

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rindt v. Rindt*,
2024 BCSC 848

Date: 20240517
Docket: S227945
Registry: Vancouver

Between:

Ronald Rindt

Plaintiff

And

**Robert Rindt, Heidi Rindt, Erwin Rindt, Richard Rindt,
Russell Rindt, Ryan Rindt, Roy Rindt, Western Turf Farms Ltd.,
Fraser Valley Turf 2001 Inc., Ecotech Natural Turf Systems Ltd.,
Getsod.com Ltd. and Roots and Wings Distillery Inc.**

Defendants

Before: The Honourable Justice Schultes

Reasons for Judgment

Counsel for the Plaintiff:

K. Sandulescu

Counsel for the Defendants:

B. Vickers
V. Namdarian

Place and Date of Hearing:

New Westminster, B.C.
July 12, 2023

Place and Date of Judgment:

Vancouver, B.C.
May 17, 2024

Introduction

[1] This hearing dealt with four applications in a commercial dispute among members of the same family.

[2] The plaintiff is seeking to strike parts of the defendants' response to civil claim, as well as parts of a notice of civil claim filed by the defendants in a separate action that raises the same issues.

[3] The defendants seek to join the two actions, and to remove the plaintiff's original action from fast track litigation.

[4] Although the defendants have brought their own action, for the sake of clarity I will refer to them as "the defendants" throughout.

Background

[5] The plaintiff operates a turf farm in Vernon, while the defendants, who are his siblings, other members of his family, and their associated companies, operate one in Abbotsford.

[6] They had a dispute in 2016 that resulted in litigation between them, but were able to resolve it in a settlement agreement in November 2018, with an addendum to the agreement in February 2020.

[7] Under the agreement, the defendants were required to supply up to 10 acres of turf to the plaintiff in 2019 and 2020. The present dispute relates to the fulfillment of that obligation in 2020.

[8] The agreement provided that the plaintiff "may place one or more orders in 2020, but not later, on a commercially reasonable basis...". The plaintiff was also required either to provide the pallets that would be used for the delivery of the turf, or purchase pallets from the defendants for a specified price.

[9] In April 2020, the defendants notified the plaintiff that they would not be providing the turf for that year. After an unsuccessful attempt to engage in mediation,

which the plaintiff says was scuttled by the defendants' lack of cooperation, he began an action for breach of the agreement in October 2022, in the Vancouver registry.

[10] His notice of civil claim indicates that it is "subject to Rule 15-1" (the fast track rule of the *Supreme Court Civil Rules*).

[11] The defendants' initial response to civil claim, which they filed in December, offered a blanket denial. They advised the plaintiff shortly after filing it that they would also be filing a counterclaim, but they did not actually do so until January 19, 2023. This was contrary to Rule 3-4(4)(a), which requires that a counterclaim be served within the time period for serving the response, unless the court orders otherwise. The plaintiff's counsel objected to their filing of the counterclaim on that basis, and would not accept service of it.

[12] The counterclaim advanced the allegations that would be further developed in the pleadings that are presently in issue. The defendants contended that the plaintiff had ordered his 2019 turf from them in November of that year, even though the weather was too cold by then to plant it, or for it to survive the transfer to Vernon. He then made defamatory statements disparaging the quality of turf that the defendants were selling, and videos with the same kind of content. These actions were said to give rise to claims in defamation, negligent/fraudulent representation, intentional interference with economic relations, breach of fiduciary duty, and unjust enrichment.

[13] At the beginning of February, pursuant to the fast track process, the plaintiff set his action for a three-day trial starting on April 26. The defendants were opposed to him doing so.

[14] A case planning conference was held on February 3. Justice Macintosh ordered that the April trial dates were to be adjourned generally, and that the defendants' application to file and serve their counterclaim was to be heard on or before March 26. If the defendants were successful in that application in adding the

counterclaim they were permitted to set a 10-day trial. If they were unsuccessful, the plaintiff could set a three-day trial in accordance with Rule 15-1.

