

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Flanagan v. VINN Automotive Technologies Limited*,
2025 BCCA 410

Date: 20251125
Docket: CA50150

Between:

Chet Kenneth Flanagan

Appellant
(Plaintiff)

And

**VINN Automotive Technologies Limited, Levi Caleb Bernabe,
Thomas Glen Greggs Avant, Samuel Foster Archibald,
iNovia Capital GP-2018 Inc., Karamdeep Nijjar, Hans Knapp**

Respondents
(Defendants)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice Horsman
The Honourable Justice MacNaughton

On appeal from: An order of the Supreme Court of British Columbia, dated
September 4, 2024 (*Flanagan v. VINN Automotive Technologies Limited*,
2024 BCSC 1612, Vancouver Docket S233320).

Counsel for the Appellant:

H.J.S. Harris
L.A. Buitendyk

Counsel for the Respondents:

J.K. Yamashita

Place and Date of Hearing:

Vancouver, British Columbia
September 3, 2025

Place and Date of Judgment:

Vancouver, British Columbia
November 25, 2025

Written Reasons by:

The Honourable Mr. Justice Harris

Concurred in by:

The Honourable Madam Justice Horsman
The Honourable Justice MacNaughton

Summary:

This appeal arises from a judgment striking several causes of action as not disclosing a reasonable claim, without liberty to amend. Mr. Flanagan, a founder and employee of VINN Automotive Technologies Limited, alleged that VINN, several of its directors, and an investor conspired against him to prevent him from revealing misrepresentations to VINN’s shareholders. Mr. Flanagan sued for breach of his employment contract, wrongful dismissal, and various tort claims. The respondents brought an application to strike his tort claims. The chambers judge struck his claims in inducing breach of contract, economic interference, and negligence, but allowed his civil conspiracy claim to proceed. Mr. Flanagan appeals.

Held: Appeal allowed in part. Given that sufficient material facts were pleaded to allow the claim in civil conspiracy to proceed, there were sufficient material facts pleaded to allow the claims in inducing breach of contract and economic interference to proceed. However, the pleadings did not support the claim in negligence, and the judge made no error in striking that claim.

Reasons for Judgment of the Honourable Mr. Justice Harris:

Introduction

[1] This is an appeal of a judgment striking several causes of action as not disclosing a reasonable claim, without liberty to amend. The action was not entirely dismissed on the pleadings motion. The plaintiff’s claim for wrongful dismissal against his employer was not challenged by the defendants. The judge also declined to strike a civil conspiracy claim targeting all the defendants.

[2] I will return to discuss the causes of action that the judge struck. At the outset, however, I think it useful to describe the alleged narrative underlying the dispute between the parties. It should be remembered that on a pleadings motion to strike a claim as not disclosing a cause of action, the pleaded facts are assumed to be true. In analyzing the legal issues, a court is not commenting on the substantive merits of the claim and should not be taken to be doing so.

Allegations advanced by the plaintiff: Mr. Flanagan

[3] In 2018, the plaintiff Mr. Flanagan (Chief Operating Officer or “COO”) founded the defendant, VINN Automotive Technologies Limited (“VINN”), with the defendants

Mr. Bernabe (Chief Executive Officer) and Mr. Avant (Chief Technology Officer). All three individuals were directors of VINN.

[4] VINN engaged in online automotive sales.

[5] Mr. Flanagan was VINN's initial investor. He invested \$20,000 of his own funds into VINN's start-up and subsequently raised approximately \$500,000 for VINN's operations by canvassing his personal, family and business associates. Mr. Flanagan's job duties as COO included managing VINN's business strategy and growth, working closely with VINN's investors and high-level employees.

[6] Beginning in 2019, as part of its growth strategy, VINN solicited external financing.

[7] In January 2022, the defendant, iNovia Capital GP-2018 Inc. ("iNovia"), agreed to invest \$10 million in VINN.

[8] Before providing the investment, iNovia required certain corporate restructuring, including Mr. Flanagan's removal from VINN's board of directors to make room for its representative, the defendant Mr. Nijjar.

