COURT OF APPEAL OF YUKON

Citation: *38274 Yukon Inc. v Borealis Fuels & Logistics Ltd.*, 2024 YKCA 17

Date: 20241206
Docket: 24-YU917

Between:

38274 Yukon Inc. dba Super Save Propane (Yukon)

Respondent
(Plaintiff)

And

Borealis Fuels & Logistics Ltd.

Appellant
(Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Mr. Justice Butler
The Honourable Justice MacPherson

On appeal from: An order of the Supreme Court of Yukon, dated March 22, 2024 (*38274 Yukon Inc. v Borealis Fuels*, 2024 YKSC 11, Whitehorse Docket 22-A0138).

Counsel for the Appellant:	M. Burris
Counsel for the Respondent:	M. Hewitt
Place and Date of Hearing:	Whitehorse, Yukon November 20, 2024
Place and Date of Judgment:	Whitehorse, Yukon December 6, 2024

Written Reasons by:
The Honourable Chief Justice Marchand

Concurred in by:
The Honourable Mr. Justice Butler
The Honourable Justice MacPherson

Summary:

The appellant applied to strike the respondent's statement of claim for disclosing no reasonable claim of inducing breach of contract. The chambers judge dismissed the application. On appeal, the appellant submits the judge erred by holding the respondent met the level of particularity required in pleadings alleging the tort of inducing breach of contract. Held: Appeal dismissed. The pleadings are not defective. They detail a straightforward claim of inducing breach of contract. Regardless of the specificity of pleadings the tort requires, the respondent pleaded sufficient facts to meet its burden. The appellant knows the case it has to meet.

Reasons for Judgment of the Honourable Chief Justice Marchand:

Introduction

[1] The appellant, Borealis Fuels & Logistics Ltd. ("Borealis"), and the respondent, 38274 Yukon Inc. dba Super Save Propane (Yukon) ("Super Save"), are competitors. They each supply propane and equipment rental services to customers in the Yukon.

[2] In the underlying action, Super Save claims Borealis induced 18 of its customers to breach their contracts with Super Save and become clients of Borealis by offering reduced rates, free propane and the removal of Super Save's equipment from the customers' properties. Super Save further claims Borealis installed measuring devices on Super Save's customers' propane equipment to identify its best customers. Finally, Super Save alleges it suffered loss as a result of Borealis' actions.

[3] Borealis applied under Rule 20(26)(a) of the Supreme Court of Yukon *Rules of Court* to strike Super Save's statement of claim for disclosing no reasonable claim.

[4] In reasons for judgment indexed as 2024 YKSC 11, the chambers judge dismissed Borealis' application. Subject to one exception, she concluded Super Save had "on the whole, provided sufficient material facts to substantiate its claim of inducing breach of contract." In her view, the claim was deficient "in setting out Borealis' knowledge of the contracts, which, in turn, affect[ed] whether there [were]

sufficient facts to sustain the element of intent." She therefore ordered Super Save to provide particulars to Borealis "stating which terms of Super Save's contracts Borealis had knowledge of": at para. 43.

[5] Borealis appeals the judge's dismissal of its application to strike Super Save's claim. Borealis submits the judge made three errors of law by:

1. holding Super Save pleaded sufficient material facts regarding the actions Borealis took to induce breach;

2. holding Super Save could cure shortcomings in the pleaded material facts regarding Borealis' intent to induce breach by providing particulars; and

3. declining to consider Borealis' submissions based on public policy considerations.

[6] For the reasons that follow, I would dismiss the appeal.

Analysis

[7] There is no question pleadings are important. In *Action4Canada v. British Columbia (Attorney General)*, 2024 BCCA 59, this Court summarized:

> [1] Pleadings play a central role in the conduct of civil litigation and access to justice. Their purpose is to clearly, concisely and precisely define the issues of fact and law to be determined, inform the other side of the case to be met, determine the nature and scope of pre-trial procedures, and guide the trial process: [cites omitted].

[8] Rule 20(1) of the *Rules of Court* provides "[a] pleading shall be as brief as the nature of the case will permit and must contain a statement in summary form of the material facts on which the party relies, but not the evidence by which the facts are to be proved."

[9] Rules 20(12) and 20(25) require "full particulars" to be provided in certain circumstances. Under Rule 20(12), full particulars must be provided "[w]here the party pleading relies on misrepresentation, fraud, breach of trust, wilful default or

undue influence, or where particulars may be necessary". Under Rule 20(25), full particulars must be provided "[w]here malice or fraudulent intent is alleged". No rule specifically requires "full particulars" for pleading the tort of inducing breach of contract but, of course, in some cases such particulars "may be necessary".

[10] Rule 20(26)(a) permits the court to strike a pleading if it discloses no reasonable claim. The question of whether a pleading discloses a reasonable claim is generally considered to be a question of law subject to review on a correctness standard: *FORCOMP Forestry Consulting Ltd. v. British Columbia*, 2021 BCCA 465 at para. 14.

