IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Axion Ventures Inc. v. Bonner,*
2026 BCSC 318

Date: 20260225
Docket: S210438
Registry: Vancouver

Between:

Axion Ventures Inc. and Axion Interactive Inc.

Plaintiffs

And

John Todd Bonner, Nithinan Boonyawattanapisut, Monaker Group, Inc., William Kerby, Cern One Limited, Red Anchor Trading Corp., CC Asia Pacific Ventures Ltd., Jonathan Chen, HotPlay Enterprise Limited, HotPlay (Thailand) Ltd., Christopher Bagguley, Mark Henry Saft, Longroot, Inc., Jane Doe and ABC Corp.

Defendants

- and -

Docket: S213309
Registry: Vancouver

Between:

Axion Ventures Inc.

Plaintiff

And

John Todd Bonner, Nithinan Boonyawattanapisut, Cern One Limited and Red Anchor Trading Corp.

Defendants

- and -

Docket: S217835
Registry: Vancouver

Between:

Nextplay Technologies Inc., John Todd Bonner, Nithinan Boonyawattanapisut, Cern One Limited and Red Anchor Trading Corp.

Plaintiffs

And

Axion Ventures Inc., Axion Interactive Inc. and
Ying Pei Digital Technology (Shanghai) Company Limited

Defendants

Before: The Honourable Mr. Justice P. Walker

Oral Reasons for Judgment

Counsel for Axion Ventures Inc. and Axion Interactive Inc.:	P.J. Sullivan S. Macdonald
Appearing via videoconference and as Representatives for Cern One Limited and Red Anchor Trading Corp.:	J.T. Bonner N. Boonyawattanapisut
Place and Dates of Hearing:	Vancouver, B.C. February 9, 12-13 and 17-18, 2026
Place and Date of Judgment:	Vancouver, B.C. February 25, 2026

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Introduction

[1] These reasons concern certain relief sought by opposing parties in these actions, on mid-trial applications brought after more than 60 days of trial have elapsed.

[2] The first of those applications is brought by Axion Ventures Inc. and Axion Interactive Inc. (collectively, “Axion”), who are defendants in VA S217835, seeking a declaration (“Declaratory Relief Application”) that the co-plaintiffs, John Todd Bonner and Nithinan Boonyawattanapisut (referred to by the parties throughout as “Jess”, as will I without intending any disrespect), are not authorized representatives of another co-plaintiff, NextPlay Technologies Inc. (“NextPlay”), because NextPlay is in bankruptcy in the United States and can only be represented by its trustee in bankruptcy who is located in Florida (“Trustee”).

[3] The other plaintiffs in that action are Cern One Limited (“Cern One”) and Red Anchor Trading Corp. (“Red Anchor”), who are related to Mr. Bonner and Jess. When I refer to them collectively, it is as the “Bonner Parties”. The Bonner Parties are also defendants in a related action being tried at the same time, VA S210438.

[4] The other two applications are brought by the Bonner Parties.

[5] In one of their applications, the Bonner Parties seek leave to amend their pleadings in VA S210438 to add counterclaims, described as “amendments” in their application (“Amendment Application”). Those amendments cover a wide range of matters. Only those that relate to the Declaratory Relief Application were considered at the hearing. I refer to them as the “Proposed Amendments”. A hearing regarding the rest of the amendments will follow next upon the release of these reasons.

[6] In their other application, although not concisely framed as such in their notice of application, the Bonner Parties were clear in submissions that they seek an order, premised on fraud on the court or alternatively, spoliation, dismissing the entirety of Axion’s claims in VA S210438 alleging *inter alia*, breach of fiduciary duty and theft of corporate assets and opportunities (“Fraud on the Court/Spoliation Application”).

Declaratory Relief Application and Amendment Application

[7] In this section, I deal with the Declaratory Relief Application and the Amendment Application since they are both closely intertwined.

Introduction

[8] NextPlay's claim as plaintiff in VA S217835 ("Debt Action") is to recover debt allegedly owed by Axion exceeding US$6 million, arising from loans ("Loans") made to the Axion entities by or on behalf of the Bonner Parties, said to have been assigned to NextPlay.

[9] Mr. Bonner and Jess are principals of Cern One and Red Anchor. Prior to its bankruptcy (and NextPlay being struck from the register of its home jurisdiction, the State of Nevada), Mr. Bonner and Jess held positions as directors and officers (chairman and chief executive officer, respectively) of NextPlay.

[10] The relief Axion seeks in the Declaratory Relief Application – that Mr. Bonner and Jess lack authority to represent NextPlay in the Debt Action – is grounded on NextPlay's bankruptcy in the United States and the position now taken by Mr. Bonner and Jess that the Loans should be repaid to them, not NextPlay. Axion does not rely on NextPlay having been struck from the corporate register of the State of Nevada.

[11] Relying on an expert report concerning Florida bankruptcy law (discussed below) and certain Canadian authorities (e.g., *Roussy v. Savage*, 2019 BCSC 1669 at para. 271; *Brunette v. Legault Joly Thiffault, s.e.n.c.r.l.*, 2018 SCC 55 at paras. 53–54), Axion's position is that only the Trustee has the authority to pursue NextPlay's claim in the Debt Action. Citing *Eagle Construction Services, Inc. v. Royal One 2225 Markham Road Med Centre Ltd*., 2021 ONSC 2347 at paras. 35–36, Axion also points out that in view of NextPlay's bankruptcy, Mr. Bonner and Jess could not remain as directors of the company.

[12] Axion also says that Mr. Bonner and Jess are in a conflict and should not have standing to represent NextPlay's interests in the Debt Action in view of the

position they are now taking at trial (which they seek to include in the Proposed Amendments) that the Loans should be repaid to them because the assignment of the Loans to NextPlay was never perfected due to the tortious misconduct of Axion.

[13] Axion does not seek the other relief set out in its notice of application, such as a stay of 60 days to allow the Bonner Parties to prove to this Court that they have the authority to represent NextPlay and for an order providing the Trustee the same amount of time to appear in the Debt Action to assert its right to represent NextPlay. Axion's position is that it will leave it up to the Court to determine if it wishes to impose a stay on that basis and for that duration.

The Claim in the Debt Action

[14] As seen from these extracts from the notice of civil claim in the Debt Action, the Loans are said to have been assigned ("Assignment") to NextPlay through a share exchange agreement ("Share Exchange Agreement") it entered into with the Bonner Parties. The reference to "Monaker" is to NextPlay as it was known prior to its name change:

> **PART 1: STATEMENT OF FACTS**
>
> …
>
> **The Loans**
>
> 6. From about March 2018 to about June 2020, [Mr. Bonner], [Jess], [Cern One], and [Red Anchor] (together, the "**Lenders**") made the loans described below (the "**Loans**") to the defendants under the agreements described below (the "**Loan Agreements**").
>
> …
>
> 10. On or about July 21, 2020 Monaker [NextPlay] entered into a share exchange agreement with the Lenders and others. The share exchange agreement was amended on or about October 28 2020 and amended and restated on or about November 16, 2020.
>
> 11. Under the share exchange agreement (the "**Share Exchange Agreement**"), in exchange for Monaker shares or warrants, the Lenders transferred the rights to repayment of US $7,657,023 of the debt owed by the defendants to the Lenders under the Loan Agreements plus the interest payable thereon (the "**Debt**"). That included all of the Loans made by Cern, Bonner, and Jess plus US $4,960,561 of the Loans made by Red Anchor.

> 12. The exchange of the rights to repayment of the Debt for the Monaker shares and warrants completed on or about November 16, 2020. Thereafter, the defendants, or some of them, were indebted to Monaker for US $7,657,023 plus interest.
>
> 13. As the successor to Monaker, NextPlay is entitled to repayment of the Debt from the defendants, or some of them.
>
> [Bold in original; insertions in square brackets added]

[15] Axion denies all liability in the Debt Action. Included in its defences are assertions that: (a) the Loans were never advanced and never approved by Axion's board of directors; (b) or if made, the source of the funds came from others as opposed to the Bonner Parties; (c) the claim is overstated; and (d) NextPlay's claim should be dismissed because the Share Exchange Agreement, which includes the Assignment (on which NextPlay grounds its standing as plaintiff), is an illegal agreement.

Axion's Illegality Defence in the Debt Action

[16] A useful description of Axion's illegality defence is contained in these extracts from its response pleading in the Debt Action:

> ***Part 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS***
>
> **INTRODUCTION**
>
> …
>
> 3. Monaker alleges in its Notice of Civil Claim that it acquired the debts of [Mr. Bonner], [Jess], [Cern One], and [Red Anchor] (together the "**Bonner Affiliates**") between July and November 2020. The alleged agreement between Monaker, Bonner and the Bonner Affiliates is an illegal agreement (the "**Illegal Agreement**"). In particular:
>
> (a) At the time of the Illegal Agreement, Bonner was subject to a Management Cease Trade Order and Bonner, Monaker and the Bonner Affiliates were subject to a Cease Trade Order issued by the BC Securities Commission. Pursuant to the Cease Trade Orders, Bonner, Monaker and the Bonner Affiliates were prohibited from disposing of any securities or engaging in any act, conduct or negotiation in furtherance of a trade in a security. As the Illegal Agreement involved the transfer of the

debt securities to Monaker, the transaction was illegal; and

(b) Further, at the time of the Illegal Agreement, Monaker was acting jointly or in concert with Bonner, the Bonner Affiliates and others to effect a secret illegal takeover of Axion Ventures in breach of the Securities Act (the "**Illegal Takeover**"). The transfer of the debt securities was an important component of the Illegal Takeover.

4. The integrity of the legal system does not and cannot allow Monaker, Bonner, or the Bonner Affiliates to profit from their illegal, wrongful conduct. In order to preserve the integrity of the legal system, the Illegal Agreement [the Share Exchange Agreement] cannot be enforceable by any of the Plaintiffs, and the Plaintiffs should not be able to enforce the Loans against the Defendants.

…

Part 3: LEGAL BASIS

....

21. Monaker, Bonner, and the Bonner Affiliates acted in concerted efforts to make and attempt to enforce the Loans, for the illegal purposes set out above.

22. As such, the Loans are not enforceable or repayable by any of the Plaintiffs.

…

28. The defence of illegality bars an otherwise valid action on the basis that Monaker, Bonner and the Bonner Affiliates have engaged in illegal or immoral conduct and, therefore, should not recover.

[Bold and italics in original; insertions in square brackets added]

[17] The illegality allegations in Axion's response pleading mirror many of its allegations that ground its claims against the defendants, including the Bonner Parties, in VA S210438. The parties refer to that action as the "conspiracy action" and sometimes, the "breach of fiduciary duty" action; for convenience, I will refer to it as the "Conspiracy Action".