[15] The defendants made their application to add the counterclaim before Master Keighley on March 14. He dismissed it. The present application record does not contain his reasons for judgment, but I have listened to the court recording of them. In essence he found that it did not make sense to join what would amount to a ten-day trial of the defendants' claims of defamation and other related matters, which was at that time intended to be heard by a jury, with the plaintiff's anticipated three-day, purely contractual claim about the non-delivery of the turf, and that there would be significant prejudice to the plaintiff if he were to do so. In the course of explaining his decision Master Keighley described the plaintiff's claim and counterclaim as being "two different matters".

[16] The defendants appealed this order, but the hearing of the appeal was adjourned pending the outcome of the present applications.

[17] On March 21, the defendants filed an amended response to civil claim. It refined the allegations that had been contained in the rejected counterclaim. The defences being advanced were defamation, intentional interference with economic relations, and negligent or fraudulent misrepresentation.

[18] The defendants' allegations in their amended response included that:

- the plaintiff requested a delivery of turf in November 2019, as provided for by the agreement. The defendants supplied it, even though from their point of view the temperature at that time of year meant that it was unlikely to be planted successfully.
- In April 2020, the plaintiff sent a text message to one of the defendants that accused them of "shipping poor quality grass" and added that "landscapers are saying that they will probably never order from [the defendants' company] again, if that's what you're shipping out." He explained that "I'm not hiding anything from them. I tell them exactly where it came from."

- As indicated by this admission, the plaintiff made “denigrating comments” about the poor quality of the turf “to anyone who would listen”, although the particulars of those comments would “need to be ascertained by further steps in the litigation process”.
- On an unspecified date, the plaintiff “posted” a video (on the internet, one could infer) of the turf that had been provided by the defendants in November. The video contained the statement that a “[h]igh percentage of costal sod lawns [that is, turf of the kind supplied by the defendants] don’t survive Okanagan winters, FYI.”
- The plaintiff continued to order turf from the defendants “while simultaneously maliciously making videos” disparaging the quality of their turf. These videos “deliberately” showed turf that “belonged” to another company.
- Since 2020 the plaintiff has been informing his clients that he continues to operate under the auspices of the defendants’ business. This allegation is based on a photo that was posted on a social media account of the plaintiff’s company in March 2021, which showed that his company was delivering its product on pallets marked with the name of the defendants’ business.
- The plaintiff wrongfully retained pallets that had been supplied by the defendants, for which he owed them more than \$17,000. They claimed an equitable set-off in this amount in the event that they are found to be liable for breaching the agreement.
- The plaintiff solicited the defendants’ clients, although the response advised that the particulars of these solicitations would also be ascertained through further steps in the litigation process.

[19] In addition, there was a catch-all reference to “such further and other defamations and bad faith conduct” which may become known to the defendants.

[20] This range of behaviour by the plaintiff was alleged to have constituted a fundamental breach by him of the settlement agreement – specifically its requirement that the shipments be “commercially reasonable”, and the obligation of good faith inherent in the agreement.

[21] On March 23 the defendants began their action in the Abbotsford registry. Their notice of civil claim contained the same factual allegations that were contained in their amended response to the plaintiff’s action. The claims arising from those facts were in defamation, negligent/fraudulent misrepresentation, intentional interference with economic interests, breach of fiduciary duty, unjust enrichment and breach of contract.

[22] The plaintiff filed a response to their notice, but explains that he did so only in response to the defendants’ threat to obtain a default judgment otherwise.

Striking Portions of the Defendants’ Response to Civil Claim/Notice of Civil Claim

Positions

Plaintiff

[23] This application is made pursuant to Rule 9-5(1)(a), which permits a court to strike a pleading, or part of a pleading, on the basis that it “discloses no reasonable claim or defence”.

[24] With respect to the main claim of defamation, the plaintiff submits that the defendants have pleaded “pure speculation that it has occurred”, without including any material facts that would actually constitute a claim.

