IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pan Pacific Business Corporation v. Mirage Trading Corporation,* 2025 BCSC 2150

Date: 20251017
Docket: S225945
Registry: Vancouver

Between:

Pan Pacific Business Corporation

Plaintiff

And

Mirage Trading Corporation

Defendant

Docket: S233936
Registry: Vancouver

Between:

Norseyl Properties Ltd. and AXA Consulting Services Inc.

Plaintiffs

And

Mirage Trading Corporation

Defendant

And

Babak Marzbani, Teknocan Properties Inc., and Rouzbeh Rabiei

Third Parties

Before: Associate Judge Robinson

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiff:	J.A. Dawson
Counsel for the Defendant:	S. D. Coblin M. Hashmi
Counsel for the Plaintiff, AXA Consulting Services Ltd. and Norseyl Properties Ltd. and Third Party, Babak Marzbani:	E. Aitken
Place and Date of Hearing:	Vancouver, B.C. October 8, 2025
Place and Date of Judgment:	Vancouver, B.C. October 17, 2025

[1] **THE COURT:** I am giving these reasons in respect of applications brought by the defendant in two separate but related actions. In each case, the defendant seeks leave to amend its Response to Civil Claim. Given the similarities between the two claims, it is not surprising the same relief is sought in both. Indeed, the defendant's proposed amendments in each action are identical.

[2] Although the proposed amendments are extensive, not all of them are contentious, as I will discuss in more detail. The amendments which are in dispute have been helpfully classified by the parties as those which address the extent of the plaintiffs' beneficial interest in shares transferred by the defendant (to which I will refer as the "Interest Amendments"), and those which propose to assert a clean hands defence as a basis on which to deny the plaintiffs' remedies that they seek (I will refer to this category of amendments as the "Clean Hands Amendments").

Background

[3] To place these applications into context, I will briefly outline the litigation in which they have arisen.

[4] As indicated, there are two separate actions. In one, the plaintiff is Pan Pacific Business Corporation ("Pan Pacific"). In the other, there are two plaintiffs, being Norseyl Properties Ltd. ("Norseyl") and AXA Consulting Ltd. ("AXA"). Where it is necessary to distinguish between the two actions, I shall refer to them as the "Pan Pacific Action" and the "Norseyl Action", respectively.

[5] In these reasons, for convenience and brevity, I will address the proposed amendments in relation to the Pan Pacific Action. My decision, however, is applicable to both actions since the same amendments are proposed in each claim for the same reasons. The plaintiffs' opposition in each case is also the same.

[6] Pursuant to an order of Associate Judge Dick made on November 20th, 2023, the two actions are being tried concurrently. The trial is scheduled for 15 days beginning on December 1, 2025.

[7] In each of the claims, the plaintiffs allege a beneficial interest in shares held by the defendant in a company known as Teknocan. It is not disputed that the defendant is the registered owner of 10 shares in Teknocan, representing a 10 percent interest in the company. That interest was obtained in or around 2011 and facilitated by a loan made to the defendant or to its principal, Dr. Abo Taheri, by Mahmoud Rabiei Ghahroud ("Mr. Rabiei"). When that loan was made, Mr. Rabiei was principal of a company known as MRG Investment Corporation. I understand that company is now known as MAJ Enterprises Inc. MAJ Enterprises is the majority shareholder in Teknocan, holding a 90 percent interest.

[8] At some date, which was not specified in the materials before me or in submissions made by the parties, Mr. Rabiei demanded payment of the loan advanced to the defendant. That demand resulted in the defendant partially liquidating its assets, and in particular, partially liquidating its interest in Teknocan.

[9] The defendant entered into an agreement with each of the plaintiffs whereby it was agreed the plaintiffs would collectively repay the defendant's debt to Mr. Rabiei and also pay to the defendant an additional sum of CAD$654,000. In exchange, the plaintiff would acquire a beneficial interest in 50 percent of the defendant's interest in Teknocan. In other words, the plaintiffs would acquire a beneficial interest in 5 of the defendant's 10 shares.