[9] Following his removal from the board, Mr. Flanagan continued to be employed by VINN as COO and continued to be a shareholder of VINN.

[10] Mr. Flanagan alleges that iNovia was induced to make its \$10 million investment by misrepresentations, made by Mr. Bernabe and possibly by other directors of VINN, as to VINN's monthly revenue. At that time, VINN's directors were Mr. Bernabe, Mr. Avant, Mr. Archibald, Mr. Nijjar, and Mr. Knapp (the "defendant directors").

[11] After iNovia discovered VINN's true monthly revenue, it reduced its investment to \$3 million.

[12] iNovia agreed to assist the defendant directors to conceal the misrepresentations from VINN's shareholders and other investors to protect its investment.

[13] On learning of the misrepresentations, Mr. Flanagan attempted to have Mr. Bernabe removed as VINN's CEO and to inform VINN's shareholders and investors of the misconduct.

[14] To silence Mr. Flanagan, the defendants (VINN, the defendant directors and iNovia) acted in concert and conspired to discredit him and worked to wrongfully terminate his employment to prevent him from exposing the misconduct to VINN's shareholders and investors. In short, there was a conspiracy to "scapegoat" Mr. Flanagan.

[15] Mr. Flanagan alleges that he suffered damage because of the defendants' wrongful conduct, including income loss, lost value of his shares and option entitlements, loss of health benefits, dilution of share and option allotments, and reputational damage.

[16] Mr. Flanagan started this action. He sued for breach of his employment contract and wrongful dismissal by VINN. This claim has not been challenged. Originally, he included the lawyers involved in the iNovia investment, but that claim was dismissed. He has also sued some of VINN's directors and iNovia. He advances various tort claims, including civil conspiracy, interference with economic relations, inducing breach of contract, breach of fiduciary duty, and negligence against all defendants.

[17] The chambers judge struck the claims in interference with economic relations, inducing breach of contract, breach of fiduciary duty and negligence against all of the defendants without liberty to amend. On appeal, Mr. Flanagan abandoned the claims in breach of fiduciary duty against the defendant directors and the claim for economic interference against iNovia.

[18] As a result, in issue on appeal are three causes of action against the defendant directors: a) inducing breach of contract; b) economic interference; and c) negligence. There are two causes of action against iNovia: a) inducing breach of contract; and b) negligence. Only one cause of action is in issue against VINN, namely, negligence.

Reasons for judgment

[19] During the hearing before the chambers judge, the plaintiff provided proposed amendments to address deficiencies in the existing filed pleading. The reasons, indexed at *Flanagan v. VINN Automotive Technologies Limited*, 2024 BCSC 1612, analyze those proposed amendments. It is appropriate for us to do so as well.

[20] The judge began by taking a global view of the pleadings and expressing the view that at its core, the action is a relatively straightforward case of wrongful dismissal, embellished by conclusory allegations casting the liability net as widely as possible, in an attempt to capture an array of allegedly tortious conduct committed by a broad cast of characters. He also opined, at paras. 15–17 that:

[15] Many of the things said to be misconduct cannot objectively be viewed as such. An obvious example is that one aspect of VINN’s misconduct is said to be “accepting the altered investment” of iNovia. One aspect of iNovia’s misconduct is said to be providing the altered investment.

[16] Some of the alleged misconduct, although it may potentially be viewed that way, is wholly unrelated to Mr. Flanagan, and could not conceivably give rise to a cause of action by him, certainly not these causes of action. For example, VINN is alleged to have failed in some of its corporate reporting and governance responsibilities.

[17] The overarching issue which is created by the structure of the pleadings is this: for most of the discrete torts pleaded, the conduct said to bottom the claim merely circles back to the previously defined “misconduct”. I reproduce here the entire pleading related to the claim of negligence, as an example.

61. Each of the defendants owed a duty of care to Flanagan.

62. Each of the defendants breached their standard of care, particulars of which include but are not limited to:

- a) VINN’s Misconduct;
- b) the Directors’ Misconduct;
- c) iNovia’s Misconduct;

- d) the Lawyers' Misconduct; and/or
- e) such further particulars as may be advised.

