IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Talius Group Inc. v. Portlan Inc.,*
2025 BCSC 1942

Date: 20251006
Docket: S246309
Registry: Vancouver

Between:

Talius Group Inc.

Plaintiff

And

Portlan Inc, Lilyway Enterprises Incorporated (d.b.a. Seaton Sunrooms), Jason Watorek and Brooke Watorek

Defendants

Before: The Honourable Justice Blake

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	D.M. Palaschuk
Counsel for the Defendants:	J.V. Payne
Place and Date of Hearing:	Vancouver, B.C. August 5 & 6, 2025
Place and Date of Judgment:	Vancouver, B.C. October 6, 2025

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I. INTRODUCTION

[1] The pleadings in this matter have been the subject of significant dispute between the parties. The notice of civil claim was filed on September 12, 2024, and amended on October 31, 2024 (the "Amended NOCC"), pursuant to R. 6-1(1)(a) of the *Supreme Court Civil Rules* [*Rules*]. The original notice of trial was filed November 4, 2024, and the original trial date was set for October 27, 2025. This matter is now set for trial commencing January 6, 2026, for 15 days.

[2] On March 13, 2025, plaintiff's counsel circulated a draft second amended notice of civil claim to the defendants' counsel, seeking their consent to the amendments. Defence counsel did not consent, and on March 24, 2025, the plaintiffs filed an application seeking leave to file the second amended notice of civil claim.

[3] On March 26, 2025, the defendants filed an application seeking portions of the Amended NOCC be struck pursuant to R. 9-5(1)(a) of the *Rules*, and an order striking the allegations relating to the tort of contractual interference (or to induce a breach of contract) with respect to certain defendants pursuant to R. 9-6 of the *Rules.*

[4] On April 30, 2025, the plaintiff then filed another notice of application seeking leave to file a revised second amended notice of civil claim (the "Second Amended NOCC").

[5] On the same day, the plaintiff filed a document production application. As there was insufficient court time set aside to hear that application while the other two notices of applications were heard, I adjourned that application generally.

[6] Further, during argument, counsel for the defendants came to agree with counsel for the plaintiff, that it was premature for them to apply for summary judgment pursuant to R. 9-6 (as sought in their application of March 26, 2025). Given that agreement, notwithstanding the plaintiff's position that I should still consider the application for summary judgment, I also adjourned that portion of the

defendants' application generally. The defendants have leave to bring that application in the future.

[7] Counsel agreed it was appropriate that I hear the plaintiffs' April 30, 2025 notice of application for leave to file the Second Amended NOCC at the same time as the defendants' application to strike portions of that pleading pursuant to R. 9-5(1)(a) of the *Rules*. Notwithstanding the two notices of application refer to different versions of the proposed amended pleading, counsel was of the view it was both efficient and proportionate to do so. To the extent the plaintiff advanced any argument that the application of the defendants to strike the Amended NOCC was moot, I must respectfully disagree.

II. BRIEF BACKGROUND

[8] The plaintiff, Talius Group Inc. ("Talius") is a BC company headquartered in Salmon Arm. Talius manufactures retractable screens and rollshutters. One product Talius manufactures is Habitat Screens, which is Talius' brand name for retractable screens. Talius sells its products for residential, commercial and institutional properties, throughout North America.

[9] Top Rollshutters Inc. ("Top Rollshutters") was a BC company, headquartered in Salmon Arm. It developed, manufactured, distributed and sold rolling shutters and exterior products, including Habitat Screens. Its' products are used in residential, commercial and institutional properties, and are sold mainly in North America. Top Rollshutters filed for bankruptcy in March 2024 and is not a party to this proceeding. Talius acquired the assets of Top Rollshutters, as set out below.

[10] The defendant Portlan Inc. ("Portlan") entered into a licensing agreement with Top Rollshutters on October 26, 2016 (the "Licensing Agreement"), under which Portlan was granted certain exclusive rights to manufacture, distribute and sell the Habitat Screens in Ontario, Quebec, Prince Edward Island, Nova Scotia, Newfoundland, Michigan and Ohio (the "Territory"). None of the other defendants — Jason Watorek, Brooke Watorek (collectively the "Watoreks" or the "Personal Defendants") nor Lilyway Enterprises Incorporated (doing business as Seaton

Sunrooms) (“Seaton Sunrooms”) — were a party to the Licensing Agreement. The initial term for the Licensing Agreement was for five years. On September 18, 2018, the Licensing Agreement was amended and was set to terminate on December 31, 2023.

[11] The Licensing Agreement contained clause 5.1, which provided that for a period of one year after termination, neither Portlan, nor any director or shareholder of Portlan, would solicit business away from Top Rollshutters; compete with Top Rollshutters; or do any act detrimental to the business of Top Rollshutters.

[12] The Second Amended NOCC contains the following description of the relevant clauses in the Licensing Agreement as follows:

> 11. The Licensing Agreement included the following terms which are summarized below:
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> a. Clause 3.1 Portlan Shall purchase all Retractable Screens components exclusively from Top Rollshutters Inc.
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> b. Clause 3.2 Portlan shall pay a royalty to Top Rollshutters Inc. equal to 5% of certain sales within 10 business days following the end of each month and will provide Talius with monthly sales records. (No royalties are payable on sales subsequent to May 26, 2023 pursuant to an amendment to the Licensing Agreement.)
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> c. Clause 4.4 – Upon termination, Portlan to return all Top Rollshutters Inc. Components, Materials, and Products in their possession to Top Rollshutters Inc.
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> d. Clause 4.5 – Upon termination, Portlan will cease to use, sell, promote, or in any way deal with the Top Rollshutters Inc. Trademarks, the Intellectual Property, the Materials, the Components, and the Products, except in fulfilling their obligation under section 4.4 and to return the same to Top Rollshutters Inc.
>
> e. Clause 5.1 – for a period of one year after the termination, neither Portlan, nor any director or shareholder of Portlan either individual or in partnership, whether by way of trust, agency or otherwise, jointly or in connection with any Person or persons, including without limitation any individual, firm, association, syndicate, company, corporation or other business enterprise, as principal, agent, shareholder, director, officer, employee or in any other manner whatsoever shall (i) ~~not~~ attempt to solicit any business, Dealers or customers away from Top Rollshutters Inc.; (ii) be engaged in any business which is competitive to the business of manufacturing and/or selling the Products, or similar goods within the Territory; ~~and~~ (ii) doing any act the probable ~~affect~~ effect which would be detrimental to the business of Top Rollshutters Inc. or impair relations with Top Rollshutters Inc., its dealers or employees.

