ltd.,
Plaintiff in Action No. S218746 and
Defendant/Third Party in Action No's.
S219946, S2110680, S221121, S226246
and S226406:

M.B. Morgan

Counsel for Eric Hopkins and Kandace
Hopkins, Defendants in Action No's.
S218746, S219946, S2110680, S221121,
S226246 and S226406:

A. Cameron
J. Choi

No appearance on behalf of the Plaintiffs in
Action No's. S219946, S2110680, S221121,
S226246 and S226406.

Place and Date of Hearing:

Vancouver, B.C.
January 9, 2023

Place and Date of Judgment:

Vancouver, B.C.
January 17, 2023

[1] **THE COURT:** The defendants, Eric Quay Hopkins and Kandace Dawn Hopkins (the “Hopkins”), apply for an order that would require this action to be tried at the same time as the five other above referenced actions.

[2] This decision is being delivered as oral reasons. If the oral reasons are transcribed, I will likely edit them in order to clarify the judgment in written form and may include information from case authorities or the evidence on matters mentioned in an abbreviated manner when the oral reasons were delivered in court. However, the result and the core analysis will not change.

Background

[3] The Hopkins own real property in Vancouver. In December 2018 they executed a Letter of Agreement (the “Construction Agreement”) with the plaintiff, Reid Developments Ltd. (“Reid”) to construct a home and laneway house on the property (the “Project”).

[4] Reid engaged subcontractors and suppliers to provide materials and labour for the Project.

[5] The Project was completed in 2021.

[6] Reid filed its notice of civil claim for this action (S218746) on October 8, 2022. Reid seeks to enforce a builders lien and alleges that the Hopkins breached their obligations under the Construction Agreement. The notice of civil claim indicates that principal amount of the builders lien claimed by Reid is \$650,209.55.

[7] The Hopkins deny that they are liable to Reid and deny that Reid is entitled to a builders lien in the amount claimed (the Hopkins’ response to civil claim filed November 5, 2021, Part 3, paras. 1 and 4). The Hopkins filed a counterclaim on November 5, 2021 alleging that Reid breached the Construction Agreement by failing to complete the Project on time, on budget, and without deficits, causing them to incur costs and damages. Some of the damages claimed by the Hopkins do not directly concern the work done on the Project (e.g. it is alleged that delay on the

Project exposed the Hopkins to mortgage penalties and additional payments with respect to a rental house) (counterclaim, Part 1, para. 15).

[8] This application was heard together with applications the Hopkins filed in five other actions. Those actions concern claims subcontractors commenced to enforce claims of lien filed in relation to the Project (the “Subcontractor Actions”). The Subcontractor Actions are:

- 1) Supreme Court of British Columbia (“SCBC”) Action S219946; Ace Integrated Systems Ltd. v. Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins and Reid Developments Ltd (Third Party).
- 2) SCBC Action S2110680; Sherwood Painting & Decorating Ltd. v. Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins and Reid Developments Ltd (Third Party).
- 3) SCBC Action S221121; Laurent Bros. Woodwork Ltd. v. Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins and Reid Developments Ltd (Third Party).
- 4) SCBC Action S226246; Allan Michael MacInnes dba MacInnes Landscaping v. Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins and Reid Developments Ltd (Third Party).
- 5) SCBC Action S226406; J & R Excavation & Demolition Ltd. v. Reid Developments Ltd., Eric Quay Hopkins and Kandace Dawn Hopkins and Reid Developments Ltd (Third Party).

[9] The principal amount of the builders liens set out in the notices of civil claim for the Subcontractor Actions total \$170,261.28 (\$48,562.28 plus \$52,318.35 plus \$52,433.80 plus \$15,143.93 plus \$1,802.92). Those claims are included in the lien claim advanced by Reid in this action, as Reid was the general contractor for the Project.

