IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Isusius v. The Owners, Strata Plan N.W. 41,* 2026 BCSC 855

Date: 20260508
Docket: S261252
Registry: New Westminster

Between:

Braven Isusius

Plaintiff

And

The Owners, Strata Plan N.W. 41 (Hawthorne Park)

Defendant

Before: Associate Judge Bilawich

Reasons for Judgment

The Plaintiff, appearing on his own behalf:	B. Isusius
Counsel for the Defendant:	C. Reid, Articled Student
Place and Date of Hearing:	New Westminster, B.C. April 21, 2026
Place and Date of Judgment:	New Westminster, B.C. May 8, 2026

Introduction

[1] By application filed March 4, 2026, the plaintiff applies for an order striking certain paragraphs in the defendant's counterclaim which set out a factual basis for a claim in fraudulent and/or negligent misrepresentation. In the alternative, he seeks an order that the defendant provide full particulars of the alleged fraudulent and/or negligent misrepresentation.

[2] The defendant opposes the relief sought, but has put minimal effort into formulating an argument in opposition to the application. Its primary position is that if the counterclaim is found to be deficient, it requests leave to amend it to address any issues which are identified.

Background

[3] The plaintiff says he is assignee of all rights, title and interest formerly held by PelionMark Restorations Ltd. ("PelionMark") in respect of agreements which PelionMark made with the defendant strata corporation regarding comprehensive roofing remediation of 12 residential buildings (comprising 134 strata lots) and associated structures. The plaintiff is the principal of PelionMark.

[4] The plaintiff pleads that PelionMark executed an assignment in his favour on or about January 12, 2026, and says he gave notice of the assignment to the defendant prior to or contemporaneous with him commencing this action.

[5] The relevant agreements include:

a) An initial design and permitting agreement (the "Design Contract") which provided for engineering design services, municipal permit applications, and coordination of regulatory approvals and certifications required for the roofing remediation work; and

b) A roofing contract dated August 31, 2020 (the "Roofing Contract")

[6] The parties disagree regarding the terms of the Roofing Contract. The plaintiff says it contemplated that the work would be done over an anticipated 2-year period, and that the contract price was "approximately $650,000". Specifically:

> A material term of the Roofing Contract provided that individual buildings were subject to estimated timelines and that overall project duration could vary, with the work to be carried out over an anticipated two year period or longer in order to accommodate the Defendant's budgetary and financial constraints, including funding through contingency reserves rather than immediate levies, taking into account weather constraints, latent structural conditions, professional engineering oversight, and funding limitations.

[7] He also says the defendant later asked PelionMark to perform additional work which was worth more than $100,000.

[8] The defendant says the Roofing Contract was for a fixed price of $650,000 and that the work was to be completed within 16 months.

[9] Between August 2020 and October 2024, PelionMark performed work on 7 out of 12 buildings. The plaintiff alleges that starting in or about late 2023, the defendant began refusing or failing to release progress payments to PelionMark for a variety of reasons, all of which are in dispute. He says an unpaid balance of $87,820.27 accumulated.

[10] On October 9, 2024, PelionMark alleged the defendant had committed a repudiatory breach and purported to accept that breach. It is the defendant's position that it was PelionMark that breached the Roofing Contract, entitling it to treat it as being at an end.

[11] The relief which the plaintiff seeks includes:

a) Unpaid invoices totalling $87,820.27;

b) Expectation damages for remaining contracted scope of work of $98,816.69;

c) Consequential financial losses (loss of use of money) of $37,000;

d) Legal fees and disbursements incurred prior to termination of counsel of $33,800;

e) Restitution of $2,500 for a City of Surrey permit damage deposit paid by the plaintiff;

f) Damages for loss of commercial reputation and creditworthiness of $35,000;

g) Statutory trust remedies;

h) Punitive damages of $200,000 or such other amount assessed by the court;

i) Interest; and

j) Special Costs.

[12] The defendant raises numerous allegations, including that promptly after entering into the Roofing Contract, PelionMark charged roughly $150,000 in overages which were not contemplated in the contract over just the first 5 buildings. It also says it repeatedly expressed concern to PelionMark about the fact that it had taken more than 42 months since the start of the contract to complete work on just 7 of the 12 buildings. The defendants says that following termination of the Roofing Contract, it paid:

a) $87,820.27 into court;

b) $13,270 to SSR Roofing Supplies for shingles ordered by PelionMark, to get a claim of lien removed; and

c) $446,000 to a different roofing contractor, Coast Mountain Roofing, to complete the project and fix deficiencies.