The Bonner Parties are Contingent Plaintiffs in the Debt Action

[18] All of Axion's illegality allegations, as well as all other allegations asserted by Axion in the Conspiracy Action, are vehemently denied by the Bonner Parties. They contend that all of Axion's defences in the Debt Action and all of its claims in the

Conspiracy Action are baseless, and (as seen from the discussion below concerning their Fraud on the Court/Spoliation Application) are contrived, grounded on intentionally false and misleading evidence, and constitute a fraud on the court.

[19] At one point, the Bonner Parties sought to recover the outstanding amounts owing on the Loans in a separate action brought in this court. Eventually, both actions were consolidated by a consent order into the Debt Action following the agreement of all parties that two separate actions to recover the same debt was an abuse of process.

[20] The Bonner Parties' specific answer to Axion's illegality defence was added by amendment to their notice of civil claim in the Debt Action by a consent order issued on May 19, 2023. Their amendment contains an alternative pleading that if the Share Exchange Agreement is invalid or unenforceable, the outstanding amounts on the Loans must be repaid to themselves, as lenders, instead of to NextPlay:

> **Part 2: RELIEF SOUGHT**
>
> ...
>
> 17.1 In the alternative, and in the event the Share Exchange Agreement is found for any reason to be invalid or unenforceable (which is denied), the Lenders seek judgment against the defendants in respect of the amounts due and owing under the Loan Agreements, as follows: …
>
> [Bold in original]

[21] Thus, in view of the alternative pleading, the Bonner Parties stand as contingent plaintiffs in the Debt Action since one possible outcome is that even if Axion's illegality defence is successful, it may be insufficient to defeat their claim for alternative relief for judgment for the outstanding amount of the Loans.

[22] Separate from its position that only the Trustee has standing to pursue the claim in the Debt Action, Axion cited *Fission Uranium Corp. v. Dahrouge*, 2014 BCSC 1214 at para. 135, in support of its assertion that having assigned their rights to the Loans to NextPlay, the Bonner Parties lack standing to assert any claim to recover the Loans.

[23] In response, the Bonner Parties said that separate from the tortious conduct of Axion, the Assignment was never performed and NextPlay never acquired the Loans. They pointed to various documents in evidence, such as filings with securities regulators, showing that NextPlay declined to transfer the shares called for by the Share Exchange Agreement. As a consequence, they maintain that that NextPlay lacks status to pursue recovery of the Loans.

[24] These matters are not raised on the current pleadings in the Debt Action nor in any of the Proposed Amendments.

NextPlay is in Bankruptcy

[25] NextPlay was petitioned into bankruptcy in the United States District Court for the Southern District of Florida ("U.S. District Court") on January 27, 2025 ("Bankruptcy Proceeding"), just before the trial of the Debt Action and Conspiracy Action (and a third action, brought by Yuki Hirakawa, discussed below) commenced. An order issued by the U.S. District Court granting relief under the *United States Bankruptcy Code* was subsequently entered on February 26, 2025; the Trustee was appointed on the same date.

[26] NextPlay's bankruptcy was initiated by three individuals who assert claims for unpaid consulting fees totalling just over US$404,000. One of them is Wiliam Kerby, a former director and officer of NextPlay. He claims a debt owing from NextPlay for consulting fees of US$75,000. Mr. Kerby's conduct is intertwined within Axion's allegations against Mr. Bonner and Jess in the Conspiracy Action. He was called as a witness at trial on behalf of Axion. Mr. Bonner and Jess contend that his evidence at trial establishes that his role in NextPlay's bankruptcy was instigated, *mala fide*, by Grant Kim, Axion's current chief executive officer, who, prompted by Mr. Kim's alleged animus towards Mr. Bonner, coordinated the bankruptcy process with Mr. Kerby. This is a live issue raised by Mr. Bonner and Jess at trial over which I have made no determination at this juncture.

[27] Soon after the Bankruptcy Proceeding commenced, Axion notified the Trustee of the Debt Action and the trial, and that Mr. Bonner and Jess were pursuing

recovery of the Loans on behalf of NextPlay in this court. I am told by Axion's counsel that more than one letter has been sent to the Trustee advising of the status of these proceedings and that the Trustee has not responded.

[28] Documents from the Bankruptcy Proceeding tendered by Axion in affidavits on the Declaratory Relief Application show that the Trustee is aware of the debt claim asserted on behalf of NextPlay against Axion, as the Trustee has listed the claim in its court filings with the U.S. District Court. In those filings, the Trustee describes the "current value" of NextPlay's claim against Axion as "Unknown" and the "amount" of its claim as "zero dollars".

[29] Axion has also tendered expert evidence concerning Florida law to the effect that (subject to certain exceptions, such as abandonment by the Trustee) control, including prosecution and settlement, of NextPlay's claim now resides with the Trustee. The expert report notes that the Trustee has also listed a claim on behalf of NextPlay against Mr. Bonner and Jess for fraud and breach of fiduciary duty.

[30] Axion has tendered affidavit evidence in its effort to demonstrate that NextPlay is significantly in debt (approximately US$25.456 million) to numerous creditors. However, Axion has not sought an order requiring NextPlay to post security for costs in this court.

[31] According to Axion, Mr. Bonner and Jess, who as noted above were principals of NextPlay, have not participated in the bankruptcy "other than perhaps by NextPlay attending the Meeting of Creditors on October 16, 2025."

[32] The Trustee has not appeared nor sought to appear in this court, has not sought a stay of the Debt Action, and has not sought any relief, including relief that would or might affect or impact the ability of Mr. Bonner and Jess to appear in the Debt Action to prosecute NextPlay's claim for judgment on the Loans or to pursue the Bonner Parties' claim for alternative relief.

[33] There is no evidence nor suggestion that the Trustee has initiated recognition proceedings in this court or elsewhere in Canada.

[34] The Trustee has remained inexplicably silent.

[35] Whether that is because the Trustee does not object to Mr. Bonner and Jess prosecuting NextPlay's claim in this court, or has no interest in the outcome of the Debt Action (including the claim for alternative relief), or is of the view that it is not worth the expense to pursue the claim (allowing for adjustments, now said by Mr. Bonner and Jess to exceed US$6 million) in this court, or is awaiting the outcome to find out if judgment is granted in favour of NextPlay, are all possible, but nonetheless speculative, reasons.

[36] What is clear, I find, is that the Trustee has been made aware that both NextPlay's claim and the Bonner Parties' claim for alternative relief are being pursued in this court by Mr. Bonner and Jess and the reason(s) for the Trustee's absence remains unknown.

Timing of the Declaratory Relief Application

[37] Axion did not file the Declaratory Relief Application until November 6, 2025, long after it had closed its case at trial and well after the trial had been adjourned in June 2025 (while Mr. Bonner was under cross-examination), when mid-trial production of over 90,000 emails plus attached documents ("Emails") from the laptop ("Laptop") of Axion's former general counsel, Mr. Craig Rollins, occurred. The Bonner Parties were granted leave to reopen to ameliorate prejudice from late production of the Emails and advised they intend to do so when the trial resumes. Axion has said it will not apply to reopen.

[38] Axion maintains the timing of its application is not tactical (which is disputed by Mr. Bonner and Jess) but arises from some of the Proposed Amendments now sought mid-trial by the Bonner Parties in the Conspiracy Action.

[39] Without citing any authority, Axion contends that even though the Trustee is not present, Axion, as a litigant in the Debt Action, has standing to bring the application. Without deciding that specific question, I do agree that Axion raises

appropriate concerns about the impact on the trial from the Proposed Amendments in the Conspiracy Action.

Mr. Bonner and Jess

[40] For their part, Mr. Bonner and Jess, who are self-represented litigants, tell me they are not certain in view of the Bankruptcy Proceeding, whether they are in fact authorized to represent NextPlay in the Debt Action. They nonetheless wish to prove the Loans were made and that over US$6 million remains owing. In hearing them, it is clear that they also wish to avoid a situation where Axion's illegality defence fails but with no one appearing for NextPlay to prove its claim for recovery of the Loans, NextPlay's claim could be dismissed, for example, on a non-suit application brought by Axion (Axion remains silent as to whether it might bring such application).

Proposed Amendments

Introduction

[41] The Proposed Amendments fall into three categories.

[42] The first category asserts claims for alleged non-performance of the Share Exchange Agreement caused by the tortious misconduct of Axion. The Bonner Parties allege that as a consequence, NextPlay failed to deliver free trading shares called for by the Share Exchange Agreement and thus, the Assignment was not perfected ("Share Exchange Agreement Amendments"). Submissions to this effect are also reflected in recent statements made by Mr. Bonner in oral submissions at trial in September 2025.

[43] The second category asserts claims for alleged misconduct surrounding Axion Ventures Inc.'s 2021 annual general meeting ("AGM Amendments").

[44] The third asserts claims for an alleged tortious conspiracy engaged between Axion and Mr. Kerby to wrongfully commence the Bankruptcy Proceeding as a form of revenge against Mr. Bonner ("Bankruptcy Proceeding Amendments").

[45] In addition to Axion, the claims in the Proposed Amendments include claims for damages against persons (including directors, past and present of Axion) who are not currently parties to the litigation and have not been served with the notice of application and supporting materials. In reasons I issued following a prior sequencing application, I made it clear that I would not hear applications to add claims against such persons until they were served: see 2025 BCSC 2673 at paras. 13, 20. Consequently, leave to add claims against non-parties will not be considered until such time as they have been served.

Instructing Authorities

[46] As a general rule, amendments are permitted as necessary in order to determine the real question(s) between the parties. The threshold is low at the pre-trial stage; more stringent considerations apply where a party seeks to amend pleadings during or at the end of the trial where the considerations are focused on whether allowing the amendment would be unfair: *Argo Ventures Inc. v. Choi*, 2019 BCSC 86 at paras. 7–9, 22, citing *Chouinard v. O'Connor*, 2011 BCCA 121 at para. 13 and *Coburn and Watson's Metropolitan Home v. Bank of America Corporation*, 2016 BCSC 2021 at para. 24, aff'd 2017 BCCA 202, leave to appeal ref'd [2017] S.C.C.A. No. 312.

[47] Those considerations are set out in *Argo Ventures* at para 8, citing *Lam v. Chiu,* 2012 BCSC 677 at para. 10, excerpted below:

> a) is it [the amendment] inconsistent with the pleadings already filed on behalf of the party seeking the amendment;
>
> b) is it inconsistent with evidence already tendered by that party and his witnesses at trial and on discovery;
>
> c) if it had been asked for at the outset of trial, would it have changed the whole course of the trial;
>
> d) would it be unfair to the opposite party;
>
> e) is it necessary for the purpose of determining the real issues raised or depending upon the pleadings?