[10] The Hopkins apply for an order that would require this action to be tried at the same time as the five Subcontractor Actions. The application is presented in the notice of application the Hopkins filed on November 25, 2022. The plaintiff, Reid, opposes the application. Two of the plaintiffs with respect to Subcontractor Actions, Sherwood Painting and Decorating Ltd. (Action S2110680) and Allan Michael MacInnes dba MacInnes Landscaping (Action S226246) filed application responses

to that notice of application indicating that they oppose the orders sought by the Hopkins, but they did not appear at the hearing.

[11] On November 25, 2022 the Hopkins filed a notice of application to each of the five Subcontractor Actions seeking the same relief sought in the notice of application filed to this action. No application responses were filed with respect to those applications.

[12] The trial of this action is scheduled for a 10-day hearing starting on April 24, 2023.

[13] The five Subcontractor Actions are at a relatively early stage. Examinations for discovery have not been conducted in any of the Subcontractor Actions; pleadings have not yet closed for one of them; and document disclosure has not occurred in four of them. Trial dates have not been set for any of the Subcontractor Actions (notice of application, Part 2, paras. 8 and 11).

The Legal Framework

[14] The application is pursuant to Rule 22-5(8) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (the “Rules”). It provides:

- (8) Proceedings may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

[15] In *Callan v. Cooke*, 2020 BCSC 290 the Chief Justice provided the following guidance with respect to applications pursuant to Rule 22-5(8):

[122] An order under Rule 22-5(8) engages the discretion of the court. The order is discretionary and regard must be given to the administration of justice when considering an application to consolidate actions.

[123] The law to be applied in applications under Rule 22-5(8) is well-settled, and ably set out by Master Kirkpatrick in *Merritt v. Imasco Enterprises Inc.*, (1992) 2 C.P.C. (3d) 275. There are two questions that must be addressed. The first question is: do common claims, disputes and relationships exist between the parties? That determination is made on a review of the pleadings. The second question is: are the actions so interwoven that separate trials at different times before different judges would be undesirable and

fraught with problems and expense? This question involves a consideration of factors beyond the pleadings.

[124] The factors to consider when making a determination on consolidation or ordering that actions be heard together include whether the consolidation will:

- 1) create a saving in pre-trial procedures;
- 2) reduce the number of trial days taken up by the actions heard together;
- 3) avoid serious inconvenience to a party being required to attend a trial in which they only have a marginal interest;
- 4) save the time and witness fees of experts;
- 5) dispose of all actions at the same time due to common issues of fact or law;
- 6) avoid a multiplicity of proceedings; and
- 7) whether the degree of commonality and intertwining of issues outweighs the prejudicial factors raised by the party opposing consolidation;

bearing in mind:

- 8) the relative stages of the actions;
- 9) whether the trial will be delayed and prejudice one or some of the parties; and
- 10) whether the refusal to consolidate risks inconsistent results.

(See: *Merritt, Insurance Corporation of British Columbia v. Sam* (1998), 24 C.P.C. (4th) 338; *Liu v. Tsai*, 2017 BCSC 221 (Master))

Analysis

[16] The analysis begins with a consideration of whether the six actions involve common claims, disputes and relationships between the parties. They obviously do as they all involve claims relating to materials and labour provided for the Project.

[17] Nevertheless, Reid submits that this action is fundamentally distinct from the Subcontractor Actions. It argues that the main issues in this action are the circumstances surrounding the estimated cost of the Project, the changes to the scope of work performed by Reid, and matters relating to the Hopkins' financing of the Project (Reid's application response, filed December 6, 2022, Part 4, para. 11). Reid points out that the Subcontractor Actions only deal with the subcontractors'

builders lien claims. Reid alleges the subcontracts contained an express or implied “Pay When Paid Clause” (i.e. Reid’s obligation to pay the subcontractors only arises when it is paid by the Hopkins), and argues that if the general contractor action proceeds on its own, this clause would require Reid to pay the subcontractors if it recovers funds from the Hopkins (Reid’s application response, Part 4, para. 13). The problem with this suggestion is that it is not certain that a payment to Reid for the contractor action would necessarily resolve a claim in a Subcontractor Action. Builders lien claims are governed by the *Builders Lien Act*, SBC 1997, c. 45. Section 34 of the *Builders Lien Act* limits the amount that may be recovered by all lien holders who claim under the same contractor. However, the *Builders Lien Act* does not contain a provision that would require the court to direct that a payment order granted on a general contractor’s claim must then be passed on for payment of a specific subcontractor’s claim. Therefore, if the Reid general contractor action proceeds first, there is no requirement that a judgement Reid may obtain against the Hopkins in relation to a subcontractor’s claim would be binding on or fully resolve that subcontractor’s lien.