63. Each of the defendants' breach of standard of care caused or contributed to the Damages.

64. It was reasonably foreseeable that the defendants' breach of standard of care would cause harm to Flanagan.

[21] I find it difficult to dissent from that characterization of the pleadings. Nonetheless, it is necessary, as the judge accepted, to analyze the pleadings through the lens of the test summarized in *R. v. Imperial Tobacco Canada*, 2011 SCC 42 at para. 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] 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. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[22] As the judge went on to write:

[27] A plaintiff must clearly set out material facts in its pleading. Speculation, assumption and bald conclusory assertions are non-compliant with Rule 3-1: *Kindylides v. Does*, 2020 BCCA 330, at paras. 33-35.

[28] The primary basis on which the defendants seek to strike the pleaded causes of action is that there are no facts pleaded, or capable of being pleaded, which support those causes of action.

[23] With this framework in mind, the judge analyzed the causes of action individually.

Fiduciary duty

[24] The claim of breach of fiduciary duty against the defendant directors need not be summarized since it has been abandoned on appeal.

Negligence

[25] Turning to negligence, the judge analyzed the pleading as filed, together with a proposed pleading, alleging that the duty of care owed to Mr. Flanagan arose because of his status as a co-founder and initial investor, his removal from the board of directors, and the nature of his continuing employment duties following his removal from the board. The judge reasoned as follows:

[36] ... there are no actual facts pleaded which support the existence of a duty of care. Equally, there are no facts pleaded which speak to a breach of the standard of care. The alleged breaches circle back to the earlier defined “misconduct”, and, in the proposed further amendment, the conspiracy agreement.

[37] Again, the failure to plead material facts capable of supporting the elements of this tort even in the proposed further amended NoCC persuades me that there are no facts capable of being pleaded in that regard. This pleading too must be struck in its entirety, without leave to amend, and the claim dismissed.

[38] I also note parenthetically that the addition of the conspiracy to the pleaded breach of the standard of care adds nothing substantive to this claim, and indeed confuses matters. The torts of negligence and unlawful conspiracy do not comfortably co-exist on a single set of facts. It is difficult to envisage circumstances in which defendants could negligently involve themselves in an unlawful conspiracy, which is an intentional tort.

Intentional interference with economic relations

[26] The judge concluded that the pleading of intentional interference with economic relations was fatally deficient, and incapable of being cured through further amendment. He noted the elements of the cause of action, as distilled in *Low v. Pfizer Canada Inc.*, 2015 BCCA 506 at para. 77, namely:

- a) an unlawful act committed against a third party;
- b) intended to cause economic harm to the plaintiff; and
- c) resulting in economic harm to the plaintiff.

[27] He observed that there was no pleading of an unlawful act committed against VINN. He identified two proposed paragraphs alleging that the personal defendants, through their previously defined misconduct and the conspiracy agreement, breached various duties they owed to VINN, and breached an unspecified contract with VINN. A similar claim was made against iNovia that it breached unspecified

contract(s) with VINN and further breached its duty of honesty and fair dealing in contractual relations owed to VINN.

[28] The judge concluded that no facts were pleaded in support of these bald assertions with “baked-in legal conclusions”: at para. 42. Accordingly, he found the pleading fatally deficient and incapable of being cured by further amendment.

Inducing breach of contract

[29] The essence of this claim is that each of the defendants, except VINN, intentionally induced or procured VINN’s breach of the employment contract because of the conspiracy. The judge applied the principle in *Said v. Butt*, [1920] 3 K.B. 497, [1920] All E.R. Rep 232 (KB Div UK).

[30] About that principle, the Court of Appeal said this, in *Hildebrand v. Fox*, 2008 BCCA 434, at para. 70:

... 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.

[31] Concerning iNovia, the judge could not envision what facts could be pleaded, beyond those alleged as part of the conspiracy claim, in support of the claim.