[25] He refers to authority establishing that the exact words that are said to constitute the defamation must be pleaded, unless they can only be known after discovery. Crucially, even if discovery will be required to identify the exact words, the pleading party must still establish at the initial stage that they have “a good cause of action”: *Central Minera Corp. v. Lavarack*, 2001 BCSC 349 at paras. 12, 14. The party is also “not relieved from their obligation to plead particulars when they can

determine the precise words by investigating them” outside of court discovery processes: *Christian Advocacy Society of Greater Vancouver v. Arthur*, 2013 BCSC 1542 at para. 112.

[26] Other essential requirements of a sufficient pleading are the time, place and manner of the publication of the defamatory comments, and to whom they were made: *Cooper v. Hennan*, 2005 ABQB 709 at para. 18.

[27] Applying these principles here, the plaintiff says that:

- the defendants’ allegation that he responded to complaints from landscapers about the poor-quality grass that they had received by telling them “exactly where it came from” – would not be defamatory even if it were true, and their allegation that he made “denigrating comments” falls short of disclosing any cause of action with respect to them;
- The video of the turf planted in November 2019 is not alleged to have referred to any of the defendants and so could not have defamed them; and
- Like the denigrating comments allegation, the allegation with respect to “maliciously making videos disparaging” the defendants does not even contain a general statement of the defamatory statements in question.

[28] The absence of the required details prejudices the plaintiff’s defence, he argues, because it is impossible to know what specific defences may apply.

[29] A failure of this nature can result in the offending pleadings being struck, or lead to an order to amend to include the actual defamatory words used: *Frost v. Fox Insurance Brokers Ltd. (c.o.b. Demara Insurance Brokers)*, [1999] B.C.J. No. 2562, aff’d on other grounds [2000] B.C.J. No. 176.

[30] In this case however, the plaintiff submits that there should be no leave to amend. After the initial response to civil claim, the failed counterclaim and the amended response, the defendants’ notice of civil claim is their fourth attempt to

plead defamation properly, and they have still failed to do so. To aggravate matters further, the plaintiff made a request for particulars in relation to this claim, which they did not respond to.

[31] The pleading of the claim for intentional interference with economic relations is also said to be fatally deficient. The essential elements of that tort are that (1) the offending party intended to injure the victim's economic interests; (2) the interference was by illegal or unlawful means; and (3) the victim suffered economic loss or harm as a result. It involves what has been described as “parasitic liability”, in that it is the offending party’s acts against a third party that lead to such liability: *Low v. Pfizer Canada*, 2015 BCCA 506 at paras. 32-34. The means by which the interference was carried out are unlawful “where they support a civil action for damages or compensation by the third party, or would do so except for the fact that the third party did not suffer a loss as a result of the [offending party]’s acts: *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, at para. 41.

[32] Applying these requirements, the plaintiff says that the defendants have not alleged any acts by him towards their third-party clients that would be actionable by those clients against him.

[33] Finally on the alleged inadequacies in the pleadings, it is unnecessary to address the plaintiff’s attack on the claims for negligent or fraudulent misrepresentation, because the defendants now concede that the alleged misrepresentations by the plaintiff concerning the quality of their product set out in their pleadings do not support them. The alleged misrepresentations were made to third parties, not to the defendants, and those torts require that the person to whom the misrepresentations were made was the one who suffered damages as a result of reliance on them: *Queen v Cognos Inc.*, [1993] 1 SCR 87 at para. 65.

Defendants

[34] The defendants argue that it is essential to distinguish between a claim of defamation that is made without any basis, which they concede should not be allowed to proceed, and one in which the existence of defamatory statements is

clear, but the particulars of them are known to the defendant and need to be obtained through pretrial discovery processes.

[35] For example, in *Richardson v. Norton Lilly International (Canada) Ltd.*, [1993] B.C.J. No. 1890 (S.C.), the court refused to strike a claim based on the defendant's assertion to the plaintiff that he was going to defame him in the context of a business dispute, even though the person at their client company to whom he had made the defamatory statements, and their exact nature, had yet to be discovered. Further, given the plaintiff's concern about his reputation in his particular industry arising from the defamatory statements, the court considered it "unrealistic to expect him to canvass the possible recipients of the slander to determine the precise words and occasions upon which they were spoken" (para.18).