[18] Reid also suggests the determination of it’s general contractor action would likely result in resolution of the claims in the Subcontractor Actions through application of the holdback provisions under s. 34 of the *Builders Lien Act* (Reid’s application response, Part 4, para. 23). Although this is possible, it is not a certain outcome, as the *Builders Lien Act* does not require the court deciding a general contractor’s claim to specify the holdback that would apply to subcontractor claims.

[19] The determination of whether the six actions deal with common claims, disputes and relationships is made on a review of the pleadings. There is no real doubt that the pleadings in the six actions involve common claims, disputes and relationships between the parties.

[20] The next question to be addressed is whether the six actions are so interwoven that separate trials at different times before different judges would be

undesirable and fraught with problems and economic expense. The following factors are to be considered.

1) *Would an order requiring the actions to be heard at the same time create a saving in pre-trial procedures?*

[21] There is no evidence that any of the actions would require extensive pre-trial procedures.

[22] Counsel for the Hopkins submits that there may be some time savings by allowing the parties to use information, documents and evidence from one action in other actions. This may be so.

2) *Would a a combined trial reduce the total number of trial days required?*

[23] The Hopkins submit that having the six actions tried at the same time would reduce the total number of trial days. The evidence required for the five Subcontractor Actions would be presented only once if there is a combined trial. If there are separate trials, or two trials (this one plus a separate combined subcontractor trial), the evidence in support of the builders liens alleged in each of the Subcontractor Actions would be presented at least twice; once in the general contractor action (if it proceeds first as proposed by Reid) and again in the subsequent trial of the subcontractor's action. This is because all of the claims in the Subcontractor Actions are included in this general contractor action.

[24] If it is assumed that all the actions may proceed to trial, the need to present evidence to prove the subcontractor claims in the general action, and then repeat that evidence in the Subcontractor Actions, and the potential that other evidence relating to the Project may be provided in each action, indicates there would be an overall saving of court time if the six actions were tried at the same time.

3) *Would a party be seriously inconvenienced by being required to attend a combined trial in which that party may have only marginal interest?*

[25] Counsel for Reid argues the plaintiffs to the Subcontractor Actions would be at risk of being seriously inconvenienced if this action and the Subcontractor Actions

were to be tried at the same time. Some have relatively modest claims, yet would have to participate in a combined trial that could last 10 days or more. This is true. However, the inconvenience could be moderated by the trial judge allowing a plaintiff in a Subcontractor Actions to participate in part of the trial and absent themselves from proceedings that would not affect their claim.

[26] Counsel for Reid proposes that this action should proceed as scheduled, towards a 10-day trial starting April 24, 2023, and that the five Subcontractor Actions be tried together, after this action is concluded. He argues that the claims presented in the Subcontractor Actions will likely be determined in this action and the parties should be able to resolve the subcontractors' claims once the Reid main contractor claim has been determined. The problem with this proposal is that the lien claims are denied by the Hopkins. They deny that Reid is entitled to a lien, which means they also deny the liens that are the subject of the Subcontractor Actions. On top of that, claims the Hopkins are pursuing in the counterclaim they filed to this action could, if successful, affect the funds that may be applied to the subcontractor liens. Although Reid's proposal might increase the chance of settlement of the subcontractors' claims, it would not fully resolve the problem of a plaintiff to a subcontractor action being inconvenienced by having to attend a combined trial in which that party may have only marginal interest. The subcontractor plaintiff would still have to attend at a combined trial for the five subcontractor lien claims, and they would have marginal interest in the other four claims. Although a combined trial for the five Subcontractor Actions would likely be shorter than a combined trial for all six actions, and therefore the degree of inconvenience for a specific subcontractor plaintiff might be less under this proposal, it could still be significant.