[32] As a result, the judge found the pleading to be fatally deficient, based on a failure to plead material facts. He reasoned:

[50] ... I decline to grant leave to amend. I note, as with the breach of fiduciary duty claim, the gravamen of the wrongful conduct, as reflected in the proposed further amendment, is captured by the allegation of civil conspiracy, which is not being struck.

Civil conspiracy

[33] The judge declined to strike the pleading in civil conspiracy, which is not challenged by cross-appeal. As we shall see, in my view, that has implications for the result of this appeal. Accordingly, it is worthwhile to set out the judge’s analysis:

[52] In respect of the claim of civil conspiracy, I reach a different conclusion. The facts pleaded in support of this claim are sparse, and lacking in particularity, but not fatally deficient. Paragraph 77 of the proposed further amended NoCC pleads that, between May 30, 2022 and October 17, 2022, the defendants formed an agreement or agreements to:

- a) Remove Flanagan from all his executive and management roles at VINN;
- b) Terminate Flanagan’s employment at VINN;
- c) Prevent Flanagan from disclosing the misrepresentations to investors and shareholders;
- d) Prevent Flanagan from holding Bernabe responsible for the misrepresentations;
- e) Prevent Flanagan from disclosing the reasons for iNovia’s altered investment to investors and shareholders.

[53] Paragraph 78 pleads in brief compass the object and means of the conspiracy.

[54] There are few, if any, overt acts pleaded, and certainly no specificity as among the various defendants, but that in my view does not lead to a conclusion that the entire pleading must be struck. ...

On appeal

Standard of review

[34] It is unnecessary to dwell on the standard of review, which is incontrovertible. The judge’s determination that it is plain and obvious that the pleadings do not disclose a reasonable claim is reviewable on a standard of correctness. By contrast, his decision not to grant liberty to amend engages the judge’s exercise of discretion and is to be reviewed by this Court accordingly.

The implications of the claim in civil conspiracy surviving: inducing breach of contract and intentional interference with economic relations

[35] I have outlined the live issues on appeal above. I think it convenient to begin by considering the implications of the acceptance by the judge that the conspiracy claim had been adequately pleaded.

[36] As is well known, there are two types of civil conspiracy recognized in Canada: predominant purpose conspiracy and unlawful means conspiracy. Predominant purpose conspiracy asserts an agreement of two or more persons with

the primary objective of harming a plaintiff. Unlawful means conspiracy involves an agreement to use unlawful means (which may be a tort) where it is known or ought to be known that harm to the plaintiff is likely. It has often been remarked that where the unlawful means involved in a conspiracy are tortious, alleging a conspiracy is redundant.

[37] In this case, as I read the pleadings, despite a passing reference to predominant means conspiracy, what is alleged is an unlawful means conspiracy. The alleged conspiracy involved an agreement to remove Mr. Flanagan from his executive and management roles at VINN, and to terminate his employment to further the conspirators' interests. These means mirror the tort of inducing breach of contract. It is not apparent to me how, if the conspiracy claim survives on the pleadings, the claim of inducing breach of contract cannot. Indeed, as noted above, the judge recognized that the essence of the wrongful conduct claim in inducing breach of contract is captured by the allegation of a civil conspiracy.

[38] While pleading both inducing breach of contract and an unlawful means conspiracy alleging common material facts creates a redundancy, this is not sufficient to strike either one as not pleading a reasonable cause of action in these circumstances. If one survives, so does the other. Counsel for the respondents on the appeal did not argue otherwise.

[39] The judge gave two principal reasons for striking the claim for inducing breach of contract. The first was the failure to plead material facts in support of a conclusory statement of the legal conclusion. I have dealt with this proposition in examining whether it is inconsistent with maintaining the civil conspiracy claim. The second reason, though, was the judge's application of the principle from *Said v. Butt* that protected the defendant directors.

[40] The judge grounded his conclusion, in part, by saying that it was difficult to envision what facts could be pleaded, beyond those alleged as part of the conspiracy claim. The issue that needs to be addressed is whether the allegations of

material fact underlying the conspiracy claim take the case arguably outside the scope of the application of the principle in *Said v. Butt*.

