

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Pan Pacific Business Corporation v. Mirage Trading Corporation*,  
2026 BCSC 179

Date: 20260204  
Docket: S225945  
Registry: Vancouver

Between:

**Pan Pacific Business Corporation**

Plaintiff

And

**Mirage Trading Corporation**

Defendant

And

**Babak Marzbani**

Third Party

- and -

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 Party

Before: The Honourable Mr. Justice Milman

On appeal from: A decision of an Associate Judge of the Supreme Court of British Columbia, dated October 17, 2025 (*Pan Pacific Business Corporation v. Mirage Trading Corporation*, 2025 BCSC 2150).

## Reasons for Judgment

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Place and Date of Hearing:	Vancouver, B.C. January 14, 2026
Place and Date of Judgment:	Vancouver, B.C. February 4, 2026

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### V. SUMMARY AND DISPOSITION

### **I. INTRODUCTION**

[1] Before the Court are two appeals from a decision of an associate judge of this court. The appellants are the plaintiffs in two separate but related actions against the same defendant, Mirage Trading Corporation (“Mirage”). The orders

under appeal granted Mirage leave in both actions to amend its responses to the plaintiffs' claims in various ways, including by raising a new "clean hands" defence.

[2] In bringing these appeals, the plaintiffs contend that it was clearly wrong for the associate judge to grant Mirage leave to do so, inasmuch as that defence:

- a) is bound to fail; and
- b) constitutes a collateral attack on two previous orders of this court in other parallel proceedings involving these parties.

[3] On that basis, they seek an order setting aside the orders under appeal and striking those amendments, which have since been made pursuant to those orders.

[4] Mirage argues that the associate judge made no reversible error and, on that basis, that the appeals should be dismissed.

[5] For the reasons that follow, I have concluded that the appeals should be allowed in part.

## **II. BACKGROUND**

### **A. The Actions**

[6] These appeals arise in two actions. In Vancouver Registry Action No. S225945, the plaintiff is Pan Pacific Business Corporation ("Pan Pacific"). In Vancouver Registry Action No. S233936, the plaintiffs are Norseyl Properties Ltd. ("Norseyl") and AXA Consulting Services Inc. ("AXA"). Due to the similarity of the claims advanced in the two actions, and Mirage's responses to them, this Court has previously ordered that they be tried together.

[7] At issue in both actions is the fate of five shares that Mirage holds in a company called Teknocan Properties Inc. ("Teknocan"). Mirage's 10% stake in Teknocan is comprised of those five shares and five others, the ownership of which is not in dispute in these proceedings. The other 90 shares in Teknocan are owned by a company called MAJ Enterprises Inc., formerly known as M.R.G. Investment Corporation ("MAJ").

[8] Teknocan in turn owns a 51.7% equity interest in two limited partnerships, known as Seylynn (North Shore) Development Limited Partnership (“Seylynn LP”) and Seylynn (North Shore) Properties Phase II Limited Partnership (“Seylynn II LP”), which are developing two real estate projects in North Vancouver. The other limited partners are Norseyl, Pan Pacific, and a company called Bluemount Development Corp.

[9] The partnerships were formed in 2011. In addition to the four limited partners, there were also two general partners. The ownership of the general partners was, at the time, shared equally between Dr. Abo Taheri, Mirage’s principal, and Abbasali Shapour Hosseini, the principal of Pan Pacific, through their respective companies.

[10] Teknocan was incorporated at the same time by Dr. Taheri and Mahmoud Rabiei Ghahroud (“Mr. Rabiei Sr.”), who was then MAJ’s principal. More recently, Mr. Rabiei Sr.’s son, Rouzbeh Rabiei Ghahroud (“Mr. Rabiei Jr.”) has become MAJ’s principal. Dr. Taheri remained the sole director of Teknocan until May 2020, when Mr. Rabiei Jr. was added as a director. Dr. Taheri was removed as a director in October 2022.

[11] Mirage acquired its 10% stake in Teknocan at the time of Teknocan’s formation in 2011. The acquisition was facilitated by way of a loan from the Rabiei family to Dr. Taheri, using their respective companies.

[12] In 2016, Mr. Rabiei Sr. demanded that Dr. Taheri repay that loan. In order to raise the funds to do so, Dr. Taheri caused Mirage to enter into an arrangement with the plaintiffs pursuant to which the plaintiffs were to repay Mirage’s debt to the Rabiei family and advance additional funds to Mirage, in exchange for which Mirage was to transfer five of its 10 Teknocan shares to the plaintiffs.

