IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sridharan v. Whirlpool Corporation,* 2025 BCSC 1671

Date: 20250609
Docket: S242269
Registry: Vancouver

Between:

Sudharshan Sridharan

Plaintiff

And:

Whirlpool Corporation, Whirlpool Canada Co., Home Depot of Canada Inc., BMTC Group Inc., Corbeil Électroménagers, Best Buy Canada Ltd., Rona Inc., Leon's Furniture Ltd., and Costco Wholesale Canada Ltd.

Defendants

Brought under the *Class Action Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Mr. Justice Morishita

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	T.P. Charney C. Edwards
Counsel for the Defendants Whirlpool Corporation, Whirlpool Canada Co., Corbeil Électroménagers, Best Buy Canada Ltd., and Rona Inc.:	N. Rabinovitch E.H. Irving
Counsel for the Defendant Home Depot of Canada Inc.:	A. Cocks A.D. Butler
Counsel for the Defendant Leon's Furniture Ltd.:	J.S. Yates
Counsel for the Defendant, Costco Wholesale Canada Ltd.:	G.J. Nash, K.C.

Place and Date of Hearing:	Vancouver, B.C. April 14, 2025
Place and Date of Judgment:	Vancouver, B.C. June 9, 2025

[1] **THE COURT:** These are my oral reasons for judgment. Should any party order a transcript or should I decide to publish them, I reserve the right to edit these reasons for grammar, clarity, style, and to add citations or references; however, should I make any edits, the substance of my reasons will not change.

[2] This class action proceeding involves allegations of a manufacturing defect in dishwashers manufactured by the defendants, Whirlpool Corporation and Whirlpool Canada Co. (collectively "Whirlpool"), and sold by the defendants Home Depot of Canada Inc., Corbeil Électroménagers, Best Buy Canada Ltd., Rona Inc., Leon's Furniture Ltd., and Costco Wholesale Canada Ltd. (collectively, the “Retailers").

[3] The plaintiff advances a claim against the Retailers in contract, and the claim against Whirlpool in negligence.

[4] The Retailers apply to have the action bifurcated and conditionally and temporarily stayed as against them. Specifically, they seek the following orders:

1. The action is bifurcated and will proceed first against Whirlpool and will be conditionally and temporarily stayed against the Retailers.

2. Any application for certification in the action or resulting certification as against Whirlpool will be limited to issues arising from the claims against Whirlpool only.

3. Any application for certification in the action or resulting certification as against Whirlpool is without prejudice to the Retailers, including the right of the Retailers to bring any precertification applications or to oppose any future certification application as against the Retailers on all available grounds and, without restricting the generality of the foregoing, any order or reasons for judgment may not be relied on by any person as it relates to the criteria for certification (including class definition or the existence or elements of the causes of action) asserted as against the Retailers.

4. Any and all findings of fact or law, directions and orders made by the court in the action as proceeding against Whirlpool will be limited to findings, directions and orders arising from the claims against Whirlpool only and will not be binding on the Retailers.

5. All parties, including the Retailers, are at liberty to apply to the court for directions in respect of this order at any time.

6. This order is without prejudice to any position, objection or defence that Whirlpool may assert in the action and the certification application.

7. Costs as against any party that opposes this application.

[5] Prior to the hearing, the applicants agreed that if bifurcation and a conditional stay are ordered, they would agree to be bound to a finding in the first proceeding that the dishwashers are or are not defective.

[6] The five-day certification hearing is scheduled to start on May 25, 2026. The parties consented to having this application heard before the certification hearing.

[7] The Retailers submit that a bifurcation and stay order advances the goals of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50, and the *Supreme Court Civil Rules*. Specifically, they argue that a stay promotes judicial economy, limits the use of scarce court resources, and simplifies the proposed class proceeding, which they say will help it be fairly and expeditiously determined. Moreover, they state that it is inefficient to have the claims against the Retailers proceed now, as the claims against them are different than against Whirlpool and are contingent on a finding that the dishwashers are defective. They further submit that bifurcation and a stay will narrow the issues until the Retailers' participation becomes necessary, and in the meantime the plaintiff, Whirlpool and the court can focus on the critical threshold question of whether the alleged defect exists and whether Whirlpool knew or ought to have known about them.