[41] As Mr. Flanagan points out, it is settled law that liability may be imposed on a director of a company if the director was not acting *bona fide* in accordance with their duties to the company, and a dominant purpose of the director's actions was to deprive the plaintiff of the benefit of the contract. I am persuaded that there is a sufficient basis to conclude that material facts have been pleaded which are capable of depriving the individual directors of the protection provided by *Said v. Butt*. Mr. Flanagan pleads that the defendant directors targeted him to advance their personal interests, arguably at the expense of VINN, by increasing their own voting power, increasing the value of their option entitlements, increasing their own profits, diluting Mr. Flanagan's share entitlements, and concealing the conduct of individuals engaged in soliciting investment under false pretences. Although the pleading is thin, I do not think it is plain and obvious that the alleged material facts are not enough to allege that the directors were not acting *bona fide* in the best interests of VINN.

[42] Accordingly, I would allow the appeal in respect of inducing breach of contract, although it is not clear that this result achieves anything material in the underlying litigation.

[43] This analysis also has implications for the claim of intentional interference in economic relations. It will be remembered that the judge identified the need to plead an unlawful act committed against a third party as an element of the cause of action. The judge concluded that there were no pleadings of material fact alleging an unlawful act against a third party, namely VINN. The judge rejected a proposed amendment to allege that the directors breached duties owed to VINN, concluding that the claims were merely bald assertions with a baked-in legal conclusion.

[44] Again, I do not think that striking this aspect of the interference claim is consistent with maintaining the civil conspiracy claim. The civil conspiracy claim, in addition to mirroring the claim of inducing breach of contract, also alleges that the

defendant directors intended to prevent Mr. Flanagan from disclosing to VINN's investors and shareholders that:

- a revenue misrepresentation is said to have induced iNovia's initial investment;
- Mr. Bernabe was responsible for that misrepresentation; and
- concealing the misrepresentation was the reason for iNovia's altered investment.

[45] If these pleadings were sufficient to sustain a pleading of unlawful means conspiracy, they can also sustain a pleading of an unlawful act for wrongful interference with economic relations since they allege wrongs to third parties.

[46] The allegation that the directors committed a wrongful act against third parties goes a little further than being merely a bald assertion. The directors owed duties to VINN. It may be sufficient to uphold the wrongful interference claim that it overlaps material facts underlying inducing breach of contract.

[47] Moreover, it is not plain and obvious that allegedly concealing misrepresentations from investors and shareholders, preventing Mr. Bernabe being held responsible for the misrepresentations, and concealing the reasons for iNovia's altered investment do not amount to wrongful conduct in relation to VINN or VINN's investors and shareholders. The judge recognized how thin the allegations of material fact were to support the conspiracy claim but concluded that that was not sufficient to strike that claim at this stage. I can see no meaningful distinction in the analysis as it applies to the intentional interference with economic relations claim.

[48] It is not necessary to analyze this cause of action against iNovia since it has been abandoned.

[49] I would allow the appeal in respect of the claim of intentional interference in economic relations.

Negligence

[50] So far, my reasoning has been influenced by the judge's conclusion that sufficient material facts are pleaded to support the conspiracy claim and the relationship between those facts and the other economic torts alleged. I sympathize with the judge's assessment that the pleadings tend towards the conclusory, are duplicative, and often make bald assertions. As I have indicated, allowing the continuation of the allegations of inducing breach of contract and wrongful interference will likely have no material impact on the conduct of the litigation, given the presence of the conspiracy claim. However, that cannot be said of the negligence claim. For the reasons that follow, I would dismiss the appeal from the order striking the negligence claim, without leave to amend. The action should be struck in respect of that claim.

[51] It will be recalled that the judge found that no material facts had been pleaded supporting the existence of a duty of care or a breach of the standard of care. The judge also noted, with some justification, that the pleading of negligence sits uncomfortably with the material facts asserting intentional conduct.