[48] Adding to that is the statement in *Macdonald v. Macdonald* (1996), 21 B.C.L.R. (3d) 379, 1996 CanLII 1360 (S.C.) at para. 50 (referred to more recently in

Batyka v. Barber, 2014 BCSC 769 at para. 24) that amendments are generally allowed, "provided there is no prejudice or injustice done to the non-amending party that cannot be satisfactorily cured by either costs or the re-opening of evidence for at least that party."

[49] A counterclaim (i.e., the Proposed Amendments) is supposed to be filed within the time for filing a response to civil claim. After that, the defendant must apply to extend the time to do so per Rule 22-4(2) of the *Supreme Court Civil Rules* [*Rules*]: *Genaille v. Webb*, 2021 BCSC 2284 at paras. 42–43.

[50] As the reasons in *Genaille* point out, factors such as the relation or connection with the subject matter of the claim, the reasons for the delay, limitation issues, and prejudice are considered by the court when determining whether to exercise its discretion to permit the counterclaim to be filed:

> [45] The factors considered in an application to extend time to file a counterclaim are set out in *Evans v. Dumitrean*, 2019 BCSC 203 at para. 47, citing *Smith v. British Columbia*, 2010 BCSC 928 ["*Smith*"] at para. 15:
>
> > 47 In considering whether to grant Ms. Dumitrean's application for leave to file an amended counterclaim, there are two issues that must be considered:
> >
> > 1. Is the matter in the proposed counterclaim "related or connected with the subject matter of" the plaintiff's claim?
> >
> > 2. Should the court exercise its discretion to extend the period of time for issuance of the counterclaim?
>
> [46] Factors considered when deciding whether to exercise discretion to extend time are summarized in *Smith* at paras. 18-19:
>
> > **18** The court has discretion under Rule 3(2) to extend a time period set out in the *Rules*, and will do so if it is "just and convenient".
> >
> > **19** In *Squamish Indian Band v. Canadian Pacific Ltd.*, [1998] B.C.J. No. 1726 (S.C.), Saunders J. (when she was a member of this Court), held that the following factors should be considered in making any determination of whether it is just and convenient to extend the time to permit a counterclaim to be filed:

> a) What was the length of the delay between receiving the statement of claim and proposing the draft counterclaim;
>
> b) What were the reasons for delay;
>
> c) Whether the counterclaim would be time barred but for s. 4(1) of the *Limitation Act*;
>
> d) The connection between the proposed counterclaim and the plaintiff's claim;
>
> e) Whether there will be prejudice to the defendant, such as would arise if denial of the application to file a counterclaim would prevent the defendant from making full answer and defence to the claim brought against it; and
>
> f) Whether there will be prejudice to the plaintiff by permitting the proposed counterclaim, such as if the counterclaim would require additional investigation and potentially delay the trial of the matter.
>
> [Bold in original]

[51] See also *Price v. 481530 B.C. Ltd.*, 2015 BCSC 781 at para. 131; *Phaneuf v. 0896459 B.C. Ltd.,* 2024 BCSC 1343 at paras. 58–60, 69–70.

Share Exchange Agreement Amendments

Nature of Proposed Amendments

[52] The claim in the Share Exchange Agreement Amendments is based in part on newly pleaded causes of action of tortious interference with economic relations and breach of an alleged equitable duty in connection with the Share Exchange Agreement. There is nothing to indicate whether the claim is advanced only as against Axion or also advanced against its past and present directors and other parties. I will consider them as they concern Axion since no other persons referred to in the allegations have been served.

[53] The claims for breach of fiduciary duty and tortious interference, which include allegations of spoliation, are excerpted below:

> **2. Breach of Fiduciary Duty and Conversion – Bonner Loans (Cern One Limited and Red Anchor Trading Corp.)**

> Axion Ventures Inc. and its directors owed fiduciary duties to the Defendants as lenders, creditors, and shareholders. Those duties were breached when the Plaintiff [Axion] and its directors denied the existence of duly-approved loan resolutions and failed to honour or promptly repay funds advanced by Cern One Limited and Red Anchor Trading Corp. The failure to repay [the Loans] when due in or about July 2020, and the subsequent obstruction of repayment through concealment and falsification of records, caused the Defendants substantial damages, including the loss of delivery of freely-tradable NextPlay Technologies Inc. shares that were to be issued or delivered in satisfaction of the Bonner Loans. …
>
> **6. Tortious Interference and Equitable Compensation – NextPlay Transaction**
>
> The Plaintiff and its directors, by falsely disputing the Bonner Loans and misrepresenting Axion's ownership of the IGA Asset, intentionally interfered with the NextPlay Technologies Inc. transaction under which the Bonner interests were to receive freely-tradable NextPlay shares in exchange for their assets and advances. Those misrepresentations and denials caused NextPlay Technologies Inc. to withhold or refuse delivery of such shares. Had the shares been delivered, the Bonner interests could have sold them for considerable value. The Plaintiff's conduct thus constitutes tortious interference with economic relations and a breach of equitable duty causing severe financial loss. The Defendants claim damages for tortious interference and equitable compensation for the loss of the NextPlay transaction and its benefits.
>
> …
>
> **9. Relief Sought**
>
> The Defendants claim:
>
> (a) general, aggravated, and punitive damages in an amount to be proven at trial;
>
> (b) compensation for all losses arising from the Plaintiff's failure to repay the Bonner Loans when due and from the resulting loss of delivery of freely-tradable NextPlay Technologies Inc. shares;
>
> …
>
> (d) damages and equitable compensation for tortious interference with the NextPlay transaction and for loss of economic opportunity;
>
> (e) damages and equitable compensation for privatization, exclusion from governance, and financing interference that deprived the Defendants of corporate opportunity; …
>
> [Bold in original; insertion in square brackets added]

Connection

[54] Issues between the Bonner Parties, NextPlay, and Axion concerning any potential breach of the Share Exchange Agreement are matters that fall outside the

factual questions of: (a) whether the Loans were made to Axion; (b) and if they were, to which Axion entities, (c) what amount remains owing, and (d) depending on the illegality issue, to whom any money is owed, if anyone (e.g., if the illegality defence bars the Bonner Parties' right of recovery entirely).

[55] Those are the issues to be determined in the Debt Action as they are framed in the existing pleadings.

[56] Whether any of the Bonner Parties are entitled to damages or other relief against Axion arising from its alleged role in any potential breach of the Share Exchange Agreement are new claims, irrelevant to my determination of those issues.

[57] They are, however, connected to the Bonner Parties' allegations (and evidence they have adduced at trial thus far) in the Conspiracy Action of *mala fide* conduct on the part of Axion and its directors that they knowingly tendered false and misleading evidence before this Court as part of what the Bonner Parties characterize as Axion's "false narrative" and fraud on the court, facilitated in part by Axion's intentional spoliation of evidence. Those allegations are discussed in the "Disposition" and in the Fraud on the Court/Spoliation sections below.

Action in U.S. District Court for Western Washington

[58] Similar allegations of misconduct in respect of the Loans are made by the Bonner Parties, through NextPlay as plaintiff, in an extant claim pending against Mr. Kim and other parties related to Axion including directors (although Axion is not specifically named as a party) in the U.S. District Court for Western Washington ("Washington State Action") in 2022. The claim was commenced in either June or July 2022 (according to the document initiating the claim ("Summons"), it was filed on "07/06/2022").

[59] The nature of those misconduct allegations is seen from a sampling of these extracts from the Summons. The reference to "RICO" is to the United States *Racketeer Influenced and Corrupt Organizations Act*, 18 U.S.C. § 1961:

> 10. In addition, this Court has specific jurisdiction over each of the RICO defendants as they conspired to defraud NextPlay Technologies Inc., a U.S. corporation, by producing false evidence and false claims to deny the debts Axion presently owes to NextPlay and by unlawfully diluting NextPlay's ownership interests in Axion by issuing at least 80 million additional shares to two of the defendants. Upon information and belief, these acts – including the development, drafting, and preparation of false evidence – were committed in the United States as well as in Canada, Thailand, and other places unknown to the Plaintiff as many of their conspiratorial acts were committed in secret. In so doing, the RICO Defendants relied on perjured and forged evidence designed to damage NextPlay. When NextPlay (then known as Monaker) was identified as a target at the inception of Defendants' scheme, NextPlay was located solely in the United States. Defendants' actions were thus directed to tortiously harm a U.S. company whose headquarters and area of operation are in the United States.
>
> …
>
> 83. Further, also as discussed in more detail, infra, in 2021, the RICO Defendants have falsely alleged in various courts of law that Axion's board of directors never approved the Red Anchor Loans. This is false. Axion did approve each of the Red Anchor Loans and the RICO Defendants know that Axion indeed approved the Red Anchor Loans.
>
> 84. Upon information and belief, the RICO Defendants intentionally and knowingly hid the evidence in their possession which substantiated that the Red Anchor Loans had been approved by Axion's board of directors.
>
> [Emphasis added]

[60] Mr. Bonner signed the Summons certifying the allegations contained in it to be true.

Performance or Breach of the Share Exchange Agreement is Irrelevant to Axion's Illegality Defence

[61] Whether the Share Exchange Agreement was in fact performed or breached (and if the latter, the cause of the breach) is irrelevant to Axion's illegality defence. Illegality does not turn on actual performance.

[62] A contract is illegal if performance of it violates a statutory or common law prohibition or it is entered into with the object of committing an illegal or immoral act.

