

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan EPS 677 v.
ASPAC Developments Ltd.,
2026 BCSC 502*

Date: 20260206
Docket: S178251
Registry: Vancouver

Between:

The Owners, Strata Plan EPS 677

Plaintiff

And:

**ASPAC Developments Ltd., Hillsboro Investment Ltd.,
Ledcor Construction Limited, IBI/HB Architects, Oldcastle BuildingEnvelope
Canada Inc., Morrison Hershfield Limited, Jones Kwong Kishi Consulting
Engineers, Creo Stone Inc., and Solarfective Products Limited**

Defendants

And:

**Ledcor Construction Limited, Oldcastle BuildingEnvelope Canada Inc.,
Morrison Hershfield Limited, Jones Kwong Kishi Consulting Engineers,
Nor-West Architectural Millwork Ltd., Aligned Floor Coverings Inc., McGregor
& Thompson Hardware Ltd., Nightingale Electrical Ltd., Fastgo System (2011)
Inc., Isackson Rimes Enterprises Ltd., GML Mechanical Ltd., Stordor
Investments Ltd., M & L Painting Ltd., Edmonds Appliance Centre Ltd.,
Snaidero Kitchens & Design Inc., Nexgen Technologies Inc., Creo Stone Inc.,
Solarfective Products Limited, IBI/HB Architects, ASPAC Developments Ltd.
Hillsboro Investment Ltd., Garibaldi Glass Industries Inc., Atlas Stone
Products Ltd., Intricate Glass Ltd., RPM Canada, HP Construction Ltd., Villa
Roofing & Sheet Metal Ltd., Project 143,000 Investments Ltd., Keith Panel
Systems Co., Arcadia Architectural Products Inc., Signature Plastics Ltd.,
Concorde Glazing Systems (a sole proprietorship), Concorde Glazing Systems
(2006) Ltd., Cascade Aqua-Tech Ltd., Mara Projects Ltd., Alternate Glazing
Systems Ltd., Adriatic Concrete Cutting & Coring Ltd.,
and A.T. Westside Projects Ltd.**

Third Parties

And

Docket: S192884
Registry: Vancouver

Between:

The Owners, Strata Plan EPS 677

Plaintiff

And:

Travelers Insurance Company of Canada and Hillsboro Investment Ltd.

Defendants

And:

Ledcor Construction Limited, IBI Group Architects (Canada) Inc., formerly known as 1B1/HB Architects, Oldcastle BuildingEnvelope Canada Inc., Morrison Hershfield Limited, Jones Kwong Kishi Consulting Engineers, Creo Stone Inc., HP Construction Ltd., Villa Roofing & Sheet Metal Ltd., Project 143,000 Investments Ltd., Keith Panel Systems Co., Ltd., Arcadia Architectural Products Inc., Signature Plastics Ltd., Concorde Glazing Systems (a Sole Proprietorship), Concorde Glazing Systems (2006) Ltd., Cascade Aqua-Tech Ltd., Mara Projects Ltd., Al Terna Te Glazing Systems Ltd., Adriatic Concrete Cutting & Coring Ltd., A.T. Westside Projects Ltd., and Dow Silicones Corporation

Third Parties

Before: The Honourable Justice J. Walker

On appeal from the Supreme Court of British Columbia, October 27, 2025 (The Owners, Strata Plan EPS 677 v. ASPAC Developments Ltd., Vancouver Registry No. S178251 and Vancouver Registry No. S192884)

Oral Reasons for Judgment

In Chambers

Counsel for the Third Party,
Cascade Aqua-Tech Ltd.:

J. Antifaev

Counsel for Third Party,
Dow Silicones Corporation:

P. Palmer

Place and Date of Hearing:

Vancouver, B.C.
January 26, 2026

Place and Date of Judgment:

Vancouver, B.C.
February 6, 2026

THE COURT: These are my oral reasons for judgment. For the ease of listening, I am not going to read in the case citations I refer to, but if a transcript of my judgment is ordered, the citations will be inserted.

[1] This is an appeal by Dow Silicones Corporation (“Dow”) from an order of an associate judge dismissing Dow’s application to strike an amended third party notice of Cascade Aqua-Tech Ltd. (“Cascade”) filed on September 26, 2025. The appellant argues that the associate judge erred in concluding that the amended third party notice pleads sufficient material facts to disclose a cause of action against Dow. Dow argues that the associate judge also appears to have accepted that simply pleading the bare elements of a cause of action, which is all the amended third party notice does, meets the pleadings requirements under the *Supreme Court Civil Rules*.