[8] The plaintiff opposes the application. He submits that a stay in these circumstances will not save judicial resources or simplify the proceeding. Instead, he says it will complicate matters and result in the same issues being relitigated in a second certification hearing at a great waste of time and money. Further, the plaintiff argues that a stay will ultimately require more court time and will prejudice the plaintiff, as he will be required to litigate two certification hearings in two common issues trials. Last, the plaintiff contends that as the party with carriage of the proceeding, he should be permitted to advance the claim according to his chosen strategy.

Legal Framework

[9] The parties agree that the court has the discretion to order bifurcation and a partial stay against a subset of defendants in an action.

[10] The court's authority to order bifurcation and a partial stay flows from three sources:

1. Section 8 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253;

2. Under Rules 5-3(p) and (v) and 22-5(6) of the *Supreme Court Civil Rules*; and

3. Pursuant to the Court's inherent jurisdiction to control its own process.

Araya v Nevsun Resources Inc., 2020 BCSC 294, para. 49;
Tanchak v British Columbia, 2023 BCSC 428, para. 32

[11] While the plaintiff agrees that the court does have a discretion generally to order bifurcation and a partial stay, he submits that there are no examples where the court has used that power to bifurcate a certification application over the objection of the plaintiff. He states that the use of the bifurcation and stay power in class action proceedings has occurred in the context of ordering separate trials and not applications for certification.

[12] The Retailers note that this court has recently granted orders similar to those sought in this application. The first was an order of Justice Branch in *Krishnan v. Jamieson Laboratories Inc.*; the second was an order of Madam Justice Tucker in *Dhaliwal v. Johnson & Johnson Inc. et al*.

[13] The Retailers advise that the Branch J. order was by consent and that although the Tucker J. order was not by consent, the order was one of a number that were sought in a contested chambers application. Though disputed, the issue was not substantively argued at the hearing before Tucker J., and was not addressed in the reasons.

[14] In my view, the Branch J. and Tucker J. orders simply confirm that the court has the authority to make the orders the Retailers seek. Without reasons for judgment addressing the matters at issue, there is little more that I can make of the fact that previous orders of this nature have been made. In any event, the Retailers submit that there are analogous cases where the court has ordered partial stays against a subset of defendants.

[15] *Campbell v. Flexwatt Corp.*, 1996 CanLII 3556, was an application for certification. The claim involved allegations of a defect in radiant heating ceiling panels designed and manufactured by one of the defendants. The plaintiff sought to have the proceedings certified against four distinct classes of defendants:

1. The designer/manufacturers;

2. The distributors;

3. The standards/certification organization; and

4. The public regulatory authorities (i.e. the provincial government and various municipalities).

[16] In the certification hearing reasons, Mr. Justice Hutchison stayed the proceeding against the municipal defendants until the common issues involving the manufacturers and the standards/certification organization were determined. In the

claim, the plaintiff asserted that the municipal defendants were liable for damages arising from negligent inspection of buildings where the panels were installed. In staying the proceeding against the municipal defendants, Hutchison J. noted that their potential liability was dependent on a finding that the panels were defective and not fit or unsafe for the purpose of their manufacture.

[17] *Cooper v. British Columbia (Registrar of Mortgage Brokers)*, [1999] BCJ No 1360, rev'd on other grounds, 2000 BCCA 151, was a class action proceeding that flowed from the failure of Eron Mortgage Corporation in the late 1990s. The plaintiff sought to certify a class action against the defendant Hobart, who was the Registrar of the provincial mortgage broker regulator, and the Province of BC, who the plaintiff alleged was vicariously liable for the actions of the defendant Hobart. The defendants issued a Third Party Notice against a number of third parties alleging that any loss sustained by the plaintiff and other potential class members was caused or contributed to by the misrepresentations, fraud, negligence, or breach of fiduciary duties of the third parties.

[18] In the certification application, the plaintiff sought an order that the claims against the third parties be stayed until the conclusion of the trial of the common issues. The third parties supported the request. The defendants were opposed. Mr. Justice Tysoe (then of this court) granted the order. In reaching this decision, he noted that if the common issues were decided in favour of the defendants, the litigation would come to an end, and that it would be unfair to require the third parties to incur the expense of participating in the common issues trial when the allegations against them could become academic: para. 55.