[63] The defence of illegality, known by the Latin maxim *ex turpi causa non oritur actio*, was reviewed by the Court of Appeal in 2020 in *Youyi Group Holdings*

(Canada) Ltd. v. Brentwood Lanes Canada Ltd., 2020 BCCA 130 at paras. 43–49; extracts from paras. 46–48 are set out below:

> [46] The leading Canadian case discussing the continuing relevance of the illegality defence is found in *Hall v. Hebert*, [1993] 2 S.C.R. 159. *Hall* was a tort case but discussed the *ex turpi causa* defence at a principled level, which assists in explaining the underlying rationale for the application of the defence in other areas of the law. McLachlin J. (as she then was) wrote the lead judgment. She explained at p. 173 that the reasoning underlying the application of the *ex turpi causa* doctrine in contract was that "the court will not assist a wrongdoer in profiting from an illegal scheme or act". She concluded, however, that this reasoning reflected a broader principle that the true rationale for the defence of illegality associated with the maxim *ex turpi causa non oritur actio* was the integrity of the justice system. …
>
> [47] Contracts may be regarded as illegal in either of two distinct ways. A contract may be illegal *per se* if performance of the contract violates a statutory or common law prohibition. Such a contract will be unenforceable. For a recent example, see *Lindsay v. Ambrosi* where this Court refused a *quantum meruit* claim brought in the face of a statutory prohibition.
>
> [48] The second type of illegality is more nuanced. A contract may be unenforceable in circumstances where it is not *per se* illegal, but was entered into at least in part, with the object of committing an illegal act. Enforcement of such a contract may be so tainted with illegality that a court is entitled to refuse to enforce it. These cases must be considered on a case-by-case basis, unless there is controlling authority, as I conclude there is for the present appeal. But in examining the facts of each case, the application of the illegality defence should be approached on the basis of principle, namely the impact of enforcement on the integrity of the judicial process, rather than as a rules-based exercise.

[64] *Youyi* was cited more recently in the Court of Appeal's decision in *Zhang v. Zhang*, 2025 BCCA 143 at para. 20; see also Bruce MacDougall, "Introduction to Contracts", (Toronto: LexisNexis Canada Inc., 2019) 5th ed., at 18.01.

[65] As such, Axion's illegality defence can be determined at trial without reference to the performance or breach of the Share Exchange Agreement as raised in the Share Exchange Agreement Amendments.

Disposition

[66] That said, I agree with Axion that the Share Exchange Agreement Amendments should not be permitted at this stage of the trial.

[67] Although connected to matters raised in the Conspiracy Action, they are not new allegations. The factual basis for the claims was known to the Bonner Parties at least since 2022 when the Washington State Action was commenced. On their face, the claims in the Share Exchange Agreement Amendments appear to be statute-barred.

[68] The disclosure of the Emails in June 2025 does not, as the Bonner Parties assert, provide an appropriate explanation for their delay in seeking the Share Exchange Agreement Amendments (there is no other explanation for their delay in bringing the claims contained within the Share Exchange Agreement Amendments).

[69] In addition to the Washington State Action brought in 2022, the Bonner Parties have asserted tortious misconduct on the part of Axion and some or all of its directors in relation to the Loans in interlocutory proceedings in these actions long before trial, and throughout trial before the Emails were disclosed.

[70] The most the Bonner Parties can say now is that as a result of the disclosure of the Emails in June 2025, they have further proof of Axion's misconduct, including the wrongful denial of the Loans.

[71] Allowing these amendments now, as claims, would adversely impact trial fairness and prejudice Axion. It would result in a further and prolonged adjournment of the trial to facilitate new pleadings and further document production and examinations for discovery on new issues and causes of action that go well beyond those framed in the current pleadings; it would engage other issues surrounding obvious prejudice to Axion, for example, whether it could be ameliorated on terms that allowed Axion to start afresh with a reconstituted case.

[72] Leave is therefore denied for the Share Exchange Agreement Amendments.

[73] My decision does not, however, impede the Bonner Parties' right to attempt to establish what they have asserted at trial (both in submissions throughout the litigation and in their evidence thus far) should be the lens through which I must view Axion's conduct and its evidence; in particular, their allegations that: (a) Axion and

its directors, including Mr. Kim, falsely denied the existence of the Loans and did so as part of an overall contrived, *mala fide* plan to oust Mr. Bonner and Jess from Axion; (b) in order to, *inter alia*, thwart Mr. Bonner's stated intention to remove Mr. Kim and others from the board of directors; and (c) their plan is an integral component of Axion's continued "false narrative" to the Court concerning the reasons for Mr. Bonner's termination as its chief executive officer and a central plank of its claims grounded in dishonesty and breach of fiduciary duty in the Conspiracy Action. Whether there is any merit to those allegations is a live matter at trial for which I have made no determination. Trial fairness is not compromised. Axion closed its case aware of these allegations from the Bonner Parties' submissions from numerous pre-trial applications and conferences, and from questions put to Mr. Kim, and knowing of the contents of the Emails, does not seek to reopen its case.

AGM Amendments

Nature of the Proposed Amendments

[74] The AGM Amendments, described as a "Counterclaim for Fraud and Conspiracy at the 2021 AGM", are lengthy, and as noted in the descriptor, concern Axion's 2021 annual general meeting ("AGM"). In them, Mr. Bonner, Jess, Red Anchor, and another related entity known as HotPlay Corporation, seek declaratory relief (along with damages) that the AGM and its resolutions are *void ab initio* because they are tainted by fraud. Those resolutions resulted in Mr. Bonner and his "dissident" slate of candidates for Axion's board of directors losing out to an opposing management slate that included Mr. Kim and Yasuyo Yamazaki (Axion's board chair). They also seek a declaration that the proposed defendants by counterclaim breached their fiduciary duties to Axion. The factual grounds alleged include an improper manipulation of voting of certain shares coordinated by Mr. Kim, Mr. Yamazaki, and an individual named Yuki Hirakawa at the AGM, and allege that Mr. Hirakawa – who, as described below, is a plaintiff in another action being tried at the same time as the Debt Action and Conspiracy Action– provided false and misleading testimony before this Court.

[75] In addition to Axion, the proposed parties to the AGM Amendments include past and current directors, and other individuals and corporate entities. The only party that has been served is Axion.

Mr. Hirakawa

[76] Mr. Hirakawa invested funds with Mr. Bonner and Jess to obtain shares in Axion they owned (either directly or through entities such as Cern One). He has sued the Bonner Parties in VA S213309 ("Hirakawa Action"), which is being tried at the same time as the Debt Action and Conspiracy Action, to recover damages he claims he suffered as a result of the breach of those investment agreements. Mr. Hirakawa contends that he is owed over 40.713 million Axion shares held by some or all of the Bonner Parties, valued at $8.8 million (his pleading does not identify whether it is Canadian or US currency). Axion took an assignment of Mr. Hirakawa's claim in December 2024 and stands as plaintiff in his place in the Hirakawa Action.

The Bonner Parties' Defence in the Hirakawa Action

[77] In their current response pleading, the Bonner Parties deny many of Mr. Hirakawa's allegations, asserting that some of his stated investments never occurred and that he received appropriate consideration for others. Up to this point at trial, the Bonner Parties acknowledged that Mr. Hirakawa is owed Axion shares but far less than the amount claimed. They also maintain that he has engaged in wrongful, fraudulent conduct to their detriment, i.e.:

(a) he has knowingly overstated the amount of the shares he is owed before this court throughout, including in an interlocutory injunction application before Justice Davies that led to an order enjoining certain shares from being voted in favour of the dissident slate at the AGM;

(b) at the AGM, Mr. Hirakawa, knowing it was wrong, exercised voting rights in favour of the management slate, under Uniq Venture shares that he did not

own and could not belong to him and that he could not vote, in order to defeat the dissident slate; and

(c) that wrongful conduct was facilitated by Grant Kim, who knowing it was wrong, gave Mr. Hirakawa the control codes to vote the shares electronically to ensure that Mr. Bonner and the dissident slate were not elected.

[78] A useful description of the factual nature of the claim is found in these extracts from the AGM Amendments:

> 1. The 2021 Annual General Meeting ("AGM") of Axion Ventures Inc. was conducted under the chairmanship of Director Yasuo Yamazaki. Evidence in Affidavit No. 33 [reference omitted] shows that the AGM was manipulated through coordinated actions between Yamazaki, Grant Kim, Yuki Hirakawa, and Mana Prapakamol (acting for True Corporation PCL). These actions breached Axion's Articles of Association [reference omitted] and sections 147-149 of the *Business Corporations Act (SBC 2002 c. 57).*
>
> 2. **Improper Voting of Uniq Venture Shares.** Grant Kim admitted at trial (2025 transcript – Affidavit No. 33 166) that he transferred electronic control codes enabling Yuki Hirakawa to vote the 23 million shares held by Uniq Ventures Ltd., a registered shareholder. Neither Uniq Ventures nor its owner provided written authorization as required by Articles 10.5 and 10.12. By allowing those votes to be cast under false proxy authority, the Defendants committed corporate fraud and breached their fiduciary duties.
>
> 3. **Injunction of Cern One Shares and Double Counting of Security Interests.** At the same time, Defendant Yuki Hirakawa sought and obtained an injunction freezing approximately 36 million *Cern One Limited* shares of Axion without disclosing that he had already claimed those shares as security for a purported $36 million debt. This constitutes a material misrepresentation to Justice Davies and an abuse of process. Hirakawa thereby double-counted his security interest and falsely portrayed himself as an unsecured creditor.
>
> …
>
> 7. The Defendants further plead that the Claimant, together with its directors, officers, and advisors including Yuki Hirakawa, Yasuo Yamazaki, and William Kerby, engaged in corporate fraud in connection with the 15 April 2021 Annual General Meeting by (a) overriding and disregarding the registered shareholder proxies of Uniq Ventures and Cern One Limited; (b) transferring or providing Uniq Ventures' confidential control codes to persons with no authority to vote those shares; (c) conducting the AGM in breach of the Business Corporations Act and Axion's Articles; and (d) misreporting or concealing the true voting results. The Claimant subsequently

> relied on the tainted AGM results in these proceedings. Such conduct constitutes corporate fraud, breach of fiduciary duty, and, insofar as the falsified AGM results were advanced in Court, a separate and independent fraud upon the Court.
>
> [Bold and italics in original; insertions in square brackets added]

[79] In addition to seeking to void the result of the AGM and damages, the Bonner Parties seek to rely on the AGM Amendments as part of their list of *mala fide* conduct on the part of Axion and also to demonstrate that in view of Mr. Hirakawa's conduct, no credibility should be given to his account of the number of shares and dollar amount owing to him. They contend that Mr. Hirakawa's misconduct, which they say amounts to fraud, taints his entire claim and is a complete defence to his (and now Axion's) right to recovery in the Hirakawa Action.

[80] Their explanation for the delay in bringing the application is that they did not know until Mr. Kim admitted in his evidence that he gave the control codes to Mr. Hirakawa.

Washington State Action

[81] However, the Bonner Parties, through NextPlay, advance a similar claim against Mr. Hirakawa, Mr. Kim, and other parties related to Axion in the Washington State Action.