[2] The appellant argues that this alleged error was compounded by the associate judge’s suggestion that Dow could demand particulars and went on to speculate that those procedural steps had not been taken because Dow was “fully apprised” of the claim it is called upon to meet. This, too, was an error of law that reflects a fundamental misapprehension of the purpose of pleadings. Dow says that this court should set aside the order and strike Cascade’s deficient pleadings, without leave to amend.

Background Facts

[3] The underlying action involves claims of negligence, breach of contract, and breach of duty arising from alleged construction deficiencies in a strata complex located at 277 Thurlow Street in Vancouver. It is a companion action to a separate action which involves claims under the Homeowner Warranty Policy. The plaintiff in both actions is the Strata Corporation and the pleadings are similar. One of the defendants, Oldcastle Building Envelope Canada Inc. (“Oldcastle”), filed third party notices on June 29, 2021, including on Cascade, seeking contribution and indemnity under the *Negligence Act*, R.S.B.C. 1996, c. 333.

[4] Subsequently, Cascade filed a third party notice claiming contribution and indemnity against Dow. The third party notice makes allegations of fault relating to

alleged defects in the design and manufacture of caulking, waterproofing, and sealants. Oldcastle alleges that Cascade supplied the caulking product. In turn, Cascade alleges that Dow designed, made, and supplied the caulking products to Cascade.

[5] Caulking problems are just one of the many construction defects alleged by the plaintiff. As it relates to caulking products, the plaintiff alleges various problems, including deficient caulking in glass pane corners, failure of caulking in curtain wall joints, windows, and doors, delaminating interior caulking, and systemic failures in the curtain wall, including exterior caulking.

[6] The amended notice of civil claim is not particularized as to specific caulking products in issue or how any caulking was defective or unsuitable. Some of the allegations appear to allege negligent installation as opposed to product defects. It is a generalized allegation brought by the plaintiffs.

[7] As noted, Oldcastle's third party notices allege that Cascade supplied Oldcastle with the caulking products. Oldcastle did not seek particulars as to the specific caulking products that were unsuitable, why they were unsuitable, or how they were defective. Oldcastle advances *pro forma* allegations of negligence such as that Cascade failed to complete its supply of caulking products in a good and workmanlike manner without defect and in accordance with all relevant industry standards.

[8] Cascade's third party notices against Dow allege that if the caulking products were defective, then they were negligent in design, made and supplied by Dow, and that Dow breached its Distribution Contract with Cascade. The allegations include:

- (a) Dow designed, made, and provided to Cascade the same caulking products which Cascade had alleged to have supplied.
- (b) Dow was or ought to have been aware of the use to which the caulking products would be put.
- (c) Dow owed duties of care to Cascade in respect of the design and manufacture of the caulking products.

- (d) Dow breached its duties of care owed to Cascade in respect of the design and manufacture of the caulking products.
- (e) Dow and Cascade contracted for the distribution of the caulking products, defined as the Distribution Contract, including pleading express or implied terms of the Distribution Contract. Dow breached the Distribution Contract and implied warranties under the *Sale of Goods Act*.
- (g) Cascade is entitled to damages from Dow.

[9] In Dow’s responses to third party notices, Dow admits that it supplied certain caulking products to Cascade pursuant to distribution agreements. Dow denies that its products were used by the plaintiff in the construction and asserts that their caulking products are free of defects or deficiencies, among other defences pleaded.

Procedural History

[10] On October 17, 2024, Dow applied for leave to file its own third party notices. Those applications were denied by Associate Judge Harper at reasons indexed at 2025 BCSC 511. At para. 15 she found that:

The proposed third party notice discloses no reasonable cause of action and has no reasonable prospect of success. Dow could never be required to pay more than its proportionate share as determined by the liability findings of the trial judge, and thus could have no claim over against Oldcastle for contribution and indemnity.

Further, at para. 17 she found that s. 4(2)(b) of the *Negligence Act*:

... provides the basis for claims for contribution or indemnity. As between multiple at-fault parties, as between themselves, they can only seek contribution to the extent of their relative degree of fault. ... In other words, the parties from whom contribution or indemnity is sought face only several liability. A defendant can be held jointly and severally liable to compensate a plaintiff. A third party is only severally liable to contribute to the joint and several liability of the defendant.

