

CANADA / JUDGMENT

WIT Management Corp. v. Aulakh

2025 BCSC 1628

COURT

Supreme Court of British Columbia

DECIDED

5 August 2025

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2025 BCSC 1628 WIT Management Corp. v. Aulakh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

WIT Management Corp. v. Aulakh,

2025 BCSC 1628

Date: 20250805

Docket: S210353

Registry: Vancouver

Between:

WIT Management Corp. and WTC Group Inc.

Plaintiffs

And

Inderjit Aulakh, TrasBC Freight Ltd., and J.J. Cool & Co. Ltd.

Defendants

And

Inderjit Aulakh and TRANS BC Freightways (2007) Ltd.

Counterclaimants

And

Brian Atkins by his litigation guardian Jordan Atkins, WIT Management Corp., and WTC Group Inc.

Defendants by way of Counterclaim

Before: The Honourable Chief Justice Skolrood

Oral Reasons for Judgment

In Chambers

Counsel for the Plaintiffs and Defendants by Counterclaim:

L. Karr

Counsel for the Defendants Aulakh, TrasBC Freight and Counterclaimants:

D. Urquhart

Place and Date of Hearing:

Vancouver, B.C.

July 28, 30, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 5, 2025

- [1] THE COURT: There are a few matters before the Court, all concerned with the state of pleadings in this long-running commercial dispute which is currently set for trial commencing September 15, 2025.
- [2] The underlying dispute largely centres around two family-owned enterprises. The plaintiff companies are owned by Mr. Brian Atkins and his family, and are involved in the transloading industry. They are referred to in the materials as the "Atkins Group."
- [3] The defendant companies are owned by Mr. Inderjit Aulakh and his family, and they are involved in the trucking industry. They are referred to in the materials as the "Aulakh Group."
- [4] Without going into all of the background, in 2011 a number of the relevant entities entered into a shareholder agreement in order to essentially operate a company known as J.J. Cool & Co. Ltd. ("Cool Co."). Since at least 2020, the parties have been in dispute about the management and operation of the affairs of Cool Co. and other related matters.
- [5] The plaintiffs originally commenced this action by way of a notice of civil claim filed on January 12, 2021. The notice of civil claim advanced a number of claims including breach of trust, breach of contract, oppression, trespass, and nuisance.

- [6] The litigation proceeded through various stages through 2021 to 2024. In August 2023, a receiver was appointed for Cool Co. One of the responsibilities of the receiver was to conduct a process to assess and quantify the shareholders' respective contributions to Cool Co. This was referred to as the "Claims Process."
- [7] On November 6, 2024, the plaintiffs filed a notice of application seeking to amend the notice of civil claim to add various claims including what have been referred to as the "IP Claims." The IP Claims allege that, while trespassing on the plaintiffs' property, the defendants accessed and copied the designs for certain proprietary equipment which they then used to manufacture similar equipment for their own use. According to the plaintiffs, their counsel had been of the view that the IP Claims were simply an extension of, or flowed from, the existing claims in trespass.
- [8] The plaintiffs' application to amend was set for hearing on December 20, 2024, but was unable to be heard. It was reset to January 6, 2025. At that time, the parties had a trial date scheduled for January 20, 2025. As it happened, that trial date was lost due to the lack of an available judge.
- [9] The plaintiffs' application came on for hearing before Associate Judge Scarth who dismissed it. With respect to the IP Claims, Associate Judge Scarth held that they amounted to new claims which, if permitted, would likely derail the trial, given that new evidence, including likely expert evidence, would be required. Associate Judge Scarth also noted that the facts underlying the IP Claims were known to the plaintiffs since as early as 2022 and no explanation had been provided for the delay in bringing the amendment application.
- [10] The plaintiffs filed an appeal from Associate Judge Scarth's decision but did not take steps to prosecute that appeal until now. The appeal was set for hearing on July 28, 2025. Late in the day on July 24, 2025, the plaintiffs force filed a new notice of application, again seeking to amend the notice of civil claim to add claims similar to those denied by Associate Judge Scarth, albeit with a more detailed description of the IP Claims and including a claim for breach of confidence.
- [11] In the intervening period, Justice Fitzpatrick, who was seized of the Cool Co. receivership proceeding, granted the parties leave to amend the defendants' counterclaim and the plaintiffs' response to counterclaim to address certain issues not dealt with through the receivership.
- [12] The defendants filed their amended counterclaim on June 20, 2025, and the plaintiffs filed their amended response on June 27, 2025. In their amended response, the plaintiffs incorporated the IP Claims which, again, are the subject of the appeal from Associate Judge Scarth and the newly filed application.
- [13] The defendants seek to strike those aspects of the amended response to counterclaim on the basis that they are not responsive to their amended counterclaim, and as such the plaintiffs required leave to advance new claims, which they did not get.