[19] Other than consideration of whether a finding of liability of one group of parties is dependent on the finding of liability against another group, and consideration of fairness and saving of legal expense, neither the *Campbell* case nor the *Cooper* case set out an exhaustive list of factors that the court should consider in determining whether to bifurcate and partially stay a certification proceeding against a defendant.

[20] In *Johnston Estate v. Johnston*, 2017 BCCA 59, the Court of Appeal set out the factors to be addressed by the court when determining whether to exercise its discretion to sever an action. MacKenzie J.A., for the Court, writes:

> [44] As noted by the PGT, in addition to the court's jurisdiction under Rule 22-5, it may temporarily stay a proceeding pursuant to its inherent jurisdiction or under s. 8(2) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, or both: *Zurich Indemnity Co. of Canada v. Western Delta Lands Inc.* (1997), 38 B.C.L.R. (3d) 273, 95 B.C.A.C. 165 at para. 14 (C.A.), leave to appeal to S.C.C. refused [1997] S.C.C.A. No. 469. In exercising its discretion to grant or deny a stay, the court must weigh the potential benefits and prejudice at play and fairly balance the parties' competing interests.
>
> [45] The court's jurisdiction under Rule 22-5, s. 8(2) of the *Law and Equity Act*, and its inherent jurisdiction are exceptions to the principle stated in s. 10 of the *Law and Equity Act* as to the general avoidance of multiplicity of legal proceedings "as far as possible".
>
> [46] I would endorse the judge's non-exclusive summary of the key considerations relevant to an application to sever and the general principles governing severance:
>
> > [68] The key factors engaged in a general sense on an application to sever were canvassed in *Schaper v. Sears Canada*, 2000 BCSC 1575 [*Schaper*] at para. 19:
> >
> > > 1. ...the party making the request must show that hearing the claims together would unduly complicate, delay the hearing, or otherwise be inconvenient. If a party applying does not meet this threshold, the court need not go further in any analysis and the application should be dismissed.
> > >
> > > 2. Have the actions of any party in the proceeding been unreasonable and have they contributed to the complication, the delay, or the inconvenience alleged by the party applying? If this found [*sic*], that would strengthen the argument to sever.
> > >
> > > 3. Are the issues between the plaintiff and defendant and the issues between the defendant and the third party sufficiently distinct so as to allow them to be tried separately? If so, that strengthens the argument to sever off third party proceeding.
> > >
> > > 4. Is the relief claimed by, or the potential obligation of, any party best determined by hearing the evidence of all parties at one hearing? If so, that weakens an application to sever.

> 5. Does the prejudice to the party applying, prejudice based on undue complication, delay or inconvenience, outweigh any benefit of matters being heard together, or outweigh any considerations related to the overall objective of the rules to ensure a just, speedy and inexpensive determination of every proceeding on its merits, including the avoidance of a multiplicity of proceedings for the benefits of litigants and having concern to congestion in the courts generally?

[69] Guidelines that focused attention more keenly on the efficacy of the trial process were helpfully laid out in *O'Mara v. Son, Kim et al.,* 2007 BCSC 871 [*O'Mara*] at para. 23:

> 1. whether the order sought will create a saving in pre-trial procedures;
>
> 2. whether there will be a real reduction in the number of trial days taken up by the trial being heard at the same trial;
>
> 3. whether a party may be seriously inconvenienced by being required to attend a trial in which the party may have a marginal interest;
>
> 4. whether there will be a real saving in expert's time and witness fees;
>
> 5. whether one of the actions is at a more advanced stage than the other;
>
> 6. whether the order sought will result in delay of the trial of any one of the actions and, if so, whether any prejudice which a party might suffer as a result of that delay outweighs the potential benefits which a consolidated trial might otherwise have;
>
> 7. the possibility of inconsistent findings and common issues resulting from separate trials.

[70] Severance may well be appropriate where the determination of one issue will render another one moot: *Lawrence v. ICBC*, 2001 BCSC 1530 [*Lawrence*].