[13] On April 13, 2024, through a receivership process, Talius took over the ownership, management and operation of the "Receivership Assets" of Top Rollshutters. The Receivership Assets were defined in the relevant agreement as being the Top Rollshutters "Property", which was defined as:

> Property means the Business and all assets used in the Business and all Rights, the Goods, including but not limited to all Vendor bank and credit card accounts at CIBC, all bank accounts at Royal Bank, all receivables, prepaid expenses, and all Intellectual Property, real property, and personal property (to the extent not included in the aforementioned), owned by any one or more of the Debtors, but not include any Excluded Assets.
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> (Second Amended NOCC, Part 1, para. 9).

[14] The Watoreks are the sole directors and shareholders of Portlan. The plaintiff also alleges that Mr. Watorek and Ms. Watorek are the "sole controlling minds" of the defendant Seaton Sunrooms (Second Amended NOCC, Part 1, para. 12).

[15] As I understand the Second Amended NOCC, the plaintiff alleges that during the latter half of 2023, Top Rollshutters rejected both an offer from the Watoreks to purchase their shares in Portlan and an offer to extend the term of the Licensing Agreement. The plaintiff says these two potential offers were deals that "had gone sour" and allege that the Watoreks "were very spiteful and upset and began to act dishonestly and deceptively". It alleges the Watoreks used both the defendants, Portlan and Seaton Sunrooms, for the "illegitimate purpose of depriving Talius of profits in order to improve their own personal financial situation as the sole beneficial shareholders of Portlan and Seaton Sunrooms", and Portlan failed to comply with the terms of the Licensing Agreement for 2024—specifically clause 5.1—after the termination of the Licensing Agreement on December 31, 2023.

[16] Talius claims Portlan breached the Licensing Agreement and seeks damages as a result. I note the defendants do not seek to strike the portions of the Second Amended NOCC that relate to the alleged breach of contract by Portlan.

[17] However, Talius also claims damages from Seaton Sunrooms, Ms. Watorek and Mr. Watorek. During oral argument, counsel for Talius made clear the legal basis for the claims against these defendants are:

a) Seaton Sunrooms, Mr. Watorek and Ms. Watorek induced the breach of the Licensing Agreement; and

b) both the Portlan and Seaton Sunrooms corporate veils should be lifted, such that Ms. Watorek and Mr. Watorek should be found personally liable for the actions of the two corporations.

III. APPLICABLE LEGAL PRINCIPLES

[18] I will address briefly the applicable law for allowing amendments to pleadings pursuant to R. 6-1 and for striking pleadings pursuant to R. 9-5. Counsel were in agreement on the applicable legal principles.

[19] The fundamental purpose of pleadings is to define the issues to be tried with clarity and precision. Amendments should be permitted as are necessary to determine the real issue between the parties: *Levy v. Petaquilla Minerals Ltd.,* 2012 BCSC 776 at para. 10. A party seeking an amendment must plead sufficient material facts that, if proven at trial, would support a reasonable cause of action.

[20] In *Kwikwetlem First Nation v. British Columbia (Attorney General*), 2021 BCCA 311 at para. 166, the Court of Appeal adopted Madam Justice Ross' summary of the factors to be considered in applications to amend pleadings in *G.A.D. v. BC Children's Hospital*, 2003 BCSC 443 at para. 17:

a) amendments should be permitted as are necessary to determine the real question in issue between the parties;

b) the Court will not give its sanction to amendments which violate the rules that govern pleadings, including the prohibition of pleadings which disclose no reasonable claim (and in considering this, the Court is to apply the same tests and considerations as are applicable on an application to strike pleaded claims);

c) a party is not required to adduce evidence in support of a pleadings before trial;

d) the facts alleged in the proposed pleading are to be taken as established; and

e) the discretion is to be exercised judicially, in accordance with the evidence adduced and the guidelines of the authorities. Factors to be considered include: the extent of delay; the reasons for delay; any explanation put forward to account for delay; the degree of prejudice caused by the delay; the extent of the connection between the existing claims and a proposed new cause of action. The over-riding consideration is what is just and convenient.

[21] As noted by Justice Davies in *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372:

> [39] In *Mayer v. Osborne Contracting Ltd.*, 2012 BCCA 77 at para. 215, the Court of Appeal affirmed that the fundamental purpose of pleadings is to define the issues to be tried with clarity and precision, to give the opposing parties fair notice of the case to be met, and to enable all parties to take effective steps for pre-trial preparation.
>
> [40] Applications 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 para. 13 – 14 and cases cited therein.
>
> [Emphasis added.]

[22] Rule 9-5 is a challenge on the pleadings. Where it is plain and obvious a claim discloses no reasonable cause of action, and is thus bound to fail, it should be struck pursuant to R. 9-5(1)(a). The material facts as set out in the notice of civil claim are taken to be true and evidence is not to be considered on such an application: *R. v. Imperial Tobacco Canada Ltd*., 2011 SCC 42 at paras. 17 and 22 [*Imperial Tobacco*]. The Supreme Court of Canada noted:

> [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. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go to trial.