[13] At least part of that arrangement was reduced to writing in the form of a Trust Agreement dated January 5, 2017, pursuant to which the plaintiffs acquired a beneficial interest in five of Mirage’s Teknocan shares (Pan Pacific and Norseyl in two shares each and AXA in one).

[14] The plaintiffs commenced these two actions on May 29, 2023. The notices of civil claim allege that Mirage was required by the Trust Agreement to convey the five shares to the plaintiffs on demand and failed to do so when demand was

made. In the alternative, the plaintiffs also rely on the rule in *Saunders v. Vautier* (1841), 41 ER 482, 10 LJ Ch 354 (Eng. Ch.), according to which the sole beneficiaries of a trust may, in the appropriate circumstances, extinguish the trust and demand to have the trust property conveyed to them.

[15] The main items of relief sought in the actions are as follows:

- a) declarations that the plaintiffs are the beneficial owners of the five shares;
- b) an order terminating the trust;
- c) an order requiring Mirage to transfer the five shares to the plaintiffs;
- d) an injunction to prohibit Mirage or its principals from dealing with the five shares; and
- e) damages.

[16] Mirage filed its original responses to those claims on September 29, 2023. In those responses, Mirage alleged, among other things, that the Trust Agreement does not reflect the entire agreement between the parties because it fails to account for other consideration that was supposed to flow to Mirage. Mirage also alleged that the Trust Agreement did not create a bare trust than can properly be collapsed on the grounds asserted. Mirage contends, on those and other grounds, that it has no obligation to transfer the five shares to the plaintiffs at the present time.

## **B. The Oppression Proceeding**

[17] On November 9, 2023, Mirage filed a third-party notice in Action No. 233936, naming Teknocan, MAJ, and Mr. Rabiei Jr. as third parties. In it, Mirage alleged, among other things, that the third parties had engaged in oppressive conduct of various kinds against it and, on that basis, sought relief pursuant to the oppression provisions of the *Business Corporations Act*, S.B.C. 2002, c. 57.

[18] On May 9, 2024, this Court allowed an application by the plaintiffs and third parties to have the third-party notice struck on the basis that the claims that Mirage was advancing in it ought instead to be advanced in a separate proceeding

commenced by petition: *Norseyl Properties Ltd. v. Mirage Trading Corporation*, 2024 BCSC 1225.

[19] On June 21, 2024, Mirage commenced a new proceeding by way of petition (Vancouver Registry Action No. S244258 – the “Oppression Proceeding”), repeating the claims that had been advanced in its third-party notice. As later amended, the petition alleged that MAJ and Mr. Rabiei Jr. had unlawfully excluded Mirage from the financial management of Teknocan, unlawfully removed Dr. Taheri as a director, refused to produce audited financial statements, refused to provide financial disclosure to Dr. Taheri while he was a director, and repaid millions of dollars in shareholder loans to MAJ while withholding any such repayments owing to Mirage.

[20] On July 22, 2024, the parties were before me in the Oppression Proceeding on an application by Mirage for an interlocutory injunction, which I granted in part (the “Injunction Order”). Among other things, the Injunction Order prohibited Teknocan from:

- a) further disposing of its assets, other than in the ordinary course of business; and
- b) taking steps to vote its partnership units in Seylynn LP and Seylynn II LP in any way that would affect how funds were used or paid out by the partnerships.

[21] The Injunction Order also required the respondents to appoint an auditor to prepare a report on Teknocan’s financial statements, with all documents forwarded to the auditor copied to Mirage. Finally, I ordered Teknocan to produce a number of documents.

[22] The parties were before me again on August 15, 2024. On that occasion, I refused the respondents’ request to vary the Injunction Order. I again ordered Teknocan and MAJ to produce specifically enumerated documents that had been requested by Mirage. The parties were before me yet again on September 23, 2024, and October 25, 2024, seeking clarification of my earlier orders.

[23] By order of Latimer J. made on August 26, 2024, the plaintiffs were added as respondents in the Oppression Proceeding. Justice Latimer’s decision granting

that order is indexed as *Mirage Trading Corporation v. Ghahroud*, 2024 BCSC 1552. Having successfully applied to be added as respondents, the plaintiffs filed responses opposing all of the relief that Mirage was seeking in the petition.