[10] Central to this application is an agreement dated January 5, 2017, entered between the defendant and each of the plaintiffs which reflects the transaction I have just described. That agreement, to which I will refer as the "Trust Agreement", confirms the defendant transferred a beneficial interest in one half of its 10 percent interest in Teknocan to the plaintiffs with each of Pan Pacific and Norseyl acquiring the defendant's beneficial interest in 2 percent and AXA acquiring a 1 percent beneficial interest.

[11] The Trust Agreement begins with an express provision which states that the transfer applies to “all of the defendant's beneficial right, title and interest” in the affected shares. Thereafter, it includes an express acknowledgment that the shares

will be held by the defendant for the “sole benefit” or sole beneficial use of the plaintiffs, and that all benefits, including dividends attaching to the affected shares, will be held by the defendant in trust for the plaintiffs and that the defendant will promptly deliver up any benefit to the plaintiffs promptly upon receipt.

[12] The Trust Agreement goes on to address the defendant's voting rights and obligations as the registered owner of the transferred shares. Specifically, it provides that if three of the four parties, (a reference to the defendant and the three plaintiffs) agree on how their shares are to be voted, the defendant will vote all shares as determined by such agreement. However, if three of the four parties cannot agree, then the defendant shall not vote the shares it holds in Teknocan, for which it is both the legal and beneficial owner, and Pan Pacific shall determine the voting procedure in accordance with the terms of a related partnership agreement following consultation with each of Norseyl, AXA, and the defendant, and shall vote the shares as instructed by Pan Pacific.

[13] As will be discussed, this voting provision is salient to the present application. The defendant contends that it constrains and limits the rights of the plaintiffs as beneficial shareholders. The defendant argues that this calls into question the status of the trust as a bare trust and the plaintiffs' corresponding right to collapse that trust.

[14] While this is an incomplete recitation of the issues and allegations, it is sufficient for the purposes of the present application.

Proposed Amendments

[15] As indicated at the outset, the proposed amendments are substantial but not all of them are in dispute. To place the contentious amendments into context, it will be of help to first identify the categories of amendments that I had previously described as the Interest Amendments and the Clean Hands Amendments.

[16] The Interest Amendments are those set out in paras. 8, 10, 25 and 37 of part 1, and paras. 2 and 4 of part 3 of the proposed Amended Response to Civil Claim in the Pan Pacific Action. Collectively, they deny the extent of the plaintiffs' beneficial

interest in the shares which were the subject of the transaction. The proposed amendments specifically deny that the plaintiffs are solely entitled to the beneficial rights arising from their respective interests. This position is premised on allegations, which are not in dispute, where the defendant pleads that the voting provisions in the Trust Agreement serve to constrain the voting rights of the plaintiffs.

[17] While the plaintiffs oppose the Interest Amendments, the Clean Hands Amendments are more contentious. They are set out in a proposed Amended Response to Civil Claim in the Pan Pacific Action, at paras. 51 through 54 of part 1, as well as in para. 9 of part 3. These amendments, if allowed, would give rise to a defence not previously pleaded. Specifically, the defendant proposes to argue that (a) the plaintiffs breached their contractual obligation to confirm that they had collectively repaid the defendant's debt to Mr. Rabiei, and (b) they conspired with others, including with Teknocan, to oppress the defendant and to wrongfully deny the defendant dividends commensurate with the defendant's interest in Teknocan.

[18] The defendant seeks leave to raise the foregoing amendments as a basis on which to contend that the plaintiffs come before the court with less than clean hands and, accordingly, cannot avail themselves of equitable relief. In this context, it is not disputed that an order collapsing a trust, as is sought by the plaintiffs, requires an invocation of the court's equitable jurisdiction.

Parties' Positions

[19] With respect to the Interest Amendments, the defendant argues leave ought to be granted since they serve to explain and elaborate on allegations already pleaded or amendments to which the plaintiffs have consented. In taking this position, the defendant points out that, from the outset of this litigation, it has denied that the trust agreement creates a bare trust and has denied the allegation that it is a bare trustee. The defendant argues that the Interest Amendments are consistent with that position and serve only to offer a basis as to why that position is taken.