> [20] This promotes two goods – efficiency in the conduct of litigation and correct results. Striking out claims that have no reasonable prospect of success promotes litigation efficiency, reducing time and cost. The litigants can focus on serious claims, without devoting days and sometimes weeks of evidence and argument to claims that are in any event hopeless…

[23] When insufficient material facts have been pleaded to support each element of a cause of action, a cause of action is bound to fail. The facts as pleaded are the basis upon which the possibility of success of the claim must be evaluated: *Imperial Tobacco* at para. 22. Rule 9-5(2) provides that on an application to strike pleadings under R. 9-5(1)(a), no evidence is admissible. Rather, the exercise is whether, taking the material facts pleaded as true, the notice of civil claim discloses a cause of action.

[24] When deciding whether pleadings disclose a cause of action, the judge should read them generously, err on the side of permitting novel but arguable claims to proceed, and accommodate inadequacies in form to the extent reasonable by allowing for proposed amendments to cure deficient drafting. Nevertheless, for a claim to be allowed, the prospect of success must be reasonable, not speculative, taking into account the salient law and the litigation context: *Imperial Tobacco* at paras. 21–25.

[25] An effectively pleaded cause of action must include sufficient material facts to support each element of the cause of action: *Imperial Tobacco* at para. 22. The material facts giving rise to the claim, or that relate to the matters raised in the claim, must be concisely set out. This obligation was explained by Chief Justice McLachlin, as she then was, in *Imperial Tobacco,* in the context of a motion to strike as follows:

> [22] A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. <u>But plead them it must. The facts pleaded are the firm basis upon which the</u>

> possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.
>
> [Emphasis added.]

[26] However, where the facts pled are based purely on assumptions or wild speculation or are incapable of proof, they may be subject to cautious scrutiny by the court: *Grosz v. Royal Trust Corporation of Canada*, 2021 BCSC 1313 at para. 125. Put another way, the facts as pled are assumed to be true "unless they are manifestly incapable of being proven": *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64; quoting *Imperial Tobacco* at para. 22.

[27] While generally proposed amendments to cure deficient drafting will be allowed; where the claim is so defective it is incapable of amendment, it ought to be struck in its entirety: *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10.

IV. ANALYSIS

[28] The Second Amended NOCC contains additional amendments which were not included in the Amended NOCC. The defendants applied to strike portions of the Amended NOCC and say none of the alleged deficiencies are cured in the Second Amended NOCC. The defendants seek to disallow the amendments sought in the Second Amended NOCC, and to strike those portions of the Amended NOCC identified in their application.

[29] While the plaintiff put forward significant evidence on this application, all such evidence was unnecessary and inappropriate and I have not considered it. Rather, both applications turn on whether the material facts pled in both the Amended NOCC and the Second Amended NOCC disclose a reasonable cause of action or whether it is plain and obvious that, notwithstanding the proposed amendments, the causes of action that are objected to are bound to fail. For the same reason the plaintiff's argument that there is no prejudice to the defendants from the proposed amendments in the Second Amended NOCC is not a relevant consideration, if the pleadings do not disclose a reasonable cause of action.

[30] While the plaintiff argues that the defendants' application is wholly without merit and was solely brought for the improper purpose of undermining the previously scheduled summary trial, I cannot agree. Pleadings are foundational and serve a critical purpose in our adversarial system of litigation.

[31] An effectively pled cause of action must include sufficient material facts pled to support each element of the cause of action. The material facts giving rise to the claim, or that relate to the matters raised in the claim, must be concisely set out. Neither evidence nor argument is appropriate: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.,* 2021 BCCA 362 at para. 44 [*Mercantile Office*]. A material fact is accepted as one that is essential to formulate a cause of action: *Mercantile Office* at para. 48*;* citing *Muldoe v. Derazk,* 2021 BCCA 199 at para. 31.

[32] Our Court of Appeal recently again addressed the critical issue of sufficiency of pleadings in *Mercantile Office* and noted:

> [21] Pleadings are foundational. They guide the litigation process. This is true in relation to the discovery of documents, examinations for discovery, many interlocutory applications and the trial itself.
>
> [22] 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: *Wong v. Wong*, 2006 BCCA 540 at paras. 22–23. They enable the parties and the court "to ascertain with precision the matters on which the parties differ and the points on which they agree; and thus to arrive at certain clear issues on which both parties desire a judicial decision": *1076586 Alberta Ltd. v. Stoneset Equities Ltd.,* 2015 BCCA 182 at para. 55, citing D.B. Casson & I.H. Dennis, eds, *Odgers' Principles of Pleading and Practice in Civil Actions in the High Court of Justice*, 21st ed (London: Stevens & Sons, 1975) at 75–76.
>
> [23] For the court, pleadings serve the ultimate function of defining the issues of fact and law that will be determined by the court. In order for the court to fairly decide the issues before them, the pleadings must state the material facts succinctly: *Sahyoun v. Ho*, 2013 BCSC 1143 at paras. 15–22; *Shoolestani v. Ichikawa*, 2018 BCCA 155 at para. 30; *Weaver v. Corcoran*, 2017 BCCA 160 at para. 63. They must be organized in such a way that the court can understand what issues the court will be called upon to decide: Frederick M. Irvine, ed., *McLachlin & Taylor, British Columbia Practice,* 3rd ed, vol 1 (Markham, Ont.: LexisNexis Canada Inc., 2006) (loose-leaf updated 2021) at 3–6; *Simon v. Canada (Attorney General),* 2015 BCSC 924 at paras.17–18, aff'd 2016 BCCA 52.