Appeal from Associate Judge Scarth

- [14] I will deal first with the appeal from Associate Judge Scarth's decision denying the plaintiffs' application to amend. While the application sought to amend the notice of civil claim to add a number of claims, I am advised that the issues on appeal have narrowed to simply the IP Claims. The parties agree that Associate Judge Scarth's decision was interlocutory in nature and, as such, the standard of review on appeal is the "clearly wrong" standard. See *Thomson v. A.R. Thomson Group*, 2018 BCSC 322, para. 39. In my view, the plaintiffs have not satisfied that standard. The decision whether to permit amendments to pleadings is discretionary and entitled to a high degree of deference.
- [15] Associate Judge Scarth's determination that the IP Claims constitute new and different claims, rather than simply flowing from the existing trespass claims, is unassailable. While Associate Judge Scarth's reasons are brief, necessarily so given the timing of the application in proximity to the scheduled trial, it is apparent that she considered the IP Claims, which effectively amount to an allegation of theft of intellectual property, to be qualitatively different than the trespass claim, likely involving very different evidence, including expert evidence. As she noted, introduction of those claims at the eleventh hour would likely derail the trial. The fact that the trial was subsequently adjourned due to judicial resource issues does not undermine Associate Judge Scarth's analysis at the time.
- [16] Further, as Associate Judge Scarth also noted, it is apparent that the plaintiffs were aware of the facts underpinning these claims as early as 2022 and the plaintiffs provided no explanation for the delay. I would add that, similarly, there has been no explanation provided for why the plaintiffs did not proceed in a more timely manner to prosecute this appeal, which was filed in January but not set for hearing until late July.
- [17] I appreciate the line of authorities cited by the plaintiffs that support a generous approach to permitting amendments to pleadings in order to ensure that the real issues between the parties can be properly adjudicated. Nonetheless, in the circumstances of this case, including the clear prejudice to the defendants flowing from the late amendments, I am unable to find that Associate Judge Scarth was clearly wrong in exercising her discretion to refuse the amendments.
- [18] The plaintiffs' appeal is therefore dismissed.

The Application to Amend

- [19] As noted at the outset, on July 24, 2025, the plaintiffs force filed a new notice of application, again seeking to amend the notice of civil claim. "Force filed" refers to the situation where a pleading or other document is accepted at the Registry despite not complying with the Rules. In this case, the notice of application set the application for hearing on July 28, alongside the hearing of the appeal, which did not comply with the time limits established by the Rules. That fact alone would justify dismissing the application.