[20] The plaintiffs contend that the Interest Amendments, if permitted, would be to countenance inconsistent pleadings. They point out that the defendant has

throughout taken the position that its principal, Dr. Taheri, agreed to sell one-half of the defendant's shares in Teknocan to the plaintiffs. They cannot now be permitted to allege that the agreement pertained to a limited beneficial interest. They say to permit the amendments would be to permit the withdrawal of an express or implied admission to the prejudice of the plaintiffs. Further, the plaintiffs contend that the Interest Amendments, if allowed, would permit the defendant to circumvent a previous order made by Justice Underhill with the consent of all parties on April 28, 2025 (the "Underhill Order").

[21] The Underhill Order was made in the context of a related proceeding initiated by the defendant in which it alleged that it had been subjected to prejudicial and oppressive conduct in its capacity as a minority shareholder in Teknocan. Because the present action calls into question the extent and nature of the defendant's interest as a shareholder in Teknocan, the Underhill Order ensured that the parties' rights in the present action would not be affected by the outcome of that proceeding. In this respect, the Underhill Order provided a partial stay of the defendant's oppression proceeding pending final determination of the present litigation. It further provided that if the defendant succeeded in the oppression proceeding, execution would be stayed in respect of any claim related to 50 percent of the defendant's interest in Teknocan. That is the same 50 percent of the shares in which the plaintiffs claim an interest in the present action.

[22] The plaintiffs say that the Underhill Order clearly and unequivocally sets out a series of steps which will arise on the conclusion of the present litigation. They point to paras. 4 and 7 of the Underhill Order which provide respectively that, upon the conclusion of the present litigation, if it is determined that the plaintiffs are entitled to 50 percent of the shareholder loan, which is at issue in the oppression proceeding, then 40 percent of that amount, along with all accrued interest, will be paid to each of Pan Pacific and Norseyl and 20 percent will be paid to AXA. As well, if it is determined that the plaintiffs are the beneficial owner of shares as claimed, the plaintiffs may elect to retain ownership of those shares, necessitating registration in

the plaintiffs' respective names, or require payment of their respective interest pursuant to the order made in the oppression proceeding.

[23] The plaintiffs say that the Underhill Order is free of ambiguity and was made on the basis of pleadings and positions as they existed on April 28, 2025. They say to permit the Interest Amendments would be to create a barrier to the plaintiffs' rights in the present action which is not contemplated in the Underhill Order. They say this would constitute an abuse of process and a collateral attack on the Underhill Order.

[24] Insofar as the Clean Hands Amendments are concerned, the defendant concedes this is a new defence and not merely an elaboration or particularization of existing pleadings. Notwithstanding that, the defendant says the Clean Hands Amendments ought to be permitted.

[25] The plaintiffs' opposition to the Clean Hands Amendments is focused primarily on the argument that allowing the amendment would be contrary to and a circumvention of the Underhill Order. They say that their rights pursuant to the Underhill Order are clear. If they are determined to have a beneficial interest in the shares as claimed, they have certain rights which flow from that determination. However, they say the introduction of a clean hands defence potentially means that even if they are determined to have a beneficial interest in the shares as claimed, they may be precluded from any equitable relief if they are found to lack the metaphorical "clean hands" necessary to avail themselves of equity. They say that on this basis, leave to make the Clean Hands Amendments should be denied.

Law

[26] As a starting point, it is helpful to recognize that this application is brought pursuant to Rule 6-1 of the *Supreme Court Civil Rules*, BC Reg 168/2009 which provides:

> (6) Subject to Rules 6-2(7) and (10) and 7-7(5), a party may amend the whole or any part of a pleading filed by the party, other than to change parties or withdraw an admission,
>
> (a) once without leave of the court, at any time before service of the notice of

> trial, or
>
> (b) after the notice of trial is served, only with
>
> (i) leave of the court, or
> (ii) written consent of the parties.

[27] While Rule 6(1)(b) confers discretion to grant leave to amend pleadings, it offers no insight as to the factors which ought to inform the exercise of that discretion. Instead, the applicable principles can be discerned from a review of the authorities.

[28] In *Jazette Enterprises Ltd. v. Gould*, 2022 BCSC 2206, affirmed at 2023 BCCA 180, those principles were outlined at para. 9:

> a) Amendment to pleadings ought to be allowed unless pleadings fail to disclose a cause of action or defence;
>
> b) Amendments are usually permitted to determine the issues between the parties and ought to be allowed unless it would cause prejudice to party's ability to defend an action;
>
> c) The party resisting an amendment must prove prejudice to preclude an amendment, and mere, potential prejudice is insufficient to preclude an amendment;
>
> d) Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy; and
>
> e) Courts should only disallow an amendment as a last resort.

