

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Beigi v. Sabaghchian*,
2025 BCSC 745

Date: 20250423
Docket: S212990
Registry: Vancouver

Between:

Abbas Beigi and International Design Group Limited

Plaintiffs

And

**Aliakbar Sabaghchian, Leile Kavishi, Niaz Sabaghchian,
and Masoud Sab Holdings Ltd.**

Defendants

And

Joanna Beigi Wong

Defendant by Way of Counterclaim

Before: Associate Judge Bilawich

Reasons for Judgment

Counsel for the Plaintiffs:

J. Faner

Counsel for Defendants:

A. Spence

No other appearances.

Place and Date of Hearing:

Vancouver, B.C.
March 19, 2025

Place and Date of Judgment:

Vancouver, B.C.
April 23, 2025

Introduction

[1] The plaintiffs seek leave to amend their amended notice of civil claim (“Amended NOCC”). The defendants do not oppose minor amendments particularizing claims relating to the parties’ alleged “Polyurethane Partnership”. They do oppose the addition of a new claim based on the tort of abuse of process. This relates to criminal proceedings (the “Iranian Criminal Proceedings”) which were initiated by a complaint made by the defendant Aliakbar Sabaghchian (“Mr. Sabaghchian”) to Iranian authorities regarding the plaintiff Abbas Beigi (“Mr. Beigi”), a person named Amir Taghiakbari (“Mr. Taghiakbari”), who is not a party, and others.

[2] I previously presided over an application made by the defendant Niaz Sabaghchian (“Niaz”) who was seeking leave to cross-examine Mr. Taghiakbari on several affidavits he affirmed in this action: see *Beigi v. Sabaghchian*, 2024 BCSC 812. The background relating to that application overlaps with the proposed abuse of process claim.

Background

[3] In this action, the plaintiffs allege that they were involved in various business dealings with Mr. Sabaghchian. Starting in or about 2013, the parties entered into a partnership to develop and sell properties in BC (the “BC Partnership”). Starting in or about 2014, there was a separate partnership to import and market polyurethane into Iran (the “Polyurethane Partnership”). They claim that they did not receive money due to them from each of those ventures. The defendants deny there were any partnerships between the parties.

[4] On March 25, 2021, the plaintiffs started this action. On November 25, 2021, the defendants filed a response to civil claim and counterclaim.

[5] On August 22, 2022, Niaz, the daughter of Mr. Sabaghchian, filed an application to strike the claim against her or alternatively, applied for a summary trial

to dismiss the claim made against her. Initially the claim against her focused on her having allegedly received funds derived from the BC Partnership.

[6] In or around January 2023, Mr. Taghiakbari travelled to Iran and obtained various documents (collectively, the “Taghiakbari Documents”) which he provided to the plaintiffs for use in this action. These were listed and also attached as exhibits to a legal assistant’s affidavit which was tendered in opposition to Niaz’ application.

[7] On February 23, 2023, the plaintiffs filed the Amended NOCC. It added a new claim that Mr. Sabaghchian had misappropriated Polyurethane Partnership funds and used them to purchase and develop several properties in Iran. One of the properties was identified as No. 12 Salar Street in Tehran (the “Salar Property”). They alleged he had registered title of the Salar Property in Niaz’s name. The plaintiffs seek, amongst other relief, judgment against Niaz for unjust enrichment, tracing and a declaration that they have an equitable interest in her real and personal property, based on principles of constructive, resulting, implied and/or express trust.

[8] Mr. Taghiakbari affirmed an Affidavit #2 dated March 31, 2023, in which he set out how he had acquired the Taghiakbari Documents. This included:

12. I affirmed my Affidavit #1 in this proceeding on January 11, 2023, shortly before I left Vancouver and travelled to Iran. While in Iran I obtained, from various public institutions in Tehran, Farsi-language documents relating to a property at No. 12 Salar St. in Tehran, Iran, (the "Salar Property"). These documents included a title deed, an appraisal report, a construction license, a payment receipt, and three powers of attorney (the "Salar Documents").

13. I took the Salar Documents to a certified translator in Tehran, known as Certified Translation Bureau No. 615 (the "Translation Office"). The Translation Office is owned and operated by Dr. Moghaddam Yazdani. The Translation Office translated the Salar Documents from Farsi into English. I provided these translated Salar Documents and their originals to counsel for Beigi. I have now reviewed Affidavit #2 of Patti Allen made February 23, 2023 and confirm that the Salar Documents and their translations are exhibits to Affidavit #2 of Patti Allen.