[11] Dow then applied to strike Cascade’s third party notice, primarily relying upon Harper A.J.’s decision. Dow argued that Cascade’s third party notice did not disclose a cause of action for contribution and indemnity. Cascade, like Dow, is a third party against whom contribution and indemnity was sought under the *Negligence Act*.

Thus, Cascade, likewise, could have no claim for contribution and indemnity against Dow.

[12] Dow also argued that the third party notice failed to plead sufficient material facts to disclose a cause of action against Dow. Dow argued that Cascade's claims for contribution and indemnity rest on bald conclusory statements of fault related to Dow's alleged manufacture and supply of unspecified caulking products without pleading material facts to support the cause of action alleged.

[13] The respondent, Cascade, disputes that this second basis was argued by Dow before the associate judge as a distinct basis for the application and says that argument was made in the context of the first ground. The arguments before me were made on the second ground only. They were far more developed than the arguments that were made before the associate judge. The respondent says that this is a new argument raised on appeal and should not be permitted to be made.

[14] The appellant denies that this is a new argument advanced on appeal but acknowledges that it was not well developed in their notice of application to strike Dow's claim, but this was because after being served with Dow's strike application Cascade filed an amended third party notice. The appellant says that the amendments are purported to remove Cascade's claim for contribution and indemnity under the *Negligence Act* and substitute it with "an independent" claim for damages arising from alleged causes of action in: (1) negligence; (2) breach of contract; and (3) breach of the implied warranties under the *Sale of Goods Act*, R.S.B.C. 1996, c. 410.

[15] However, Dow argues that Cascade did not plead new or additional material facts to support the causes of action alleged. For instance, the amended third party notice does not plead any material facts identifying the caulking products alleged to be used in the construction of the strata complex, the specific manufacturing or design defects alleged, or any specific contract. For their part, Cascade maintains that their original third party notice did identify an independent claim but was amended to clarify if such clarification was necessary.

Application to Strike

[16] The associate judge found that Harper A.J.’s ruling had no bearing on the amended third party notice. He characterized the amended third party notice as being “in effect, a claim brought pursuant to the *Sale of Goods Act*.” In his view, that distinguished it from Dow’s proposed third party notice that was before Harper A.J. He concluded this was not a situation where Cascade would necessarily be precluded from claiming over against Dow by operation of law.

[17] The associate judge also rejected Dow’s argument that the pleadings failed to disclose a cause of action. Although he acknowledged the pleading was not a “work of art,” he found the allegations were “sufficiently set out so as to bring to the attention of Dow what is being alleged and the basis for those allegations.”

Issue on Appeal

[18] The issue on appeal is whether the associate judge erred in law or principle in not striking the amended third party notice pursuant to R. 9-5(1)(a) or, alternatively, R. 3-5(8). As noted, Cascade argues that Dow’s appeal arguments are new arguments that were not raised before the associate judge and Dow should not be permitted to advance them.

[19] Cascade says in assessing whether the associate judge erred, Dow must establish the amended third party notice as pleaded or as could be amended failed to disclose a cause of action. Alternatively, if it is plain and obvious the amended third party notice failed to disclose a cause of action, then leave to amend should be granted.

Standard of Review

[20] The question of whether a pleading discloses a cause of action is a question of law and is reviewed on a correctness standard: *Qualcomm Incorporated v. Barroqueiro*, 2025 BCCA 65 at para. 38.

Preliminary Issues

[21] In the appeal record, the appellant included a written reply in response to the respondent’s argument. The respondent objects to its inclusion because R. 23-6(8.8) does not permit a written reply. There is no suggestion the written reply goes beyond the scope of proper reply. In response to the objection, the appellant seeks leave to have me consider it.

[22] The parties agree that I have the discretion to accept a written reply. Having now reviewed the reply, I am exercising my discretion to receive it. For the most part, the points made in writing were made by counsel in their oral reply and it does not significantly add. I do note that because it was included in the appeal record the respondent was not prejudiced and, in fact, had the advantage of knowing what the appellant’s position was in response. The respondent was then able to address both points raised in his submission.

[23] As for the respondent’s argument that the appellant is advancing new arguments on appeal that were not raised before the associate judge, while I accept the argument being advanced on appeal is more developed, I do not accept the argument made is new. It was advanced before the associate judge.

Applicable Legal Principles

(1) Rule 9-5(1)(a)

[24] Rule 9-5(1)(a) empowers the court to strike out the whole or part of a pleading if it is “plain and obvious” that some or all of it discloses no reasonable cause of action, even taking the facts pleaded to be true. In other words, where the claim has no reasonable prospect of success.