[36] The defendants say that the same situation applies here – there is certainty, based on the plaintiff's own statements, that defamatory statements were made by him, but they cannot be particularized any further without resorting to discovery processes.

[37] The defendants agree with the requirements of the tort of intentional interference with economic relations as the plaintiff has described them, but maintain that the plaintiff misrepresenting himself as continuing to operate under the defendants' business and negligently supplying them with turf that was unlikely to thrive because of the season in which it was planted would indeed be actionable by those customers against him.

Discussion

[38] In order to accede to the plaintiff's application, it must be "perfectly clear" that the defendants' impugned pleadings disclose no reasonable cause of action and that they are "certain to fail" *McNaughton v. Baker*, (1988) 25 B.C.L.R. (2d) 17 at 25; *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959 at 980. When dealing with such an application, the court must read the claim generously, and accommodate inadequacies in form that are merely the result of drafting deficiencies: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 143.

[39] The elements of defamation are well-known and were concisely set out in *Grant v. Torstar Corp.*, 2009 SCC 61:

28 A plaintiff in a defamation action is required to prove three things to obtain judgment and an award of damages: (1) that the impugned words were defamatory, in the sense that they would tend to lower the plaintiff's reputation in the eyes of a reasonable person; (2) that the words in fact referred to the plaintiff; and (3) that the words were published, meaning that they were communicated to at least one person other than the plaintiff. If these elements are established on a balance of probabilities, falsity and damage are presumed...The plaintiff is not required to show that the defendant intended to do harm, or even that the defendant was careless. The tort is thus one of strict liability.

[40] While its awkward syntax introduces some ambiguity, the plaintiff's text message to the defendants amounts to an admission that he responded to complaints by landscapers that the turf that he received from the defendants was "of poor quality" (as opposed to having been planted in the wrong season through his own error, as the defendants contend) by informing them of the source of the turf. The statement that "I'm not hiding anything from them" appears to relate to his disclosure of the turf's origins.

[41] The problem for the defendants is that these statements do not support an inference that he made any defamatory statements of his own about the turf in those communications, as opposed to simply reporting on the origins of the product that the customers described in that manner. As a result, that subparagraph (21(a) of the notice of civil claim and 20(a) of the amended response to civil claim), standing on its own, would not support an action in defamation, and I will order that it be struck.

[42] The allegation that the plaintiff posted a video characterizing the turf delivered by the defendants as falling within the "high percentage" of the product originating from the coast that cannot survive Okanagan winters would certainly be capable of defaming the defendants, when contrasted with their assertion that the cause of the failure was his unseasonable planting. The problem here is that the paragraph does not allege that the turf shown in the video was the defendants'. There is therefore no false and damaging statement that is actually referable to them. That subparagraph

(21(c) in the notice of civil claim and 20(c) in the response to civil claim) must also be struck.

[43] Making videos that show turf from other suppliers but disparage the defendants' product would be damaging, both because of the disparagement itself, but also because of the false association of the defendants with a product that is not theirs, in the context of such disparagement. This time the problem is that the defendants do not plead the manner in which the videos disparaged their product, whether by words stated in them, their captions, or otherwise, and do not plead that further steps in the litigation are needed to obtain that precise information. On the current drafting this not a situation in which a valid claim has been asserted that still has to be fleshed out by information known only to the defamer. Despite apparently being aware of the content of the videos, the defendants have simply not explained how, or provided the basis of an inference that, they are defamatory. These subparagraphs (21(d) in the notice of civil claim and 20(d) in the amended response to civil claim) must be struck as well.

[44] However, I do not agree with the plaintiff's submission that the defendants have had repeated opportunities to plead this claim properly, so that leave to amend should be denied. This is the first time that these subparagraphs have actually faced scrutiny, despite them having been included at previous stages. It is also not a case in which it is obvious that no amount of redrafting could support a valid claim, and so there is no good reason not to allow the defendants a further opportunity to plead them properly, if they are in a position to assert the necessary material facts.

