IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *AFX Mixing & Pumping Technologies Inc. v. McKinon,* 2026 BCSC 522

Date: 20260318
Docket: S253992
Registry: Vancouver

Between:

AFX Mixing & Pumping Technologies Inc.

Plaintiff
Defendant by Counterclaim

And

Shaune McKinon, Vanessa McKinon, Kirsty McKinon, Kent McKinon, and Macworx Inc.

Defendants

And

Shaune McKinon, Vanessa McKinon

Plaintiffs by Counterclaim

And

AFX Holdings Proprietary Limited

Defendant by Counterclaim

Before: Associate Judge Bilawich

Oral Reasons for Judgment

Counsel for the Plaintiff:	S. Coulson
Counsel for Mixtec North America Inc.:	S. Marescaux
Place and Date of Hearing:	Vancouver, B.C. March 9, 2026
Place and Date of Judgment:	Vancouver, B.C. March 18, 2026

Introduction

[1] **THE COURT:** The plaintiff ("AFX") applies to add Mixtec North America Inc. ("Mixtec"), a Utah-based company, as a defendant to this action and for leave to file an amended notice of civil claim in the form attached to its application.

[2] Mixtec opposes the application, on the basis that AFX only seeks to add it as a defendant in order to obtain information and documents it can use against the current defendants, rather than engaging in a letters rogatory process. It also says the proposed claim against it has not been properly pled.

Background

[3] AFX is a BC company which offers services involving solving specific engineering and industrial problems and applications which require agitators and peristaltic pumps, including ancillary services such as sourcing replacement parts, repairs and servicing warranties for its products. AFX is owned 80% by AFX Holdings Proprietary Limited ("AFX Holdings"), a South African company.

[4] The defendant Shaune McKinon ("Shaune") was formerly a director and employee of AFX from 2014 to March 8, 2025. The defendant Vanessa McKinon ("Vanessa") is his wife. The defendants Kent McKinon ("Kent") and Kirsty McKinon ("Kristy") are their adult children. Vanessa, Kent, and Kirsty are also all former employees of AFX.

[5] Shaune and Kirsty incorporated the defendant Macworx Inc. ("Macworx") on May 31, 2019. They are both directors and each holds 50% of its shares. AFX says that, unbeknownst to its majority shareholder and its board of directors:

a) Macworx was being operated out of AFX's premises from 2019 onwards;
b) Macworx competed with AFX and provided services to AFX's clients; and
c) Macworx partnered with AFX's largest global competitor, Mixtec.

[6] Mixtec describes itself as a manufacturer of industrial mixing equipment, based in Utah. It has no facilities, assets, employees, or property in Canada. It sells its products in North America, including Canada.

[7] AFX uses a proprietary software which is owned by AFX Holdings and operated by an affiliated company. The software generates product specifications which provide custom solutions for AFX customers. The software and its outputs give AFX a competitive advantage. The claim alleges Shaune used these outputs for his personal advantage and to AFX's detriment, including by providing AFX Confidential Information to Mixtec. It is alleged that each of the individual defendants worked for Macworx, and that this was in breach of their respective employment agreements with AFX. In Shaune's case, it was also in breach of his duties as a director of AFX. They regularly blended their roles with AFX with their roles with Macworx, and arranged it so that the customers and suppliers regularly worked with both companies while they were accessing and using AFX Confidential Information.

[8] Shaune has sworn an affidavit in which he says Mixtec reached out to him about one month after he left AFX, on March 8, 2025. He ceased being a director of AFX on April 8, 2025.

[9] On May 30, 2025, AFX filed its notice of civil claim. On July 9, 2025, it filed an amended notice of civil claim.

[10] On August 28, 2025, AFX was granted an interim injunction against the defendants prohibiting them from using, possessing, distributing, or selling AFX Confidential Information. See Justice Coval's reasons, at 2025 BCSC 1717.

[11] On October 14, 2025, an order was granted directing the defendants to produce a range of documents relating to negotiations between Shaune and Mixtec and between Macworx and Mixtec, as well as agreements between Shaune and Mixtec and between Macworx and Mixtec.