[24] Soon after that, the original respondents applied to vary the Injunction Order in various ways, including to permit Teknocan to repay a debt of over \$20 million that was said to be owing to its lenders. Mirage brought a cross-application seeking the appointment of a receiver. Those applications came before Matthews J. on December 16-20, 2024. In her reserved decision of March 31, 2025 (indexed as *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 588), she dismissed both applications.

[25] On April 24, 2025, Dion J. found Teknocan and Mr. Rabiei Jr. in contempt of the Injunction Order on the basis that Teknocan had, in breach of that order, responded to a cash call from one of the partnerships: *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 762.

[26] When the Oppression Proceeding came on for hearing on the merits, the plaintiffs applied to stay it pending the outcome of these two actions. In the end, there was no immediate stay because the parties agreed on the terms of a consent order to preserve their respective rights pending the conclusion of all three proceedings. That order was made by Underhill J. without a hearing and by consent on April 28, 2025 (the “Stay Order”).

[27] The Stay Order contained the following terms relating to Mirage’s shares in Teknocan (at paras. 5-7):

- a) the execution of the order sought in the petition in relation to those shares, if granted, will be stayed as it relates to the five disputed shares, pending the outcome of the two actions, or further agreement of the parties, but not as it relates to Mirage’s remaining five shares (para. 5);
- b) if the court orders MAJ or Teknocan to purchase Mirage's 10 shares in the Oppression Proceeding, then half of the purchase funds and share certificates will be deposited into court (para. 6); and
- c) if, upon conclusion of the two actions, the court determines that the plaintiffs are the beneficial owners of the disputed shares, each of them

may elect, within 15 days, either to accept their *pro rata* share of the purchase funds or to retain their respective shares. Conversely, if the court dismisses the actions, the purchase funds will be paid to Mirage and the share certificates returned or conveyed to MAJ or Teknocan (para. 7).

[28] The petition then proceeded to a hearing before Underhill J. over four days from April 28 to May 2, 2025. His reserved decision (indexed as *Mirage Trading Corporation v. Ghahroud*, 2025 BCSC 1955) was released on October 7, 2025. The resulting order (the “Oppression Relief Order”) was summarised in the decision as follows:

[115] In sum, I make the following declarations and orders, and for clarity, confirm that some orders are partially stayed pursuant to the terms of the Stay Order, as identified below:

- (a) I declare that the affairs of Teknocan are being or have been conducted in a manner oppressive or unfairly prejudicial to Mirage contrary to s. 227 of the *Act*.
- (b) I declare that Mr. Rabiei is or has been exercising his powers as a director and officer of Teknocan in a manner oppressive or unfairly prejudicial to Mirage contrary to s. 227 of the *Act*.
- (c) Teknocan is directed to forthwith retain and appoint a licensed Certified General Accountant or Chartered Accountant, to be selected by McEown, (the “Auditor”), for the purposes of preparing audited financial statements for Teknocan in compliance with the Auditor’s obligations under the *Act* and the *Business Corporations Regulations*, B.C. 65/2004, who shall hold office until the next annual reference date as defined in s. 204 of the *Act*.
- (d) Paragraphs 1 through 6 and paragraph 14 of the Injunction Order are continued until such time as Mirage’s shares in Teknocan have been purchased by MAJ, or such other time as may be agreed to by the parties or ordered by this Court.
- (e) Subject to the terms of the Stay Order, Teknocan is directed to repay all of Mirage’s shareholders loans, with accrued interest as outlined in these Reasons, at the same time as Mirage’s shares in Teknocan are purchased by MAJ.
- (f) Subject to the terms of the Stay Order, MAJ is directed to purchase the shares of Mirage in Teknocan on the following terms:
  - (i) the value of the shares will be determined by a Chartered Business Valuator retained and instructed by the receiver, and the costs of the valuation will be paid by MAJ;

(ii) the valuation date will be the date the receiver issues its report to this Court, and the valuation will be performed following the receipt of that report;

(iii) the valuation will be based on the assumption that MAJ has returned the \$6 million and \$11 million payments, along with any other funds removed from Teknocan without the consent of Mirage; and

(iv) the price methodology will be based on a fair valuation of Teknocan as an operating business, not on fair market value, and there will be no minority discount applied.

(g) McEown is appointed as an interim receiver under s .227(3) of the *Act*, substantially in the form handed up to the Court by counsel for Mirage on May 2, 2025.