[45] As to the claim of intentional interference with economic relations, the defendants are correct that the plaintiff misrepresenting himself as continuing to operate under the defendants' company, and negligently supplying customers with turf that was unlikely to thrive because of the season in which it was planted could well be actionable by those clients against him. Here the problem is that the pleading

does not make such allegations. Instead it asserts that actionable torts arose because:

- (a) The [defendant]s' clients were deprived of services by the [defendants] as a result of the Defamations and Misrepresentations;
- (b) The [defendant]s' clients were intended to be named as parties in a frivolous action by the [plaintiff];
- (c) The [defendant]s' clients retained the services of the [plaintiff] or other similar companies as opposed to the [defendant]s as a result of the [plaintiff]'s improper conduct; and
- (d) Such further and other grounds as counsel may advise.

[46] Even read in the generous manner required, I cannot identify any causes of action for those customers against the plaintiff. Accordingly, the subparagraphs of the defendants' notice of civil claim that advance this tort (31-39) will be struck, as will subparagraph 26(c) of the amended response to civil claim. As in the case of the defamation claim, there is no suggestion that the defendants have had repeated opportunities to plead this claim properly, and no basis to conclude that it cannot be effectively amended, there will be leave to amend.

[47] Given the defendants' concession that the misrepresentation claims are not viable, and lack of any intention to replead them, the subparagraph advancing them (para. 30 in the notice of civil claim and para. 26(b) of the amended response to civil claim) will be struck, but without liberty to amend.

Hearing the Claims Together

Positions

Defendants

[48] The defendants' application is pursuant to Rule 22-5(8), which permits a court to order that proceedings be tried at the same time. A helpful explanation of the correct application of this subrule was provided in *Hui v. Hoa*, 2012 BCSC 1045:

[33] ...[T]here are two questions which must be answered. The first involves considering whether the two proceedings involve common claims, disputes and relationships... [T]hat determination is made on a review of the pleadings.

[34] The second question is whether the two proceedings are so interwoven as to make separate trials at different times before different judges undesirable and fraught with problems and expense. This question involves considering a number of factors including whether trial together will:

- a) create a saving in pre-trial procedures;
- b) reduce the number of trial days;
- c) seriously inconvenience a party by being required to attend part of a joined proceeding in which they may have little or no interest;

[35] Other factors to be considered are whether:

- a) one of the proceedings is at a more advanced stage than the other;
- b) trial together will result in a delay of the trial of one of the proceedings and the prejudice of that delay outweighing the potential benefits of trial together;
- c) there is a risk of inconsistent findings on identical issues; and
- d) one party might be deprived of their right to a jury trial.

[Internal citations omitted.]

[49] The essential question, therefore, is whether “the degree of commonality and intertwining of issues as revealed in the pleadings outweighs prejudicial factors raised by the party opposing the order”: *Simmonds v. Victoria (City)*, 2016 BCSC 951 at para. 25.

[50] The defendants submit that such an analysis strongly favours hearing the claims together.

[51] On the first question, they note that the parties are the same, their claims both involve a breach of the settlement agreement in some form, and it will be necessary to hear the same evidence in both, whether the defendants’ evidence is presented as a defence to the plaintiff’s claim or in support of its own, and to determine the same issues. They also note that both actions are at the same relatively early stage – lists of documents have not been exchanged and examinations for discovery have not been carried out.

[52] On the second question, they point out that the actions being heard together will avoid the duplication of those pretrial procedures that would otherwise be required. It would also reduce the total required trial time by the three days that the

plaintiff seeks to set for his action (because each party's claim is their defence to the other's, I infer), subsuming it within the ten days of trial time that they will require. There are no parties who have a minimal interest in one of the actions who would be inconvenienced by having to attend a joint trial and the plaintiff's action, although it was begun first, has not progressed to a stage at which it would be prejudiced by setting dates for such a trial.