[12] On November 10, 2025, the defendants produced an agreement between Macworx and Mixtec which was effective March 18, 2025, which provides that Macworx would provide Mixtec the same services for the same products in the same territory as Shaune's role with AFX, for which Macworx would be paid a monthly retainer of USD $6,000 plus commissions.

[13] On December 3, 2025, Mixtec produced email documentation to AFX which AFX says included evidence showing that Mixtec knowingly assisted Shaune in breaching his fiduciary duties owed to AFX. It says the emails show that Shaune commenced negotiations with Mixtec as early as December 2024, entered into an agreement with Mixtec on March 8, 2025, and provided Mixtec with AFX Confidential Information. The emails show Mixtec requested AFX's technical software output from Shaune to build a spare impeller for one of AFX's clients while Shaune was still a director of AFX.

[14] AFX notes that documents provided by Mixtec were ordered to be produced by Shaune by November 15, 2025, but he failed to produce them in his court-ordered production.

[15] On December 31, 2025, Justice Coval noted as follows, in reasons [2025 BCSC 2573] dismissing a second broader injunction sought against the defendants:

> [52] On December 3, 2025, Mixtec produced documents not yet produced by the defendants, despite the October 14, 2025 order. They showed the parties' negotiations began as early as mid-December 2024, and included two trips by Mr. McKinon to Salt Lake City for meetings (January and March 2025). They also showed Mr. McKinon's Mixtec email account being activated on March 26, 2025 and Macworx receiving its initial retainer payment on April 3, 2025. They showed Mr. McKinon introducing Vanessa and Kent as part of the Macworx administration and sales and marketing team on April 11, 2025.
>
> [53] The Mixtec documents also disclosed:
>
> • February 16, 2025: Emails between Mr. McKinon and AFX executives, regarding his intention to leave AFX and work with Mixtec. This included his statement:
>
> I will take on the responsibility to call on all engineering (EPC) houses across Canada, of which many I currently have relationships with, in order to ensure your product is included in any current and upcoming RFQs for mixing equipment in all industries, coupled with this, call on and develop capable and established resellers across Canada to penetrate more localized markets and industries in their respective territories. This will include onsite end

> user calls for technical support, equipment assessment, sales and marketing visits/opportunities … I believe we require 4-6 weeks before advertising our association, however there may very well be a need to direct some clients to you during this period.
>
> • March 23, 2025: Mr. McKinon's email to Mixtec, attaching AFX copyrighted technical plans for an AFX client Cru Brewing Systems, for which he orders a replacement part from Mixtec.
>
> • April 3, 2025: Mr. McKinon orders an impeller part from Mixtec, similar to those of AFX clients.
>
> …
>
> [65] In my view, AFX has demonstrated a strong initial case of Mr. McKinon's breaches of fiduciary duty by acting against its interests in service of his own.
>
> [66] The current record appears to indicate that, while still a director, he: (a) negotiated and signed the Mixtec Agreement to go into business with AFX's primary competitor; (b) sent AFX's software output containing technical client information to Mixtec (March 23, 2025); (c) ordered parts for a client from Mixtec rather than AFX; and (d) departed with copies of his AFX email account and the company hard drive; and (e) concealed all of this from AFX until revealed in this litigation.
>
> [67] There is also strong initial evidence of a pattern of ongoing concealment:
>
> a) Mr. McKinon's initial affidavits were not forthright about his dealings with Mixtec;
>
> b) the Mixtec Agreement was not disclosed until November 10, 2025;
>
> c) his negotiations and disclosure of client information to Mixtec were not disclosed until Mixtec's production on December 3; and
>
> d) the sales ledgers, ordered to be produced on October 14, were redacted so as not to reveal that many of the sales were to AFX clients.
>
> [68] I agree with AFX that this pattern of breaches of duty and concealment creates concerns of ongoing non-disclosure and misuse of AFX confidential information.