- [20] It is apparent from the application and supporting materials, that in filing the new application, the plaintiffs were attempting to remedy certain defects identified by Associate Judge Scarth in their previous amendment application. In particular, the plaintiffs have filed evidence purporting to explain the delay in applying to amend.
- [21] That evidence is largely in the form of an affidavit sworn by plaintiffs' counsel, who essentially does a mea culpa by acknowledging that he could have been more diligent in bringing the amendment application. He deposes that the delay was due, in part, to his understanding that the IP Claims simply flowed from the existing trespass claims. The proposed new and additional claims set out in the current proposed edition of the amended notice of civil claim, which includes claims for breach of confidence and injunctive relief which were not part of the proposed amendments before Associate Judge Scarth, stem from the fact that, according to counsel, he had not previously turned his mind to those claims.
- [22] The defendants oppose the application. In doing so, they repeat many of the arguments advanced in response to the appeal from Associate Judge Scarth's decision, including that the plaintiffs are attempting to raise wholly new claims very late in the day that, if permitted, will likely derail the rescheduled trial.
- [23] The defendants also take the position that the amendments should not be permitted as the limitation period for bringing the IP Claims has expired given that, on the plaintiffs' own evidence, they had knowledge of the facts supporting the claims in 2022. The defendants also argue that the plaintiffs' application is an improper collateral attack on Associate Judge Scarth's decision, is an abuse of process, and that the issue of the proposed amendments is res judicata.
- [24] In determining the plaintiffs' application, it is not, in my view, necessary to deal with the limitation issue. While the defendants may well have a strong limitation defence given the evidence indicating knowledge dating back to 2022, it is also arguable that the alleged breach of the plaintiffs' intellectual property rights is ongoing and that the claims, or at least some of them, are not statute-barred. Thus, if the application turned solely on whether the limitation period has expired, I would be inclined to permit the amendments without prejudice to the defendants' ability to raise a limitation defence at trial.
- [25] However, the limitation period is not the only issue. Rather, I think there is considerable force to the defendants' argument that the plaintiffs' new application is an improper collateral attack on Associate Judge Scarth's decision and amounts to an abuse of process.
- [26] While the new proposed pleading is, as noted, slightly different than what was before Associate Judge Scarth in that the breach of confidence claim and the claim for injunctive relief have been added, these claims arise out of the same factual circumstances that form the basis of the proposed amendments before Associate Judge Scarth. As I held in my reasons dismissing the plaintiffs' appeal from Associate Judge Scarth's decision, the IP Claims, which would include these new claims, are new and different claims that do not

simply flow from the existing trespass claim.

- [27] Associate Judge Scarth disallowed those claims and the plaintiffs appealed. That was the proper course of action. What was not proper, with respect, was to, in advance of the appeal being heard, file another notice of application seeking essentially the same relief.
- [28] This problem is compounded by the fact that, as noted, the notice of application was force filed at the eleventh hour in breach of the requirements set out in the Rules.
- [29] Leaving aside these problematic issues, in my view, the plaintiffs' application also does not accord with the principles governing such applications.
- [30] Those principles have been discussed in numerous cases; see, for example, *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311, at para. 116, where the Court held that the decision whether to permit amendments is discretionary, with the exercise of discretion to be informed by a number of factors including: the extent of delay, the reasons for delay, any explanation put forward to account for the delay, the degree of prejudice caused by the delay, the extent of the connection between the existing claims and a proposed new cause of action.
- [31] The over-riding consideration is, of course, what is just and convenient.
- [32] In my view, these factors weigh against granting the application. There has been considerable delay in advancing the IP Claims given that the facts underpinning the claims have been known to the plaintiffs since at least 2022. While counsel for the plaintiffs explains the delay in terms of his misapprehension of the nature of the claim, there is no explanation why this specific application was brought so late in the day. Further, as already discussed, the claims are new and different from the existing claims. And, finally, to permit the late amendments would prejudice the trial and the interests of the defendants in having this matter proceed.
- [33] For all these reasons, I am not prepared to grant the amendment sought, and the plaintiffs' application is dismissed.

Application to Strike Portions of the Amended Response to Counterclaim

- [34] The third matter before me is the defendants' application to strike portions of the plaintiffs' response to amended consolidated counterclaim.
- [35] The defendants' amended counterclaim was further amended in accordance with the consent order issued by Justice Fitzpatrick in the receivership proceeding. The intent of that order was to incorporate certain unresolved issues from the receivership into the trial for determination.