(h) Special costs of this entire proceeding are awarded to Mirage, payable jointly and severally by Mr. Rabiei and MAJ.

### **C. The Orders under Appeal**

[29] On August 11, 2025, Mirage applied for leave to amend its responses to the claims advanced by the plaintiffs in the two actions, in various ways.

[30] The proposed amendments that are of import for these appeals are those in which Mirage proposed to plead that the plaintiffs could not properly be granted the relief they were seeking in the two actions because they did not come to court with clean hands. In particular, Mirage proposed to allege that the plaintiffs' hands were unclean, so as to disqualify them from obtaining that relief, inasmuch as the plaintiffs:

- a) were in breach of a material term of the arrangement under which the beneficial interest in the shares was to be transferred from Mirage to the plaintiffs, for having failed to confirm that Dr. Taheri's debt to the Rabiei family had been retired; and
- b) engaged in a conspiracy with each other, Teknocan and Mr. Rabiei Jr. to withhold Mirage's share of distributions from Teknocan.

[31] The parties, like the associate judge, referred to these as the "Clean Hands Amendments".

[32] The plaintiffs opposed Mirage's application for leave to make the Clean Hands Amendments on various grounds, including those that they now raise again on this appeal, namely that the clean hands defence:

- a) is bound to fail because Mirage did not plead the requisite "immediate and necessary relation" between the plaintiffs' alleged misconduct and the relief that they are seeking in the actions (citing, among other authorities, *Takhar v. Phoenix Homes Limited*, 2025 BCCA 152 at para. 43; *Dehydration Research LLC v. EnWave Corporation*, 2022 BCCA 347 at paras. 62-67 [*EnWave BCCA*]; *Mayer v. Mayer*, 2012 BCCA 77 [*Mayer*] at para. 86; *DeJesus v. Sharif*, 2010 BCCA 121 at para. 87; and *De Angelis v. Sierny*, 2022 BCCA 401 [*De Angelis*] at para. 39); and
- b) amounts to a collateral attack on the Stay Order, and, as such, an abuse of process.

[33] Mirage's application for leave to amend came on for hearing before the associate judge on October 8, 2025. In his reserved decision of October 17, 2025, indexed as *Pan Pacific Business Corporation v. Mirage Trading Corporation*, 2025 BCSC 2150, the associate judge granted Mirage leave to make the amendments, including the Clean Hands Amendments, as proposed.

[34] In rejecting the plaintiffs' argument that the Clean Hands Amendments were bound to fail for want of the requisite "immediate and necessary relation" between the plaintiffs' alleged misconduct and the claims being advanced, the associate judge stated as follows:

[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.

[35] The associate judge also rejected the collateral attack argument, on the following grounds:

[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 [Stay] Order. In my view, the obvious purpose of the [Stay] 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 [Stay] 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.

[36] Mirage filed its amended response to civil claim in both actions, incorporating the Clean Hands Amendments, on November 5, 2025.

### III. STANDARD OF REVIEW

[37] It is common ground that to succeed on these appeals, the plaintiffs must show that the associate judge was clearly wrong in granting Mirage leave to make the Clean Hands Amendments: *Abermin Corp. v. Granges Exploration Ltd.* (1990), 45 B.C.L.R. (2d) 188 (S.C.), 1990 CanLII 1352; *Kalafchi v. Yao*, 2015 BCCA 524; *Kondori v. New Country Appliances Inc.*, 2017 BCCA 164.

[38] In *1055249 B.C. Ltd. v. Grace Mtn. Land Company, Ltd.*, 2023 BCSC 2339, a decision of an associate judge was said to be “clearly wrong” where any one or more of the following circumstances apply (at para. 46):

- a) the associate judge abuses his or her discretion by acting arbitrarily or capriciously;
- b) the associate judge exercises his or her discretion under a mistake of law;
- c) the associate judge erred in law or principle;
- d) the associate judge misdirected him or herself;
- e) the associate judge disregards a principle;

- f) the associate judge misapprehends facts or takes into account irrelevant factors; or
- g) the order of the associate judge would result in an injustice.

#### IV. DISCUSSION

##### A. Was the associate judge clearly wrong in concluding that the clean hands defence was not bound to fail?

[39] The plaintiffs argue that the associate judge made two inter-related errors in para. 61 of his reasons.

[40] First, they say that he overstated the circumstances in which a clean hands defence can succeed. Rather than just being “material to the right at issue”, they say, the alleged misconduct must, on the authorities, form part of the basis for the claim in order for a clean hands defence to be viable.