[82] The misconduct allegations concerning Mr. Hirakawa and the AGM are excerpted from the Summons below:

> **NATURE OF THE ACTION**
>
> …The Director Defendants also conspired among themselves and with RICO Defendants [e.g., Mr. Hirakawa] to fraudulently manipulate the April 2021 election of directors at the Axion annual general meeting ("AGM") – including by bald forgery - - so that they could control Axion notwithstanding NextPlay's substantial interest.
>
> Some of the Defendants' most egregious frauds and manipulations of the election at that AGM are the subject of litigation brought by other Axion shareholders and currently pending elsewhere. At issue here is RICO Defendants' pattern of racketeering activity that allowed them to deceitfully gain control of Defendant Axion to further perpetuate their agenda, including falsely claiming that Axion rather than NextPlay owns the IGA. Also at issue is RICO Defendants' conspiracy to engage in fraud for the purpose of

invalidating and overriding the vote of Axion shares for which NextPlay is the beneficial owner. …

6. Defendant Yuki Hirakawa is a businessman who resides in Singapore and is a shareholder of Axion. Upon information and belief, Hirakawa is a citizen of Japan and transacts Axion-related business in the United States, including but not limited to communicating and conspiring about the tortious conduct alleged herein via at least e-mail, telephone, video conference, and regular mail with at least Defendants Willey [an Axion director] and Kim when they are present in Washington or the United States generally.

…

13. This Court may exercise specific personal jurisdiction over the RICO Defendants due to their direction of the conspiracy as alleged herein in connection with the various frauds at the 2021 AGM, including with respect to the false Uniq Pledge Agreement (discussed below).

…

194. On or about April 9, 2012, Defendant Hirakawa filed a petition in British Columbia Supreme Court falsely claiming a personal interest in 40,713,307 shares of Axion stock held by Red Anchor Affiliate Cern One and seeking to enjoin Cern One from voting those shares at the AGM. Hirawaka supported his petition with perjured testimony in the form of sworn affidavits.

…

196. On the basis of his perjured testimony, on April 14, 2021, Hirakawa in fact obtained an injunction against Cern One voting the challenged shares, and the AGM proceeded without counting those votes. The Court of Appeal of British Columbia has accepted a discretionary appeal of the Hirakawa injunction; that appeal is currently pending.

…

199. At the time of the AGM, there were less than 300 million shares that could be voted. The RICO Defendants improperly created 80 million shares for Hirakawa and Yamazaki and then switched the votes of the 23 million shares owned by Uniq, which resulted in a 46 million share shift in the voting.

200. Indeed, as discussed further herein, despite the true owner of Uniq (which owned approximately 23 million shares of Axion) voting against the RICO Defendants' proposed slate of directors, the RICO Defendants forged a pledge agreement that resulted in denying the true owner of Uniq's Axion shares her vote and falsely registered the Uniq share votes in favour of the Management Slate.

201. The purpose of the two 40 million share grant and the reversal of the 23 million share proposed vote by Uniq was to ensure that the RICO Defendants would prevail at Axion's AGM such that the RICO Defendants could seize complete control of Axion and that the Bonner entities would have no meaningful vote in the outcome, thus ensuring defeat of the Moniker [dissident] slate.

[Bold in original; insertions in square brackets and underlining emphasis added]

Disposition

[83] Even though there is a connection between the misconduct allegations in the AGM Amendments and their overarching *mala fide* misconduct allegations in the Conspiracy Action, the Bonner Parties' claim against directors of Axion for breach of the company's Articles and breach of duty to Axion is a claim belonging to Axion and cannot be brought by any of the Bonner Parties in their capacity as Axion shareholders. The claim fails on the merits.

[84] Moreover, these are not new allegations.

[85] The factual basis for the claims concerning the AGM and Mr. Hirakawa's alleged misconduct relating to the injunction application before Justice Davies was known to the Bonner Parties at least since 2022 when the Washington State Action was commenced. On their face, the claim in the AGM Amendments appears to be statute-barred. The Bonner Parties' explanation for the delay in seeking the AGM Amendments now is on account of Mr. Kim's evidence at trial that he gave the control codes for the Uniq Venture shares to Mr. Hirakawa (it is not based on the Emails). I reject their submission that his evidence "resets" the limitation period; put at its highest; it is, instead, evidence supporting the factual allegations and claims asserted in the Washington State Action and of the Bonner Parties' overarching, ongoing contention, before and at trial, of Axion's misconduct and that of Mr. Hirakawa.

[86] Leave for the AGM Amendments is denied. However, my decision does not prohibit the Bonner Parties from advancing at trial the underlying factual misconduct components of the AGM Amendments, insofar as they concern the conduct of Mr. Kim and Mr. Hirakawa in voting the Uniq Venture shares and of Mr. Hirakawa's conduct in this litigation, as part of their overall contention that it informs the view I should take of what they say was the *mala fide* conduct of Axion and Mr. Hirakawa throughout and the integrity of their evidence and claims. Trial fairness is not impacted. Axion closed its case knowing these allegations were being made by the

Bonner Parties, from their submissions prior to and at trial, and from the questions put to Mr. Kim at trial and his evidence.

Bankruptcy Proceeding Amendments

Nature of Proposed Amendments

[87] In the Bankruptcy Proceeding Amendments, the Bonner Parties allege that directors of Axion and Mr. Kerby (who was, until his position was terminated by Mr. Bonner, an officer and director of NextPlay and Monaker) engaged in a deliberate and wrongful scheme instigated by and coordinated with Mr. Kim, to place NextPlay into bankruptcy, motivated by Mr. Kim's animus towards Mr. Bonner.

[88] The claim arises from events that occurred early in the trial. Upon coming into court one morning, as the trial was about to get underway, Mr. Bonner was informed of the Bankruptcy Proceeding by Axion and learned its genesis was Mr. Kerby filing his claim in the U.S. District Court for outstanding consulting fees. Knowing that Mr. Kerby was to be called as a witness by Axion, and of a settlement agreement reached between Axion and Mr. Kerby and another individual connected with NextPlay, Don Monaco, who assigned their claims against NextPlay for outstanding receivables to Axion in exchange for Axion covering Mr. Kerby's costs to attend trial in Vancouver (from Washington State where he resides), Mr. Bonner immediately challenged Mr. Kerby's standing in the Bankruptcy Proceeding. The matter was raised by Mr. Bonner in court but left outstanding. Shortly thereafter, Axion produced an amended settlement agreement with Mr. Kerby, said to predate the commencement of the Bankruptcy Proceeding, purporting to return to Mr. Kerby his claim for consulting fees. Mr. Bonner and Jess challenged the timing and provenance of the amended settlement agreement in court and claimed it was done to harm their interests and was done as part of Axion's overall scheme to wrongfully pursue the Bonner Parties in the Conspiracy Action and resist paying the amount Axion knows is outstanding on the Loans.

[89] In support of the Bankruptcy Proceeding Amendments, the Bonner Parties point to Mr. Kerby's evidence at trial where they say he testified that he was

encouraged by Mr. Kim, motivated by Mr. Kim's animus towards Mr. Bonner, to put NextPlay into bankruptcy, and then collaborated with Mr. Kim to pursue the Bankruptcy Proceeding.

[90] The following sampling of extracts provides a useful summary of the Bonner Parties' claim:

> 1.0 Introduction
>
> 1.1 This Counterclaim arises from the deliberate and coordinated scheme by William ("Bill") Kerby and the directors of Axion Ventures Inc. to fabricate and backdate financial documents to create the false appearance that Kerby was a legitimate creditor of NextPlay Technologies Inc. ("NextPlay").
>
> 1.2 The false receivable amendment was first presented and relied upon in the Supreme Court of British Columbia as part of Axion's litigation strategy to mislead Justice Walker and prejudice the Defendants [reference omitted].
>
> 1.3 The same forged document was later used to support a bad-faith involuntary bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida – a downstream extension of the same fraudulent scheme.
>
> 2.0 Background
>
> 2.1 In late 2023 and early 2024, Kerby, acting in concert with Grant Kim and Axion's directors, fabricated and back-dated a "Reversal Amendment" purporting to restore certain receivables by Kerby personally after they had been assigned to Axion under a 2020 Separation Agreement [reference omitted].
>
> …
>
> 2.3 Kerby and Kim subsequently caused Axion and its advisors to reuse the same document as a foundation for the U.S. bankruptcy filing intended to interfere with these Canadian proceedings [reference omitted].
>
> …
>
> 3.1 The "Reversal Amendment" purported to nullify the 2020 Separation Agreement and reinstate Kerby as a creditor. Analysis of metadata and signature inconsistencies confirms it was created well after its stated date of execution [reference omitted].
>
> …
>
> 4.0 Conspiracy to Bankrupt NextPlay
>
> 4.1 Kerby, Kim, and one or more Axion directors entered into a conspiracy to weaponize the false receivable documentation as both a litigation tactic in British Columbia and a pretext for a U.S. Bankruptcy filing [reference omitted].

> 4.2 The U.S. petition was filed in bad faith and constituted a continuation of the Canadian fraud – a cross-jurisdictional effort to distort judicial process and thwart justice.

[91] Only Axion has been served with the application.

Disposition

[92] Limitation issues and *laches* are not engaged since these factual matters arose during trial.

[93] However, I would not allow the amendments because the claim alleges harm to NextPlay and belongs to NextPlay; no derivative action has been brought by any of the Bonner Parties.

[94] While it is possible to speculate, from their submissions, that Mr. Bonner and Jess allege harm to their personal interests (e.g., reputational damage) and positions as directors and officers in NextPlay, no loss or damage to them or to any of the other Bonner Parties is identified. There is no basis to allow the amendments as a counterclaim.

[95] Nevertheless, the Bonner Parties' allegations are relevant to the credibility and conduct issues they have raised, such as their attack on the *bona fides* of Axion's conduct and motives throughout the litigation, their complaint that Axion's motive in bringing the Declaratory Relief Application when it did was purely tactical and a further *indicia* of Axion's ongoing bad faith conduct (the Bankruptcy Proceeding was used by Axion as one of its grounds for the Declaratory Relief Application).

[96] Axion has been aware of these allegations since close to the outset of trial, and certainly when Mr. Kerby concluded his testimony. Axion closed its case. I cannot see any basis for prejudice to Axion to allow the Bonner Parties to pursue their assertions that Axion, through Mr. Kim, aided by Mr. Kerby, engaged in ongoing *mala fide* conduct. If proven true, it might affect the lens through which I view Axion's conduct throughout and my view of the evidence of Mr. Kim and Mr. Kerby.

Conclusion

[97] Since I have denied leave for the Proposed Amendments, that ground for Axion's timing of the Declaratory Relief Application falls away. Axion's illegality defence does not depend on performance or breach of the Share Exchange Agreement. The Bonner Parties have stood throughout as contingent plaintiffs claiming the right to recover the Loans should the illegality defence fail. Axion's other assertion that the Bonner Parties lack standing to pursue the Debt Action in view of the Assignment and the Bonner Parties' claim that NextPlay is in breach of the Share Exchange Agreement independent of Axion's tortious misconduct are not supported by any pleading (and none have been sought). In these circumstances, and for the reasons discussed above, I decline to exercise my discretion to grant a stay.