[13] The defendant says the replacement contractor substantially completed the balance of the project by July 15, 2025.

Procedural History

[14] On January 19, 2026, the plaintiff filed his notice of civil claim. It is 37 pages in length, single spaced.

[15] On February 10, 2026, the defendant filed a response to civil claim and counterclaim.

[16] On February 17, 2026, the plaintiff filed a response to counterclaim.

[17] On March 4, 2026, the plaintiff filed this application.

[18] On March 20, 2026, the defendant filed its application response and an amended counterclaim. The amendment resulted in paragraph numbering changes, such that paras. 9-18 in the original counterclaim are now re-numbered as paras. 15-25. The primary change was the addition of an allegation that the purported assignment of PelionMark's rights to the plaintiff failed to comply with the requirements set out in s. 36(1) of the *Law and Equity Act*, RSBC 1996, c 253, that the assignment is void because it assigns a bare right of action and that this action generally is an abuse of process.

Impugned Misrepresentation Allegations

[19] The plaintiff's application focuses on the following section of the counterclaim. I will also include the changes made via the amended counterclaim, leaving out the deleted portions to avoid confusion. Additions are underlined:

> **Misrepresentations**
>
> 15. At all material times, Isusius was the owner, directing mind and agent of the PelionMark.
>
> 16. During the negotiation of the contract in 2020 and prior to entering into the Purchase Agreement, Isusius represented that:
>
> a) PelionMark was competent to complete the Work and was a roofing expert;
>
> b) PelionMark had the capacity to complete the Work;
>
> c) PelionMark would be able to complete the work within 16 months;
>
> d) PelionMark would be able to complete the work within the budget defined in the Contract.
>
> (collectively, the "**Representations**").
>
> 17. The Representations were made as statements of fact, not opinion, and were intended to convey that the PelionMark was a competent roofing contractor.
>
> 18. The Representations were intended to induce the Defendant to enter into the Contract on the price and terms agreed. The Defendant understood the statements in that way and reasonably relied upon them in deciding whether to enter into the Contract.
>
> 19. But for the Representations, the Defendant would not have entered into the Contract on those terms, or at all.
>
> 20. The representations were false, as Isusius and PelionMark almost immediately started to invoice the Defendants for work that was not contemplated in the Contract and at schedules that did not conform with the

payment schedule defined in the Contract. Furthermore, the Defendants began to experience problems with the work that PelionMark did complete, including chronic leaking of the roof membranes into strata units and chronic issues with ventilation into the attic of the roofs. At all material times, the Plaintiff, through Isusius, knew or ought to have known that the true Contract price was materially higher than represented, and that PelionMark was not fully qualified for the Work or made the representation recklessly, not caring whether it was true or false.

21. The Defendants say that, in making the Representations, the Plaintiff and or Isusius:

> a) knew the Representations were false or misleading, or was reckless as to their truth, and thereby committed negligent misrepresentation, or alternatively, fraudulent misrepresentation; and
>
> b) further or in the alternative, owed the Defendants a duty to take reasonable care that any representations made and information provided about the business were accurate and not misleading, and made the Representations negligently.

22. Further, shortly after signed the Contract, and contrary to the Representations, the Plaintiff and/or Isusius began to invoice the Defendant in excess of the costs of the Contract and performed work in an unworkmanlike manner, which resulted in significant financial loss and hardship to the Defendants in operating the business (the "Harms").

23. The Defendant reasonably relied on the Representations and was induced by them to enter into the Contract.

24. In the alternative, it was an implied term of the Contract that PelionMark and/or Isusius would exercise reasonable care, skill and diligence in his dealings with the Defendant. The negligent representation constitutes a breach of the contract between the Plaintiff and Defendant.

25. As a result of the Representations and the Harms, the Defendant has suffered loss and damages, including but not limited to:

> a) overpaying for the Work;
>
> b) incurred costs associated with curing deficiencies in the Work; and
>
> c) paying for new contractors to complete the Work to the standard contemplated in the Contract.

Application to Strike Misrepresentation Claims

[20] By application filed March 4, 2026, the plaintiff applies for orders:

a) Striking paras. 9-18 of the defendant's counterclaim filed February 10, 2026, on the basis that:

i. It fails to disclose a reasonable claim in fraudulent or negligent misrepresentation;

ii. It fails to plead material facts capable of establishing personal liability distinct from the corporate contracting party; and/or

iii. It improperly attempts to convert a contractual performance dispute into a personal tort liability claim, without pleading an independent legal foundation.