[16] On January 12, 2026, AFX filed the present application. The proposed amendments pertaining to Mixtec include:

> a) In Part 1: Statement of Facts:
>
> **Mixtec**
>
> 63. In or about December, 2024, Mixtec commenced negotiations with Shaune McKinon to acquire his services to market and sell Mixtec agitators, including to AFX clients. The negotiations ultimately took the form of a contract between Macworx and Mixtec in which Macworx would agree

> to sell and market Mixtec agitators in Canada. The agreement encompassed lines of business, industries, and territories identical to AFX.
>
> 64. Mixtec and Macworx entered into a contract effective March 18, 2025.
>
> 65. Mixtec knew, ought to have known or was deemed to know that Shaune McKinon was a director of AFX when it commenced negotiations and when it entered into the Macworx Agreement.
>
> 66. Mixtec requested pricing information from Shaune McKinon in or about January, 2025.
>
> 67. Mixtec agreed with Shaune and Macworx to trade on AFX Confidential Information and knowingly received AFX Confidential Information from Shaune McKinon, including in or about February to March, 2025 to build an impeller part for an AFX client using AFX Confidential Information.
>
> 68. From December, 2024 to the present Mixtec knowingly assisted Shaune McKinon breach his fiduciary duties to AFX, including by:
>
> > a. Requesting and receiving from Shaune AFX Confidential Information for the benefit of Macworx and Mixtec;
> >
> > b. Delivering competing services to AFX clients introduced to Mixtec by Shaune, including by using AFX Confidential Information to do so.
>
> b) And in Part 2: Relief Sought:
>
> 8. Damages or disgorgement against Mixtec for knowing assistance of breach of fiduciary duty and breach of trust.
>
> 9. A permanent injunction against Mixtec prohibiting it from using, possessing, distributing, or selling AFX Confidential Information.
>
> c) And in Part 3: Legal Basis:
>
> *33.* The Defendant Mixtec had actual knowledge and deemed knowledge of Shaune's Fiduciary Duties as a director and knowingly assisted Shaune in the breach of those Fiduciary Duties, including the duties listed above at paragraph 27 and the Additional Fiduciary Breaches.

[17] There are also existing claims, including in civil conspiracy, set out in the current amended notice of civil claim which are framed as being made against “all defendants.” This term does not currently include Mixtec. If Mixtec were to be added as a new defendant, that term would, presumably, also automatically include it as being part of the alleged conspiracy.

Applicable Law

[18] AFX relies on Rule 6-2(7)(c) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 (“*SCCR*”):

> (7) At any stage of a proceeding, the court, on application by any person, may, subject to subrules (9) and (10),
>
> (c) order that a person be added as a party if there may exist, between the person and any party to the proceeding, a question or issue relating to or connected with
>
> (i) any relief claimed in the proceeding, or
>
> (ii) the subject matter of the proceeding
>
> that, in the opinion of the court, it would be just and convenient to determine as between the person and that party.

[19] In *Madadi v. Nichols*, 2021 BCCA 10 at paras. 22–24, the Court of Appeal described the approach to this sub-rule as follows:

> [22] Rule 6-2(7)(c) is broader and therefore more commonly relied upon. A plaintiff applicant must establish that there is a question or issue between the plaintiff and the proposed defendant that relates to or is connected with the relief, remedy, or subject matter of the proceeding. This threshold is low. It is generally expressed as establishing a real issue between the parties that is not frivolous, or that the plaintiff has a possible cause of action against the proposed defendant: *The Owners, Strata Plan No. VIS3578 v. John A. Neilson Architects Inc.*, 2010 BCCA 329 at para. 45 [*Neilson Architects*]; *Strata Plan LMS 1816 v. Acastina Investments Ltd.,* 2004 BCCA 578 [*Acastina*]; and *MacMillan Bloedel Ltd. v. Binstead et al.* (1981), 58 B.C.L.R. 173 (C.A.) [*Binstead*]. I would define a frivolous issue as an issue that does not go to establishing the cause of action, does not advance a claim known to law, or serves no useful purpose and would be a waste of the court's time and public resources. This is similar to the considerations for determining whether a claim should be struck as "unnecessary, scandalous, frivolous or vexatious" under Rule 9-5(1)(b): see, for example, *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at paras. 65, citing in *Willow v. Chong*, 2013 BCSC 1083 at para. 20.
>
> [23] This threshold requirement is usually met solely on the basis of the proposed pleadings, but the parties may provide affidavit evidence addressing it. If evidence is provided, the court is limited to examining it only to the extent necessary to determine if the required issue between the parties exists; it is not to weigh the evidence and assess whether the plaintiff could prove the allegations: *Neilson Architects* at para. 45, citing *Acastina* and *Binstead*. Whether or not evidence is provided, it is necessary for the court to examine the pleadings in order to determine whether the plaintiff has a possible cause of action against the proposed defendants. The pleadings must set out material facts sufficient to establish a real and not frivolous issue between the plaintiff and the proposed defendants: *Neilson Architects* at paras. 60, 62, and 75.
>
> [24] If this requirement is met, the court must next determine whether it would be just and convenient to decide the issue between the parties in the proceeding. It is in relation to this issue that evidence is more commonly provided. This is a discretionary decision, which discretion must be exercised judicially, and in accordance with the evidence adduced and the guidelines established in the authorities. In *Letvad*, this court adopted a list