[98] I agree with Mr. Bonner and Jess that the Trustee's absence should not deprive the Bonner Parties of their right to prove the Loans were made, that they remain outstanding and in what amount and to whom, and to defend against the illegality defence. If the claim on the Loans is proven and Axion's illegality defence fails such that judgment is granted to NextPlay, it would be up to the Trustee to take steps, if it is so inclined, to seek payment of the judgment from Axion.

[99] The Declaratory Relief Application is dismissed. Leave to file the Proposed Amendments as counterclaims is denied.

[100] That leaves one matter outstanding. Although I find it clear that Axion has been aware, well prior to trial, of the Bonner Parties' allegations concerning *mala fide* conduct of Axion and Mr. Hirakawa, including those contained in the Share Exchange Agreement Amendments and the AGM Amendments (which I view as describing some particulars of their defence to Axion's claims), the defence itself is not contained in their response pleadings in the Conspiracy Action and the Hirakawa Action. I appreciate that the Bonner Parties are self-represented litigants and their pleadings were prepared by their former counsel long ago. It is, however, essential that the pleadings reflect, even in an overarching way, the essence of this aspect of

their defence. The Bonner Parties should deliver appropriate amendments that comport with the *dicta* in *Argo Ventures* at para 8, citing *Lam v. Chiu,* 2012 BCSC 677 at para. 10 that I discuss in para. 46 of these reasons. They should do so by March 6, 2026, to align with another direction, discussed below, for notice of the parties' respective spoliation allegations to be delivered to each other by the same date.

Fraud on the Court/Spoliation Application

[101] According to the Bonner Parties, the Emails clearly establish that Axion has systematically engaged in knowingly tendering false and misleading evidence to the court and perpetuated a "false narrative" throughout interlocutory proceedings and trial in these and related actions, including related proceedings before Justice Ross (in VA S209078), facilitated in part by Axion's destruction and active concealment of evidence. The Bonner Parties contend that the Emails also establish that Axion's board of directors approved the Loans, the Loans remain outstanding, Axion has falsely accused Mr. Bonner and Jess of dishonesty and of breaching their fiduciary duties to Axion in the Conspiracy Action, and that Justice Ross was misled in the related proceeding.

[102] A useful summary of their position is found in several of the amendments they seek leave to include in their response pleading in the Conspiracy Action, excerpted below:

> **1. Fraud upon the Court and Intentional Spoliation of Evidence**
>
> The Defendants plead that the Plaintiff Axion Ventures Inc., acting through its directors, officers, and solicitors, intentionally destroyed, withheld, or concealed material evidence after litigation was reasonably contemplated and while this proceeding was underway. The conduct includes the deletion or non-production of the Axion Google Workspace archive, executive email accounts, and related corporate records, as well as the late and selective disclosure of the laptop belonging to former General Counsel Craig Rollins. These acts were undertaken to mislead the Court, prejudice the Defendants' ability to defend, and prevent the truth from being discovered. Such conduct constitutes a fraud upon the Court and an abuse of process warranting judgment in favour of the Defendants together with aggravated and punitive damages.
>
> …

> 6.0 Fraud on the Court
>
> 6.1 [Axion's] conduct constitutes a continuing fraud on the Supreme Court of British Columbia by introducing false documents, concealing material facts, and using judicial processes to pervert justice.
>
> …
>
> 8.0 Relief Sought
>
> The [Bonner Parties] seek:
>
> …
>
> b. A finding that [Axion's] presentation in the Supreme Court of British Columbia constituted a fraud on the Court; …
>
> [Bold in original; insertions in square brackets added]

Fraud on the Court

[103] Fraud on the court is a ground on which a party may seek to set aside a judgment on the basis that it is vitiated by fraud, or to reopen based on the discovery of fresh evidence: *Long v. Red Branch investments Limited*, 2018 BCCA 115 at paras. 22–51.

[104] In a subsequent *Red Branch* decision issued in this court, *Red Branch Investments Limited v. Long*, 2024 BCSC 1588, at paras. 31–40, Justice Basran described the circumstances where a judgment may be set aside on the ground that the court had been misled by fraud.

[105] Excerpted below is the four-part test discussed in his reasons:

> [31] In the Supplemental Appeal Decision at para. 32, the Court of Appeal, in quoting from *MacDonald v. Pier*, [1923] S.C.R. 107 at 120–122, acknowledged that a judgment may be set aside where a court has been misled by fraud, and such fraud may include cases of perjury.
>
> [32] A party must meet the following four-part test to establish a fraud on the court:
>
> 1) prove the fraud on a balance of probabilities with clear and cogent evidence;
>
> 2) show that it did not have knowledge of the fraud or the evidence necessary to prove the fraud at the time of the initial trial;
>
> 3) the fraud must have affected the result in the judgment but the party need not show that it was a determining factor; and
>
> 4) prove that it did not act without undue delay:

> *Canada v. Granitile Inc.* (2008), 302 D.L.R. (4th) 40 (Ont. S. Ct. J.), 2008 CanLII 63568 (O.N.S.C) [*Granitile*] at paras. 25, 282, and 319.
>
> …
>
> [38] The question of whether a party has exercised due diligence when applying for fresh evidence to be considered by the court is one of fact. However, this analysis is relaxed when that fresh evidence did not previously come to light because of deliberate non-disclosure: *Bains v. Bhandar*, 2000 BCCA 466 at para. 56.
>
> [39] A party with knowledge of the alleged fraud at the relevant time cannot claim that they have been deceived or defrauded. At the same time, parties are not expected to be perpetually on guard to discover fraud of another party. Partial or constructive knowledge is not enough to overcome fraud: *Granitile* at paras. 301–303.
>
> [40] Ultimately, the question of whether the party alleging fraud had knowledge of the said fraud should be applied flexibly: *Granitile* at para. 312.
>
> [41] The key underlying principle is that those who deceive others will not be permitted by the court to profit from their deception: *Granitile* at para. 319.

[106] Here, the Bonner Parties do not seek to set aside judgments issued by Ross J. in VA S209078 or to reopen the proceeding before him on the basis of fresh evidence. Nor do they seek to set aside any of the pre-trial decisions I have made in the actions before me. Instead, the Bonner Parties rely on fraud on the court as a basis to have all of Axion's claims in the Conspiracy Action dismissed now, mid-trial, before any judgment is issued. Their application is thus misguided. Their assertions that Axion and its directors and officers have and continue to intentionally mislead the court (which include allegations of perjury) is a matter to be considered at the conclusion of the trial, during argument, after all of the evidence has been tendered, and as part of my assessment of the credibility and reliability of each witness' testimony.

Spoliation

Introduction

[107] The other ground the Bonner Parties rely on to have Axion's claims in the Conspiracy Action dismissed is spoliation (there is no application to dismiss the Hirakawa Action on that basis). Their two prior applications (one pre-trial and the other brought just as the trial was to get underway) were adjourned over to trial.

[108] Their new application is grounded in the disclosure of the Emails from the Laptop in June 2025. The Bonner Parties submit that it is now clear that Axion has presented baseless claims in the Conspiracy Action and the Hirakawa Action, and an intentionally concocted and false defence in the Debt Action, supported throughout with affidavit evidence from Mr. Kim and others from Axion that is wholly inconsistent with Axion's own documents found on the Laptop. Moreover, the Bonner Parties contend that the Emails make it clear that Mr. Kim has not been truthful in his testimony at trial.

Instructing Authorities

[109] I discussed the instructing legal authorities in my last set of reasons dismissing the spoliation application brought by the Bonner Parties (see 2025 BCSC 167). I will cite only some of them here.

[110] Spoliation is a doctrine that is engaged where relevant evidence is destroyed, mutilated, altered, or concealed by an intentional act indicative of fraud. At the time such conduct occurred, litigation must have been ongoing or contemplated, and it must be reasonable to infer that the evidence was destroyed in order to affect the outcome of the litigation: *2025925 Ontario Inc. v. Maramusche Holdings Inc*., 2023 ONSC 3041 at para. 250.

[111] The doctrine is succinctly described by the Alberta Court of Appeal in *McDougall v. Black & Decker Canada Inc*., 2008 ABCA 353 at para. 18:

> [18] *St. Louis* [*v. Canada* (1896), 25 S.C.R. 649], therefore, stands for the following proposition. Spoliation in law does not occur merely because evidence has been destroyed. Rather, it occurs where a party has intentionally destroyed evidence relevant to ongoing or contemplated litigation in circumstances where a reasonable inference can be drawn that the evidence was destroyed to affect the litigation. Once this is demonstrated, a presumption arises that the evidence would have been unfavourable to the party destroying it. This presumption is rebuttable by other evidence through which the alleged spoliator proves that his actions, although intentional, were not aimed at affecting the litigation, or through which the party either proves his case or repels the case against him.
>
> [Emphasis added]

[112] Another useful discussion of the doctrine, from our Court of Appeal, is found in *Holland v. Marshall*, 2008 BCCA 468 at paras. 55 and 59:

> [55] Justice Brooke stated his understanding of the law of spoliation based on four case authorities to which he was referred by counsel for the respondents. The following is a summary of what was stated:
>
> 1. A rebuttable evidentiary presumption arises where evidence of spoliation exists; the doctrine of spoliation is an evidentiary rule raising a presumption and not an independent tort giving rise to a cause of action (*St. Louis v. Canada* (1896), 25 S.C.R. 649).
> 2. In an appropriate case, destruction of documents carries a procedural but not substantive remedy, an action for damages cannot be sustained solely on the ground that documents have been destroyed (*Endean v. Canadian Red Cross Society* (1998), 48 B.C.L.R. (3d) 90 (C.A.)).
> 3. Spoliation requires four elements in evidence: a) the evidence has been destroyed; b) the evidence destroyed was relevant to an issue in the lawsuit; c) legal proceedings were pending; and d) the destruction of documents was an intentional act indicative of fraud, or an intention to suppress the truth (*Dyk v. Protec Automotive Repairs* (1997), 41 B.C.L.R. (3d) 197 (S.C.)).
> 4. There is no common law duty of care to preserve property which may possibly be required for evidentiary purposes; such an obligation can only be imposed by court order granted pursuant to the *Rules of Court* (*Dawes v. Jajcaj*, 1999 BCCA 237, 66 B.C.L.R. (3d) 31, aff'g (1995), 15 B.C.L.R. (3d) 240, leave to appeal ref'd [1999] S.C.C.A.. No. 347).
>
> …
>
> [59] In a legal context, the term spoliation refers to the destruction, mutilation, alteration or concealment of evidence. The harm to the trial process that spoliation can cause is well-recognized. The more difficult problem is finding an appropriate remedy for spoliation. The sanctions or remedies available to litigants who suffer due to spoliation include procedural remedies, evidentiary presumptions, contempt proceedings and costs orders. Preventive measures may also be taken through preservation orders.
>
> [Emphasis added]