[9] On June 30, 2023, Niaz filed an application to also dismiss the new Salar Property-related claims. She raised a variety of issues, summarized at para. 14 of my previous reasons:

[14] It is Niaz's position that the Farsi language documents attached to Ms. Allen's affidavit are forged, were obtained fraudulently or may have been improperly altered. Among the issues she raises:

- a) ...
- b) A title deed and powers of attorney can only be obtained from the Government Registration Office by either the property owner or someone authorized by the owner;
- c) Inquiries were made with the Notary who purportedly certified the title deed and he indicated he had no record of having done so. In Iran, notaries are government officials who keep government records.
- d) Inquiries were made with the Translator, who identified Mr. Taghiakbari in a photo as having passed himself off as Mr. Sabaghchian when obtaining the translations;
- e) Inquiries were made with the Appraiser, who advised that their seal and signature on the appraisal had been forged.

[10] Mr. Sabaghchian filed a criminal complaint with Iranian authorities. This was referenced at paras. 15-16 of my previous reasons:

[15] Mr. Sabaghchian says that, based on affidavits from him and an Iranian lawyer, Mr. Negatpour, the Revolutionary Prosecutors Office issued arrest warrants for Mr. Beigi and Mr. Taghiakbari. Both were indicted in Iran for forgery. The appraiser also commenced proceedings regarding the appraisal.

[16] Mr. Sabaghchian says that in September 2023, a hearing took place in Iran concerning these charges. Neither Mr. Beigi nor Mr. Taghiakbari attended but Mr. Taghiakbari was represented by counsel. The Iranian court found Mr. Taghiakbari guilty of forgery and related offences and sentenced him to a 3-year term of imprisonment. The charges against Mr. Beigi were adjourned.

[11] On October 19, 2023, Niaz filed an application seeking an order that the plaintiffs produce for inspection the notarially sealed originals of the Taghiakbari Documents. The plaintiffs said they had received electronic copies, not originals. Mr. Taghiakbari affirmed an Affidavit #3 dated November 15, 2023, in which he set out a different explanation for how he come into possession of the Taghiakbari Documents. The parties attended chambers twice in November 2023, but the application did heard due to the lack of available court time.

[12] On February 1, 2024, Niaz filed her application seeking leave to cross-examine Mr. Taghiakbari on his affidavits. On May 13, 2024, I dismissed the

application as premature and directed the plaintiffs to file a response to her application of June 30, 2023 within 21 days.

[13] On February 26, 2025, the plaintiffs filed the present application seeking leave to amend the Amended NOCC. No examinations for discovery have been held yet. Trial is scheduled for February 9, 2026, for 14 days.

Proposed Abuse of Process Claim

[14] The proposed abuse of process amendment includes, in Part 1: Statement of Facts:

Iranian Criminal Proceedings

88. In or around January 2023, Amir Taghiakbari, a former advisor for Mr. Sabaghchian, obtained documents which were provided to the plaintiffs in relation to their claims in this action (the "Taghiakbari Documents").

89. On March 18, 2023, Mr. Sabaghchian and Niaz Sabaghchian commenced proceedings by way of legal complaint to the Judiciary of Iran against Amir Taghiakbari, Mr. Beigi and Mrs. Joanna Beigi Wong (the "Iranian Criminal Proceedings") alleging that the Taghiakbari Documents were forgeries.

90. The trial of the Iranian Criminal Proceedings took place on October 18, 2023.

91. Mr. Sabaghchian commenced Iranian Criminal Proceedings for collateral or improper purposes, namely: dissuading Mr. Taghiakbari from cooperating with Mr. Beigi, and dissuading Mr. Beigi from pursuing this action. In text messages from Mr. Sabaghchian in or around June 2023 following the commencement of the Iranian Criminal Proceedings, Mr. Sabaghchian intimated that he could end the criminal proceedings against Mr. Taghiakbari if he stopped assisting Mr. Beigi.

92. The plaintiffs are now unable to travel to Iran without risk of criminal sanctions.

93. The plaintiffs have suffered loss or damage as a result of Mr. Sabaghchian's conduct.

[15] Under Part 3: Legal Basis:

Tort of Abuse of Process

31. The defendants committed the tort of abuse of process:

(a) The defendants subjected the plaintiffs to a legal process, namely the Iranian Criminal Proceedings.