[21] The plaintiff's application is made pursuant to Rule 9-5(1)(a) and (b) of the *Supreme Court Civil Rules*, B.C. Reg, 168/2009 ("*SCCR*").

[22] The defendant's application response indicates that it opposes all of the relief sought. It asserts that the impugned paragraphs set out material facts which sustain the allegations of fraudulent and negligent misrepresentation. It raises factual issues regarding the assignment of PelionMark's claims to the plaintiff. Thereafter, it sets out the legal tests applicable to Rules 9-5(1)(a) and (b) respectively. It does not offer any substantive analysis or defence of the misrepresentation allegations. The only substantive argument offered appears in Part 5: Legal Basis:

> 5. In considering an application to strike under Rule 9-5, the court should consider whether defective pleadings can be corrected by way of an amendment and whether it would be appropriate to give leave to do so.
>
> 6. In the present circumstances, should the pleadings be found to be insufficient, which is not admitted but specifically denied, the Defendant should be given leave to amend its pleadings.

Applicable Law – Application to Strike

[23] Rule 9-5(1) of the *SCCR* sets out the basis on which a pleading may be struck out. It includes:

> Scandalous, frivolous or vexatious matters
>
> (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
>
> (a) it discloses no reasonable claim or defence, as the case may be,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> …
>
> and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[24] Sub-rule (2) provides that no evidence is admissible on an application under sub-rule (1)(a). Evidence is admissible for an application under sub-rule (1)(b).

9-5(1)(a) - Discloses No Reasonable Claim or Defence

[25] The approach under this sub-rule is summarized in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 at para. 17:

> **17** …. A claim will only be struck if it is plain and obvious, assuming the facts pleaded to be true, that the pleading discloses no reasonable cause of action: …. Another way of putting the test is that the claim has no reasonable prospect of success. Where a reasonable prospect of success exists, the matter should be allowed to proceed to trial: …
>
> [citations omitted]

[26] In *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 [*Nevsun*] at paras. 64 and 66, the Supreme Court summarized as follows:

> [64] A pleading will only be struck for disclosing no reasonable claim under rule 9-5(1)(a) if it is "plain and obvious" that the claim has no reasonable prospect of success ... When considering an application to strike under this provision, the facts as pleaded are assumed to be true "unless they are manifestly incapable of being proven" ….
>
> . . .
>
> [66] This Court admonished in *Imperial Tobacco* that the motion to strike
>
> > is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. . . . Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [para. 21]
> >
> > [citations omitted]

[27] A claim should not be struck where, if amended, it could disclose a reasonable cause of action: see *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10 and *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163 at para. 133.

Rule 9-5(1)(b) - Unnecessary, scandalous, frivolous or vexatious

[28] In *Willow v. Chong*, 2013 BCSC 1083 [*Willow*], at para. 20, the court summarized sub-rule (b):

> [20] Under Rule 9-5(1)(b), a pleading is unnecessary or vexatious if it does not go to establishing the plaintiff's cause of action, if it does not advance any claim known in law, where it is obvious that an action cannot succeed, or where it would serve no useful purpose and would be a waste of the court's time and public resources: *Citizens for Foreign Aid Reform Inc. v Canadian Jewish Congress*, [1999] B.C.J. No. 2160 (SC); *Skender v Farley*, 2007 BCCA 629. If a pleading is so confusing that it is difficult to understand what is pleaded, it may also be unnecessary, frivolous or vexatious. An application under this sub-rule may be supported by evidence.

Applicable Law – Negligent and Fraudulent Misrepresentation

[29] The plaintiff argues that the misrepresentation allegations in paras. 15-25 of the amended counterclaim are deficient because they fail to disclose a reasonable claim in fraudulent and/or negligent misrepresentation.

[30] The elements of negligent misrepresentation were summarized in *Queen v. Cognos Inc.,* [1993] 1 S.C.R. 87 at para. 33:

> (a) there must be a duty of care based on a "special relationship" between the representor and the representee;
>
> (b) the representation in question must be untrue, inaccurate, or misleading;
>
> (c) the representor must have acted negligently in making said misrepresentation;
>
> (d) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
>
> (e) the reliance must have been detrimental to the representee in the sense that damages resulted.