[113] As a general rule, absent an exceptional or clear-cut case, determining whether spoliation has occurred – and if it has, determining the appropriate remedy – is a matter best left for trial after all of the evidence has been considered. Again, citing from *McDougall*:

> [27] In summary, some Canadian courts have left open the possibility of extending the law relating to spoliation. There is, however, one aspect of the

> law that Canadian courts appear to agree upon. Because spoliation is primarily an issue of fact, and the remedies based on prejudice (also a matter of fact), these are matters usually best left to a trial judge. Thus, it would be rare for a claim to be struck pre-trial. The reasoning behind this position was described by Clarke J. in *North American Road Ltd. v. Hitachi Construction Machinery Co.*, 2005 ABQB 847, 385 A.R. 314. He was asked, on a pre-trial motion, to grant access to privileged documents as a remedy for spoliation. His Lordship denied the application, stating, at paras. 21-22:
>
> > I am satisfied that this is not the appropriate time for the question of spoliation to be addressed. ... The issue of spoliation is more appropriately raised at trial when all of the evidence will be available to be considered by the trial judge.
> > …
>
> [29] In conclusion, therefore, I would summarize the Canadian law of spoliation in the following way:
>
> …
>
> 5. Generally, the issues of whether spoliation has occurred, and what remedy should be given if it has, are matters best left for trial where the trial judge can consider all of the facts and fashion the most appropriate response.
>
> …
>
> [Emphasis added]

The Spoliation Allegations

[114] The Bonner Parties' spoliation allegations are extensive and significant, and range from wilful blindness to intentional concealment on the part of Axion and nearly all of its directors. The Bonner Parties' application is grounded on the overall effect of the Emails from the Laptop. However, neither is formally in evidence at the trial. The Emails are stored on the Laptop which has been marked as an exhibit for identification. The Emails have been downloaded and reviewed by the parties. Only some of them are attached to affidavits filed in support of the application. None have been reviewed at trial to verify authenticity and to determine admissibility.

[115] Some of the Emails are duplicates of documents previously admitted into evidence at trial; and for some of those (e.g., board resolutions approving the Loans), Axion has alleged that they were fabricated by Mr. Bonner. The Bonner Parties say that the Emails refute that contention and establish that Axion's board of directors knew of and approved the Loans (and in fact, requested them to alleviate

Axion's dire financial straits), knew the terms of the Loans, such as interest payable, and knew of the amounts outstanding. They also submit that in respect of Axion's theft of corporate assets claim against Mr. Bonner in the Conspiracy Action, the Emails clearly establish that the board of directors were told by Mr. Rollins that one of the assets Mr. Bonner is alleged to have converted did not belong to Axion and instead belonged to an entity related to the Bonner Parties.

[116] In the backdrop of the permanent loss of a significant body of Axion's documents when Google let Axion's G-Suite lapse, the Bonner Parties contend that Axion should have pursued documents from Mr. Rollins and Axion's third-party custodians over whom it had control. Axion did not do it, the Bonner Parties submit, because Axion did not want to find out if documents exculpatory to the Bonner Parties existed. Instead, Axion and nearly all of its directors engaged in a false narrative in evidence and submissions taken in interlocutory proceedings and pursued at trial, at times wilfully blind to the existence of exculpatory documents, and at other times, engaged in intentional concealment.

Starting Point

[117] As seen from this extract from their written submissions, the Bonner Parties focus on March 2021 as the starting point in their analysis:

> **Four Years of Willful Blindness/Intentional Concealment**
>
> **The March 2021 Trigger**
>
> In March 2021, Director [of Axion] Yoshiro Obata swore under oath that Grant Kim and Stephen Wiley were not being truthful in their sworn affidavits. From that moment forward, Axion knew that its evidentiary foundation was disputed by an internal director citing contemporaneous records.
>
> March 2021 is the trigger. Every day after Obata's warning that Axion failed to pursue the obvious custodians was willful blindness.
>
> **The Instruction Not to Restore**
>
> In Affidavit #1, Peemtat Utsahajit [Axion's chief financial officer] swore that Grant Kim instructed him not to restore Google G-Suite access. This is direct sworn evidence of intent. The corporate email archive disappeared by instruction, not accident.
>
> At paragraph 30, Mr. Utsahajit swears:

> "I was instructed by Kim that, in light of the more serious actions of Bonner and his associates that needed to be addressed, Axion had decided against attempting to restore Axion's access to the axionventures.com email accounts."
>
> That is instruction not to restore. In writing. Under oath. From the CEO.
>
> [Bold in original; insertions in square brackets added]

Mr. Rollins

[118] The Bonner Parties also point to Mr. Rollins' answers he provided to the Bonner Parties' written questions per Rule 7-5, where he said he was never asked for his documents nor was any effort made to locate them, even though Mr. Rollins left them with Axion on his departure. They submit that only after serving Mr. Rollins with a subpoena were the documents from the Laptop produced:

> **Craig Rollins: Former General Counsel, Never Asked for Five Years**
>
> Craig Rollins is a lawyer and the former General Counsel of Axion Ventures. He was the most obvious custodian of board resolutions, corporate records, and governance documentation.
>
> In his sworn Rule 7-5 answers dated June 26, 2025 **(Affidavit #1 of Natalie Magana-Luna),** Mr. Rollins testified under oath as follows:
>
> **Question 7:** "Did Axion Ventures or any of its representatives ever ask you to produce that laptop between 2020 and 2025? Please answer separately for each year."
>
> **Rollins' Answer:** "To the best of my recollection, nobody knew of or asked me for the laptop until the formal requests from Todd in late January 2025."
>
> **Question 8:** "Did Axion Ventures or its representatives ever ask you to produce emails between 2020 and 2025? Please answer separately for each year."
>
> **Rollins' Answer:** "To the best of my recollection, Axion Ventures or its representatives did not ask me to produce emails until January 2025."
>
> **Question 9:** "Did Axion Ventures or its representatives ever ask you to produce documents relevant to the Cern One Loans, The Michael Bonner Loans, the Red Anchor Loans, the In Game Advertising Platform ("IGA Platform") between 2020 and 2025? Please answer separately for each year? Please give details?"
>
> **Rollins' Answer:** "To the best of my recollection, Axion Ventures or its representatives did not ask me to produce documents until January 2025."
>
> **Question 10:** "Did Boughton Law ever request production of your laptop or emails between 2020 and 2025?"
>
> **Rollins' Answer:** "Not to my recollection."

> This is sworn testimony from a court officer. The most obvious custodian. Never asked for five years.
>
> …
>
> **June 2025: Production Only After Subpoena**
>
> Only after Mr. Bonner subpoenaed Craig Rollins in May 2025 did the 30 GB email archive suddenly appear in June 2025, causing a 7-month trial adjournment.
>
> The laptop contained the exact board duly executed board resolutions, Clark Wilson correspondence, KPMG materials, and governance emails that Mr. Bonner had claimed existed and that Axion had denied or questioned.
>
> The records existed. They were preserved. They were accessible. They were simply not pursued until legal compulsion forced disclosure.
>
> [Bold in original]

[119] The Bonner Parties contend, based on Mr. Rollins' answers, that in the face of the lost significant body of material documents in the G-Suite, Axion, as a publicly traded company required to complete audits, would have looked for and secured Mr. Rollins' documents he said he left with Axion on his departure.

[120] Mr. Kim testified at trial that he did ask Mr. Rollins for documents in 2020 and learned that Mr. Rollins' laptop was not functional.

[121] In my reasons issued on an earlier application (see 2026 BCSC 90), I discussed the seeming conflict (candidly acknowledged by Axion) between Mr. Kim's evidence at trial and some of the evidence in an affidavit Mr. Rollins delivered in response to the Rule 7-5 application, concerning Axion's requests to Mr. Rollins to produce documents from the Laptop.

[122] In terms of Mr. Kim:

> [46] As seen from the excerpt below, Mr. Kim's evidence at trial is that in 2020 he asked Mr. Rollins for documents and understood that the Laptop was not working:
>
> > Q Okay. So, you've had -- so, Mr. Kim, why -- what is your understanding as to why Mr. Rollins, after four and a half years, part of what you were in some form of business relationship or advisory relationship with Mr. Rollins, suddenly produced his laptop with these documents on it, these 314 documents, that got produced on February 4th, 2025? What is your understanding of that? How'd that happen?

> A My understanding is what I heard from him previously. The computer was fried, was not working because I did ask him in 2020 what he had, what was available, we're going through litigation, et cetera…
>
> [Emphasis added]

[123] I contrasted that evidence from Mr. Rollins' evidence in his affidavit:

> [36] Mr. Rollins' evidence is excerpted below:
>
> 11. When I brought the laptop to Whitelaw Twining on February 3, 2024, I specifically showed Whitelaw Twining where the corporate documents for Axion Ventures were located on the C drive. I specifically showed the location of certain directors' resolutions/minutes and promissory notes in question.
>
> 12. I never discussed emails being on the computer with Whitelaw Twining in January or February of 2025. The first time I advised Whitelaw Twining there might be emails on the computer was in June 2025. On June 13, 2025, I advised Whitelaw Twining that if emails were accessible on the laptop, I had not gone through them to remove personal information. Mr. Sullivan [WT's lead counsel] responded that he was not aware there were emails on the laptop, but they would immediately look into it.
>
> [Emphasis and insertion in square brackets added]

[124] I also discussed issues between his affidavit evidence and his Rule 7-5 answers:

> [37] Mr. Bonner and Jess nonetheless continue to point to an answer Mr. Rollins provided in June 2025, to one of their written Rule 7-5 pre-trial witness questions, that they assert is inconsistent with his affidavit evidence.
>
> [38] Mr. Rollins' answers to the Rule 7-5 questions are attached to an affidavit sworn on June 26, 2025 by a legal assistant at a law firm who represented him on the Rule 7-5 application.
>
> [39] The impugned answer, they submit, shows that Mr. Rollins discussed the issue of emails in his possession with WT prior to trial in January 2025.
>
> [40] The question and answer are excerpted below:
>
> 8. Did Axion Ventures or its representatives ever ask you to produce emails between 2020 and 2025? Please answer separately for each year.
>
> **To the best of my recollection, Axion Ventures or its representatives did not ask me to produce emails until January 2025.**

> [Bold in original; underlining emphasis added]
>
> [41] Although Mr. Bonner and Jess have maintained their characterization of the effect of that answer since it was delivered in June 2025, Mr. Rollins did not address their continued assertion in the Rollins Affidavit (sworn approximately six months later).
>
> [42] However, it is not clear from the answer whether it was Axion or a representative(s), or possibly individuals from both categories, who asked Mr. Rollins for emails; even if it was the latter, it does not establish that it was WT who made the request and is thus, is not, on its face, inconsistent with para. 12 of the Rollins Affidavit.
>
> …
>
> [45] What does arise from Mr. Rollins' Rule 7-5 answer is, as Mr. Bonner and Jess point out, that it conflicts with the evidence of Mr. Grant Kim (Axion's current interim chief executive officer and one of the two witnesses it called at trial), a point acknowledged by Axion in submissions.