[25] *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 19: “The power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation,” and is used to weed out hopeless claims from those that have some chance of success. The court should read the pleading “generously and to accommodate inadequacies in form that are

merely the result of drafting deficiencies”: *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465, at paras. 21 and 22. “Where they are functionally adequate, in that they provide an outline of material allegations and the relief sought, minor defects may be overlooked if the defendants are not prejudiced by them”: *Conseil scolaire francophone de la Colombie-Britannique v. British Columbia*, 2022 BCSC 540 at para. 19.

[26] Rule 9-5(1)(a) is not in the main concerned with whether a pleading is poorly organized or difficult to understand:

For a cause of action to be properly advanced, the elements of the cause of action must be set out, the material facts that ground those various elements of the cause of action must be concisely stated, and the relief that is sought must be available for the specific cause of action advanced.

FORCOMP at para. 25

[27] On an application under R. 9-5(1)(a), the applicant must establish “beyond doubt” that the pleadings disclose no cause of action. The court should only reject proposed claims if the action is “bound to lose” or there is no *bona fide* triable issue: *Steveston Seafood Auction Inc. v. Bahi*, 2013 BCSC 1072, at para. 19.

(2) Pleadings

[28] The appellant emphasizes the critical role pleadings play in ensuring that actions proceed fairly and efficiently. As explained in *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21–23:

Pleadings are foundational. They guide the litigation process...

Pleadings also give effect to the underlying policy objectives of the *Rules*, which are to ensure the litigation process is fair and to promote justice between the parties...

For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court...

[29] Proper pleadings give opposing parties fair notice of the case to be met prior to discovery. A claimant is “not entitled to rely on the possibility that new facts may turn up as the case progresses:” *Imperial Tobacco* at para. 22.

[30] Pleadings must disclose a cause of action supported by allegations of material facts which must be pleaded at the outset. Material facts are “the elements essential to formulate a claim” and are comprised of every fact that will be necessary for the plaintiff to prove in order to support their claim: *Mercantile* at paras. 45–48. If material facts are omitted, a claim is not properly pleaded. The pleading requirements for notices of civil claim apply equally to third party notices: *Qualcomm* at para. 35.

[31] On a strike application:

... there is a delicate balance to be maintained in evaluating the adequacy of pleadings to ensure that, on the one hand, meritorious claims are not struck for drafting deficiencies, but on the other hand, defendants are not required to respond to “bald assertions or mere conclusory statements of law” *Kindylides* at para. 34, citing *Owimar* at para. 19.

Qualcomm at para. 35.

[32] Material facts must be pleaded in sufficient detail to “tell the defendant who, when, where, how, and what gave rise to its liability:” *Qualcomm* at para. 36.

[33] In *Canada (Attorney General) v. Frazier*, 2022 BCCA 379 at paras. 69–71 the Court discussed the importance of creating material facts.

[69] Rule 3-1(2)(a) provides that a notice of civil claim must “set out a concise statement of the material facts giving rise to the claim”. Material facts must be pleaded in sufficient detail to support a plaintiff’s claim because the pleadings serve to provide notice and to define the issues to be tried such that the court and the opposing parties are not left to speculate as to how the facts will support the cause of action: see *Mancuso v. Canada (Minister of National Health and Welfare)*, 2015 FCA 227 at paras. 16–20 [*Mancuso*].

[70] The principles governing pleadings must be “applied functionally in the context of the case”: *Valeant Canada LP/Valeant Canada S.E.C. v. British Columbia*, 2022 BCCA 366 at para. 30. The following principles regarding pleading material facts emerge from the jurisprudence. Effective pleadings serve to guide the litigation process and to ensure the court can fairly decide the issues before them: *Sort* at para. 102, citing *Mercantile Office Systems Private Ltd. v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at

paras. 21–23 [*Mercantile*]. Sufficient material facts are the foundation of a proper pleading and as such, the pleading “must tell the defendant who, when, where, how and what gave rise to its liability”: *Mancuso* at paras. 17 and 19; see also *Kindylides v. Does*, 2020 BCCA 330 at para. 34 [*Kindylides*]. It is not permissible for a plaintiff to rely on the possibility that new facts may be uncovered as the case progresses: *Imperial Tobacco* at para. 22.