(b) The defendants used the Iranian Criminal Proceedings for a purpose other than it was designed to serve, i.e. for a collateral or

improper purpose, namely hindering the plaintiffs' ability to pursue this action.

(c) The defendants have done some definite act or made some definite threat in furtherance of the improper purpose.

(d) Some measure or loss or damage have resulted to the plaintiffs as a result of the defendants' conduct.

Special Costs

32. Further and in the alternative, the defendants' conduct in relation to the Iranian Criminal Proceedings warrants an award of special costs in favour of the plaintiffs.

Applicable Law

Amendment of Pleadings

[16] Rule 6-1(1)(b) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009, ("SCCR") provides that after a notice of trial has been filed, a party may only amend a pleading with leave of the court or with written consent of the parties.

[17] Evidence is not required on an application to amend a pleading. The facts alleged in the pleading are assumed to be true. The court can consider evidence which bears on an allegation that the amendment will give rise to prejudice or constitute an abuse of process, but not to address the substance of the claims: See *W.O.M. Mastercraft Construction Ltd. v. TFN Meadows Development Limited Partnership*, 2020 BCSC 1345 at para 10.

[18] In *Thomas v. Rio Tinto Alcan Inc.*, 2019 BCSC 107 at para. 18, the court summarized the principles applicable to applications to amend pleadings:

THE TEST FOR AMENDING PLEADINGS

18 Some of the basic principles governing applications for leave to amend pleadings have been summarized in *Continental Steel Ltd. v. CTL Steel Ltd.*, 2014 BCSC 104 at para. 26 and in *British Columbia (Director of Civil Forfeiture) v. Violette*, 2015 BCSC 1372 at para. 41 [citations deleted]:

1. The court has a wide discretion to permit amendments so as to enable the real issues between the parties to be determined;
2. The discretion to permit amendments is unfettered, subject only to the general rule that it be exercised judicially;
3. The overriding consideration is the interests of justice generally and to direct what is just and convenient between the parties;

4. While useless amendments that do not advance a reasonable cause of action or defence are to be avoided, justice is generally best served by permitting amendments that will allow the real controversy between the parties to be decided on the merits;
5. Amendments may not be allowed if they will cause actual and meaningful prejudice to the opposing party -- mere potential prejudice is insufficient. Rather the party resisting an amendment must prove actual and significant prejudice;
6. Additional considerations include any delays in applying for the amendment, the reasons for such delay and whether deliberate or voluntarily dilatory conduct is involved, particularly when a new cause of action is proposed to be added that would otherwise preclude the operations of a limitation defence;
7. Costs are the general means of protecting against prejudice unless it would be a wholly inadequate remedy; and
8. Courts should only disallow an amendment as a last resort.

Tort of Abuse of Process

- [19] A claim in tortious abuse of process requires three elements:
- a) A collateral and improper purpose;
 - b) An overt act in furtherance of a purpose not legitimate in the use of the process; and
 - c) Damages resulting from the wrongful use of the legal process.
- [20] These were discussed in *Oei v. Hui*, 2020 BCCA 214 ["*Oei*"] at paras. 5-6:
- 5 Tortious abuse of process requires as a precursor, previous court proceedings advanced against the now plaintiffs, by the now defendants. The classic formulation of this tort presents three elements. Professor Fleming stated two of these elements in J.G. Fleming, *The Law of Torts*, 4th ed. (Sydney: The Law Book Company, 1971) at 548, in a passage adopted by Mr. Justice Anderson (later J.A.) in *Guilford Industries Ltd. v. Hankinson Management Services Ltd.* (1973), 40 D.L.R. (3d) 398 at 405 (B.C.S.C.):
- ... The essential elements of abuse of process are: first, a collateral and improper purpose, such as extortion, and secondly, a definite act or threat, in furtherance of a purpose not legitimate in the use of the process. Some such overt conduct is essential, because there is clearly no liability when the defendant merely employs regular legal process to its proper conclusion, albeit with bad intentions.
- The second element described by Professor Fleming of "a definite act or threat, in furtherance of a purpose not legitimate in the use of the process" is commonly referred to by the shorthand description of an "overt act".

6 The two Fleming elements of 1) a collateral and improper purpose, and 2) an overt act, are joined by the third element, damages resulting to the plaintiff from the wrongful use of the legal process. ...

