

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Harder v. InCor Holdings Limited*,
2026 BCSC 23

Date: 20260108
Docket: S237204
Registry: Vancouver

Between:

**Lorne Harder, Springhill Investments Ltd. and
Harder Investments Ltd.**

Plaintiffs

And

**InCor Holdings Limited, George Molyviatis, Jocelyn Bennett,
Pangaea Resources Limited, InCor Energy Materials Limited,
InCor LeadFX Limited Partnership, LeadFX Inc.,
InCor Holdings PLC and InCor Services Limited**

Defendants

Before: The Honourable Justice Kirchner

Reasons for Judgment

Counsel for the Plaintiffs:

P.J. Sullivan
S.R. Shuchat

No other appearances:

Written Submissions of the Plaintiffs:

November 14, 2025

Place and Date of Hearing:

Vancouver, B.C.
November 10, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 8, 2026

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I. Introduction

[1] The plaintiffs apply strike the responses to civil claim of three of the defendants – George Molyviatis, Jocelyn Bennett, and InCor Services Limited (the “Application Respondents”) – and seek judgment against them on most of the claims as if no response had been filed. Alternatively, they seek a summary trial judgment on those claims against the Application Respondents. The notice of application also sought this relief against the defendant LeadFX Inc. but that was not pursued at the hearing.

[2] The primary plaintiff, Lorne Harder, through his investment companies, the plaintiffs Springhill Investments Ltd. and Harder Investments Ltd., invested some \$7 million in companies owned by or associated with Ms. Bennett and Mr. Molyviatis. He also loaned some \$11.35 million to those companies in multiple transactions. In the Further Amended Notice of Civil Claim (“NOCC”), the plaintiffs seek to recover both the investments and the loans with promised interest. The claims are founded in fraudulent misrepresentation, negligence, unlawful means conspiracy, breach of contract, and unjust enrichment.

[3] In an earlier application, the plaintiffs sought judgment by way of summary trial against the defendant InCor Holdings Limited (not to be confused with InCor Services Limited, against whom relief is sought on this application) on two of the loans (the “Summary Trial Application”). They also sought judgment on one of those two loans against and Pangaea Resources Limited. In reasons issued December 13, 2024 (*Harder v. InCor Holdings Limited*, 2024 BCSC 2285), I granted the judgment sought. That judgment did not address or dispose of the liability of other defendants for the same loans or address other claims in the NOCC.

[4] In the same application I found Mr. Molyviatis and Ms. Bennett were in contempt of a disclosure order made by Justice Milman in connection with a *Mareva* injunction he granted at the same time. As I will address in these reasons, neither Mr. Molyviatis nor Ms. Bennett have sought to purge their contempt, post the

security I ordered for good behavior, or applied to vary my order in accordance with the opportunity I gave in my reasons.

[5] At this point, the Application Respondents have ceased participating in this proceeding, despite having filed a response to civil claim. In view of that and Ms. Bennett and Mr. Molyviatis' continuing contempt, the plaintiffs now seek to strike the responses to civil claim of the Application Respondents and ask to have judgment against them on most of the claims. For the following reasons, I grant that relief.

II. Background

A. The Parties

[6] In February 2019, Mr. Harder retired from more than 30 years in the insurance industry. He sold his major shareholdings in a large regional brokerage and pursued various investments to further build his retirement funds and an inheritance for his children. He is the sole shareholder, officer, and director of the other two plaintiffs, Springhill Investments and Harder Investments, through which he has made these investments.

[7] The defendant, InCor Holdings was incorporated in England and Wales by Ms. Bennett and Mr. Molyviatis who control it. It is a holding company which owns shares and invests in subsidiary companies, primarily in the mineral and gold mining business.

[8] Mr. Molyviatis and Ms. Bennett are business partners and directors/shareholders of InCor Holdings. They also control several related companies but the particulars of that are somewhat murky, largely due to their refusal to actively participate in this litigation. They purport to be involved in high-stakes investment in the mining industry and Ms. Bennett purports to manage investment funds for high-net-worth clients and for InCor Holdings. However, these claims are becoming doubtful as the plaintiffs uncover more evidence in their efforts to pursue this action.

[9] Mr. Harder met Ms. Bennett and Mr. Molyviatis in May 2019. At the time, both Mr. Harder and Mr. Molyviatis were investors in a company called Cascadero Copper Corporation. Mr. Harder quickly developed a rapport with Mr. Molyviatis and Ms. Bennett, and came to trust them. They represented themselves to Mr. Harder as having significant experience in public markets and the expansion of mining companies. Mr. Harder understood they were on the boards of the various companies that he would later loan money to or invest in. He understood Mr. Molyviatis was an experienced and educated international financier with over 25 years of investment and banking project investment and financing experience. Mr. Molyviatis and Ms. Bennett represented themselves to Mr. Harder as a very high net-worth individuals. While Mr. Harder's introduction to the defendants came through Mr. Molyviatis, Ms. Bennett would come to be his main contact with them.

[10] Between October 2019 and March 2020, Mr. Harder invested some \$7 million in companies controlled by or associated with Ms. Bennett and Mr. Molyviatis. Mr. Harder also loaned some \$11.35 million to companies controlled by or associated with Ms. Bennett and Mr. Molyviatis, including InCor Holdings and, at least indirectly, Pangaea Resources.