[71] Material facts are “the elements essential to formulate a claim” and are comprised of every fact that would be necessary for the plaintiff to prove in order to support their claim: *Sort* at para. 102. A material fact is the “ultimate fact ... to the proof of which evidence is directed”: see *Mercantile* at para. 47 citing *Jones v. Donaghey*, 2011 BCCA 6 at para. 18. Bare allegations that are incapable of proof and based on speculation or assumptions are not material facts: *Kindylides* at para. 33. In the absence of sufficient material facts, the court will not infer facts from bald legal conclusions: see *Bhangu v. Honda Canada Inc.*, 2021 BCSC 794 at para. 25, citing *Ladas v. Apple Inc.*, 2014 BCSC 1821 at para. 63. Since a claim can only be evaluated on the pleaded material facts, if material facts are omitted, a claim is not properly pleaded: *Mercantile* at para. 46.

[34] A “bald assertion of a conclusion is not a pleading of material fact” and while pleadings are to be read generously, the court “cannot and should not draw factual inferences from bare assertions of legal conclusions to bolster or fill in the gaps of faulty pleadings.” Sufficient material facts must be pleaded to establish each required element for each cause of action: *Qualcomm* at paras. 35 and 149.

[35] The distinction between particulars and material facts was described in *The Public Guardian and Trustee of British Columbia v. Johnston*, 2016 BCSC 1388:

[46] Particulars and material facts are different in their character and purpose. Broadly speaking, particulars are intended to limit the generality of the pleadings and the issues to be tried; enable the other side to properly prepare for trial; tie the hands of the party supplying the particulars; and inform the opposing party what the pleader intends to prove, as distinct from the mode in which the case is to be proved: *Cansulex Ltd. v. Perry*, 1982 CarswellBC 836 (C.A.). They should follow the material facts and be identified as such. Although particulars must supply sufficient detail of the case to be met, they are not to include the evidence that is anticipated will be adduced at trial to prove the pleaded facts.

[47] The distinctions between evidence and material facts, and between evidence and particulars can be difficult to draw in practice. Despite the challenges, the integrity of those lines must be maintained as stringently as is reasonably possible.

See also *FORCOMP* at para. 30.

The Appellant's Arguments

[36] The appellant argues that the amended third party notice is fatally deficient as it merely recites the elements of the causes of action and relies on a series of bald allegations of fault. Contrary to the pleadings requirements, these pleadings do not set out who, when, where, how, and what gave rise to its liability. The appellant advances the following arguments.

(1) Negligence is not adequately pleaded

[37] Where different types of negligence are alleged, these must be separately pleaded with the material facts for each type of negligence being stated with precision and clarity. Cascade appears to allege multiple types of negligence in the amended third party notice but makes no attempt to separately plead each type; nor does it make any attempt to connect the material from the pleaded facts to the different types of negligence.

(2) Negligent manufacture not adequately pleaded

[38] Cascade's claim hinges on omnibus definitions, bare assertions, and legal conclusions which are not material facts. In the pleaded cause of action for negligent manufacture of a product the claimant must, at minimum, plead a material fact demonstrating that:

- (a) the product was defective in that it was not manufactured in accordance with the specifications the manufacturer intended;
- (b) the defect arose as a result of the manufacturer's failure to take reasonable care in the manufacturing process; and
- (c) the claimant sustained harm that was caused by the defect.

[39] The amended third party notice does not identify which caulking products were used in the construction of the strata complex, which caulking products are alleged to be defective, or how or why they are alleged to be defective.

(3) Negligent design not adequately pleaded

[40] Cascade makes a bare allegation that Dow was negligent in failing to design the caulking products in compliance with all applicable Codes, regulations, and

industry standards, but it does not plead any design defect. It does not plead any facts regarding the foreseeable risk of any design and whether there was a feasible safer alternative design for the caulking products.

[41] To plead a cause of action for negligent design a claimant must, at minimum, allege material facts that identify some feature of the design is alleged to be negligent design. This requires material facts to be pleaded regarding the foreseeable risks of the design and whether there was a feasible safer alternative design.

(4) Failure to warn not adequately pleaded

[42] Cascade makes the bare assertion that Dow was negligent in failing to warn the plaintiff and Cascade that the caulking products were defective. There are no facts pleaded about what warnings were given to Cascade, by whom, how they were inadequate, or how they could be improved. In short, no material facts were pleaded for the claim for failure to warn.

(5) Breach of contract and breach of warranty not adequately pleaded

[43] In order to plead a cause of action for breach of contract a claimant must plead facts that support the existence of a contract and its wrongful breach. The only terms of the distribution contract that are pleaded mirror the implied warranties in s. 18 of the *Sale of Goods Act*.