[21] The distinction between procedural abuse of process and the tort of abuse of process was addressed in *Oei* at para. 7:

7 Professor Fleming's rather narrow description of the tort is derived from the seminal authorities starting with *Grainger v. Hill* (1838), 4 Bing. (N.C.) 211, and stands in contrast to the broader concept of the procedural fault of abuse of process which may ground the striking of pleadings under Rule 9-5(1)(d), an elevated award of costs, and other procedural remedies, but which cannot lead to an award of damages. In reviewing the jurisprudence advanced, and the judge's comments on the tort of abuse of process, this distinction is important. In particular, unlike tortious abuse of process, the procedural fault of abuse of process does not require that the wrongful behaviour be for a collateral and improper purpose.

[22] The tort of abuse of process is intentionally narrow so as to foreclose the “spawn of litigation wherein one failed action begets another action” and so on: See *Oei* at paras. 36-37.

Position of the Parties

Plaintiffs

[23] The plaintiffs say the proposed abuse of process amendment discloses a reasonable cause of action and the new claim is brought within the applicable limitation period. They say Mr. Sabaghchian’s ulterior motive was discovered in text exchanges he had with Mr. Taghiakbari’s nephew in June 2023, which is less than two years ago. There is no suggestion that the amendments would result in actual prejudice to the defendants, in terms of their ability to defend the claim. They say the “purported forgeries” issue has previously been raised in several applications which Niaz has filed, so the defendants are well aware of it. Allowing the amendment will ensure that all matters in issue between the parties are decided on their merits.

Defendants

[24] The defendants say the allegations relating to the Iranian Criminal Proceedings are not relevant to the issues raised in this action. They are an

improper attempt to re-litigate foreign criminal proceedings through a civil action here in BC. The allegations of the defendants having a collateral and improper purpose are speculative and not supported by any evidence.

[25] They say the BC Court does not have jurisdiction to inquire into or assess the validity of an Iranian criminal conviction. Attempts to characterize the Iranian Criminal Proceedings as an abuse of process constitute an improper collateral attack on a foreign judgment. Mr. Taghiakbari was tried, convicted and sentenced in Iran. The complaint was found to be valid under Iranian law. The charges against Mr. Sabaghchian and his wife are “archived” for the time being.

[26] The defendants deny Mr. Sabaghchian had any control over the Iranian Criminal Proceedings. Once his complaint was made, the matter was in the hands of Iranian authorities to decide whether to proceed with a prosecution. Mr. Sabaghchian’s subjective intent does not invalidate a prosecution which proceeded independently.

[27] The defendants say the plaintiffs’ purported inability to travel to Iran does not constitute a legally actionable harm in BC. Inability to enter a foreign jurisdiction due to the lawful operation of that country’s legal system does not engage any rights or obligations in BC.

[28] Allowing the amendments would unfairly expand the scope of trial to include an inquiry into Iranian legal processes and procedures. This would require extensive expert evidence regarding Iranian law and procedure, and would cause significant prejudice and delay.

Analysis

[29] As noted, evidence is not normally required on an application to amend a pleading because the facts alleged are presumed to be true for purposes of the application only. The court can consider evidence which bears on an allegation that the amendment would constitute an abuse of process. In this case, the defendants do argue that the proposed abuse of process claim is itself an abuse of process, as

it constitutes a collateral attack on the decision of the Iranian authorities to charge Mr. Taghiakbari , Mr. Beigi and his wife. In Mr. Taghiakbari’s case, it is also a collateral attack on Iranian Court’s decision to convict and sentence him. Accordingly, it is appropriate to consider evidence which addresses that issue.

[30] Included in the application material is an affidavit of Mr. Sabaghchian which attaches a translation of the Iranian court’s reasons. It includes:

- a) The court convicted Mr. Taghiakbari of forging and using a counterfeit “ordinary document”, which resulted in him receiving two concurrent one-year sentences. It also convicted him of forging and using an “official document”, which resulted in two concurrent three-year sentences. Accordingly, there appears to have been a determination by the Iranian court that certain relevant documents had been forged.
- b) The charges against Mr. Beigi and his wife involve use of the forged documents by presenting them to the Canadian judiciary. The court concluded that, because that part of the alleged crime took place in Canada, and because Mr. Beigi and Mrs. Beigi Wong were residents of Canada and had not been arrested in Iran, the case against them was “archived” until they are found or arrested in Iran.