[41] Second, they say, he compounded that error by erroneously concluding that he need not address that question (regardless of how it was framed), finding it to be one more appropriately left for trial. In the plaintiffs’ submission, this amounted to a misdirection because the associate judge had a duty as gatekeeper to assess whether the defence was bound to fail for want of that essential element (citing *Jazette Enterprises Ltd. v. Gould*, 2022 BCSC 2206 at para. 10).

[42] Had he done so, they say, it would have been apparent that both aspects of the misconduct alleged were insufficiently connected to the claim to give rise to a valid defence.

[43] The plaintiffs’ alleged failure to confirm retirement of Mirage’s debt to the Rabiei family was not, in the plaintiffs’ submission, “misconduct” of the kind that can support a clean hands defence, but rather a matter of contract.

[44] With respect to the conspiracy allegation, the plaintiffs submit that it cannot support a clean hands defence because the conspiracy is alleged to have been formed and carried out in 2024, long after the events in 2016 and 2017 giving rise to the trust that the plaintiffs seek to enforce. A proper analysis would therefore have revealed the defence as bound to fail, for the same reasons that the clean hands defence was struck in *First Majestic Silver Corp. v. Davila Santos*, 2012

BCCA 5 at paras. 36-41 and *Bang v. Kim*, 2022 BCSC 1893 [*Bang*], rev'd in part on other grounds, 2024 BCCA 88. The plaintiffs are not, they submit, relying on that alleged misconduct to make out their claim.

[45] Mirage responds that the associate judge made no such errors. Rather, in Mirage's submission, the associate judge's reasons, when read as a whole, disclose that he understood the correct test and applied it.

[46] I disagree with Mirage's submission on this point. The associate judge addressed this issue only in para. 61 and nowhere else. Moreover, I agree with the plaintiffs that his reasoning in that paragraph is indeed marred by the two errors they have identified. Even if he had stated the correct test there or elsewhere, he fell into error by not properly applying it, an error similar to that identified by Hunter J.A., writing for the Court in *Clayworth v. Octaform Systems Inc.*, 2020 BCCA 117 at para. 47.

[47] What remains to be decided is whether the plaintiffs are also correct that, on a proper analysis, the defence is bound to fail.

[48] Mirage says that the requisite connection between the alleged misconduct and the claims arises in two ways.

[49] First, with respect to the plaintiffs' alleged wrongful failure to confirm retirement of the debt, Mirage relies on *Owners, Strata Plan NW1837 v. Owners, Strata Plan NW2794*, 2003 BCSC 1037 [*NW1837*]. In that case, Burnyeat J. refused to grant an injunction on the grounds that the applicant had not come to court with clean hands. The misconduct giving rise to that defence was, like the misconduct alleged in this case, a failure by the applicant to perform its own obligations under the same contract that it was seeking to enforce.

[50] With respect to the conspiracy allegation, Mirage relies on the chambers decision from which leave to appeal was refused in *EnWave BCCA* (namely, *Enwave Corporation v. Dehydration Research, LLC*, 2022 BCSC 637). There, Basran J. ordered that an injunction should continue in effect despite the defendant's argument that the plaintiff had not come to court with clean hands. The misconduct alleged in that case was that the plaintiff had improperly accessed the defendant's laptop to obtain the evidence used to make out its claim.

[51] In rejecting that argument, Basran J. accepted the proposition that “[t]he court will not grant injunctive relief when the applicant has engaged in a self-help remedy that is improper or unlawful” (at para. 117, citing *MortgageBrokers.com v. Mortgage Brokers City*, 2010 ONSC 1797 [*Mortgage Brokers*] at para. 50). However, in his view, because the alleged misconduct at issue in that case was not the only source of evidence relied upon to support the claim, it did not disqualify the applicant from obtaining the injunctive relief it was seeking.

[52] In *Mortgage Brokers*, the case cited by Basran J., one of the grounds relied upon by the court in refusing to grant an injunction was that the applicant, a mortgage broker, had engaged in an unlawful self-help remedy against the defendant, a former business associate. In particular, the plaintiff was found to have wrongfully withheld commissions to which the defendant was entitled, in an apparent effort to punish the defendant for having wrongfully misappropriated the plaintiff’s intellectual property and goodwill in setting up a competing business. In those circumstances, the court refused the plaintiff’s application to enjoin the defendant from continuing to use the plaintiff’s intellectual property, on the basis, among others, that the plaintiff had not come to court with clean hands.