> of factors to be considered from *Teal Cedar Products (1977) Ltd. v. Dale Intermediaries Ltd.* (1996), 19 B.C.L.R. (3d) 282 (C.A), a decision that addressed the amendment of pleadings after the expiry of a limitation period. These factors include the extent of the delay, the reasons and any explanation for the delay, the expiry of a limitation period, the degree of prejudice caused by the delay, and the extent of the connection, if any, between the existing claims and the proposed new cause of action: *Teal Cedar* at para. 67; *Letvad* at para. 29; see also *Chouinard v. O'Connor*, 2011 BCCA 161 at para. 21. In the context of adding parties, the last *Letvad* factor may be more accurately described as the extent of the connection, if any, between the existing claim and the parties to be added.

[20] In *Meade v. Armstrong (City)*, 2011 BCSC 1591 at para. 16, the Court summarized general principles for interpretation of Rules 6-2(7)(b) and (c):

> 1) A party should be added where that party's participation is necessary for the proper determination of the case …;
>
> 2) The discretion to add parties should be generously exercised so as to enable effective adjudication upon all matters …;
>
> 3) In exercising the discretion to add a party, the court should not concern itself as to whether the action will be successful other than to be satisfied that there may exist an issue or question between the applicant and the party being joined …;
>
> 4) Evidence is not required in support of a joinder application. The pleadings may be sufficient to establish that there is a question to be tried between the parties …;
>
> 5) Where an applicant relies on pleadings alone, the facts alleged, which if assumed to be true, must disclose a cause of action …;
>
> 6) Unless there is prejudice, amendments should be granted liberally to enable the issues to be tried….
>
> [Citations omitted.]

Analysis

[21] AFX argues Shaune concealed the Macworx-Mixtec agreement and his competition through Mixtec from AFX while he was an AFX director, and until November 10, 2025 and December 3, 2025. At that time the agreement was disclosed as a result of production arising from the aforementioned document production order and from documents voluntarily produced by Mixtec. It says any delay in it adding Mixtec as a defendant is the existing defendants' fault for actively concealing this information. The claim it proposes to advance against Mixtec is in knowing assistance in breach of fiduciary duty and breach of trust. It argues this is supported by evidence which Mixtec itself has provided, so there is a compelling basis for adding Mixtec as a defendant.

[22] Mixtec says the application materials fail to identify a question or issue as between AFX and Mixtec. Rather, correspondence between the parties demonstrates that AFX seeks to add Mixtec for tactical reasons; namely, to obtain information and production of additional documents through discovery processes which it hopes to use against the existing defendants, rather than pursuing those through a letters rogatory process or other means.

[23] Mixtec says in October, November, and December 2025, AFX contacted it to request documents related to Shaune and Macworx. Mixtec voluntarily provided some documents on several occasions, through counsel. On November 25, 2025, AFX filed an application for production of additional non-party documents from Mixtec. When Mixtec declined to cooperate further, AFX indicated it would seek to add Mixtec as a defendant. It says there is no legitimate basis for any claim against it directly.

[24] Mixtec characterizes AFX's proposed claim as including both knowing assistance in breach of fiduciary duty and knowing receipt of AFX Confidential Information provided to Mixtec by Shaune.