[31] In the proposed abuse of process amendment, the plaintiffs plead that Mr. Sabaghchian and Niaz initiated proceedings by way of complaint to the Judiciary in Iran against Mr. Taghiakbari, Mr. Beigi and Ms. Beigi Wong, based on the Taghiakbari Documents being forgeries.

[32] The plaintiffs do not indicate whether the Taghiakbari Documents were forgeries. They do not allege that the factual basis for criminal complaint was false. They plead that the trial of the Iranian Criminal Proceedings took place on October 18, 2023, but do not state what the outcome was. They do not indicate that they dispute the outcome of the trial, namely Mr. Taghiakbari being convicted and sentenced for forgery.

[33] All that the plaintiffs do plead is that Mr. Sabaghchian commenced the Iranian Criminal Proceedings for collateral or improper purposes, namely:

- a) To dissuade Mr. Taghiakbari from cooperating with Mr. Beigi; and
- b) To dissuade Mr. Beigi from pursuing the present action.

The amendment accordingly focuses on the motivation for having made the criminal complaint; it does not suggest the allegations of forgery were false.

[34] The plaintiffs refer in the proposed amendment to text exchanges between Mr. Sabaghchian and Mr. Taghiakbari's nephew. The plaintiffs tendered translated excerpts of text exchanges in evidence. It is not appropriate to consider evidence when assessing whether a proposed amendment adequately pleads the proposed new cause of action. The only aspect of the texts which is pled in the amendment is that Mr. Sabaghchian had intimated he could end the criminal proceedings as against Mr. Taghiakbari if he stopped assisting Mr. Beigi.

[35] It is not clear from the amendment how Mr. Taghiakbari cooperating with the plaintiff could adversely affect this action. On the pleading, his role appears to have been limited to travelling to Iran to obtain the Taghiakbari Documents. As noted, at least some of those documents were found by the Iranian Court to have been forged. Without additional information, I am not persuaded that dissuading this sort of cooperation qualifies as a collateral and improper purpose.

[36] The other purpose alleged is that Mr. Sabaghchian initiated the Iranian Criminal Proceedings to dissuade Mr. Beigi from pursuing the present action. As noted, the proposed amendment does not deny that the Taghiakbari Documents were forged. It should not be controversial that tendering forged documents in evidence in this action would be inappropriate. It is not clear from the proposed amendment how else the complaint could have dissuaded Mr. Beigi from pursuing this action. I am not persuaded that this qualifies as a collateral and improper purpose in the circumstances.

[37] A further issue I have with the proposed amendment is that the plaintiffs plead that they have suffered loss or damage as a result of Mr. Sabaghchian's conduct. There is no similar allegation of fact that the conduct of any of the other defendants caused the plaintiffs loss and damage. One of the elements necessary to establish tortious abuse of process has accordingly not been pled in relation to the defendants Ms. Kavishi, Niaz and Masoud Sab Holdings Ltd.

[38] The plaintiffs plead that they are unable to travel to Iran without risk of criminal sanctions. It appears that this was intended to be a particular of loss and damage which the plaintiffs have suffered due to the alleged abuse of process. Without more detail, it is not clear how this constitutes damage or loss.

[39] At part 3, para. 32 of the proposed amendment, the plaintiffs also seek to add a claim for special costs based on the defendants' conduct in relation to the Iranian Criminal Proceedings. Special costs are intended to punish reprehensible conduct in the course of a proceeding (i.e. the present action), not for pre-litigation conduct: see *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2017 BCCA 177 at paras. 132-134. The Iranian Criminal Proceedings are taking place before a foreign court, in another jurisdiction. I was not directed to any authority which indicated it would be appropriate for the BC Court to impose a costs penalty based on a party's conduct in relation to criminal proceedings which are before a foreign court.

Conclusion

[40] For the reasons set out above, I conclude that the proposed amendments fail to adequately plead the elements required to support a claim in tortious abuse of process. As currently formulated, these amendments are bound to fail. The proposed amendment adding a special costs claim in relation to the Iranian Criminal Proceedings also fails to set out a proper basis for same. The application for leave to amend the Amended NOCC to add the tortious abuse of process and special costs claim are dismissed.

[41] The proposed amendments relating to the Polyurethane Partnership were not opposed. Leave to make those amendments is granted.

[42] The defendants have been largely successful in opposing the application and are entitled to costs from the plaintiffs.

“Associate Judge Bilawich”