[53] In fact, as of the time the defendants' application materials were prepared, a ten-day trial was available only one month after the earliest dates for the three-day trial sought by the plaintiff, and their counsel's availability would push a trial of either length beyond that range of dates in any event.

[54] The defendants have also decided to forego a jury trial, despite their initial inclination to proceed with one, so any contrast in the suitability of the two claims to be heard by a jury, which has led some courts to refuse to join a defamation claim with a less complex one, no longer arise.

[55] On the other hand, the defendants say that if the actions are not heard together, there is a substantial risk that there will be inconsistent findings on important common issues, such as the assessment of credibility and the interpretation of the settlement agreement.

[56] Anticipating the plaintiff's argument that a joinder would be an abuse of process, the defendants point out first of all that abuse of process generally applies to prevent re-litigation of matters that have already been decided on their merits, whereas neither action in this case has proceeded to an adjudication.

[57] Further, the tests for the unsuccessful application to file the counterclaim and the present application are quite different. And, as a practical matter, the materials now before the court are very different than what was presented to Master Keighley. He had only a pro forma response to civil claim before him, in contrast to the detailed elaboration of the relationship between the defamation and the contract that was alleged to have been breached that is now available.

[58] In fact, it has been held that leave to file a counterclaim late is generally granted unless there is a limitation issue, because the alternative is for the applicant to file a separate action and then apply to join it with the existing one, as the defendants seek to do here: *Raven v. A&W Ranching Ltd.*, 2014 BCSC 1359 at para. 39.

Plaintiff

[59] His first argument in response is indeed that this attempted joinder of the actions should be dismissed as an abuse of process. It seeks to undermine the order of Master Keighley declining to allow the counterclaim, which was effectively a severance of the two claims, without pursuing the proper course of appealing it. It also undermines Macintosh J.'s case plan order, which entitled the plaintiff to set down a three-day trial under the fast-track process if the application to file the counterclaim did not succeed.

[60] Courts have had particular concerns, he points out, when they are asked to join defamation with other claims. (I think this argument is still relevant despite my decision about the current defamation pleadings, because they are still capable of being amended.) Although the defendants are no longer seeking to exercise their right to a jury trial, which has been specifically identified as a complicating factor that weighs against joinder, it has also been observed that the highly technical nature of defamation actions tends to lead to a similar conclusion: *Ortiz v. Vancouver City Savings Credit Union*, [1984] B.C.J. No. 1350 (S.C.) at para.8. In addition, it has been held that combining defamation with a claim for breach of contract will unduly complicate the task of the trier of fact, and could lead to inappropriate outcomes in light of the very different elements of each claim: *Canic v. Chrysler Canada Ltd.*, [1982] B.C.J. No. 1440, at paras. 8-10.

[61] The plaintiff submits that the considerations in Rule 22-5(6), which permit a court to “order separate trials or hearings or make any other order it considers will further the object of” the *SCCRs* are also informative on this issue. That discretion may be exercised when it appears that joined claims “may unduly complicate or

delay the trial or hearing of the proceeding or is otherwise inconvenient”, which he argues will be the situation if the present matters are heard together.

[62] In this case, joining the claims will prejudice him by leading to the delay of his straightforward turf delivery claim to accommodate the much lengthier period required for the defendants’ action. This is a genuine access to justice issue for him, because such an expanded trial may be “cost-prohibitive”, he warns.

Discussion

[63] First of all, I do not think that joining the defendants’ Abbotsford action would be an abuse of process in these circumstances.

[64] The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute: *Canam Enterprises Inc. v. Coles* (2000), 51 O.R. (3d) 481 (C.A.), at para. 55, per Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307). Although it is not confined to attempts to relitigate a final determination, the level of unfairness that would result, or the degree to which it would be subversive of the administration of justice, would have to rise to similar levels of unfairness or impropriety.