[27] The bottom line is that a combined trial involving the Reid general contractor action and the five Subcontractor Actions may inconvenience some of the plaintiffs to the Subcontractor Actions, but the nature of this litigation is such that those plaintiffs will very likely be involved in a combined trial, parts of which they will have marginal or no interest.

4) Would there be a saving in experts' time and witness fees if the actions are heard together?

[28] If expert evidence is to be tendered with respect to matters that are included in the lien claims, there would be a saving in expert time and fees if the expert had to appear in court for only one trial.

5) Would a combined trial dispose of all actions at the same time due to common issues of fact or law?

[29] Yes.

6) Would a combined trial avoid a multiplicity of proceedings?

[30] Yes.

7) Does the degree of commonality and intertwining of issues outweigh the prejudicial factors raised by the party opposing the order for a combined trial?

[31] Yes. The issues in the Reid general contractor action and the Subcontractor Actions are very intertwined. The avoidance of multiplicity of proceedings and the benefit of disposing of all claims in a hearing where the common issues, disputes, and relationships can be considered weigh in favour of a combined trial. As indicated by the Hopkins, any prejudice to the lien claimants because of delay in this action proceeding to trial can be compensated by payment of interest on any amount that would have been awarded if the Reid action proceeded to trial on the April 2023 date presently set (notice of application, Part 3, para. 18).

8) Is one of the actions at a more advanced stage than the others?

[32] Yes. This action is on track to proceed to trial as scheduled, in April 2023. The Subcontractor Actions are far from being ready to proceed to trial.

9) Would an order requiring the actions to be heard at the same time delay the trial of one of the actions and thereby prejudice one or some of the parties?

[33] The Hopkins acknowledge that the present April 2023 trial date for the Reid general contractor action would likely have to be adjourned if the six actions are to

be tried at the same time, because more than 10 days would probably be needed for the combined trial and the parties to the Subcontractor Actions would need more time to properly prepare for trial.

[34] The delay of the trial could potentially prejudice Reid. However, the prejudice to Reid caused by that delay could be addressed by an award that would provide payment of interest on any amount Reid would have been awarded if the trial had proceeded in April 2023. Trial dates have not been set in any of the Subcontractor Actions, so the order sought should not delay the trial of those actions.

10) If the order requiring the actions to be heard at the same time is not granted, is there a risk that separate trials could result in inconsistent findings on identical issues?

[35] Yes. The Subcontractor Actions concern claims that also form part of the claims presented in the Reid general contractor action. The claims are disputed by the Hopkins. If the cases were tried separately, the court in each action would have to assess the credibility of the witnesses and make findings of fact regarding the arrangements between the parties concerning the labour and materials the parties agreed on with respect to the Project. There would be a risk of inconsistent findings on those issues.

[36] The factors to be considered on this application weigh in favour of the orders sought. Furthermore, the orders sought would assist in the administration of justice as they would eliminate the risk of inconsistent decisions on matters in issue in the six actions, would resolve all actions at the same time and could reduce the overall court time required for these cases.

Result

[37] The application presented in Part 1, paras. 1 (a), (b) and (c) of the defendant's notice of application filed November 25, 2022, seeking an order that the six actions be tried at the same time and related orders, are granted.

[38] The applications presented in Part 1, paras. 1 (a), (b) and (c) of the Hopkins' notices of application filed November 25, 2022 in the five Subcontractor Actions, seeking orders that the six actions be tried at the same time and related orders, are granted.

[39] Are there submissions on costs?

[DISCUSSION RE: COSTS]

[40] The Hopkins defendants were successful on their application. They are awarded costs of the application as against the party who opposed the application, Reid. Those costs are to be assessed at Scale B under appendix B of the Rules and are payable at the conclusion of the litigation. The hearing mainly dealt with the application presented in this action and the plaintiffs to the Subcontractor Actions did not participate in the hearing. There will be no costs payable to any party with respect to the applications in the Subcontractor Actions.

“Master Vos”