[11] The defendant, InCor Services Ltd., which is also an Application Respondent, is affiliated with InCor Holdings but the relationship is unknown to the plaintiffs. It is the entity to which Ms. Bennett and Mr. Molyviatis instructed Mr. Harder to advance various loan funds and investment monies for InCor Holdings. InCor Services is represented in this proceeding by a John Terry who has twice failed to attend an examination for discovery, the second of which was scheduled pursuant to an order of this court.

B. The Loans

[12] The first of the plaintiffs' loans was to InCor Holdings in May 2021 for \$6,308,050 (the "Cascadero Loan"). Its purpose was to finance InCor Holdings' purchase of shares in Cascadero Copper. Ms. Bennett and Mr. Molyviatis represented to Mr. Harder that the loan would be secured by shares that InCor

Holdings owned or would acquire in four other companies. The value of this security was said to be approximately \$8.5 million. They also represented they were seeking a short-term loan and would pay “interest” to Mr. Harder in the form of 500,000 shares of InCor Holdings with a value of €0.10 per share.

[13] In the Summary Trial Application, I found the plaintiffs were entitled to judgment against InCor Holdings for the Cascadero Loan with the “interest” to be assessed, plus interest under the *Court Order Interest Act*, R.S.B.C. 1996, c. 79. The NOCC also alleges that Ms. Bennett and Mr. Molyviatis are personally liable for the Cascadero Loan and associated interest because of alleged fraudulent misrepresentations they made that induced Mr. Harder to make the loan. That claim was not pursued on the Summary Trial Application but the plaintiffs now seek judgment on it in this application.

[14] The second loan was in June 2021 for \$4 million also to InCor Holdings but for the benefit of Pangaea Resources (the “Pangaea Loan”). The purpose of the Pangaea Loan was to assist a Malaysian gold exploration company called Besra Gold Inc., in which Pangaea had invested, to transition to a public company on the Australian Securities Exchange (ASX). Ms. Bennett, who was a director and shareholder of Pangaea, represented to the plaintiffs that it would be a short-term loan – “a maximum of three months” – and committed Pangaea to providing security for and repaying the loan. The promised form of security was to be an assignment from Pangaea of payments that would come due to it under existing and future agreements with others to buy its shares in Besra. The loan was documented by a promissory note from InCor Holdings but on the summary trial application I found Pangaea was also a party to the loan agreement.

[15] The Besra Gold IPO completed in October 2021 and apparently raised approximately \$10 million. However, the defendants did not repay any amount of the loan or provide the promised security or interest before the December 31, 2021 deadline. They later repaid \$2 million but the balance, interest, and security remain outstanding.

[16] In the Summary Trial Application, I found that the Pangaea Loan was a “short-term” loan and that payment was due no later than December 31, 2021. I found the unpaid balance of \$2 million and the promised interest had not been paid. I granted judgment for the plaintiffs against InCor Holdings and Pangaea for those amounts plus interest under the *Court Order Interest Act*.

[17] As with the Cascadero Loan, the plaintiffs make claims against Ms. Bennett and Mr. Molyviatis personally for the Pangaea Loan and interest based on alleged misrepresentations concerning the duration of and security for the loan. Those are the subject of this application.

[18] The plaintiffs made other loans that are pleaded but were not pursued in the Summary Trial Application because the plaintiffs were still marshalling evidence in support of those claims. Some of those loans are now pursued in this application. Other loans, specifically three loans made to LeadFX, are not pursued on this application but it is expected they will be in future proceedings.

[19] In my reasons for judgment on the Summary Trial Application at paras. 20-21, I explained the plaintiffs’ rationale for pursuing these matters in slices. Essentially, they are pursuing those parts of their claim when they are in a position to do so. For some claims, they are continuing to marshal the necessary evidence but the defendants’ refusal to participate in this proceeding is an impediment. However, since any delay increases the already substantial risk that they will be unable to realize on any successful claim, they are pursuing those parts of the claim when they are able. The approach is far from ideal but fault for that lies with the non-participating defendants, not the plaintiffs. In the circumstances, I consider the plaintiffs’ approach to be reasonable.

C. The Contempt Findings

[20] When the plaintiffs brought the Summary Trial Application, they also sought declarations that Ms. Bennett, Mr. Molyviatis, and Pangaea are in contempt of orders made by Milman J. for a *Mareva* injunction and related disclosure orders. The *Mareva* injunction froze four defendants’ worldwide assets to the extent necessary to

secure the outstanding amounts on the three loans for a total of \$8,858,050. The concomitant disclosure order, which is necessary to “breath life” into a *Mareva* injunction so the plaintiffs know what assets are to be frozen and where they might be found (*Sekisui House Kabushiki Kaisha (Sekisui House Co. Ltd.) v. Nagashima*, 1982 CanLII 800 (B.C.C.A.) at para. 10), required each of InCor Holdings, Ms. Bennett, Mr. Molyviatis, and Pangaea to verify their worldwide assets by way of an affidavit and provide copies of their brokerage account statements and bank account statements. Only InCor Holdings provided that disclosure.