[71] The judicial discretion to sever trials or hearings is to be exercised sparingly: *Morrison Knudsen Co. v. British Columbia Hydro & Power Authority*, 1972 Carswell B.C. 62, 24 D.L.R. (3d) 579 (S.C.); Lawrence at para. 43. The test for severance is not applied in a vacuum; it is to be considered against the backdrop of the nature of the particular case at hand: *Wirtz v. Constantini*, 137 D.L.R. (3d) 393, 1982 CarswellBC 588 (S.C.). Because the determination involves an individualized

> assessment of the unique case before the Court, there is no closed list of uniformly applied considerations that inform the exercise of the Court's discretion

Analysis

[21] I will now apply the *Johnston Estate* factors to the circumstances of this case.

Prejudice to the Applying Party

[22] The first *Johnston Estate* factor requires the parties seeking severance to prove that hearing the claims together would unduly complicate, delay the hearing, or otherwise be inconvenient. The Retailers submit that it is inefficient to have the claims against them proceed at this time. They say they stand in a different position than Whirlpool, who they argue developed, manufactured and marketed the impugned dishwashers. They submit that the majority of the inquiry in the proceeding will concern Whirlpool, their products and what they knew or ought to have known.

[23] In addition, they argue that bifurcation and a stay will narrow the issues until their participation in the proceeding becomes necessary. The stay, they submit, will allow the plaintiff, Whirlpool and the court to focus on the critical threshold questions of whether the alleged defect exists and whether Whirlpool knew or ought to have known about it. A stay, they argue, avoids the complication of prematurely considering the Retailers' alleged liability.

[24] Hearing the claims against Whirlpool and the Retailers together may very well be inconvenient to the Retailers, particularly if the matter proceeds to a common issues trial and it is determined that the alleged defect in the impugned dishwasher does not exist, and all the claims against the Retailers are indeed contingent on that finding. In this situation, the Retailers argue that there would be no remaining claims against them and there would be no viable proceeding left.

[25] The plaintiff disputes this claim. He submits that the claims, or at least some of the claims, against the Retailers are independent of the claims against Whirlpool and can be advanced regardless of what occurs with respect to Whirlpool.

[26] In addition, the plaintiff submits that severing the claims would actually result in an additional complication, as the Retailers seek an ancillary order that they would not be bound by any findings of fact in the severed certification application and common issues trial against Whirlpool, with the exception of a finding that the dishwashers were or were not defective.

[27] In my view, the applicants have not established that hearing the claims against Whirlpool together with those against the Retailers will unduly complicate the certification hearing and, should there be one, a common issues hearing. While hearing the claims together will cause inconvenience to the Retailers, I am not satisfied that this inconvenience is significant enough to favour severance.

[28] In *Johnston Estate*, MacKenzie J.A., citing *O'Mara*, notes that when assessing efficacy of the trial process, the question is whether a party may be seriously inconvenienced by being required to attend a trial in which they may have a marginal interest. In my view, while the Retailers may be inconvenienced if severance is not granted, and the dishwashers are found to not have a defect, it cannot be said that their interest in the proceeding is marginal, nor does the inconvenience rise to the level of serious inconvenience.

[29] This factor does not favour severance.

Any Unreasonable Actions Contributing to the Complication, Delay or Inconvenience?

[30] The second *Johnston Estate* factor looks at whether the actions of any party have been unreasonable and have contributed to the complication, delay or inconvenience alleged by the applicant.

[31] This factor is not relevant in the circumstances of this application.

Are the Issues Between the Parties Sufficiently Distinct?

[32] The third *Johnston Estate* factor deals specifically with scenarios where a third party is seeking to sever the third-party action from the main action. Accordingly, this factor is not relevant to this application.

Is the Relief Claimed By, or the Potential Obligation Of, any Party Best Determined by Hearing the Evidence of All Parties at One Hearing?

[33] The fourth *Johnston Estate* factor addresses the question of whether the issues the court needs to address are best determined by hearing the evidence of all the parties at one hearing.

[34] In my view, the answer to this question is yes. The parties disagree over how easy it will be to deal with the claims and issues related to each set of defendants. Nevertheless, the Retailers seek an order that other than a finding of whether or not the dishwashers contain a defect, they would not be bound to any factual findings from a severed proceeding against Whirlpool. In my view, the fact that the Retailers seek such an order indicates there is a risk of overlap between some of the facts underlying the respective claims against each group of defendants.