A. Inducing Breach of Contract

[33] There was, initially, great confusion as to whether the plaintiff was pleading the tort of contractual interference or the tort of inducing a breach of contract. Plaintiff's counsel ultimately confirmed in oral submissions they seek to bring a claim that the Watoreks and Seaton Sunrooms induced a breach of contract—the Licensing Agreement. Accordingly, I am only considering whether the proposed amendments disclose a reasonable cause of action for that tort or whether it is plain and obvious it must fail.

[34] On that basis, Part 3 of the Second Amended NOCC, should read (as amended orally by counsel):

> 3. Seaton Sunrooms, Jason Watorek and Brooke Watorek have interfered with the Licensing Agreement. The tort of inducing breach of contract. Particulars of the inducement of the breach of contract are included in Part 1 paras. 10 to 21.
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> 4. Madam Justice Dickson in *Le Soleil Hospitality Inc. v. Louie*, 2010 BCSC 1183 set out the elements for inducing breach of contract.
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> [326] The tort of inducing breach of contract is committed where the defendant induces a breach of contract between the plaintiff and a third party and, as a result, the plaintiff suffers damage: *Slade and Stewart Ltd. v. Haynes*, [1969] B.C.J. No. 439 at ¶ 10 (S.C.). The essential elements are:
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> i) the defendant had knowledge of the contract;
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> ii) the defendant intended to bring about, induce or procure the breach of the contract;
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> iii) the defendant persuaded or otherwise prevailed upon one party to a contract to break it, thereby causing loss to the plaintiff, the other contracting party or the defendant induces the contract breaker to enter into a contract with him or her that is inconsistent with the existing contract of the plaintiff; and
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> iv) the plaintiff suffers damages as a consequence of the defendant's conduct.

[35] While the plaintiff argues that it has provided significant affidavit evidence in support of this cause of action, that is not the relevant analysis. Rather, the analysis is whether the claim, as pled, sets out the material facts to support this cause of action. Assuming it does, the analysis is then whether the proposed cause of action discloses a reasonable claim or it is bound to fail. In doing so, the material facts

alleged in the proposed pleading are taken to be true, unless they amount to wild speculation.

[36] Whether under an application to amend pleadings or to strike, the court will not give its sanction to pleadings which disclose no reasonable claim.

[37] The plaintiff argues that the proposed amendments plead material facts that establish a cause of action for inducement of breach of contract. On the basis of the proposed Second Amended NOCC, I cannot agree.

[38] Broadly speaking, the relevant portions of the proposed Second Amended NOCC plead:

a) the Licensing Agreement included a number of terms, including clause 5.1 (para. 11);

b) the Watoreks were the sole directors and beneficial shareholders of Portlan and Seaton Sunrooms (para. 12);

c) during the latter half of 2023 they failed to reach an agreement with Talius to either sell Portlan to it, or extend the Licensing Agreement, and as a result Mr. Watorek and Ms. Watorek “were very spiteful and upset and began to act dishonestly and deceptively including using both Portlan and Seaton Sunrooms for the illegitimate purpose of depriving Talius of profits” (para. 13);

d) following the termination of the Licensing Agreement on December 31, 2023, Portlan did not comply with the Licensing Agreement for 2024 (para. 14);

e) Seaton Sunrooms, Mr. Watorek and Ms. Watorek “dishonestly, illegitimately and in bad faith intentionally interfered with the Licensing Agreement” in 2024 (para. 15);

f) on April 16, 2024, Ms. Watorek "dishonestly, illegitimately, deceptively and in bad faith accessed without authorization" Talius' internal database (para. 16);

g) Ms. Watorek and Mr. Watorek "dishonestly, illegitimately and in bad faith solicited and recruited" Top Rollshutters and Talius' employees (para. 17); and

h) Ms. Watorek and Mr. Watorek "dishonestly, illegitimately, deceptively and in bad faith misled suppliers, dealers and customers" about the terminated Licensing Agreement; and specifically carried this out "through and under the guise of corporate entities Portlan and Seaton Sunrooms, which they controlled and operated as mere instruments of their personal business strategy, with no separation between their personal interests and those of the companies" (para. 18).

[39] When pushed in oral argument, counsel for Talius identified the specific inducement of the breach of contract in the Second Amended NOCC as being:

> 19. The Watorek Dishonest and Deceptive Conduct included the following:
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> …
>
> e. In furtherance of their deception and in an effort to circumvent restrictions under Section 5.1 of the Licensing Agreement, Brooke and Jason Watorek directed the diversion of screen sales to Seaton Sunrooms, to avoid detection and improve their own personal financial situation causing loss to the Plaintiff.
>
> f. Other dishonest actions to intentionally deceive customers and suppliers that Portlan was authorised after December 31, 2023 to represent Talius.

[40] First, there are no material facts pled that either Season Sunrooms, Ms. Watorek or Mr. Watorek intended to cause Portlan to breach the Licensing Agreement. On that basis alone there is no reasonable claim pled, as it is an essential element that the defendant intended to bring about, induce or procure the breach of the contract. Likewise, there are no material facts pled that any of these defendants prevailed upon Portlan to break the Licensing Agreement with Talius.

[41] Second, there are no material facts pled that either Ms. Watorek or Mr. Watorek, in their personal capacity (as opposed to in their capacity as directors of Portlan), intended to cause Portlan to breach the Licensing Agreement. While the pleading refers to the material facts set out in paras. 10–21, there is no pleading that either Ms. Watorek or Mr. Watorek acted in their personal capacity.

[42] The claim as contemplated in the Second Amended NOCC is deficient, as it fails to plead (or to identify potential amendments that could plead), the necessary material facts to ground a claim for inducement of breach of contract. The Amended NOCC clearly sets out a breach of contract claim as against Portlan. I struggle to see how the tort of inducing breach of contract could also co-exist on these facts.