- [36] Justice Fitzpatrick's order authorized the plaintiffs to file a second amended notice of civil claim, which they did. Of note, that amended notice of civil claim did not include the IP Claims. The order also authorized the plaintiffs to file a response to the defendants' amended counterclaim.
- [37] It is that pleading which has prompted this application, specifically the inclusion in that response of the IP Claims in virtually identical terms to the proposed amendment set out in the plaintiffs' late-filed notice of application, which I have dismissed.
- [38] Counsel for the defendants acknowledged that the defendants, in their amended consolidated counterclaim, went somewhat beyond simply setting out the residual issue from the receivership. However, he submits that this was simply for the purpose of clarifying or better particularizing claims that were already present in the counterclaim.
- [39] The plaintiffs argue that the additional pleadings in fact raise new claims that open the door to them responding, as they have done, by also raising new claims which are properly characterized as setoff claims.
- [40] Respectfully, I do not agree. As with the late-filed application seeking to further amend the notice of civil claim, the impugned provisions of the amended response to the amended counterclaim are also an improper collateral attack on A.J. Scarth's order. Further, I agree with the defendants that the amendments in issue are not properly responsive to amendments made to the counterclaim, and as such do not comply with Rule 6-1(5).
- [41] On this point, the plaintiffs argue that the newly amended counterclaim pleads that the plaintiffs were improperly competing with the defendants and that they breached the parties' joint venture agreement.
- [42] The plaintiffs submit that these are new, or at least more clearly particularized, claims that permit them to claim setoff damages for misappropriation of the plaintiffs' intellectual property.
- [43] I do not agree. The material facts underpinning the alleged misuse of the subject property and improper competition were included in the counterclaim before the most recent amendment. While it is true that further particularization is provided in the amended counterclaim, I do not read the counterclaim as setting out new and different claims.
- [44] Rather, in my view, the IP Claims set out in the amended response are yet another attempt by the plaintiffs to advance claims that should properly have been included in their notice of civil claim. As I have noted on the other two matters before me, the plaintiffs attempted to do so by way of the amendments rejected by Associate Judge Scarth. The plaintiffs properly appealed Associate Judge Scarth's order, which appeal has been denied. Respectfully, that does not then permit the plaintiffs to advance the same claims in a different pleading.
- [45] The plaintiffs' application to strike portions of the response to amended consolidated counterclaim is therefore granted.

Conclusion

- [46] In summary, the plaintiffs' appeal from Associate Judge Scarth's order and the application to further amend the notice of civil claim are dismissed. The defendants' application to strike portions of the response to amended consolidated counterclaim is granted. The relief will go in the form set out in paragraph 1 of the notice of application.
- [47] Those are my reasons. Submissions on costs?
- [48] CNSL D. URQUHART: I mean, I think in the circumstances, we'd ask for costs payable forthwith, but I am not sure if that's an order you're willing to grant --
- [49] THE COURT: No.
- [50] CNSL D. URQUHART: -- Chief Justice. But other than that, I think it -- we won all our applications. I think we get our costs in the cause, if you'd be all right with that.
- [51] THE COURT: All right.
- [52] CNSL L. KARR: I would submit that we obviously weren't successful here. I would say costs in the cause is an appropriate remedy.
- [53] THE COURT: All right. I think the proper order is that the defendants are entitled to their costs at Scale B on each of the three matters, payable in any event of the cause.
- [54] I just want to make one additional point before closing. This matter has been ongoing since 2021. One trial date has already been lost, and I think the other one may be in jeopardy due to expanding time estimates. There have been numerous interlocutory matters. It has been to the Court of Appeal once. So four and a half years into the litigation, the parties are back in court fighting about pleadings. I appreciate that cases evolve as they progress, as do the pleadings in many cases, but court time is a finite resource, and at some point, parties need to either come to a resolution or get on with having a determination on the merits. I think this case is at that point.

"Chief Justice Skolrood"

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