[29] These principles make clear that the court should be liberal in granting leave to amend pleadings unless prejudice can be demonstrated by the opposing party or the amendment will be useless. The rationale for allowing amendments is to enable real issues to be determined. The practice followed in civil matters when amendments are sought fulfils the fundamental objective of the Rules, which is to ensure the just, speedy, and inexpensive determination of every proceeding on the merits.

[30] Mr. Justice Harvey concisely and emphatically stated this principle in *MacDonald v. MacDonald*, 1996 21 BCLR (3d) 379, at para. 29:

> Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace ... It seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected, if it can be done without injustice, as anything else in the case is a matter of right.

[31] In determining whether proposed amendments are useless, the threshold question is determined by assessing whether it is plain and obvious that the amendments are bound to fail. Put another way, the court is required to determine whether it is perfectly clear that the proposed pleadings fail to raise an arguable case or defence.

[32] With respect to prejudice, the authorities leave no doubt the potential prejudice is insufficient to defeat a proposed amendment. Rather, evidence of actual prejudice is required from an opposing party. This is sensible. And were it otherwise, an application could be defeated on technical grounds without regard to the effect it may have on the ultimate determination of the proceedings. Almost any amendment can be regarded as potentially prejudicial to a respondent.

Discussion

[33] I turn now to apply the foregoing principles to the present application.

[34] In doing so, I am compelled to note at the outset that I have not been presented with any evidence on which to find that any of the plaintiffs will sustain actual prejudice if leave is granted to make the amendment sought. In saying that, I am mindful of the reality that this litigation is scheduled for trial in less than two months and I am wary of the potential that the amendments at this stage may necessitate an adjournment. However, the mere possibility or potential for an adjournment does not constitute actual prejudice, in my view. The prospect of an adjournment exists in virtually all matters before the court. If that potential materializes in this case, it can be addressed by the court at that time.

[35] Regarding the Interest Amendments, I generally accept the position of the defendant that these amendments are not, in any meaningful sense, new. From the outset, the defendant has denied the existence of a bare trust and denied its own status as a bare trustee. The proposed amendments explain the defendant's basis for that position. They do not assert a new defence. The law recognizes a distinction between amendments which serve to flesh out existing allegations and those which go further and raise new claims. Those which fit within the former category are more readily allowed than those in the latter.

[36] In this regard, the plaintiffs are content to allow the defendant to plead that the trust agreement conferred limited and constrained voting rights to the plaintiffs and that the defendant reserved for itself certain voting rights transferred to the plaintiffs. This allegation is set out at para. 7 of the proposed Response to Civil Claim in the Pan Pacific Action and no objection is raised in respect of that allegation.

[37] Having consented to those amendments, the plaintiffs cannot plausibly sustain an objection to further pleadings which outline what the defendant says is the legal consequence of those facts; namely, that the beneficial interest acquired by the plaintiff is something less than a complete beneficial interest and insufficient to give rise to a right to collapse the trust. The pleadings to which the plaintiffs object at paras. 8, 10, 35 and 37 of part 1 of the proposed Amended Response to Civil Claim in the Pan Pacific Action are summations of existing pleadings or amendments to which the plaintiffs have already consented.

[38] The same can be said insofar as the pleadings set out in paras. 2 and 4 of part 3 of the proposed Amended Response to Civil Claim are concerned. These pleadings set out the legal basis on which the defendant seeks to avoid liability and are reliant on the facts outlined in part 1.

[39] Paragraph 4 of part 3 refers to the Rule in *Saunders v. Vautier,* (1841) 4 Beav. 115, a well-known rule in equity which permits the beneficiaries of a trust to compel the trustee to transfer the legal estate to them and thereby terminate or

collapse the trust. This rule is expressly referenced in the plaintiffs' pleadings and the defendant seeks to plead that the rule does not apply in the present case because the plaintiffs' beneficial interest is incomplete due to the allegedly limited and constrained voting rights.

[40] In my view, because the Interest Amendments logically flow from pleadings which are not in dispute, and since they serve only to clarify and to particularize the legal basis for the position taken by the defendant from the outset, leave ought to be granted in this regard.