[43] Further, as the Court of Appeal noted in *Hildebrand v. Fox,* 2008 BCCA 434*:*

> The law is relatively clear that, based on *Said v. Butt*, an employee of a company which has breached a contract is not personally liable for the tort of inducing breach of contract or for another claim that is a disguised attempt to make a non-party liable on a contract (para. 70).

I address in greater detail below the reasons I find it plain and obvious that the plaintiff cannot pierce the corporate veil to make either of the Watoreks personally liable for the actions of either Portlan or Seaton Sunrooms.

[44] I note that there are no causes of action advanced against Ms. Watorek personally for the alleged access of Talius' internal database, nor against Seaton Sunrooms for unauthorized use of Talius' intellectual property. Rather, the only cause of action as against Seaton Sunrooms is that it induced Portlan to breach the Licensing Agreement.

[45] The defendants argue that the plaintiff cannot advance a claim for inducing a breach of contract against the Personal Defendants, either acting in their personal capacity or in their capacity as Portlan's directors, while also claiming a breach of contract against Portlan directly: *Flanagan v. VINN Automotive Technologies Limited*, 2024 BCSC 1612 at paras. 45–51. I do not read this case to stand for that broad proposition. While I struggle to see the basis upon which the plaintiff could

pursue both a breach of contract claim as against Portlan and an inducement of breach of contract claim as against Seaton Sunrooms, I cannot definitively conclude it is a legal impossibility.

[46] Given the confusion as to whether the plaintiff was trying to plead that Seaton Sunrooms induced Portlan to breach the contract with Talius, or whether they were attempting to plead that they were interfering with the Licensing Agreement, I find it is not appropriate to conclude that the potential claim is so defective it is incapable of potential amendment. While on the material facts proposed the plaintiff has not pled a reasonable cause of action for inducement of breach of contract, and counsel failed to identify any potential amendments to rectify this failure, I am reluctant to deprive them of any future attempt.

[47] Accordingly, the proposed amended pleading as set out in the Second Amended NOCC of inducing breach of contract is not allowed, and the pleadings related to this claim in the Amended NOCC are struck. The plaintiff has leave to bring an application to further amend their Amended NOCC to include a claim that Seaton Sunrooms induced a breach of the Licensing Agreement if, after reviewing these reasons for judgment, they determine it is appropriate to do so. However, if they decide to do so, they must plead material facts that would support this claim in addition to their breach of contract claim against Portlan.

B. Piercing the Corporate Veil

[48] The plaintiff seeks to pierce the corporate veil of both Portlan and Seaton Sunrooms, to affix personal liability to the Personal Defendants. Their Second Amended NOCC pleads in Part 3:

> 11. The Portlan and Seaton Sunrooms corporate veil should be lifted and Brooke Watorek and Jason Watorek are personally liable for damages.
>
> 12. Brooke Watorek and Jason Watorek are personally liable because the Bronwyn de Jong Deception, the Brooke Watorek's Hacking, the Watorek Dishonest and Deceptive Conduct, ~~their conduct regarding~~ the non payment of amounts due to the Plaintiff and the subsequent to December 31, 2023 noncompliance with the Licensing Agreement and contractual interference was "dishonest", undertaken for a "deal which had gone sour", "the corporate form has been abused" and "used for illegitimate purposes". *Emtwo*

> *Properties Inc. v. Cineplex (Western Canada) Inc.,* 2011 BCSC 1072 para. 115 and *Gichuru v. Smith*, 2010 BCCA 352 para. 11.
>
> a. *Gichuru v. Smith*, 2010 BCCA 352 para. 11. The corporate veil can be pierced against Brooke and Jason Watorek where there are findings of "deceit, dishonesty or want of authority".
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> The Court of Appeal continued:
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> …In every case, however, the facts giving rise to personal liability were specifically pleaded. Absent allegations which fit within the categories described above, officers or employees of limited companies are protected from personal liability unless it can be sown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act complained of their own. [at 720, quoted by the chambers judge at para. 44; emphasis added.]
>
> 13. Defendants are jointly and severally liable because the defendants acted jointly and in concert as a group under the control of the Watorek's to cause the damages to the Plaintiff.

[49] The plaintiff relies upon the following conduct to pierce the corporate veil of the two corporations: the Bronwyn de Jong Deception; Brooke Watorek's Hacking; the Watorek Dishonest and Deceptive Conduct; nonpayment of amounts due to the plaintiff; and the subsequent to December 31, 2023 noncompliance with the Licensing Agreement and contractual interference. It argues this conduct was "dishonest", undertaken for a "deal which had gone sour", "the corporate form has been abused" and "used for illegitimate purposes" (Second Amended NOCC, Part 3, para. 12). As already noted, counsel clarified that the tort being pled was inducement of breach of contract, not contractual interference.

[50] In brief, the "Bronwyn de Jong Deception" is alleged to be the hiring by Seaton Sunrooms of an employee of Top Rollshutters in March 2024, who was their only employee in the Territory, who then, at the instruction of the Watoreks, "deceptively and dishonestly represented herself to customers in the Territory as a Top Rollshutters Inc./Talius representative during the year ended December 31, 2024" (Second Amended NOCC, Part 1, para. 17).

[51] "Brooke Watorek's Hacking" is the allegation that Ms. Watorek "dishonestly, illegitimately, deceptively and in bad faith accessed without authorization the

Plaintiff's internal dbox database deleting and sabotaging the Plaintiff's business critical data" (Second Amended NOCC, Part 1, para. 16).

[52] The "Watorek Dishonest and Deceptive Conduct " is the allegation that the Watoreks "dishonestly, illegitimately, deceptively and in bad faith misled suppliers, dealers and customers about the terminated Licensing Agreement causing loss to the Plaintiff", and carried out this deception "through and under the guide of corporate entities Portlan and Seaton Sunrooms, which they controlled and operated as mere instruments of their personal business strategy, with no separation between their personal interests and those of the companies" (Second Amended NOCC, Part 1, paras. 18–19).