[31] The elements of fraudulent misrepresentation were summarized in *Chow v. Pang*, 2021 BCSC 1599 at paras. 40-42:

> **40** The elements of fraudulent misrepresentation are set out in *Froese v. Sharif*, 2020 BCSC 1914:
>
> > [160] The elements of fraudulent misrepresentation that a plaintiff must prove in order to establish a claim for damages are set out in *Wang v. Shao*, 2019 BCCA 130, leave to appeal refused 38704, [2019] S.C.C.A. 225, (14 November 2019) at para. 24:

> (a) the wrongdoer must make a representation of fact to the victim;
>
> (b) the representation must be false in fact;
>
> (c) the party making the representation must have known the representation was false at the time it was made;
>
> (d) the misrepresentor must have intended the victim act on the representation; and
>
> (e) the victim must have been induced to enter into the contract in reliance upon it.
>
> [161] One key difference between fraudulent and negligent misrepresentation is that, in fraudulent misrepresentation, the plaintiff must prove that the defendant actually knew the representation to be false (or at least was so reckless as to not care whether it was true or not) and intended that the plaintiff act upon it: *Catalyst Pulp and Paper Sales Inc. v. Universal Paper Export Co.*, 2009 BCCA 307 at paras. 56-57; *Neidermayer v. Gillies*, 20102 BCSC 143 at paras. 75-77.

41 The plaintiff must prove that he or she relied on the representation but does not need to prove their reliance was reasonable: *Froese* at para. 162. The representation must have induced the plaintiff to enter the contract, but it does not have to be the only reason the plaintiff entered the contract. It only has to be one reason: *Sidhu Estate v. Bains*, [1996] 10 W.W.R. 590 at 603. The maker of the representation must have intended that it would induce the other party to enter the contract: *The Law of Contract in Canada*, 5th ed., by G.H.L. Fridman (Toronto: Thomson Carswell, 2006) at 291.

42 A lack of diligence on the plaintiff's part, even if it clearly would have been prudent to make their own investigation, is not a defence to fraudulent misrepresentation: *Neidermayer v. Gillies*, 2012 BCSC 143 at para. 54; *Froese* at para. 162. The misrepresentation must have been one of fact as opposed to one of opinion or "puffing": Fridman at 288-89.

Analysis - Misrepresentation

[32] The impugned representations set out in the counterclaim include:

> 16. During the negotiation of the contract in 2020 and prior to entering into the Purchase Agreement, Isusius represented that:
>
> a) PelionMark was competent to complete the Work and was a roofing expert;
>
> b) PelionMark had the capacity to complete the Work;
>
> c) PelionMark would be able to complete the work within 16 months;
>
> d) PelionMark would be able to complete the work within the budget defined in the Contract.
>
> (collectively, the “**Representations**”).

[33] For reasons which are not clear, this paragraph introduces the defined term "Purchase Agreement" rather than "Contract", which is the defined term used in the amended counterclaim for what I have defined as the "Roofing Contract" in these reasons.

[34] The defendant then says the Representations were false, because almost immediately after the defendant and PelionMark entered into the Roofing Contract, the plaintiff and PelionMark began doing certain things which were inconsistent with the Representations. At para. 20:

> 20. The representations were false, as Isusius and PelionMark almost immediately started to invoice the Defendants for work that was not contemplated in the Contract and at schedules that did not conform with the payment schedule defined in the Contract. Furthermore, the Defendants began to experience problems with the work that PelionMark did complete, including chronic leaking of the roof membranes into strata units and chronic issues with ventilation into the attic of the roofs. At all material times, the Plaintiff, through Isusius, knew or ought to have known that the true Contract price was materially higher than represented, and that PelionMark was not fully qualified for the Work or made the representation recklessly, not caring whether it was true or false.

[35] This paragraph creates confusion, including by including references that "*the Plaintiff, through Isusius, knew or ought to have known …*" about the issues noted. It appears this use of "the Plaintiff" may have been intended to refer to PelionMark, however this action has been brought by Mr. Isusius (personally) as plaintiff. The defendant's counterclaim is brought against Mr. Isusius (personally) only. PelionMark has not been named as a party to this action.