[11] Rule 20(26)(a) plays a valuable housekeeping function by weeding out "hopeless claims" from those that have "some chance of success": *R. v. Imperial Tobacco Canada*, 2011 SCC 42 at paras. 19–20. The approach to determining whether a claim is "hopeless" or has "some chance if success" is well understood. So long as it is not plain and obvious the claim discloses no reasonable cause of action, has no reasonable prospect of success, or is certain to fail, it should not be struck: *Hunt v. Carey Canada Inc.*, 2 S.C.R. 959 at 980, 1990 CanLII 90; *Imperial Tobacco Canada* at paras. 17, 21. The pleaded facts are taken to be true, unless they are "manifestly incapable of being proven": *Imperial Tobacco* at para. 22.

[12] The threshold for striking a claim under Rule 20(26)(a) is therefore high: *FORCOMP* at para. 20. The statement of claim must be read generously: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 143. Reviewing courts should "err on the side of permitting a novel but arguable claim to proceed to trial": *Imperial Tobacco* at para. 21. In determining whether a claim is bound to fail, it "ought to be considered as it might reasonably be amended": *Nevsun* at para. 143.

[13] There is no suggestion the chambers judge misunderstood these basic principles.

[14] There is also no suggestion the judge misunderstood the elements of the tort of inducing breach of contract. Citing *Correia v. Canac Kitchens*, 2008 ONCA 506 at para. 99, she correctly listed them (at para. 9) as follows:

- the plaintiff had a valid contract with the third party;
- the defendant knew of the contract between the plaintiff and the third party;
- the defendant conducted itself with the intention of inducing the third party to breach the contract;
- the defendant's conduct caused the third party to breach the contract; and
- as a result of the breach, the plaintiff suffered damages.

[15] Although Borealis raises three grounds of appeal, through the course of oral submissions it became clear Borealis' grounds of appeal all turn on the same issue, namely the level of particularity required in pleadings alleging the tort of inducing breach of contract. Borealis' submissions focus on an alleged lack of particularity regarding the third element of the tort, namely its intentional misconduct.

[16] Borealis characterizes inducing breach of contract as a "serious" intentional tort. Relying on case law and court rules from other jurisdictions, Borealis maintains the tort, like other intentional torts, requires full particulars to be pleaded in support of each element of the tort.

[17] Borealis claims allegations of inducing breach of contract should be scrutinized strictly to prevent vexatious claims from being advanced every time a business loses a customer. It argues allowing such claims to proceed on "bald assertions based on assumptions and speculation" would have a chilling effect on fair competition. It is concerned not only about the cost of defending what it considers to be a meritless claim but also sharing proprietary information with its competitor through the discovery process.

[18] To determine the adequacy of Super Save's pleading requires a review of Super Save's statement of claim. The key paragraphs are 6, 9–12 and 14.

[19] In para. 6, Super Save identifies the 18 customers (who it defines as the "Customers") it says it lost to Borealis. It also indicates the dates it entered contracts with these customers, the dates of renewals of the contracts, the duration of the contracts and the renewals, and some particulars about the equipment leased to each customer. According to the allegations in para. 6, each of the contracts at issue was current and valid at the material times.

[20] In para. 9, Super Save sets out various terms of its contracts, including price, product requirements, equipment, payment and termination. Amongst the terms, Super Save says its contracts: required the Customers to purchase propane products exclusively from it; provided the equipment installed under the contracts were its sole property; and prohibited the removal of the equipment without its prior written consent.

[21] Against this background, paras. 10–12 provide:

> **Borealis' Inducement of the Customers to Breach the Contracts**
>
> 10. Since about 2021:
>
> (a) Borealis had knowledge of:
>
> (i) the existence of valid Contracts between Super Save and the Customers; and
>
> (ii) the key terms, namely that Super Save was required to deliver propane to the Customers for a fee, during the term of the Contract.
>
> (b) Borealis intended to cause the Customers to breach the Contracts with Super Save.
>
> (c) Borealis acted with the desire to cause a breach of Contracts, or with the substantial certainty that a breach of Contracts would result.
>
> 11. From 2021 to present, Borealis, wrongfully and without the lawful right to do so, caused the Customers to breach the Contracts with Super Save and to refuse to further perform the Contracts and/or wrongfully prevented Super Save from performing their obligations under the Contracts. Particulars of Borealis' wrongful conduct include:
>
> (a) soliciting the customers of Super Save for business;
>
> (b) without the knowledge or consent of Super Save, placing measuring devices on the equipment Super Save supplied to the Customers pursuant to the Contracts to assess usage rates and determine Super Save's best customers;

(c) without the knowledge or consent of Super Save, offering to uninstall the equipment Super Save supplied to the Customers pursuant to the Contracts and return that equipment to Super Save;

(d) making various inducements to the Customers including offering reduced rates to supply propane and equipment;

(e) offering the Customers free supply of propane for a certain period of time; and

(f) such other particulars and inducements which are at present not known to Super Save, but are known too Borealis.