[53] I agree with Mirage that its position finds support in *NW1837* and *Mortgage Brokers*. However, those are older authorities that predate the modern trend reflected in the cases cited by the plaintiffs, which apply a stricter test.

[54] In *EnWave BCCA*, Fitch J.A. refused to grant leave to appeal from the decision of Basran J. on various grounds, one of which was that the proposition the applicant was seeking to contest was already well established in the law. He explained his reasoning in that regard as follows:

[66] More importantly, it appears to me that this Court has already accepted the proposition the DR Applicants seek leave to contest—that if entitlement to equitable relief can be established without reliance on the alleged misconduct, the alleged misconduct does not bar the granting of the remedy: see *DeJesus v. Sharif*, 2010 BCCA 121 at paras. 83–86 [*DeJesus*].

[67] *DeJesus* was considered in *Mayer v. Mayer*, 2012 BCCA 77 at para. 86. There, the relevant rule was stated this way: “the relationship between the relief sought and the misconduct must be direct and necessary in the sense that the person seeking equitable relief must be required to rely on the misconduct in order to vindicate his claim” (emphasis added). The principle was acknowledged again in *Wang v. Wang*, 2020 BCCA 15 at paras. 46–47.

[68] Similarly, in *Nagel's Debt Review v. Mosiuk*, 2019 SKCA 16 at para. 69, the Court held that the clean hands doctrine is not absolute and that a plaintiff can avoid its application if they do not need to rely on the illegality to establish their claim: see also *Vestby v. Galloway*, 2020 ABQB 361 at paras. 112–117.

[Emphasis in original.]

[55] Viewed in that light, the proposition that Basran J. drew from *Mortgage Brokers* (namely, that “[t]he court will not grant injunctive relief when the applicant has engaged in a self-help remedy that is improper or unlawful”, at para. 117) is too broad. There are many more recent and more authoritative decisions holding that a plaintiff cannot properly be precluded from obtaining equitable relief on those grounds alone.

[56] For example, in striking the clean hands defence that was raised in *Bang*, Branch J. found the facts in *Whitford v. Whitford*, 2020 BCSC 513 to be similar to those before him. In both cases, part of the misconduct relied upon to ground the clean hands defence could be described as a kind of self-help remedy. In *Bang* it was a “campaign of harassment” by the plaintiffs against the defendants, including physical violence, aimed at acquiring the alleged trust property (at para. 10). In *Whitford*, the misconduct included “harassing or intimidating the defendants in order to force them to sell or buy out the plaintiffs’ interest” in the trust property (at para. 254). In finding these to be inadequate grounds to support a clean hands defence, Branch J. noted that the alleged misconduct occurred long after the plaintiff’s loss had already crystallised (at para. 64).

[57] The misconduct at issue in *Mayer* also fell into the category of unlawful self-help. Nevertheless, the Court found it be insufficiently connected to the claim being advanced and, on that basis, reversed the summary trial judge’s decision giving effect to the clean hands defence. Writing for the Court on this point, K. Smith J.A., explained his reasoning as follows:

[87] Here, the judge identified Mhinder’s misconduct (at para. 249) as failing to disclose the Acknowledgments of Trust in the Bhagwan Mayer Action when he knew it was wrong to fail to do so, giving misleading evidence and untruthful answers on his examination for discovery in that action, signing the Bhagwan Mayer Settlement Agreement when he knew it was false and in the expectation that Bhagwan would rely on it, and using the process of the court to obtain a dismissal of all Bhagwan’s claims “including those that bear on the trust claims Mhinder Mayer advances in this action.”

[88] He expressed his hypothetical conclusion in this way:

[248] As I have pointed out, if I had accepted Mhinder Mayer's evidence concerning the existence of a new family trust in this action, then it would mean he gave misleading and inaccurate discovery evidence in the Bhagwan Mayer Action in order to benefit himself. His misconduct in that case relates to the very same subject matter comprising his trust claims in this case.

[Emphasis added.]