[35] Thus, while hearing the evidence of all the parties at one certification hearing and potentially one common issues trial may inconvenience the Retailers, if and only if the dishwashers are found to not have a defect, the determination of the issues as it relates to any party, for example, whether the representative plaintiff is appropriate, is best accomplished by hearing the evidence of all the parties in one hearing. This factor weighs against severance.

Balancing of Prejudice

[36] The fifth and final *Johnston Estate* factor is the balancing of prejudice. This factor asks whether the prejudice to the Retailers outweighs the benefit of having the matters heard together, or concerns relating to the efficacy of the trial process or the court more generally. In addressing this factor, additional relevant considerations include the following:

1. Will severance/a stay create a savings in pre-trial procedures;

2. Will severance/a stay result in a real reduction in the number of trial days;

3. Whether there will be a real saving in expert’s time and witness fees;

4. Whether the order sought will result in delay of the trial of any one of the actions and, if so, whether any prejudice which a party might suffer as a result of that delay outweighs the potential benefits which a consolidated trial might otherwise have; and

5. The possibility of inconsistent findings and common issues resulting from separate trials.

[37] In my view, this *Johnston Estate* factor weighs strongly against severance and a stay.

[38] The Retailers argue that if the claims are severed, the certification hearing and common issues trial will take up less hearing days. However, there was no evidence before the court at the hearing estimating how many court days would be saved. Moreover, if the claims are severed and there are ultimately two certification hearings and two common issues trials, it is very likely that more court days will be required than if there were a single certification hearing and one common issues trial dealing with all the claims.

[39] If the matter is severed, then the parties would likely save on expert time and witness fees, as the parties would only be dealing with claims against Whirlpool. There was no evidence adduced at the hearing, however, indicating how much savings there would likely be.

[40] The plaintiff argues that there would be considerable delay in the proceeding if the claims were severed. They note that if a stay is granted, it could be years before the proceedings against the Retailers would resume, particularly given the likelihood of appeals.

[41] The Retailers concede that a severed proceeding would likely take longer to work its way through if the court finds that the dishwashers are defective; however, they note that there is a possibility of settlement of the retailer action if that were to occur.

[42] If the proceeding is severed and the plaintiff is ultimately successful in certification and establishing at the common issues trial that the dishwasher is defective, there is a significant likelihood that they will then have to proceed against the Retailers in a second set of proceedings, potentially doubling the time that it could take if there were one proceeding. This is not consistent with the purpose of the *Class Proceedings Act*, nor is it consistent with the object of the *Supreme Court Civil Rules*.

[43] I note that as the Court of Appeal indicated in *Johnson Estate*, severance may be appropriate where the determination of one issue will render the other moot. The Retailers submit that if the court finds that there is no defect, then there are no remaining claims against them. The plaintiff, as I understand it, does not disagree with this specific argument, however, they note that even if the class action against Whirlpool is not certified, there still may be claims against the Retailers. While this consideration favours severance, in my view it is outweighed by the risk of increased trial time if two severed actions proceed to completion.

[44] Finally, the plaintiff argues that there is a real risk of inconsistent findings if the matters are severed, particularly because the applicants seek an order that they are not bound by any findings of fact made in the severed action other than a finding that the dishwashers are or are not defective. I share the plaintiff's concern about potential inconsistent findings and potential unintended consequences of the terms of the order sought by the Retailers.

Conclusion

[45] Considering these factors, I am not satisfied that it is appropriate to exercise my discretion to sever the claims. The discretion to sever trials or hearings is to be exercised sparingly. While severance is convenient to the Retailers, I am not satisfied that it is likely to result in significant savings in terms of costs to the parties and in court time. In fact, if the plaintiff is successful in establishing that the impugned dishwashers are defective, severing the claims will result in additional costs and extended court time. More significantly, it may result in considerable

delay, as there would be two sets of certification hearings, and two common issue trials, along with potential appeals.

[46] In the result, I am dismissing the Retailers' application.

Costs

[47] Each party will bear their own costs.

“Morishita J.”