[125] Thus, in addition to the difficulty posed by the conflict in accounts of Mr. Kim and Mr. Rollins, without the benefit of Mr. Rollins' testimony at trial, I am unable when looking at Mr. Rollins' affidavit evidence and unsworn answers, to determine whether he was first asked for the Emails in January or June 2025, nor able to draw any inference from which I could find on a balance of probabilities at this juncture, that Axion and Mr. Kim did not ask Mr. Rollins for documents until pressed to do so in court by the Bonner Parties, and did not do so until then in order to conceal evidence they knew would or were wilfully blind to whether it could benefit the Bonner Parties in the litigation.

Third Party Custodians

[126] Separately, the Bonner Parties contend that given the loss of the Google G-Suite, and in particular, in response to a written demand from the Bonner Parties' former counsel sent in 2021 ("Demand Letter"), Axion should have pursued documents from Mr. Rollins and its own third-party custodians who held Axion records. The Bonner Parties describe the effect of the Demand Letter in their written submissions:

> **December 2021: Norton Rose Formally Demanded Rollins' Records**
>
> On December 9, 2021, Christopher S. Wilson of Norton Rose Fulbright wrote to Patrick J. Sullivan at Whitelaw Twining, formally demanding production of Craig Rollins' records.

The letter specifically demanded:

Request #8: "All emails with the words 'IGA', 'In game advertising', 'Hotplay', 'Hotnow', 'HIP', 'HN', 'LR', 'Longroot', 'Todd', 'Bonner', 'white paper', 'token' or 'HotToken', sent or received by Grant Kim, Mr. Yamazaki, Peemtat Utsahajit, **Craig Rollins** or Steven Ng"

Request #12(a): "All relevant documents from the following email accounts: a. **Craig Rollins: craig@axionventures.com, craigvrollins@gmail.com**"

The letter further stated:

"Of note, the email attached to Mr. Bonner's #1 Affidavit, made November 11, 2021 as Exhibit 'NN' was sent by Craig Rollins to Mr. Bonner and the other members of Axion's board of directors, and relates to the board's approval of the Bonner Family Loans, yet this email is missing from the Email Archive. The subsequent emails on that email chain, all of which Mr. Bonner are copied on, are also absent from the Email Archive."

Axion was formally put on notice in December 2021 that Rollins had critical records. They did nothing for over three more years.

…

The Other Custodians: Also Never Asked

KPMG audited the related-party loan transactions. Their audit working papers would document the underlying board approvals. Never asked for five years.

Clark Wilson LLP administered and circulated the board resolutions. Axion paid them to do this work. Never asked for five years.

Steven Krause prepared financial disclosures relating to the related-party transactions. Never asked.

Every single obvious custodian was systematically avoided.

…

The Timeline of Willful Blindness

Let me crystallize the timeline:

- **March 2021**: Obata swears under oath that Kim and Wiley are not being truthful.
- **December 2021**: Norton Rose formally demands Rollins' records in writing.
- **January 2025**: Sullivan tells the Court that records relating to Cern One and Red Anchor "do not exist."
- **February 2025**: Whitelaw takes custody of the laptop, does not disclose custody, produces only 314 documents (approximately 170 MB).
- **June 2025**: Only after subpoena does the 30 GB email archive appear.

> Fifty-one months passed between Obata's warning and the laptop's disclosure. Forty-two months passed between Norton Rose's written demand and production. That is not accident. That is architecture.
>
> [Bold in original]

[127] Axion points out that the full scope of the demand in the Demand Letter was known to the Bonner Parties well prior to trial and as a matter of fairness, per *Browne v. Dunn*, they should have put to Mr. Kim in cross-examination that neither he or anyone on behalf of Axion heeded the Demand Letter and did not seek out documents from Axion's third-party custodians. However, the rule in *Browne v. Dunn* is not an exclusionary rule; the lack of confrontation is a matter that goes to weight.

[128] The evidentiary difficulty for the Bonner Parties is that the Demand Letter was handed to me during submissions and is not in evidence.

The Loans

[129] In relation to the Loans and Mr. Kim, the Bonner Parties point to a reconciliation document produced in the Emails that was prepared by Axion's chief financial officer that was sent to Mr. Kim (to his personal email "ccasiapacific.com", which was not tied to Axion's email account or domain) and to Mr. Rollins on May 31, 2019, setting out particulars of each loan advance, the source of the funds loaned, when each advance was made, where the loan funds were paid, a loan repayment, and the net amount owing at the time of US$5,106,278.37.

[130] The Bonner Parties submit this document, which was only produced with the Emails in June 2025, demonstrates that Mr. Kim was untruthful in his testimony when he: (a) disputed that the Loans were made; (b) disputed the authenticity of board resolutions approving the Loans; and (c) suggested that the funds had not been advanced by Red Anchor or Cern One but were funds wrongfully converted from others such as Mr. Hirakawa (Mr. Hirakawa is not shown as a source of any of the Loans on the reconciliation document). They also point out that Mr. Kim has not produced his emails from his personal email account and challenge the veracity of his evidence that they are no longer available from the Blackberry server.

[131] For its part, Axion says that part of this document helps its defence as it shows that over US$1.2 million in credits must be offset against the claim on the Loans, and consequently, it is not a document it would have concealed.

[132] The Bonner Parties also put before me their recent notice to admit seeking admissions concerning the authenticity of board resolutions for the Loans and what they characterized as Axion's unwillingness even now to admit them in the face of the contents of the board resolutions, Mr. Rollins' communications, and Axion's law firm's communications found in the Emails.

Axion's Position

[133] Part of Axion's response was to take me in considerable detail to documents already produced before the Emails which it says show a contrasting version of events. Axion asserts that these documents demonstrate on their face not only the merits of their claims in the Conspiracy Action and the Hirakawa Action and its defence in the Debt Action, but also a different context in which to view the documents relied upon by the Bonner Parties. Axion's position is that nothing was hidden, full disclosure was made, and that the myriad of issues require spoliation to be considered at trial. Axion also says it has its own spoliation allegations it will advance against the Bonner Parties when the trial continues.

[134] In terms of the Emails, Axion says that even if it agrees to admit them into evidence as documents having been sent, received, or created by Mr. Rollins, it will not admit the proof of the truth of their contents.

[135] To that end, Mr. Rollins is to be called (he is under subpoena) by the Bonner Parties as part of their case (he was not called when Axion put in its case) and at that time, the Emails can be put to him to identify, and where appropriate, admitted into evidence.

Disposition

[136] There is no direct evidence at this point in the trial to establish that Axion declined to search for relevant documents, nor to establish that it concealed

exculpatory documents (including the Emails). In essence, the Bonner Parties ask me to infer it from various documents, some in evidence at trial, others in affidavits, and others not in evidence but handed up during submissions.

[137] At this juncture in the trial, the Emails, Mr. Rollins' Rule 7-5 answers, and the Demand Letter are not in evidence; there is an insufficient evidentiary basis on which I can find spoliation. Even assuming they were in evidence, I could not conclude that this is one of those rare cases where spoliation has made it impossible for the Bonner Parties to defend against Axion's claims and prevented them from proving the Loans and any amounts outstanding (if the Emails are as clear and unimpeachable as they assert, it might impact upon the notion that their ability to prove the claim in the Debt Action and defend against the claims in the Conspiracy Action are prejudiced).

[138] Considering the documents the Bonner Parties have taken me to solely on their face, and without more (for example, without hearing from Mr. Rollins), the most I can determine at this point is that some of the documents provide traction to their extensive submissions.

[139] I do not wish the parties to presume from my reasons that I have determined that spoliation has not occurred. Nor do I wish them to assume that my omission of many of the points raised by Axion in its submissions reflects my view of the merits. Quantity is not a reflection of merits. Spoliation is a live issue to be determined, guided by the above-noted authorities, from my assessment of all of the evidence admitted at trial. The spoliation aspect of the Fraud on the Court/Spoliation Application is put over to trial.

Summary

[140] The Declaratory Relief Application, the application seeking leave to file the Proposed Amendments, and the fraud on the court portion of the Fraud on the Court/Spoliation Application are dismissed. The spoliation portion of that application is put over to be determined at trial. The Bonner Parties are directed to deliver an

appropriate amendment to their response pleadings in the Conspiracy Action and the Hirakawa Action for my consideration by March 6, 2026.

[141] I conclude with these additional comments and directions.

[142] First, in terms of the spoliation allegations, no party asks the other to amend their pleadings. Instead, they agree that written notice setting out particulars should be delivered to ensure trial fairness. I agree and direct the Bonner Parties and Axion to deliver written notice to each other setting out, in the form of particulars, their respective spoliation allegations (which for the Bonner Parties, may include the applicable factual elements grounding the Share Exchange Agreement Amendments and the AGM Amendments). The purpose is to provide each other with notice in advance of the continuation of the trial; all rights to dispute the other's spoliation allegations, apart from lack of notice, are preserved. The parties are well familiar with their respective allegations and are directed to deliver their notices by March 6, 2026.

[143] Second, although I previously struck the defences of Mr. Bonner and Jess in the Conspiracy Action in view of their contempt of interlocutory orders in that action (see 2024 BCSC 198), given the serious nature of their spoliation allegations and if true, the impact on the litigation and on the integrity of the court's process, I have determined that Mr. Bonner and Jess shall have standing to pursue them on their own behalf as well as the other Bonner Parties in each of the actions before me at trial.

[144] Lastly, when the parties return to court this afternoon, I will determine, with their input, the date for the resumption of the trial.

"P. Walker J."