[89] While it is true that Mhinder's misconduct as found by the judge relates to the same subject matter as the trust claims he brings in Action 716, the misconduct is not the foundation of his current claims. Mhinder relies on the Acknowledgements of Trust signed in December 2001, five years prior to the misconduct, as evidence of an express trust whereby Richard and Rita held the shares of their companies and certain properties in trust for Bhora and Mhinder (or alternatively, for Bhora, Mhinder, Richard, and Rita). Further, his claim for a resulting trust arises simply by virtue of the allegedly gratuitous transfer of certain assets to Richard and Rita commencing in or about 1988 which, if gratuitous, would raise a rebuttable presumption of resulting trust: see *Pecore v. Pecore*, 2007 SCC 17 at paras. 24-25, [2007] 1 S.C.R. 795.

[90] It follows that, although Mhinder's behaviour in the Bhagwan Mayer Action could constitute misconduct, depending on how the evidentiary conflicts in regard to this conduct might be resolved, the misconduct did not have an "immediate and necessary relation" to his trust claims and it would be possible for Mhinder to prove these claims without relying on the impugned conduct: *Tinsley v. Milligan*, [1994] 1 A.C. 340 at 367, 371, 375, [1993] 3 All E.R. 65 (H.L.). Further, the fact that, in the judge's view, Mhinder did not have a clean record in the matter was not a bar to the equitable relief he claimed. As Lord Brougham said in *Attwood, supra*, at 447-448, quoted in I.C.F. Spry, *The Principles of Equitable Remedies*, 8th ed. (London: Sweet & Maxwell Ltd., 2010 at 170),

... [T]hat general fraudulent conduct signifies nothing; that general dishonesty of purpose signifies nothing; that attempts to overreach go for nothing; that an intention and design to deceive may go for nothing, unless all this dishonesty of purpose, all this fraud, all this intention and design can be connected with the particular transaction, and not only connected with the particular transaction, but must be made to be the very ground upon which this transaction took place, and must have given rise to this contract.

[Emphasis added by K. Smith J.A.]

[58] Likewise in *De Angelis*, the plaintiff was alleged to have forged letters from the deceased to bolster her claim in an estates case (an unlawful self-help remedy if ever there was one). Nevertheless, Fenlon J.A., writing for the Court, concluded that the trial judge had erred in relying on the clean hands defence to dismiss the plaintiff's claim in unjust enrichment, given that her claim could have been successfully advanced without the forged letters.

[59] In this case, it is at least arguable that the plaintiffs are, in advancing their claims, relying on their having complied with the agreement entitling them to a beneficial interest in the disputed shares. I am therefore dismissing the appeal in relation to those paragraphs of the amended response raising the clean hands defence based on an alleged breach of that agreement by failing to confirm that the debt had been retired.

[60] However, I have reached the opposite conclusion with respect to the paragraphs in the amended response basing the clean hands defence on Mirage's conspiracy allegation. Mirage has not pleaded sufficient facts to connect that alleged misconduct to the foundation for the plaintiff's claim, at least not in the manner required by the authorities. Without such pleaded facts, that aspect of the defence is indeed bound to fail. I am therefore allowing the appeal with respect to those paragraphs and ordering that they be struck.

**B. Was the associate judge clearly wrong in concluding the clean hands defence did not amount to an abuse of process?**

[61] The plaintiffs argue that the Clean Hands Amendments amount to an impermissible collateral attack on the Stay Order and the Oppression Relief Order, and that the associate judge was clearly wrong to conclude otherwise.

[62] In their submission, those orders operate to guarantee the plaintiffs a right to the relief granted to them in para. 7 of the Stay Order once they are found in these actions to be the beneficial owners of the disputed shares. However, they say, the Clean Hands Amendments undermine those orders by potentially depriving them of that relief even if their claims in these actions are otherwise successful.

[63] I see no merit in that argument. I am unable to discern any error in the reasoning of the associate judge on this issue. In any event, the Stay Order grants recourse to the plaintiffs only if, at the conclusion of these actions, the court finds them to be the beneficial owners of the disputed shares. Given the terms of the Stay Order, the central issue left to be determined in these actions is whether the plaintiffs are the beneficial owners of the disputed shares, as they claim. If the clean hands defence succeeds, the court will not make that finding.

[64] I am therefore dismissing this ground of appeal.

**V. SUMMARY AND DISPOSITION**

[65] The appeals are allowed in part.

[66] I am:

- a) setting aside the orders of the associate judge granting Mirage leave to amend its responses to raise the clean hands defence based on the allegation of conspiracy; and
- b) striking those paragraphs of the amended responses that plead that allegation.

[67] The appeals are otherwise dismissed.

[68] As success was divided, the costs of the appeals are to be payable in the cause.

“Milman J.”