[53] The nonpayment of amounts due to the plaintiff, the subsequent to December 31, 2023 noncompliance with the Licensing Agreement, and contractual interference appear to be based on the following pleading in the Second Amended NOCC:

> 15. Seaton Sunrooms, Jason Watorek and Brooke Watorek have dishonestly, illegitimately and in bad faith intentionally interfered with the Licensing Agreement during the year ended December 31, 2024:
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> a. Seaton Sunrooms, Jason Watorek and Brooke Watorek were aware of the terms of the Licencing Agreement which terminated on December 31, 2023.
>
> b. ~~After December 31, 2023, Brooke Watorek and Jason Watorek arranged for Portlan to sell for a profit to third parties certain of the Talius Materials, Components, and Products Portlan purchased pursuant to the Licensing Agreement.~~
>
> c. ~~After December 31, 2023,~~ Brooke Watorek and Jason Watorek dishonestly, illegitimately and in bad faith arranged for Seaton Sunrooms to sell for a profit to third parties certain of the Talius Materials, Components and Products Portlan purchased pursuant to the Licensing Agreement.
>
> d. Seaton Sunrooms sold, promoted, purchased, manufactured and delivered competing Retractable Screens and related components with a sales value in excess of $1 million to customers in the Territory and made significant profits in excess of 40% of sales.
>
> e. ~~Subsequent to December 31, 2020,~~ Seaton Sunrooms dishonestly, illegitimately and in bad faith did not purchase any Talius Materials, Components and Products from the Plaintiff but instead purchased retractable screen products from Portlan. For the 12 months ended December 31, 2023, Seaton Sunrooms had purchased from Portlan

> $768,942 in Talius Materials, Components, and Products. The profit on the $768, 942 in sales was $307,000.
>
> f. ~~Subsequent to December 31, 2023, w~~Without authorization, dishonestly, illegitimately, deceptively and in bad faith Seaton Sunrooms had displayed the Talius name and Talius Materials, Components, and Products on its marketing material including the website seatonsunrooms.com.
>
> g. Without authorization Seaton Sunrooms has dishonestly, illegitimately and in bad faith displayed on its website https://www.seatsonsunrooms.com competing Retractable Screens products.
>
> h. ~~Seaton Sunrooms, Jason Watorek and Brooke Watorek have improperly sold to third Talius Materials, Components, and Products. For the 12 months ended December 31, 2023, Portlan excluding sales to Seaton Sunrooms sold $2.2 million in Talius Materials, Components, and Products to 42 customers the majority of which have not transferred their business to the Plaintiff.~~
>
> i. Jason Watorek and a Seaton Sunrooms employee on or around May 12, 2024 contacted Allutech, Talius's exclusive component supplier, in an attempt to continue sourcing Talius Materials, Components, and Products from Alutech.

[54] As noted above, these allegations fail to set out material facts that would support a cause of action that either Seaton Sunrooms or the Watoreks intentionally interfered with the Licensing Agreement. In any event, the plaintiff confirmed their claim is not for contractual interference but rather for inducement of breach of contract.

[55] I am not persuaded the plaintiff has pled material facts that could support a finding that either the corporate veil of Portlan or Seaton Sunrooms should be pierced. I am satisfied it is plain and obvious such a claim is bound to fail.

[56] As I have found that there is no reasonable cause of action pled that Seaton Sunrooms induced Portlan to breach the Licensing Agreement, there is no reasonable cause of action pled as against Seaton Sunrooms. On that basis alone, there could be no reason to pierce the corporate veil of Seaton Sunrooms. However, I also find there is no potential basis upon which either the corporate veil of Portlan or Seaton Sunrooms could be pierced.

[57] Neither Ms. Watorek, Mr. Watorek nor Seaton Sunrooms were parties to the Licensing Agreement. The doctrine of privity of contract is well-established and stipulates that only the parties to the contract are entitled to the benefits of it and are subject to the obligations under it: *Price Security Holdings Inc. v. Klompas & Rothwell*, 2019 BCCA 36 at para. 32. There is no legal basis upon which Talius can bring a claim against Ms. Watorek, Mr. Watorek or Seaton Sunrooms on the basis of noncompliance with the Licensing Agreement.

[58] First, I find that neither Ms. Watorek nor Mr. Watorek could be personally liable for the tort of inducing breach of contract, even if that tort had survived these applications. That is because of the exception that arose in *Said v. Butt*, [1920] 3 K.B. 497, which came to be known as the "Rule in *Said v. Butt*". The Court of Appeal, in *Hildebrand v. Fox*, 2008 BCCA 434 described this principle in the following manner:

> …The law is relatively clear that, based on *Said v. Butt*, an employee of a company which has breached a contract is not personally liable for the tort of inducing breach of contract or for another claim that is a disguised attempt to make a non-party liable on a contract. …
>
> (para. 70).

[59] While the plaintiff initially argued that this does not apply to directors, counsel ultimately agreed it does: see, for example, *Coast Realty Group (Campbell River) Ltd. v. Neilson Island Holdings Inc.,* 2015 BCSC 187 at paras. 70–74; *Steele v. Riverside Forest Products et al. and Raboch v. Riverside Forest Products et al.,* 2005 BCSC 1598 at paras. 15–20. Counsel then argued that the principle in *Said v. Butt* should not apply in these circumstances, as it should not apply to the Watoreks in their capacity as shareholders of Seaton Sunrooms or Portlan. He provided no legal authority for this proposition.