[21] On October 8, 2024, Justice P. Walker ordered that Pangaea, Mr. Molyviatis, and Ms. Bennett provide an updated list of assets pursuant to Milman J.’s disclosure order. Justice Walker also ordered that the defendants produce a list of documents by October 18, 2024. Neither has been done.

[22] In the contempt proceeding, I found the plaintiffs had proven the three elements of contempt against Ms. Bennett, Mr. Molyviatis, and Pangaea beyond a reasonable doubt and I found them to be in contempt of Milman J.’s disclosure order. (No finding of contempt was sought in respect of Walker J.’s order.) As a remedy, I ordered under Rule 22-8(3) of the *Supreme Court Civil Rules* that Ms. Bennett, Mr. Molyviatis, and Pangaea must, within 60 days, post security for good behavior totaling \$8,858,050 which is equivalent to the amount that Milman J.’s *Mareva* injunction sought to freeze. I capped Pangaea’s responsibility for this at \$2,050,000 which is the extent of its liability as I found in the Summary Trial Application. The rationale for this order was that these defendants’ contemptuous failure to comply with the disclosure order frustrates the purpose of the order and denies the plaintiffs the protections it seeks to offer. Requiring the defendants to post security for good behavior in an amount equivalent to what Milman J. found should be frozen aimed to foster compliance with the order and its intended purpose. However, recognizing that contempt proceedings are not to be a “remedial surrogate for a civil action” (*College of Physicians and Surgeons of British Columbia v. Ezzati*, 2021 BCCA 422 at para. 61), I ordered that any of these defendants, who had not

appeared at the hearing, could apply to vary the order on two specific grounds. No such application has been made.

D. Examination for Discovery of InCor Services

[23] Also in the Summary Trial Application, I made procedural orders that John Terry attend an examination for discovery on behalf of InCor Services at a time and place to be determined by the plaintiffs. The plaintiffs had previously arranged an examination for discovery and served Mr. Terry with the appointment but he refused to attend. Mr. Terry also failed to attend the second examination set by the plaintiffs pursuant to my order.

III. The Application to Strike

[24] Rule 22-7(2)(d) and (e) of the *Supreme Court Civil Rules* provide that the court may strike a response to civil claim and pronounce judgment or make any other order it considers will further the object of the rules where there has been a failure to comply with the Rules.

[25] Rules 22-7(5)(a) and (d) and 22-7(6) provide the court with discretion to strike pleadings and order a proceeding continue as if no response to civil claim had been filed when a defendant refuses or neglects to comply with an order or direction of the court without lawful excuse, refuses or neglects to obey a subpoena or attend at their discovery, or to make discovery of documents. The onus of proving a lawful excuse – one that is worthy of acceptance in the discretion of the judge – falls to the party who is not in compliance: *Breberin v. Santos*, 2013 BCSC 560 at para. 54-55

[26] Dismissal of a claim under Rule 22-7 is a “draconian” remedy that is only to be invoked in “the most egregious of cases”: *Breberin* at para. 53. Lesser sanctions should be considered where any are available and appropriate: *Breberin* at para. 60. A persistent failure to comply with the *Supreme Court Civil Rules* and court orders may result in a dismissal, particularly where the conduct prevents the litigation from progressing, and where trial dates are lost: *Breberin* para. 62-63.

[27] While the overwhelming desire is to address claims on their merits, “[a]t some point non-compliance with the Rules frustrates the pursuit of a just outcome” and a “just and efficient outcome will not be obtained if one party frustrates” the operation of the civil justice system: *Breberin v. Santos*, 2013 BCSC 560 at para. 65

[28] In my view, the Application Respondents’ conduct has done just that. Their non-compliance with the *Supreme Court Civil Rules* and this court’s orders is chronic and has materially impaired the plaintiffs’ ability to pursue this action despite their own focused and relentless efforts to do so.

[29] The defendants were initially active in defending the claim. They retained experienced legal counsel in Vancouver, filed responses to civil claim, and, through their counsel, communicated with counsel for the plaintiffs on pre-trial procedures, including the *Mareva* injunction applications. They appealed, without success, Milman J.’s *Mareva* injunction order: *Pangaea Resources Limited v. Harder*, 2024 BCCA 286. They also challenged the jurisdiction of this court to hear the plaintiffs’ claims but were also unsuccessful: *Harder v. InCor Holdings Limited*, 2024 BCSC 1788; *Harder v. InCor Holdings Limited*, 2024 BCSC 1789. The plaintiff argues these were delay tactics but at least the defendants were then active in the litigation.

[30] Soon after, Ms. Bennett and Mr. Molyviatis discharged their counsel and participated, unrepresented, in examinations for discovery. However, these were adjourned shortly after they began so they could retain new counsel. In September 2024 they appeared to be retaining new counsel and the plaintiffs granted certain indulgences to accommodate that prospective new counsel but, for reasons unknown, the retainer did not proceed.