[41] In reaching this conclusion, I reject the plaintiffs' contention that the Interest Amendments are in any way inconsistent with previous pleadings or constitute the withdrawal of a prior admission. While it is true that the defendant has admitted that its principal, Dr. Taheri, agreed to sell one-half of the defendant shares of Teknocan to the plaintiffs, the defendant is not seeking to withdraw that admission. Rather, the Interest Amendments purport to plead and identify precisely *what* was sold.

[42] In this regard, it is not disputed that, despite the sale, which is admitted, the defendant retained a legal or registered interest in the shares. The defendant has not at any time, either expressly or implicitly, admitted to its alleged status as a bare trustee. In my view, there is no inconsistency between alleging or admitting that the defendant agreed to sell one-half of its shares in Teknocan to the plaintiffs while also alleging the defendant agreed to hold part of the beneficial interest in those same shares. Whether or not the defendant will ultimately establish the truth of this allegation and resist liability on this basis is not for me to determine on this application.

[43] I similarly reject the plaintiffs' opposition insofar as it relates to an alleged abuse of process or a collateral attack on the Underhill Order.

[44] The Underhill Order is not and does not purport to be a final order. It is the product of consent having been reached among the parties to facilitate a determination of the oppression proceeding without any consideration of the issues

or merits in the present litigation. While the Underhill Order unquestionably outlines a process to be followed, following a determination of the issues related to the plaintiffs' equity in Teknocan, that process is clearly and expressly contingent on the plaintiffs' equity being determined.

[45] The Underhill Order expressly states:

> … *if* this Honourable Court determines in the Pan Pacific Action and the Norseyl Action that Pan Pacific, Norseyl, and Axa are entitled to the disputed loan amount …

And:

> … *if* this Honourable Court determines in the Pan Pacific Action and the Norseyl Action that Pan Pacific is the beneficial owner of two of the disputed shares, that Norseyl is the beneficial owner of two of the disputed shares, and that Axa is the beneficial of one of the disputed shares.

[46] These provisions make clear that the rights of the plaintiffs are subject to determination and remain uncertain. The basis for that uncertainty is not set out in the Underhill Order. However, at the time the Underhill Order was made, and throughout the litigation, the defendant has denied that the Trust Agreement gives rise to a bare trust. The Interest Amendments do not add to the uncertainty which has persisted from the outset. Moreover, they do not add further to the dispute as it has always existed. Rather, they summarize the defendant's consistent position and explain the legal consequence that the defendant will presumably ask the court to draw at the conclusion of this litigation.

[47] Rather than being precluded by the Underhill Order, I find that this possibility is contemplated by the Underhill Order.

[48] In the circumstances, it cannot be said that the Interest Amendments are useless or plainly and obviously bound to fail. They are necessary amendments which will enable the defendant to properly assert a position which has been consistent throughout and will ensure a fair trial on the merits of this dispute.

[49] The extent to which the plaintiffs' voting rights are constrained or limited and the implications of those constraints or limitations is a matter for the court to determine at trial.

[50] For those reasons, I grant leave to the defendant to make the Interest Amendments, being those to which objection is taken at paras. 8, 10, 25, and 37 of part 1, and paras. 2 and 4 of part 3 of the proposed Amended Response to Civil Claim in the Pan Pacific Action, and also the corresponding paragraphs in the proposed Amended Response to Civil Claim in the Norseyl Action.

[51] The Clean Hands Amendments are subject to a somewhat different analysis.

[52] Because it constitutes an entirely new defence, not merely the particularization of existing allegations, a more rigorous approach is perhaps warranted. At the outset, I must be satisfied that the defence is not bound to fail.