[25] Mixtec says it entered into a Manufacturer's Representative Agreement with Macworx. Shaune represented Macworx in its dealing with Mixtec. At the time, it was not aware that Shaune was a director of AFX. It would not have known and did not know that the alleged fiduciary relationship between Shaune and AFX existed. Its contractual relationship with Macworx is not characterized by the exchange of confidential information or, in many cases, disclosure of the specific identity of customers. Macworx simply buys products from Mixtec and sells those to its own customers. Their relationship is not exclusive. Macworx is free to potentially work with many manufacturers. It argues that AFX's allegations describe ordinary practices in a competitive business. Customers are free to do business with different manufacturers. Mixtec never sought, nor has it received, AFX's design program or trade secrets from Shaune. It has its own design program and pricing structure, with well-defined procurement and fabrication processes in the USA.

[26] Mixtec says the proposed claim against it does not show that Mixtec willingly received confidential information or that it willingly assisted in relation to the breach of fiduciary duty by Shaune. A claim for knowing assistance requires

that it have actual knowledge of Shaune's breach of fiduciary duty or his misuse of confidential records or customer information. There is no evidence Mixtec knew Shaune was a director of AFX, and Mixtec waited until after Shaune indicated he would be leaving AFX to enter into an agreement with Macworx. There were no suspicious circumstances in Mixtec's dealings with Shaune. Those dealings were in keeping with the Manufacturer's Representation Agreement and reflect the fact that he had worked in the industry for a long time.

[27] The proposed pleading also suggests a claim against Mixtec in conspiracy. Mixtec says the proposed pleading does not include specific allegations against it which would allow it to give sufficient answer to the claim, and it merely makes general allegations against "all defendants."

[28] The general tenor of some of Mixtec's arguments is to the effect that AFX has failed to tender evidence supporting the proposed claims. As noted in *Madadi*, *supra*, at para. 23, it is sufficient for the threshold requirement to be met solely on the basis of the proposed pleadings. Affidavit evidence can be provided, but it is not strictly necessary.

[29] I will first address the proposed claims in knowing assistance and knowing receipt. In *Wood v. Bevan*, 2024 BCSC 1401, at paras. 52-55, I summarized the elements required to make out claims for knowing assistance in a breach of trust and knowing receipt of trust property:

> **Knowing Assistance in a Breach of Trust**
>
> [52] The elements of knowing assistance in a breach of trust are summarized in *Gold v. Rosenberg*, [1997] 3 S.C.R. 767, 1997 CanLII 333 (SCC) at para. 34. A stranger to a trust can be found liable for a breach of trust if:
>
> a) A trust is found to exist;
>
> b) The trustee perpetrated a dishonest or fraudulent breach of trust; and
>
> c) The stranger participated in and had knowledge of the dishonest and fraudulent breach of trust.
>
> [53] The knowledge requirement also includes recklessness or willful blindness: see *Air Canada v. M & L Travel Ltd*., [1993] 3 S.C.R. 787, 1993 CanLII 33 (SCC) at paras 39-41.
>
> **Knowing Receipt of Trust Property**
>
> [54] Knowing receipt arises where a stranger to a trust has received trust monies or property for his or her personal benefit: see *Citadel General*

> *Assurance Co. v. Lloyds Bank Canada*, [1997] 3 SCR 805, 1997 CanLII 334 (SCC). The elements include:
>
> a) Property the defendant has received was subject to a trust in favour of the plaintiff;
>
> b) The property was taken from the plaintiff in a breach of trust;
>
> c) The defendant had knowledge of the facts sufficient to put a reasonable person on notice or inquiry regarding the breach of trust (constructive knowledge); and
>
> d) The defendant received the trust property and applied it for their own use and benefit.
>
> [55] See the summary in *Kherani v. Bank of Montreal*, 2012 ONSC 2230 at para. 128.