[31] Since then, the defendants have essentially gone silent in this litigation. Ms. Bennett had some brief communication with counsel for the plaintiffs in 2025 but none of the defendants has retained new counsel. Nor have they responded to any court process, attended any court proceedings, or complied with the court’s orders. In particular, the defendants:

- a) failed to comply with or respond to document production requests made by the plaintiffs on January 23, 2024, February 13, 2024, March 25, 2024, August 21, 2024, August 27, 2024, and September 3, 2024 and failed to comply with Walker J.'s document production order of October 8, 2024
- b) were unresponsive to repeated requests (including August 21, 2024, August 27, 2024) to schedule examinations for discovery;
- c) refused to have Mr. Terry attend for his examination for discovery on the originally scheduled date of September 18, 2024 or on the second scheduled date which was set pursuant to my order of December 13, 2024;
- d) failed to comply with Milman J.'s disclosure order despite repeated demands from the plaintiffs (August 12, 2024, August 21, 2024, September 3, 2024) and my own finding of contempt;
- e) have ceased any active involvement in this litigation since September 2024, including by:
 - i. failing to respond to or attend the document production application before Walker J. on October 8, 2024;
 - ii. failing to comply with Walker J.'s document production order or to produce any documents as required by the *Supreme Court Civil Rules*;
 - iii. failing to respond to the summary trial and contempt application and to attend the hearing of that application;
 - iv. failing to comply with Milman J.'s orders for which I found Mr. Molyviatis, Ms. Bennett, and Pangaea in contempt;
 - v. failing to purge their contempt by bringing themselves into compliance with Milman J.'s disclosure order;

- vi. failing to comply with my order to post security for good behavior within 60 days following my finding of contempt;
- vii. failing to apply to vary my order to post security despite being provided a clear opportunity to so;
- viii. failing to pay the monetary judgments, or any portions of them, as I ordered following the summary trial, which order was not appealed; and
- ix. failing to respond to this application or attend the hearing.

[32] Through their efforts to enforce my summary trial order against InCor Holdings, the plaintiffs have learned, and provided evidence on this application, that after Milman J.'s *Mareva* injunction order was made, Pangaea, as directed by Ms. Bennett and Mr. Molyviatis, disposed of proceeds it earned from the sale of Besra shares. Under the loan agreement with the plaintiffs, these funds were to be used to repay the Pangaea Loan. Under the terms of the *Mareva* injunction, these funds were to be frozen. Thus, while further findings of contempt are not sought on this application, there is evidence that Ms. Bennett and Mr. Molyviatis have breached the *Marevea* injunction as well as the concomitant disclosure order. Moreover, they did so while representing to this court, in an effort to stay the *Mareva* injunction, that they were complying with it.

[33] It is beyond doubt that the Application Respondents have chronically failed to comply with the *Supreme Court Civil Rules* and have breached orders of this court. This is clearly one of the rare and “egregious” cases where Rule 22-7(2) is properly invoked.

[34] The authorities suggest it is typically appropriate to give a non-complying defendant a warning or “second chance: before striking a response to civil claim and entering judgment under Rule 22-7: *Neeld v. Pezamerica Resources Corp.*, [1985] B.C.J. No. 2356 (C.A.) at para. 28. This is often done by dismissing a first application to strike while making orders for compliance. This serves as a warning

that future compliance may result in the defence being struck: *Schwarzinger v. Bramwell*, 2011 BCSC 304 at para. 114. In this case, the Application Respondents have had ample warning. The plaintiffs have warned them expressly and in writing that they would apply to strike the response to civil claim if non-compliance with the *Rules* and orders of this court persisted. Despite that, the Application Respondents have knowingly disregarded this court's orders and the *Rules*.

[35] The non-compliance I have outlined above persuades me that the defendants have firmly resolved not to participate in these proceedings and they have no intention of voluntarily complying with the *Rules*. I am satisfied they will not abide by an order of this court that compels them to comply with the *Rules*. They have not appeared on this application to explain themselves or plead for a further chance. I can think of no lesser sanction short of striking their response to civil claim that would cause these defendants to chart a different course. A finding of contempt has already proven to be ineffective.

[36] I therefore find this is an appropriate case in which to strike the responses to civil claim of the three Application Respondents and I will make that order.

IV. Judgment Against the Application Respondents

[37] When a response to civil claim is struck, the defendant is generally deemed to have admitted the allegations of fact in the notice of civil claim: *Tchoubarov v. Poseidon Fishing Inc.*, 2023 BCSC 1448 at para. 43. I will therefore turn to the notice of civil claim to determine if the facts as pleaded, and now deemed admitted, support the relief sought such that judgment should be granted to the plaintiffs.

A. The Plaintiffs' Claims

1. General

[38] The NOCC alleges that the plaintiffs made loans to and investments in InCor Holdings and its related companies and did so in reliance on representations made by the defendants or some of them. It is alleged that these representations were not true when they were made or now. Some of those representations are specific to

each loan or investment as set out below but there are also general misrepresentations alleged that are said to have been made and relied upon in respect of all the transactions. Those general misrepresentations include:

- a) funds advanced by the plaintiffs would be repaid;
- b) Ms. Bennett and Mr. Molyviatis had significant experience in the public markets and expansion of mining companies, had expertise in building up companies to create significant profits, and were acting in good faith and in the plaintiffs' interests;
- c) Ms. Bennett and Mr. Molyviatis had access to highly promising investments and represented that it was highly probable that these would make significant profits, and which would provide a secure "exit route to recoup funds" in the event they were not successful;
- d) Ms. Bennett and Mr. Molyviatis were heavily involved and interested in LeadFX which was "guaranteed or highly expected to create a profit".