[60] The law is clear that a corporation is a separate legal entity. Portlan executed the Licensing Agreement, through their directors. There is no legal basis upon which shareholders can become liable for the actions of a corporation, except for in rare circumstances where there are arguments that the corporate structure itself is a

sham. No such arguments are advanced here. The plaintiff relies upon *Jeana Ventures Ltd. v. Garrow*, 2022 BCSC 1539, but that case is no of assistance—as the individual added as a defendant, who was a shareholder of the corporation, also was a party to the relevant shareholder agreement. It was not an attempt to pierce the corporate veil: at para. 31. Even if a reasonable cause of action was pled as against Seaton Sunrooms, this would be determinative of any attempt to pierce the corporate veil of Seaton Sunrooms.

[61] Second, the remaining issue is whether the plaintiff has pled material facts that would support a finding that Ms. Watorek and Mr. Watorek could be personally liable for the actions of Portlan. I note that piercing the corporate veil is not, in and of itself, a separate cause of action; rather, it is a finding of who is liable for the alleged cause of action—in this case, for the alleged breach by Portlan of the Licensing Agreement.

[62] In *Merit Consultants International Ltd. v. Chandler,* 2014 BCCA 121 [*Merit Consultants*], Newbury, J.A. referred to *ScotiaMcleod v. Peoples Jewellers* (1995), 129 D.L.R. (4th) 711 (Ont.C.A.) as follows:

> [17] Finlayson J.A. for the Court of Appeal noted that the cause of action pleaded had been "predicated on personal liability arising out of the actions of Peoples" (my emphasis). He observed:
>
> > The decided cases in which employees and officers of companies have been found personally liable for actions ostensibly carried out under a corporate name are fact-specific. In the absence of findings of fraud, deceit, dishonesty or want of authority on the part of employees or officers, they are also rare. Those cases in which the corporate veil has been pierced usually involve transactions where the use of the corporate structure was a sham from the outset or was an afterthought to a deal which had gone sour. ... In every case, however, the facts giving rise to personal liability were specifically pleaded. Absent allegations which fit within the categories described above, officers or employees of limited companies are protected from personal liability unless it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own. [At 720; emphasis added.]
>
> and further:

> To hold the directors of Peoples personally liable, there must be some activity on their part that takes them out of the role of directing minds of the corporation. [At 721; emphasis added.]
>
> In the result, the Court struck out the action as against certain officers of Peoples, but allowed it to proceed as against two directors and senior executives who had been "involved in making certain representations personally which were relied upon by the appellants". (At 724-5.)

[63] Madam Justice Newbury went on to note that where a director acts within the scope of their duties, and in doing so, they further the corporation's interests, their conduct is protected: *Merit Consultants* at para. 18; citing *ADGA Systems International Ltd. v. Valcom Ltd.* (1999), 43 O.R. (3d) 101, 1999 CanLII 1527 (ON CA), leave to appeal ref'd [1999] S.C.C.A. No. 124. For the same reason, the conduct of the Watoreks in their capacity as directors of Portlan is also protected, as there are no material facts pled that either of the Watoreks were acting in a manner outside their role as directors of either Portlan or Seaton Sunrooms.

[64] Finally, Newbury J.A. noted the distinctions between an independent cause of action brought against shareholders of a corporation and attempting to pierce the corporate veil:

> [19] Referring to *Salomon v. Salomon & Co. Ltd.* [1897] AC 22 (H.L.), which of course concerned the potential liability of the shareholders of a company for its liabilities, the Court went on to observe that where a plaintiff seeks to establish an "independent" cause of action against the principals of a company, *Salomon* is not engaged and the corporate veil is not threatened. The distinction between an "independent" cause of action and "looking through the corporation" had been confirmed, Carthy J.A. stated, by *Said v. Butt*. Again in his words:
>
> > First, this [*Said v. Butt*] is not an application of *Salomon v. Salomon*. That case is not mentioned anywhere in the reasons. Second, it provides an exception to the general rule that persons are responsible for their own conduct. That exception has since gained acceptance because it assures that persons who deal with a limited company and accept the imposition of limited liability will not have available to them both a claim for breach of contract against a company and a claim for tortious conduct against the director with damages assessed on a different basis. The exception also assures that officers and directors, in the process of carrying on business, are capable of directing that a contract of employment be terminated or that a business contract not be performed on the assumed basis that the company's best interest is to pay the damages for failure to perform. By carving out the exception for these policy reasons, the court has emphasized and left

> intact the general liability of any individual for personal conduct. [At para. 15; emphasis added.]
>
> [20] Finally, as noted by Nicholls, *supra*, at 19, the Court referred back to *ScotiaMcLeod* and stated that its decision in *ADGA Systems* did not represent a change from its reasoning in that case. (See also *Meditrust Healthcare Inc. v. Shoppers Drug Mart* (1999) 1999 CanLII 2316 (ON CA), 124 O.A.C. 137 (C.A.); *NBD Bank, Canada v. Dofasco Inc.* (1999) 1999 CanLII 3826 (ON CA), 46 O.R. (3d) 514 (C.A.); *Immocreek Corp. v. Pretiosa Enterprises Ltd.* (2000) 2000 CanLII 14728 (ON CA), 186 D.L.R. (4th) 36 (Ont. C.A.); and *Lana International Ltd. v. Menasco Aerospace Ltd.* (2000) 2000 CanLII 16845 (ON CA), 190 D.L.R. (4th) 340 (Ont. C.A.).) Professor Nicholls sums up these cases by concluding that "the expanded scope of personal liability anticipated by the *ADGA* court represents, for better or worse, the current state of Ontario law." (At 22.)
>
> [Emphasis in original.]