12. As a result of the actions of Borealis, the Customers breached and refused to perform the Contracts with Super Save by:

(a) disconnecting and removing the equipment supplied pursuant to the Contracts, and owned by Super Save, without the knowledge or prior written consent of Super Save;

(b) purchasing propane product from Borealis, and not Super Save;

(c) entering into a propane and equipment contract with Borealis;

(d) refusing to accept propane deliveries pursuant to the Contracts with Super Save;

(e) terminating the Contracts with Super Save without proper notice.

[Emphasis added.]

[22] In para. 14, Super Save alleges it has suffered and continues to suffer specified damages, including "the profit it would otherwise have made pursuant to the Contracts".

[23] Respectfully, these are not defective pleadings. They detail a straightforward claim of inducing breach of contract. Borealis does not agree with the allegations and wants to know how Super Save will prove them, but that is a matter for trial. In the meantime, Borealis certainly knows the case it has to meet. That is because (especially in light of the chambers judge's order for Super Save to provide further particulars as to Borealis' knowledge of the contracts) Super Save's statement of claim alleges each element of the tort in clear and sufficiently particularized terms:

- Super Save had valid and exclusive contracts with the Customers.
- Borealis knew of the contracts and their key terms.

- Despite that knowledge, Borealis took certain specified steps with the intention of inducing the Customers to breach the contracts.
- Borealis' conduct caused the Customers to breach the contracts.
- As a result of the breaches, Super Save suffered damages.

[24] There is no need to consider the many authorities cited by Borealis from other jurisdictions dealing with the required specificity of pleadings of other intentional torts under other Rules of Court. And there is no need to determine whether the tort of inducing breach of contract necessarily requires the pleading of "full particulars". Regardless of the specificity of pleadings the tort requires, Super Save pleaded sufficient facts to meet its burden. If the material facts pleaded by Super Save are true, it will be open to the trial judge to resolve the key issue of Borealis' intention in favour of Super Save based on the combination of Borealis' knowledge of the exclusive nature of valid contracts between Super Save and the Customers, and the specified inducements it offered the Customers.

[25] Borealis' characterization of Super Save's allegations as speculative is similarly misplaced. In *Operation Dismantle v. The Queen*, 1 S.C.R. 441 at 455, 1985 CanLII 74, the Supreme Court stated:

> The rule that the material facts in a statement of claim must be taken as true for the purpose of determining whether it discloses a reasonable cause of action does not require that allegations based on assumptions and speculations be taken as true. The very nature of such an allegation is that it cannot be proven to be true by the adduction of evidence. It would, therefore, be improper to accept that such an allegation is true. No violence is done to the rule where allegations, incapable of proof, are not taken as proven.

[26] "Great caution" must be taken in relying on *Operation Dismantle* as a general authority "that allegations in pleadings should be weighed as to their truth": *Young v. Borzoni*, 2007 BCCA 16 at para. 30. In *Operation Dismantle*, the pleaded fact at issue—allowing the testing of a cruise missile would increase the likelihood of nuclear war—was too uncertain, speculative and hypothetical to sustain a cause of action: *Operation Dismantle* at 447. Elsewhere, courts have relied on *Operation Dismantle* to strike claims where they "can only be viewed as wild speculation" and

where "there is no possibility… of the appellants ever obtaining any evidence in support of such allegations": *Borzoni* at paras. 32, 34 (emphasis added).

[27] That is not the case here. Paragraph 11 of the statement of claim, for example, particularizes Borealis' wrongful conduct in inducing customers away from Super Save. These particulars are not wildly speculative or based on assumptions about future events that are manifestly incapable of being proven. Rather, they are specific factual allegations amenable to being proven or disproven by evidence at trial. For the purposes of an application to strike, the court assumes them to be true.

[28] At this stage of the proceedings, Super Save is prohibited from pleading the evidence it has regarding Borealis' conduct and intention. Each side will have the opportunity to explore those issues through the discovery process. At the end of that process, it may be Super Save will have no direct evidence of Borealis' intention. In that instance, Super Save will presumably simply ask the trial judge to draw a common-sense inference from the circumstances it is able to establish. None of this makes Super Save's statement of claim impermissibly vague or speculative.

Disposition

[29] Borealis' approach to this application calls to mind the following admonition from the Ontario Court of Appeal in *PMC York Properties Inc. v. Siudak*, 2022 ONCA 635:

> [34] … [I]n circumstances where parties are quibbling over whether a known cause of action has been pleaded with sufficient particularity, injudicious use of motions to strike inevitably lead to proceedings becoming mired down, as here, in technical pleadings disagreements that cause unnecessary delay and expense, rather than the adjudication of the dispute on the merits.

[30] The judge was correct to dismiss Borealis' application to strike Super Save's claim. I would dismiss the appeal.

"The Honourable Chief Justice Marchand"

I AGREE:

"The Honourable Mr. Justice Butler"

I AGREE:

"The Honourable Justice MacPherson"