[39] The NOCC alleges that these representations, or some of them, were not true and the defendants knew they were not true at the time they were made but made them intentionally, fraudulently, or with reckless disregard as to their truth with the intention that the plaintiffs would rely on those representations.

[40] The NOCC asserts these, and the further representations described below, constitute fraudulent or negligent misrepresentations.

[41] Later in these reasons I will address whether these statements and the other alleged representations specific to each transaction are actionable fraudulent misrepresentations of existing fact or simply unfulfilled promises of future actions. The former is actionable against the person who made the alleged fraudulent misrepresentation while the latter sounds in a breach of contract claim against the contracting party, here InCor Holdings.

[42] The NOCC further alleges that the defendants, or some of them, provided a warranty to the plaintiffs, including that they had not concealed any documents or information which might have an impact on the shares of InCor Holdings or InCor Energy Materials (a company which I describe below). Contrary to that warranty, Ms. Bennett and Mr. Molyviatis were, at the time, subject to allegations of fraud, misappropriation, and financial or securities misconduct, including allegations that were and are the subject of criminal investigations into Ms. Bennett and Mr. Molyviatis in Switzerland. It is alleged that the defendants were obligated to disclose those matters and, had they done so, the plaintiffs would not have made the investments or loans. These “warranties” are further or alternatively characterized in the NOCC as “misrepresentations by silence”.

[43] With that I turn to the specific transactions and alleged misrepresentations specific to those transactions.

2. *The Cascadero Loan*

[44] I have already given judgment against InCor Holdings for the full amount of the Cascadero Loan, plus interest, based on, among other things, a promissory note that confirmed the loan and its terms. The note was given by InCor Holdings. The plaintiffs also claim against Ms. Bennett and Mr. Molyviatis personally for the same amount, and against InCor Services to whom Ms. Bennett directed the plaintiffs to advance the loan monies. Those latter claims were not part of the Summary Trial Application but judgment on them is sought on this application.

[45] The claim against Ms. Bennett and Mr. Molyviatis is based on the general misrepresentations summarized earlier and the following specific representations:

- a) that the promissory note would be satisfied in the short term; and
- b) there would be security on the promissory note in a value approximating \$8.5 million dollars, including in the form of shares held by Ms. Bennett and Mr. Molyviatis directly and/or through entities they controlled.

[46] It is not specifically alleged in this part of the NOCC that these representations were not true but that allegation is captured elsewhere in the NOCC under the general misrepresentations, which overlap with these specific ones. Moreover, it is pleaded that the note was not satisfied in the short term or at all and that the promised security was not provided.

3. The Pangaea Loan

[47] I have already given judgment against InCor Holdings for the \$2 million balance on the Cascadero Loan, plus interest. The plaintiffs also claim this amount against Mr. Molyviatis and Ms. Bennett personally and against InCor Services which, like the Cascadero Loan, received the loan advances from the plaintiffs as directed by Ms. Bennett.

[48] As with the Cascadero Loan, the plaintiffs' claim against Mr. Molyviatis and Ms. Bennett is based on fraudulent misrepresentations which include the general ones outlined earlier and these specific ones:

- a) InCor Holdings needed financial assistance;
- b) Pangaea was owned in majority by Mr. Molyviatis and Ms. Bennett;
- c) InCor Holdings and Pangea invested in a convertible debenture with Besra Gold Inc., a Malaysian gold exploration company, years before;
- d) \$4 million was needed to repay another lender before an initial public offering for Besra on the ASX could advance;
- e) the defendants were seeking the loan funds from the plaintiffs on a "short-term" basis "for a maximum of 3 months" to complete the Besra IPO;
- f) Springhill would receive one million Besra CDIs and security over Pangea's assets; and
- g) InCor Holdings would benefit significantly if the Besra IPO completed which would put it in a position to repay the plaintiffs' earlier loan to InCor.

[49] The plaintiffs plead they relied on these representations in deciding to advance the loan monies to InCor Services, that they did so to their detriment, and that the representations are not true.

4. March 2022 InCor Holdings Loan

[50] The notice of civil claim alleges that in March 2022, Ms. Bennett, Mr. Molyviatis, InCor Holdings, or one or more of them approached the plaintiffs seeking a \$350,000 loan for InCor Holdings (the “InCor Holdings Loan”). It is alleged they represented that this would be a short-term loan and would be used to advance InCor Holdings’ business interests. Again, the allegation that these representations are untrue is captured in that part of the NOCC which deals with the general misrepresentations.

[51] In reliance on those representations, the plaintiffs advanced the funds. It is alleged that the funds were not used for the stated purpose and were not repaid in the short term or at all.