[30] Mixtec emphasizes that constructive knowledge is insufficient to establish liability in knowing assistance cases. It relies on *Citadel General Assurance Co. v. Lloyds Bank Canada*, [1997] 3 SCR 805, 1997 CanLII 334 (SCC) at para. 48:

> 48 Given the fundamental distinction between the nature of liability in assistance and receipt cases, it makes sense to require a different threshold of knowledge for each category of liability. In "knowing assistance" cases, which are concerned with the furtherance of fraud, there is a higher threshold of knowledge required of the stranger to the trust. Constructive knowledge is excluded as the basis for liability in "knowing assistance" cases; see *Air Canada v. M & L Travel Ltd., supra*, at pp. 811-13. However, in "knowing receipt" cases, which are concerned with the receipt of trust property for one's own benefit, there should be a lower threshold of knowledge required of the stranger to the trust. More is expected of the recipient, who, unlike the accessory, is necessarily enriched at the plaintiff's expense. Because the recipient is held to this higher standard, constructive knowledge (that is, knowledge of facts sufficient to put a reasonable person on notice or inquiry) will suffice as the basis for restitutionary liability. Iacobucci J. reaches the same conclusion in *Gold, supra*, where he finds, at para. 46, that a stranger in receipt of trust property "need not have actual knowledge of the equity [in favour of the plaintiff]; notice will suffice".

[31] With respect to AFX's proposed knowing assistance claim, AFX alleges that Mixtec knew or ought to have known or was deemed to know that Shaune was a director of AFX when it commenced negotiations and when it entered into the Mixtec-Macworx agreement. Knowing Shaune was a director of AFX appears to be directed at him being in a position of trust vis-à-vis AFX, but does not extend to knowledge about him allegedly committing a dishonest or fraudulent breach of trust, presumably relating to misuse of AFX Confidential Information. It alleges

Mixtec requested pricing information from Shaune in or about January 2025, but does not particularize in the proposed draft pleading that it was AFX pricing information that was requested, as opposed to Macworx pricing information.

[32] It alleges Mixtec agreed with Shaune and Macworx to trade on AFX Confidential Information, but does not particularize what specific AFX Confidential Information this pertains to, beyond mentioning that it included using some to build a new impeller for an unidentified AFX client. This allegation is not sufficiently clear given the seriousness of the allegation.

[33] AFX alleges that from December 2024 to present, Mixtec knowingly assisted Shaune in breach of his fiduciary duties to AFX, including by requesting and receiving from Shaune AFX Confidential Information for the benefit of Macworx and Mixtec and by delivering competing services to AFX clients introduced by Mixtec to Shaune, including by using AFX Confidential Information to do so. These allegations are also inappropriately vague, in that they fail to specify what AFX Confidential Information and what AFX clients were involved.

[34] With respect to AFX's proposed knowing receipt of trust property claim, I presume the relevant trust property is the AFX Confidential Information. This is defined in the current amended notice of civil claim as follows:

> 24. This Confidential Information included, but was not limited to, the following:
>
> a. the outputs of the AFX Software;
>
> b. details of AFX's contracts with suppliers, manufacturers and customers;
>
> c. AFX product specifications, including the specifications generated by AFX's proprietary software program;
>
> d. information regarding AFX's prospective customers;
>
> e. bids, proposals and/or other cost calculations AFX had prepared for customers, suppliers and/or manufacturers;
>
> f. AFX's financial information, including but not limited to pricing, margins, budgets and revenues;
>
> g. technical, manufacturing and general arrangement drawings;
>
> h. marketing material and strategies; and
>
> i. business document templates.

[35] AFX does not particularize what specific trust property AFX received beyond the allegation that Shaune, Macworx, and Mixtec agreed to trade on AFX Confidential Information, including something that was used to build an impeller part for an unidentified AFX client. There is a reference to Mixtec requesting pricing information from Shaune, but no allegation that Shaune actually provided AFX confidential pricing information. There is also no allegation that Mixtec applied AFX Confidential Information to their own use and benefit.

[36] In my view, the current form of the proposed knowing assistance and knowing receipt claims are inappropriately vague and fail to set out all the necessary elements for a claim against Mixtec in particular.