[52] Mr. Flanagan asserts that the judge erred in not undertaking a full-fledged *Anns v. Merton London Borough Council*, [1978] A.C. 728, analysis of the alleged relationship of the parties to determine whether sufficient proximity existed to recognize a *prima facie* duty and then to consider whether the duty should be negatived. He asserts that proximity is grounded in his role as a co-founder of VINN, his removal as the only director to be removed when iNovia made its investment, and his role in overseeing and directing VINN's operations.

[53] I cannot accede to the suggestion that these facts can create a relationship of proximity so that the defendants came under an obligation to act reasonably to avoid causing Mr. Flanagan reasonably foreseeable harm. I do not think any foundation has been laid to require an intensive *Anns* analysis and it is not seriously contested that on these facts, the relationship between the parties does not fall within an analogous category in which a duty of care has been recognized.

[54] I do not accept that the allegations of “psychological” or other non-economic harm mean that this claim is not for pure economic loss. This is not a claim for bodily harm, property damage, or psychiatric injury.

[55] Second, as has been reiterated in *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35 at para. 19:

This explains why the common law has been slow to accord protection to purely economic interests. While this Court has recognized that pure economic loss may be recoverable in certain circumstances, there is no general right, in tort, protecting against the negligent or intentional infliction of pure economic loss. ...

[56] Categories of pure economic loss incurred between private parties include negligent misrepresentation or performance of a service, negligent supply of shoddy goods or structures, and relational economic loss. Proximity exists in these cases because, for example, the proximate relationship is formed when the defendant undertakes to provide a service or makes a representation that invites the plaintiff’s reasonable reliance on the service or representation.

[57] With respect to Mr. Flanagan’s argument, I can see no basis on which his relationship with any of the defendants could give rise to proximity in the necessary sense that a defendant thereby has a duty to take reasonable care not to injure his economic interests. It is apparent that he was not the recipient of any misrepresentations on which he could reasonably have relied. He had not sought out a professional or other service on which he relied, and which was negligently performed. His relationships with the defendants were of an entirely different character. It is not, in my view, necessary to embark on any discussion of policy issues in the absence of a basis to find a *prima facie* proximate relationship between the parties.

[58] Mr. Flanagan seeks to derive some support from this Court’s decision in *Hildebrand*, in which an employee was found to owe a duty of care in negligence to another employee when all that was sought was the recovery of damages for economic loss. He also relies on it for the proposition that an employer could be

vicariously liable for such negligence. In my view, this case does not support the argument that sufficient material facts have been pleaded to create proximity. *Hildebrand* arose in the context of a workplace investigation and was decided before *Maple Leaf Foods*. In my view, the circumstances engaged by *Hildebrand* are narrow in scope and cannot be extended to apply, by analogy or principle, to the facts of this case. A workplace investigation is materially different and engages different interests.

[59] I agree with the respondents that, standing alone and in the absence of specific representations or undertakings, Mr. Flanagan's role as one of three co-founders of VINN does not give rise to a proximate relationship. The initial relationship is more properly seen as giving rise to obligations arising from contract or the company's articles. Similarly, Mr. Flanagan's removal as a director to facilitate the appointment of an iNovia director does not create a proximate relationship with any of the defendants. Standing alone it is merely a condition of arms length commercial parties establishing an economic relationship. Finally, his role as an officer of VINN does not cast him into a proximate relationship arising from his employment responsibilities.

[60] It follows, in my view, that none of the material facts pleaded, or as they could be amended, is legally capable of giving rise to a relationship of proximity sufficient to ground the existence of a duty of care to avoid economic loss. The judge did not err in striking the pleadings, without leave to amend, and dismissing the action in relation to this cause of action. I would dismiss the appeal from this aspect of the judgment.

Disposition

[61] I would allow the appeal only to the extent that I would set aside the order dismissing the claim in inducing breach of contract and interference with economic

relations as against the defendants identified above. I would dismiss the appeal against the dismissal of the action in negligence.

“The Honourable Mr. Justice Harris”

I AGREE:

“The Honourable Madam Justice Horsman”

I AGREE:

“The Honourable Justice MacNaughton”