5. The Investments

[52] The NOCC alleges that in October 2019, Springhill invested \$3.5 million in InCor Holdings in exchange for 3,565,931 shares in that company (the “InCor Investment”). It is alleged that it did so in reliance on the following representations of InCor Holdings, Ms. Bennett, and/or Mr. Molyviatis:

- a) InCor Holdings was directly and/or indirectly invested in LeadFX; and
- b) The investment funds would be used to increase InCor Holdings’ ownership in LeadFX, which InCor Holdings, Ms. Bennett, and/or Mr. Molyviatis knew interested Springhill.

[53] The NOCC further alleges that in October 2019 and in March 2020, the plaintiffs bought partnership rights/shares in a limited partnership called InCor LeadFX Limited Partnership which is alleged to have held a majority of the shares in LeadFX (the “Limited Partnership Investments”). It is alleged that InCor Holdings

controlled LeadFX through a company called InCor Energy Materials Limited, which is 100% owned by InCor Holdings and is the general partner in the Limited Partnership. The NOCC alleges the plaintiffs invested \$1.5 million in partnership rights in October 2019 and \$2 million in partnership rights in March 2020. It is alleged that both investments were made in reliance on the following representations made by InCor Holdings, InCor Energy Materials, the Limited Partnership, Ms. Bennett and/or Mr. Molyviatis:

- a) InCor Energy Materials was or was to be the general partner in the Limited Partnership, held shares in LeadFX, and held partnership rights in the Limited Partnership in trust for Ms. Bennett and Mr. Molyviatis;
- b) InCor Energy Materials would fund LeadFX in the short term and a mine that is the major asset of LeadFX would open in two years.

[54] The NOCC alleges these representations were not true.

B. Analysis of the Plaintiffs' Pleaded Claims

[55] There are two forms of misrepresentation that can ground an action for damages: fraudulent or negligent. Fraudulent misrepresentation is grounded in the tort of deceit while negligent misrepresentation is based in the law of negligence: Bruce MacDougall, *Misrepresentation and (Dis)Honest Performance in Contracts*, 2nd ed (Toronto: LexisNexis Canada, 2021) at p. 359, ¶ 5.2; pp. 320-321, ¶ 5.10-5.11; p. 427, ¶ 6.2-6.3.

[56] Fraudulent misrepresentation is made out where:

- a) a false representation made by the defendant;
- b) the defendant has some level of knowledge of the falsehood of the representation, whether through knowledge or recklessness;
- c) the false representation caused the plaintiff to act; and

d) the plaintiff's actions resulted in a loss.

Bruno Appliance and Furniture Inc. v. Hryniak, 2014 SCC 8 at para. 21.

[57] These essential elements are pleaded in the NOCC and, since the pleaded facts must be taken to be true, I accept the claims are made out against Ms. Bennett, Mr. Molyviatis, and InCor Services. I further note that the plaintiffs have pleaded that they were induced by the representations to make the loans and investments and would not have made them had they known the truth about the representations. These pleadings satisfy the elements of a cause of action in fraudulent misrepresentation.

[58] I would add that the NOCC alleges the representations were made directly by Ms. Bennett or Mr. Molyviatis or indirectly through their companies. This appears to capture InCor Services, but even if it does not, the pleaded unjust enrichment claim does. It is pled that InCor Services received the plaintiffs' investment and loan monies for specific purposes but did not direct the money to those purposes. There was never an agreement that InCor Services would keep the money or use it for unauthorized purposes. Thus, InCor Services use of the plaintiffs' money for its own purposes enriched it to the plaintiffs' detriment without a juristic reason.

[59] I wish to comment on two legal issues that arise from the NOCC relating to the misrepresentation claims. First is the issue of personal liability of Ms. Bennett and Mr. Molyviatis for misrepresentations that induced the plaintiffs to make loans to and investments in companies controlled by those two individuals. Second, is whether representations as to future events, which describe many of the key alleged misrepresentations, can be properly characterized as misrepresentations of existing fact rather than promises that something will be done in the future.

[60] With regard to personal liability, in *Ma v. Nutriview Systems Inc.*, 2014 BCSC 25 (aff'd 2016 BCCA 4); leave to appeal to SCC ref'd [2016] S.C.C.A. No. 83), Justice Kelleher said at para. 221 that it is "settled law" that a director or officer of a corporation is personally liable for a fraudulent misrepresentation they make on

behalf of the corporation. Thus, Ms. Bennett and Mr. Molyviatias may be held personally liable for fraudulent misrepresentations they have made on behalf of InCor Holdings and Pangaea as parties to the loan and investment agreements.

[61] With regard to representations of existing facts versus promises of future events, an actionable misrepresentation must pertain to a matter of past or existing fact or circumstance. A promise that something will be done in the future cannot be properly construed as a past or existing fact: *PD Management Ltd. v. Chemposite Inc.*, 2006 BCCA 489 at paras. 12-14.

[62] Most of the key misrepresentations alleged in the NOCC appear to be promises that something will be done in the future or of some expectation of a future event. These include, for example, “representations” that security would be provided for loans, that loans would be repaid in a short term, or that funds would be used for specific stated purposes.