[53] Regarding the alleged conspiracy, the plaintiffs say the defendant has failed to set out the necessary material facts to sustain its defence. In this case, the court in *Pan v. Kelly*, 2023 BCSC 208, held at paras. 21 and 22:

> [21] ... a plaintiff claiming civil conspiracy must plead material facts which support the following:
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> a) The parties to the conspiracy;
>
> b) The agreement between those parties;
>
> c) The concerted action taken by the parties pursuant to the agreement;
>
> i. For predominant purpose conspiracy: the actions may be lawful or unlawful;
>
> ii. For unlawful means conspiracy: the actions must be unlawful;
>
> d) The Intent:
>
> i. For predominant purpose conspiracy: that harm to the plaintiff was intentional and the predominant purpose;
>
> ii. For unlawful means conspiracy: that the parties to the conspiracy knew, or ought to have known, that the injury to the plaintiff was likely to result; and

> e) The actual damages suffered by the plaintiff.
>
> [22] Pleadings alleging civil conspiracy must be as specific as possible ... Facts must be stated with precision and clarity; bald or speculative conclusions or lumping all defendants together into a general allegation of conspiracy are insufficient, and must be struck...

[54] The foregoing decision arose in a situation in which conspiracy was raised as a cause of action. It is not clear from the authorities whether the same pleading requirements arise where conspiracy is asserted as a defence. On the one hand, a lower standard may be justified on the basis that the parties against whom the allegations are raised will not face the prospect of any award of damages. At the same time, an allegation of conspiracy connotes intentional and serious misconduct, not dissimilar to allegations of fraud. In those cases, the potential stigma is sufficient to require full particulars and precise pleadings. This is intended to ensure that such allegations are only raised in circumstances where there is an obvious basis to do so and to ward off baseless claims.

[55] Without establishing any general principles of law, it is my view in the circumstances of this case that in asserting conspiracy as a defence, the defendant ought to be held to a rigorous standard akin to that applied to a plaintiff who seeks to assert conspiracy as a cause of action. This conclusion is premised largely on the fact that a clean hands defence is an affirmative defence such that its success at trial will depend on the defendant satisfying the onus of proof.

[56] With that in mind, the specific allegations set out in the Clean Hands Amendments do not meet the factors identified in *Pan v. Kelly.* The defendant effectively concedes as much. However, the defendant says that this does not mean the amendments should be disallowed and it does not mean that the defence is necessarily bound to fail.

[57] The requirement for pleadings to be as specific as possible is qualified by the fact that there may be occasions on which a pleading party has limited knowledge or

limited means of acquiring knowledge. This was recognized by the court in *Bidwell v. McGregor*, 2022 BCSC 1234, where, at para. 17, Madam Justice Jackson held:

> A pleading of conspiracy should be as specific as possible, but that may depend on the scope of information reasonably available...

[58] Moreover, without impugning or doubting the factors outlined by the court in *Pan v. Kelly*, our Court of Appeal held that a pleading of conspiracy was sufficient in *Watson v. Bank of America Corporation*, 2015 BCCA 362, where:

> ... the parties to the conspiracy are identified; their impugned business arrangements are identified; the flow of monies is identified; the alleged harm to merchants is identified; and the start and end time in respect to which the claim is brought is identified.

[59] Using that standard, I am satisfied the defendant's proposed pleadings are sufficient. In that sense, I am unable to say that the conspiracy defence is necessarily bound to fail. In this regard, the proposed pleadings leave no real doubt as to what is alleged by the defendant. The defendant contends that the plaintiffs, acting in concert with Teknocan and others, conspired to deprive the defendant of certain payments to which the defendant was entitled and conspired in the oppressive conduct as set out in the related petition proceeding.

[60] While the pleading of the defendant is decidedly imperfect and does not accord precisely with the requirements as outlined by the court in *Pan v. Kelly*, I am not required or permitted to employ perfection as a standard on this application. Unless it is plain and obvious the deficiency renders the pleading bound to fail, the law requires me to defer to allowing the amendment.

[61] A further consideration in this regard concerns the usefulness of the Clean Hands Amendments. Not all misconduct by a party seeking equitable relief will render that party's hands unclean. The misconduct must be material to the right at issue. Here, the plaintiffs say that even if the court finds that they engaged in a conspiracy, as alleged (and something they clearly deny), that engagement is immaterial to their rights as beneficial shareholders of Teknocan. This is not an argument I need to address. Ultimately, it is an argument the plaintiffs can, and I

expect will, raise at trial. This application is not an occasion in which I can embark on the relative merits of any pleadings. That is effectively what the plaintiffs ask of me in raising that concern in opposition to the present application.