[65] While plaintiff's counsel argued that the Rule in *Said v. Butt* should not apply to Ms. Watorek and Mr. Watorek, there are no independent causes of action pled against them in their personal capacity or in their capacity as a shareholder. Rather, the pleading is that the corporate veil should be pierced, such that they should be personally liable for the alleged wrongdoing of Portlan. As Newbury J.A. noted in *Merit Consultants*:

> [23] Without attempting to reconcile all the case law, it seems to me that the case at bar lies at the far 'no liability' end of the spectrum of directors' personal liability. No "independent" or "personal" tort was pleaded and no allegation was made that the Directors had acted other than *bona fide* in the best interests of Redfern and Redcorp. More importantly, it cannot be said on the evidence before the Court that the conduct of the Directors exhibited a "separate identity or interest" from that of the companies; that there was some activity that took the Directors "out of the role of directing minds of the corporation", as referred to in *ScotiaMcLeod* at 720; nor that the conduct complained of consisted of physical injury, property damage or nuisance as referred to in *ADGA* at para. 26, or fraud or dishonesty, as referred to by Professors P. Burns and J. Blom in *Economic Interests in Canadian Tort Law* (2009) at 76. (See also *ScotiaMcLeod*, *supra*, and *Kepic v. Tecumseh Road Builders* (1987) 18 C.C.E.L. 218 (Ont. C.A.).)

[66] The law is clear that, as a general rule, officers and employees of corporations are protected from personal liability unless it is established that their actions are themselves tortious or "exhibit a separate identity or interest from that of the corporation so as to make the act or conduct complained of their own": *Buchanan v. Real Estate Board of Greater Vancouver*, 2015 BCSC 2535 at para. 36.

While in certain circumstances the corporate veil may be pierced, such that the separate legal personality of the corporation will be disregarded, such circumstances generally only arise where the corporate entity has been abused—that is, used for a fraudulent or illegitimate purpose: *Emtwo Properties Inc. v. Cineplex (Western Canada) Inc.,* 2011 BCSC 1072.

[67] The plaintiff argues that it has pled sufficient material facts of alleged deceit and dishonesty on the part of the directors of Portlan. It relies upon the comments of Newbury J.A. in *Gichuru v. Smith*, 2010 BCCA 352 at para. 11, in which she noted cases where an employee or officer was personally liable were rare, in the absence of findings of fraud, deceit, dishonesty or want of authority, and they "usually involve transactions where the use of the corporate structure was a sham from the outset or was an "afterthought to a deal which has gone sour". The plaintiff argues that it has pled material facts of deceit, dishonest, and a "deal gone sour".

[68] However, after a careful review of the material facts pled in the Second Amended NOCC, I cannot accept that merely describing the alleged actions of Ms. Watorek and Mr. Watorek as deceitful and dishonest is sufficient. Rather, material facts must be pled which support the logical conclusion that specific actions were deceitful and dishonest. Even assuming the material facts pled to be true, I do not accept they establish deceitful or dishonest conduct on the part of the Watoreks sufficient to pierce the corporate veil, nor that their alleged conduct is such that it could be found to ground an independent tortious claim (which is not pled).

[69] Again, I note, there is no cause of action advanced against Ms. Watorek for her alleged hacking, nor against Seaton Sunrooms for any of its alleged conduct. The allegations are being used to advance the position that the corporate veil of Portlan and Seaton Sunrooms should be pierced.

[70] There are no material facts pled that the use of a corporate structure was a sham or was an "afterthought to a deal which has gone sour". Nor are any material facts pled that Seaton Sunroom was set up to defraud or to protect anyone; nor is there any allegation it was incorporated other than for a legitimate purpose. Rather,

the pleading is that Top Rollshutters rejected an offer from Ms. Watorek and Mr. Watorek to sell it their shareholdings in Portlan, and Top Rollshutters refused to renew the Licensing Agreement, and that these were two deals that "had gone sour". Accepting these material facts to be true, they are insufficient to lead to a finding that the use of Portlan (or Seaton Sunrooms) was an afterthought "to a deal gone sour".

[71] For these reasons I am satisfied that it is plain and obvious that the proposed amendments related to piercing the corporate veil of both Portlan and Seaton Sunrooms are bound to fail. I note the plaintiff relies upon the decision of *Nadella v. Kingston Education Group Inc.,* 2009 BCSC 1143 as authority for the proposition that an allegation of a civil conspiracy requires that the corporate veil be pierced. However, there is no pleading of a civil conspiracy in the Second Amended NOCC, and so that jurisprudence is of not assistance.

[72] Counsel for the plaintiff acknowledged that if I did not find the proposed amendments plead sufficient material facts to allow for a claim that the corporate veil be pierced, he did not seek leave to further amend the pleadings. Accordingly, the proposed amendments are not allowed, the pleadings to pierce the corporate veil of either Portlan or Seaton Sunrooms are struck without leave to amend, and the claim against Ms. Watorek and Mr. Watorek is dismissed.

V. CONCLUSION

[73] I note that the defendants also seek an order that the examination for discovery of the Watoreks, set for April 2025, be adjourned generally until these applications were heard and determined. This relief is now moot.

[74] In summary:

a) the proposed amendments set out in the Second Amended NOCC are not allowed;

b) the application of the defendants dated March 26, 2025 is allowed, and Part 1, paras. 10–13; Part 2, paras. 5–7; and Part 3, paras. 3 and 9 of the Amended NOCC are struck without leave to amend.

[75] The plaintiff has leave to seek to amend the Amended NOCC to include a claim for inducing breach of contract, if, after reviewing these reasons for judgment, they determine it is appropriate. The plaintiff does not have leave to amend to include a claim to pierce the corporate veil of either Portlan or Seaton Sunrooms. Any future amendments to the notice of civil claim should ensure that material facts, and not evidence, are pled; and that a sufficient brief synopsis of the legal basis for the alleged cause of action are included. I am not seized of any future applications to amend the notice of civil claim and all future applications are to be set down in the regular course.

[76] The defendants are entitled to their ordinary costs at Scale B for these two applications.

"Blake J."