[63] A statement of future intention can be treated as a fraudulent misrepresentation when the person who made the statement had no present intention of fulfilling it at the time the representation was made. In *Sanghera v. Danger Figure Centre (Burnaby) Ltd.*, 2007 BCSC 1308 Justice Garson, then of this court, explained the point as follows:

[11] A statement of future intention, if false, can be treated as a fraudulent misrepresentation. Waddams in *The Law of Contract*, 5th ed. (Toronto: Canada Law Book, 2005) says at para. 418 (footnotes omitted):

[A]lthough a promise as to the future conduct of the promisor or a third party is not a misrepresentation, it has been held that such a promise implies a statement that the present intention of the promisor is to carry out the promise, or that the promisor’s belief is that the third party will act as stated, and this statement of fact, if false, can be treated as a misrepresentation.

[12] For example, in *International Casualty Co. v. Thomson* 1913 CanLII 29, 48 S.C.R. 167 (S.C.C.), the plaintiff contracted to buy shares in an insurance company on condition that within a fixed time the company would be in business in Vancouver and the plaintiff would be made the medical examiner of the company for that city. When this did not happen, it was held that the contract could be rescinded for fraudulent misrepresentation. Fitzpatrick C.J. said at p. 171:

The existence or non-existence of that intention is a fact, and, if [the plaintiff] signed the application and parted with his cheques and notes on the faith of the statements made with respect to it, his position is the same as if he acted on a representation of the existence of any other fact.

[13] Bowen L. J. puts it most vividly in *Edgington v. Fitzmaurice* (1885), 29 Ch. D. 459 at 483 (C.A.):

... the state of a man's mind is as much a fact as the state of his digestion. It is true that it is very difficult to prove what the state of man's mind at a particular time is, but if it can be ascertained it is as much a fact as anything else. A misrepresentation as to the state of a man's mind is, therefore, a misstatement of fact.

[64] While it may be “very difficult to prove” a person’s state of mind at the time a representation of a future event is made, it is unnecessary for the plaintiffs to do so with evidence here because they have pleaded the necessary material facts and, as mentioned, those must now be treated as admitted by the three Application Respondents: *Tchoubarov* para. 43. The now-admitted facts are that Ms. Bennett and Mr. Molyviatis knew at the time the representations were made that they had no intention of or would be unable to fulfill the promises of future conduct and those material facts are deemed to be admitted by the striking of the response to civil claim. That makes the pleaded representations false and actionable as fraudulent misrepresentations.

[65] It follows from *Sanghera* and the authorities cited therein that the principle it sets out is not confined to promises of future conduct of the person making the representation. Waddams states there can be a misrepresentation when a person represents that a third party will act in an expected way, but does not actually believe the third party will do so. It follows that a representation as to a future event can be a misrepresentation when the person making the statement knows the event will not occur or is reckless as to whether it will occur or not.

[66] Further, silence, though ordinarily not a misrepresentation, can also become a misrepresentation if it distorts a positive representation: *Manning v. Dhalla*, 2018 BCSC 2148 at para. 34. Ms. Bennett and Mr. Molyviatis’ silence as to the fraud, misappropriation, and securities misconduct allegations against them, including a

related criminal investigation in Switzerland, can be taken as a misrepresentation when viewed in light of the positive representations of their skill and experience in investing in the mining sector worldwide, and that they could be trusted with the plaintiffs' money.

[67] The plaintiffs have led evidence to prove the claimed representations, including the intent to do something in the future, were false at the time they were made. While it is not necessary to prove their claims with evidence once the response to civil claim has been struck under Rule 22-7, the plaintiffs have tendered this evidence in support of their summary trial application, which is an alternative basis for the relief claimed in this application. I refer to some of this evidence solely to provide an additional basis on which to exercise my discretion to strike the Application Respondents' responses to civil claim and grant judgment to the plaintiffs against them.

[68] The plaintiffs' evidence includes what has been learned through a criminal investigation by Swiss authorities into allegations made by Mr. Harder and at least seven others before him against Mr. Molyviatis and Ms. Bennett. The Swiss investigation has disclosed that immediately upon receipt of the plaintiffs' \$3.5 million investment in InCor Holdings that was supposed to be used to increase InCor Holdings' ownership of LeadFX, Ms. Bennett, on behalf of InCor Holdings, caused \$3.2 million of that investment to be converted to other currencies and used to repay various loans and other debts unrelated to LeadFX. Since the \$3.2 million was diverted to other purposes immediately upon receipt from the plaintiffs, there is a clear inference that when Ms. Bennett represented to Mr. Harder that the money would be used to increase ownership in LeadFX, she knew that representation was false.

[69] Mr. Harder has also learned that Swiss authorities had frozen bank accounts and property of Mr. Molyviatis, InCor Holdings, and InCor Energy Materials. It is not known why the \$3.2 million from the plaintiffs' investment was not captured by these freezing orders. It is possible that the orders were avoided by Ms. Bennett and

Mr. Molyviatis incorporating InCor Services shortly after the freezing order was made in Switzerland. As instructed by Ms. Bennett, Mr. Harder caused the plaintiffs' investment funds to be paid to a Swiss account in the name of InCor Services.