[62] The most compelling argument raised by the plaintiffs in respect of the Clean Hands Amendments is the same argument raised in respect of the Interest Amendments; namely, that the proposed amendments constitute a collateral attack on the Underhill Order and therefore an abuse of process. I have already found that when the Underhill Order was made, there was obvious uncertainty as to whether the trust agreement gave rise to a bare trust. On that basis, I found the Interest Amendments do not add to the uncertainty and not further add to the dispute as it has always existed.

[63] The same cannot be said in respect of the Clean Hands Amendments. They raise an entirely new defence which was not contemplated by any prior iteration of the pleadings. Moreover, the plaintiffs' concerns about the potential conflict with the terms of the Underhill Order are less easily discounted.

[64] The plaintiffs argue that although the Underhill Order left the plaintiffs' interest in the disputed shares for a future determination, once that interest is determined, the plaintiffs' rights are settled by the Underhill Order. They say that the Clean Hands Amendments call those rights into question because even if they prevail at trial and it is determined they are the beneficial owners of the disputed shares, the potential of being found to have unclean hands may disentitle them to equitable relief. They say this would be contrary to the Underhill Order.

[65] While there is some merit to the plaintiffs' argument, it is one that I reject. In my view, the plaintiffs' position is premised on an unduly restrictive reading of the Underhill Order. In my view, the obvious purpose of the Underhill Order was to preserve the rights of the parties, including the rights of the defendant, in the present action, and to allow for findings to be made in the petition proceeding without prejudicing those rights. The Underhill Order goes no further than that.

[66] It served to protect the plaintiffs' right to pursue their claims in this litigation. At the same time, it preserved the defendant's commensurate rights to resist the plaintiffs' claims. In saying this, I draw no conclusion, to make no findings, as to whether the defendant can establish that the plaintiffs, or any of them, have unclean hands, or if they do, whether those unclean hands ought to disqualify them from equitable relief. I emphasize this is not within my purview on this application. Ultimately, that is an issue to be addressed by the presider at trial.

[67] The foregoing is equally applicable to the Clean Hands Amendments as it relates to the alleged breach of contract by the plaintiffs. In this regard, the alleged breach on which the defendant purports to rely concerns an alleged failure by the plaintiffs to confirm that they satisfied the defendant's indebtedness to Mr. Rabiei.

[68] Insofar as that allegation is concerned, the plaintiffs argue that this proposed pleading is bound to fail. They say that there is uncontroverted evidence that the indebtedness has been satisfied. For the purpose of this application, I am prepared to assume that is correct. However, that is not an answer to the present application. That is because the proposed pleading does not address whether the debt to Mr. Rabiei was paid. Rather, the alleged breach of contract on which the defendant proposes to rely concerns the alleged failure of the plaintiffs to confirm that the debt owing to Mr. Rabiei has been retired.

[69] While this is perhaps a fine distinction, it is nevertheless an important distinction. It is the alleged failure of the plaintiffs to overtly confirm repayment or satisfaction of the debt, not an alleged failure to repay the debt, that the defendant proposes to rely upon to establish that the plaintiffs' hands are unclean. My attention was not taken to any evidence to refute or address that allegation. While I may have misgivings as to whether this defence will succeed at trial, I am unable to say that it is necessarily bound to fail.

[70] In the circumstances, it cannot be said the Clean Hands Amendments are bound to fail. For the reasons outlined, I do not regard the Clean Hands Amendments to constitute a collateral attack on the Underhill Order or an abuse of

process. Rather, it is a pleading the defendant ought to be permitted to make and a defence on which the defendant be permitted to raise and rely upon at trial.

[71] Accordingly, I grant leave to the defendant to plead the Clean Hands Amendments as set out in paras. 51 through 54 of part 1, and para. 9 of part 3 of the proposed Amended Response to Civil Claim in the Pan Pacific Action, and the corresponding paragraphs in the proposed Amended Response to Civil Claim in the Norseyl Action.

[72] In summary, I grant the relief sought at para. 1 in each of the defendant's notices of applications.

[73] Subject to hearing submissions from the parties, I am of the view the defendant has been entirely successful in this application and ought to receive its costs in the cause, but I will hear submissions from the parties if they are inclined to make them.

(Submissions re costs)

[74] Costs to the defendant for this application shall be in the cause.

"Associate Judge Robinson"