[36] This differentiation of "the Plaintiff" and "Mr. Isusius" repeats in paras. 21, 22:

> 21. The Defendants say that, in making the Representations, **the Plaintiff and or Isusius**:
>
> …
>
> 22. Further, shortly after signed the Contract, and contrary to the Representations, **the Plaintiff and/or Isusius** began to invoice the Defendant in excess of the costs of the Contract and performed work in an unworkmanlike manner …
>
> [bolding added]

[37] An additional concern arises in para. 24, where there is an allegation that the plaintiff (i.e. Mr. Isusius) is a party to the Roofing Contract. Previously, the allegation has been that PelionMark was the contracting party:

> 24. In the alternative, it was an implied term of the Contract that **PelionMark and/or Isusius** would exercise reasonable care, skill and diligence in his dealings with the Defendant. **The negligent representation constitutes a breach of the contract between the Plaintiff and Defendant.**
>
> [bolding added]

[38] Also problematic is the apparent fact that the alleged Representations c) [PelionMark being able to complete the work within 16 months] and d) [PelionMark being able to complete the work within the budget defined in the Roofing Contract] appear to be statements about future conduct or events. Normally representations must re regarding existing or past fact. See *Gill v. Basi*, 2014 BCSC 1972 at paras. 187-188:

> **187** Whether alleged to be fraudulent or negligent, a representation must normally be one of existing or past fact: *PD Management Ltd. v. Chemposite Inc*., 2006 BCCA , 489 at paras. 14-15. Promises or opinions about future events are normally not actionable, but may be if the person making a prediction about matters, such as future profitability or future value, has special skill or knowledge. Lord Denning's words in *Esso Petroleum v. Mardon*, [1976] 2 All E.R. 5 (C.A.) at 16 are referenced by the Court of Appeal in *PD Management* and cited in *Hayes v. Schimpf*, 2005 BCCA 568 at para 19:
>
> > ... It seems to me that *Hedley Byrne* [[1963] 2 All E.R. 575, [1964 AC 465]] properly understood, covers this particular proposition: if a man, who has or professes to have special knowledge or skill, makes a representation by virtue thereof to another - be it advice, information or opinion - with the intention of inducing him to enter into a contract with him, he is under a duty to use reasonable care to see that the representation is correct, and that the advice, information or opinion is reliable.
>
> **188** In *Motkoski Holdings Ltd. v. Yellowhead (County)*, 2010 ABCA 72, the court says at para. 43:
>
> > Sometimes representations are made about the future that depend on the facts as they exist at the time of the representation. If those existing facts are inaccurately and negligently stated, the words may be actionable, as in *Cognos*. Sometimes people are retained to give opinions about the future, and if those predictions are negligent (having due regard that perfection in future projections cannot be expected) they may be actionable ...

[39] Statements about future conduct or events are actionable if the party making them did not have the stated intention at the time they made the representation. See *Pan v. Dong*, 2024 BCSC 869 at para. 107:

> **107** Allegations of fraudulent misrepresentation pertaining to future conduct or future events may be actionable at law if the party making the statement did not in fact have the intention at the time of the utterance: *Galaxy Sports Inc. v. Umbro Holdings Limited et al*, 2005 BCSC 278 at paras. 77-78.

[40] It appears from how the defendant has pled the misrepresentation section in the amended counterclaim that it is relying primarily on the subsequent performance of the Roofing Contract as the basis for arguing Representations c) and d) were false, rather than clearly asserting they were false at the time the Representations were made, or that the person making them had no intention of honouring them when they were made.

[41] With regard to representations a) [PelionMark being competent to complete the Work and being a roofing expert] and b) [PelionMark having the capacity to complete the Work], it is not clearly asserted by the defendant that these allegations were false at the time they were made, as opposed to the defendant drawing that conclusion based on subsequent events and conduct.

[42] In my view, the entire “misrepresentation” section in the amended counterclaim is confusing, and it is plain and obvious that it discloses no reasonable cause of action in negligent misrepresentation or fraudulent misrepresentation in its current form. I exercise my discretion to order that Part 1, paras. 15-25 of the amended counterclaim [formerly Part 1, paras. 9-18 of the original counterclaim] are struck out, pursuant to Rule 9-5(1)(a) of the *SCCR*.

[43] The defendant requests an opportunity to amend the counterclaim to try to address any deficiencies which are identified. I agree this is appropriate and so order. The defendant is to file and deliver its further amended counterclaim within 30 days from the date of release of these reasons.

Application for Particulars

[44] The plaintiff applied in the alternative for an order that the defendant provide particulars of the allegations of fraudulent and/or negligent misrepresentation in the counterclaim. In view of my decision regarding the application to strike, it is not necessary to address this. This item is adjourned generally.

Costs

[45] The plaintiff has been successful and is entitled to costs of this application, in any event of the cause, payable at the conclusion of the action.

"Associate Judge Bilawich"