[70] Whatever the reason for the funds not being captured by the Swiss freezing order, the fact that InCor Holdings' accounts were subject to that order suggests Ms. Bennett and Mr. Molyviatis knew at the time of their representations that the plaintiffs' investment funds, which were paid to a Swiss account for the benefit of InCor Holdings, could not lawfully be used to increase that company's investment in LeadFX. That substantiates pleaded misrepresentations. It can hardly be doubted that Mr. Harder would not have loaned his money to or invested in any of the companies associated with Ms. Bennett or Mr. Molyviatis if he knew InCor Holding's Swiss accounts had been frozen due to criminal investigation for fraud and misappropriation.

[71] I need not delve further into the evidence tendered for the summary trial application since this matter can be disposed of summarily under Rule 22-7. As I have said, I raise these examples from the evidence to show there is more to the plaintiffs' claim than bare pleaded facts. That lends further support to exercising my discretion to strike the responses to civil claim of the Application Respondents and grant judgment against them on the claims now pursued under Rule 22-7.

[72] For these reasons, I grant judgment to the plaintiffs as against Ms. Bennett, Mr. Molyviatis, and InCor Services Ltd., jointly and severally, for:

- a) the Cascadero Loan, which liability is also joint and several with InCor Holdings pursuant to my judgment in the Summary Trial Application;
- b) the balance owing on the Pangaea Loan, which liability is also joint and several with InCor Holdings and Pangaea pursuant to my judgment in the Summary Trial Application;
- c) the InCor Holdings Loan;

- d) the InCor Investment;
- e) the Limited Partnership Investments; and
- f) contractual interest and pre- and post-judgment interest under the *Court Order Interest Act* (to the extent the latter does not duplicate contractual interest).

[73] The plaintiffs have leave to appear before me for an assessment of the damages for these claims. They are urged to schedule the matter for an appearance of not more than one hour starting at 9:00 a.m. on a suitable date.

[74] The potential liability of other defendants for these claims remains extant and, for the reasons explained in paras. 20-21 of my reasons for judgment on the Summary Trial Application, the present judgment does not resolve or extinguish those claims. Nor does it resolve or extinguish other claims in the NOCC that were not pursued on this application, including the loans to LeadFX.

V. Other Relief

[75] The plaintiffs seek some additional relief on this application.

[76] First, they seek to be released from the undertaking of confidentiality with respect to the asset list provided by InCor Holdings under Milman J.'s disclosure order ancillary to the *Mareva* injunction. They wish to use that asset list in other proceedings in Switzerland, New Zealand, Australia, and perhaps other jurisdictions where they are attempting to enforce the summary trial judgment and otherwise recover the large sums of money they have advanced to the defendants.

[77] I will release the plaintiffs from the undertaking but their use of the asset list is limited to proceedings that directly concern the subject matter of this proceeding. Counsel should tailor the form of order so that it specifically identifies the active proceedings in which the asset list will be used and clearly defines any contemplated or future proceedings in which the asset list may be used. Contemplated or future proceedings must relate directly to the matters in this proceeding. To be clear,

however, those directly-related proceedings may include proceedings against either Ms. Bennett or Mr. Molyviatis, or Pangaea even if InCor Holdings is not a party to those other proceedings. That is because none of those defendants has provided their asset lists as ordered by Milman J.

[78] Second, the plaintiffs seek relief under Rule 13-1(17) of the *Supreme Court Civil Rules* to correct para. 8 of my December 13, 2024 order following the Summary Trial Application. Pangaea was inadvertently excluded from that paragraph as being required, along with InCor Holdings, to pay post-judgment interest under the *Court Order Interest Act* for the Pangaea Loan. Paragraph 65 of my reasons for judgment are clear that Pangaea should have been included in para. 8 of the order so I will grant that relief.

[79] Third, the plaintiffs seek an order allowing them to further particularize their claims since this application does not resolve all the matters in the NOCC and they wish to incorporate additional material facts from what they have learned through their ongoing efforts in other jurisdictions to pursue this matter.

[80] The reason the plaintiffs seek this relief is understandable but I do not think it is something the court can order at this time. It seems to me that if a party wishes to provide unsolicited particulars of pleaded claims, they are free to do so as long as the particulars do not amount to an amendment to the NOCC. If the plaintiffs are contemplating a further amendment to the NOCC, they must follow the process under Rule 6-1.

[81] I therefore decline make this specific order respecting pleadings or particulars but if the plaintiffs wish to bring an application to further amend their NOCC, they may submit a request through Supreme Court Scheduling for me to hear that application. Assuming it is uncontested (as I expect it will be since the defendants have ceased participating in this proceeding) I would be content to deal with that application without a hearing or in a short appearance one morning before ordinary court hours, provided the application is properly served.

VI. Costs

[82] The conduct of the Application Respondents as outlined in paras. 31-32 above is clearly “reprehensible” within the meaning of *Garcia v. Crestbrook Forest Industries Ltd.*, 1994 CanLII 2570, 9 B.C.L.R. (3d) 242 at para. 17 (C.A.). I would therefore order that they pay the plaintiffs’ costs for this application assessed as special costs. As this constitutes a final judgment on most of the claims against these defendants, they will also be jointly and severally liable, together with InCor Holdings, for the costs of the overall proceeding up to this point, also to be assessed as special costs.

“Kirchner J.”