[37] With regard to a proposed civil conspiracy claim, which would include Mixtec if it were to be added as a defendant, the elements of civil conspiracy were summarized in *Can-Dive Services Ltd. v. Pacific Coast Energy Corp.,* 1983 BCJ 2958, 1993 CanLII 6870 (BC CA) at paras. 4-5:

> [4] According to *Canada Cement LaFarge v. British Columbia Lightweight Aggregate Ltd*., 1983 CanLII 23 (SCC), [1983] 1 S.C.R. 452 [[1983] 6 W.W.R. 385], at pp. 471-72, the tort of conspiracy exists if:
>
> > (1) whether the means used by the defendants are lawful or unlawful, the predominant purpose of the defendants' conduct is to cause injury to the plaintiff; or,
> >
> > (2) where the conduct of the defendants is unlawful, the conduct is directed towards the plaintiff (alone or together with others), and the defendants should know in the circumstances that injury to the plaintiff is likely to and does result.
>
> [5] Accordingly, the following elements must be proved:
>
> > 1. an agreement between two or more persons;
> >
> > 2. concerted action taken pursuant to the agreement;
> >
> > 3.(i) if the action is lawful, there must be evidence that the conspirators intended to cause damage to the plaintiff;
> >
> > (ii) if the action is unlawful, there must at least be evidence that the conspirators knew or ought to have known that their action would injure the plaintiff (i.e., constructive intent);
> >
> > 4. actual damage suffered by the plaintiff.

[38] In *Pan v. Kelly*, 2023 BCSC 208 [*Pan*], at paras. 22-23, the Court noted [bolding added]:

> [22] Pleadings alleging civil conspiracy must be as specific as possible: *Can-Dive* at 159; *H.M.B. Holdings* at para. 67; *Sandhu v. Surrey (City),* 2021 BCSC 2519 at para. 53. 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: *Gong v. O'Neill*, 2022 BCSC 2119 at para. 66; *Ontario Consumers Home Services Inc. v. Enercare Inc.*, 2014 ONSC 4154 at paras. 24–29.
>
> [23] In *Can-Dive* at 159, Chief Justice McEachern quotes with approval an excerpt from J.I.H. Jacob & Iain S. Goldrein, eds., *Bullen & Leake & Jacob's Precedent of Pleadings*, 13th ed. (London, U.K.: Sweet & Maxwell, 1990) at 221–22 which outlines the specificity required of pleadings in civil conspiracy:
>
> > The statement of claim should describe who the several parties to the conspiracy are and their relationship with each other. It should allege the conspiracy between the defendants giving the best particulars it can of the dates when or dates between which the unlawful conspiracy was entered into or continued, and the intent to injure … It should state precisely the objects and means of the alleged conspiracy to injure and the overt acts which are alleged to have been done by each of the alleged conspirators in pursuance of the conspiracy, and lastly, the injury and damage occasioned to the plaintiff …

[39] It is not clear whether AFX expressly intended to include Mixtec in the civil conspiracy claim or whether this is merely an accident of merging the existing amended notice of civil claim with the proposed Mixtec amendments. Its inclusion would come about due to conspiracy claims being made against "all defendants," i.e., all of the defendants being lumped together. Where specific allegations relating to the civil conspiracy claim do appear in the current amended notice of civil claim, their focus is on conduct on the part of Shaune, his three family members, and Macworx. There are currently no specific acts in furtherance of the conspiracy alleged on Mixtec's part, which makes sense since it is not yet a party. AFX has not proposed to add new civil conspiracy specific allegations relating to Mixtec in the proposed draft. It did not expressly address civil conspiracy in its application or submissions.

[40] It appears the inclusion of Mixtec in the civil conspiracy claim may well have been accidental. If AFX does wish to pursue such a claim against Mixtec, it is not sufficient to do so by simply lumping it in with the existing defendants in a general allegation conspiracy, as noted in *Pan* at para. 22.

[41] In my view, AFX's proposed claims against Mixtec do not set out a viable claim in their current form and they are destined to fail. AFX's application is dismissed, but with liberty to reapply based on a modified draft pleading which addresses the foregoing concerns.

Costs

[42] With respect to costs, as Mixtec is not a party to this action it is entitled to costs of this application from AFX assessable forthwith.

[SUBMISSIONS RE COSTS]

[43] THE COURT: Mixtec is entitled to costs of this application and that assessment of costs will be suspended for an appropriate period, say 60 or 90 days, to allow AFX time to make a new application to add Mixtec as a defendant.

"Associate Judge Bilawich"