[65] As the defendants point out, an application to join actions has been explicitly identified as an alternative to an unsuccessful attempt to file a counterclaim late. While they certainly could have appealed Master Keighley’s order, it was not improper for them to pursue the present alternative. In any event, although there are overlapping concerns, the test he had to apply was different. It is also doubtful, in light of the striking of certain claims, whether the disparity between the two actions that apparently concerned him still exists, or exists to the same extent, so it cannot be said that we are revisiting the identical question.

[66] Nor do I think this approach was subversive of the case planning order. The leave granted to the plaintiff to set a three-day trial in the event the counterclaim

application did not succeed cannot have been intended to insulate him from all future pretrial applications that could potentially affect a fast track trial. The judge was simply ensuring that the dispute between the imminent trial date and the defendants' forthcoming application was resolved in an orderly way.

[67] Turning to the merits of joining the actions, it is important to keep in mind that at this point the defamation claim, which was the core of both the defence to the plaintiff's action, and of the defendants' own action, is no longer in existence. While, as I have said, it may be successfully amended later in the proceedings, I cannot proceed on the assumption that that will occur. A joint trial must be justified on the basis of what currently remains.

[68] Once that and the other struck claims are put aside, the defence to the plaintiff's action, and the defendants' own action, rest on claims of breach of fiduciary duty and unjust enrichment. Both of these are said to have constituted breaches of the turf supply agreement. While the breach of fiduciary duty is based in part on the defamatory statements that have been struck, it also includes the allegation that the plaintiff had been soliciting their clients. The unjust enrichment is also based on the conduct listed in the paragraph that contained the defamation claims, but that paragraph also includes the failure to return the defendants' pallets.

[69] My conclusion is that, even though the defendants' claims have been substantially reduced in this manner, the two actions still involve common claims, disputes and relationships, and that they are so interwoven that separate trials would be undesirable. I also do not think that, properly considered, a joint trial of the actions will result in any actual prejudice to the plaintiff.

[70] The reality is that, whether in their original form or following the striking of the claims in this application, the defence to the plaintiff's actions and the defendants' own action are identical, and the resolution of one ought to be the resolution of both, if injustice is to be avoided. While the defamation was obviously the centrepiece, there is no suggestion by the plaintiff at this stage that the breach of fiduciary duty, unjust enrichment and associated breach of contract claims are not validly included

in either of the defendants' pleadings, or that the defendants will abandon them if they are unable to pursue the defamation. The need to resolve them in a consistent way offers a compelling reason in favour of a single hearing.

[71] The resulting time savings are similarly obvious – because of the mirror pleadings by the defendants a trial of the plaintiff's claim alone would not be meaningfully shorter than the joined actions, yet a further trial would remain to be heard. In contrast, the defendants' remaining defences and substantive claims will only need to be heard and decided once in a joint trial.

[72] A joint trial has the additional benefit of avoiding the duplication of pre-trial procedures that will otherwise occur.

[73] For these reasons, I conclude that the two actions should be heard together, even with the attenuated scope the defendants' claims.

[74] I do not take the plaintiff's concerns about access to justice and the affordability of a longer joint trial lightly, but the issue was essentially decided once defences that amounted to substantive claims were pleaded. The fast track process cannot always be imposed on the trial of an action, even if a plaintiff's claim can be presented in a straightforward way in itself. If anything, the pruning of the defendants' claims that has occurred in this action distances this case even further from those in which a party seeks to tack a large, tangentially-related action onto a smaller, much more focused one. In particular, if the defamation claim cannot be revived, the disparity between the time required for a joint trial and the three days sought by the plaintiff may not be as great.

Removing the Plaintiff's Action from Fast Track

[75] The plaintiff has sensibly acknowledged that if the matters are joined, his action cannot proceed by fast track. Therefore, as part of the order for a joint trial of the actions, I order that it be removed.

Costs

[76] I would say that overall success has been more or less evenly divided. The defendants had their main claim struck, but succeeded in obtaining a joint trial and removing the matter from fast track. Therefore, the parties will each bear their own costs.

“Schultes J.”