[44] Here, Cascade simply recites the elements for breach of contract but pleads no facts to support either the existence of a contract or its wrongful breach. The amended third party notice does not allege any specific contract or when it was entered into. As such, the facts pleaded are insufficient to meet the requirements of a claim for either breach of contract or breach of the implied warranties under the *Sale of Goods Act*.

[45] The appellant says that requesting further particulars is not a solution because particulars cannot cure a claim that fails to plead material facts. Pleading

material facts is a prerequisite to an application for particulars since a party must be able to understand the facts of which it is demanding particulars.

The Respondent's Arguments

[46] The respondent emphasizes the standard that Dow was required to meet. Dow had to establish that Cascade's claim was bound to fail in the sense that the claim is hopeless: *Imperial Tobacco* at para. 19. It is only in the clearest of cases that a pleading will be struck out or an amendment disallowed as disclosing no reasonable claim.

[47] Cascade also notes that sometimes pleading the elements of a cause of action will also amount to pleading material facts and it is not always necessary to plead the elements if they can be inferred from the other matters pleaded. "Whether a pleading is adequate must be assessed keeping in mind the purpose of pleadings, which is to give the other party notice of the case it will have to meet": *Vallance v. DHL Express (Canada), Ltd.*, 2024 BCSC 140 at para. 64.

[48] Conclusions of law may be pleaded so long as the material facts supporting those conclusions are pleaded. Conclusions of mixed fact and law is commonplace such as the allegation that a defendant owed a duty: *Conseil scolaire* at para. 17.

[49] The respondent submits that the amended third party notice provides Dow with notice of the case it has to meet, details of which I have already recited.

Analysis

[50] In my view, the associate judge was correct and did not make any of the legal errors alleged. It is not plain and obvious that Cascade's claims are bound to fail. Furthermore, the associate judge did not err in concluding that the pleadings as drafted provided Dow with notice of the who, when, where, how, and what gave rise to the alleged liability.

[51] The context of the action is an important factor in the assessment of the adequacy of a pleading. As the associate judge noted, Cascade was a distributor of

a product manufactured by Dow. The very basis that Cascade alleges that Dow is liable must be looked at in this context. The associate judge specifically addressed these points in his reasons:

[16] The third party notice also provides that Dow contracted with Cascade to distribute caulking products, which is defined as the "distribution contract," and it was an express and/or implied term of the distribution contract that Dow would take all reasonable steps to ensure that the caulking products were reasonably fit for their intended purpose, durable for a reasonable period of time, of merchantable quality, and comprise materials suitable for their intended purpose. These are commonly cited implied contractual terms in a sale of goods arising under the provisions of the *Sale of Goods Act*, RSBC 1996 c 410.

[17] In effect, what is being alleged in this third party notice is that if Cascade had supplied products which caused or contributed to the plaintiff's loss because perhaps they were unfit for their intended purposes or they failed to be of reasonably durable quality, that is a basis on which Cascade may owe liability to the plaintiff ultimately, but it is also a basis on which Cascade may seek liability or contribution from Dow. Whether or not this is characterized as contribution or indemnity is, in my view, largely irrelevant when compared to a claim for damages. What matters here is that Cascade has a legitimate basis on which to seek those damages or indemnity from Dow as the ultimate manufacturer of those products.

[19] Moreover, I find that the decision of Associate Judge Harper does not go so far as to preclude the third party notices from being sustained in their present incarnation. That is not to say, as I say, that the third party notices necessarily accord with anyone's concept of perfection. Indeed, to the extent that Dow is of the view that the third party notices lack sufficient particulars, it is certainly open to Dow to demand particulars with respect to the allegations set out in the third party notice, but I suspect that this step has not been taken because notwithstanding the somewhat imprecise nature of the allegations in the third party notice, Dow is fully apprised and well aware of the claim it is being called upon to meet.

[52] I cannot discern a legal error in his conclusion or analysis. What constitutes material facts in the context of one action may not be material facts in another, dependent on the alleged facts underlying the action. In the context of this action, I agree with the associate judge that Cascade's amended third party notice adequately pleads material facts. It follows then that I do not accept that the associate judge erred in finding that insofar as Dow's allegations of insufficiency, they can be dealt with through a demand for further particulars.

Conclusion

[53] The appeal is dismissed with costs to the respondent, Cascade.

[54] Those are my reasons. Thank you, counsel.

[55] THE CLERK: Order in chambers. Chambers is adjourned.

“J. Walker, J”