

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Flanagan v. VINN Automotive Technologies Limited*,  
2024 BCSC 1612

Date: 20240904  
Docket: S233320  
Registry: Vancouver

Between:

**Chet Kenneth Flanagan**

Plaintiff

And

**VINN Automotive Technologies Limited, Levi Caleb Bernabe, Thomas Glen  
Greggs Avant, Samuel Foster Archibald, iNovia Capital GP-2018 Inc.,  
Karamdeep Nijjar, Hans Knapp, Arik Broadbent and Dentons Canada LLP**

Defendants

Before: The Honourable Justice Tammen

## Reasons for Judgment

Counsel for Plaintiff:

L.A. Buitendyk

Counsel for Defendants: VINN Automotive  
Technologies Limited, Levi Caleb Bernabe,  
Thomas Glen Greggs Avant, Samuel Foster  
Archibald, iNovia Capital GP-2018 Inc.,  
Karamdeep Nijjar, and Hans Knapp:

J.K. Yamashita

Place and Dates of Hearing:

Vancouver, B.C.  
May 2-3, 2024

Place and Date of Judgment:

Vancouver, B.C.  
September 4, 2024

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**Introduction and Overview**

[1] The plaintiff, Chet Kenneth Flanagan, who is the respondent on this application, sues his former employer, the defendant VINN Automotive Technologies Limited (“VINN”), for breach of the employment contract and wrongful dismissal. Mr. Flanagan also sues some of VINN’s directors, and a related company called iNovia Capital GP-2018 Inc (“iNovia”). In addition to the wrongful dismissal claim, Mr. Flanagan advances various tort claims, including civil conspiracy, interference with economic relations, inducing breach of contract, breach of fiduciary duty and negligence against all defendants.

[2] In his original notice of civil claim (“NoCC”), Mr. Flanagan also sued VINN’s corporate solicitors, but I struck the pleadings and dismissed the claims against those defendants after a separate application brought by them, in reasons indexed at 2024 BCSC 1236.

[3] The remaining defendants now apply to strike the pleadings in relation to all claims that do not relate directly to wrongful termination, and to have those claims dismissed. The plaintiff opposes the application, and submits that all his claims should be permitted to proceed to trial.

[4] For the reasons which follow, I am persuaded that the application must be allowed in respect of all claims other than civil conspiracy. The portions of the amended notice of civil claim (“ANoCC”) which allege interference with economic relations, inducing breach of contract, breach of fiduciary duty and negligence should be struck without leave to amend, and those claims dismissed.

**Preliminary Observations**

[5] I begin with a general comment on the plaintiff’s claim. I agree with the submissions of counsel for the defendants that at its core, this is a comparatively straightforward case of wrongful dismissal, a claim which by definition is a breach of contract case.

[6] Mr. Flanagan was one of three individuals, along with the defendants Bernabe and Avant, who in 2018 started VINN, whose business is online automotive sales. All three men were officers and directors of VINN at the outset of the business operations. Mr. Flanagan was the chief operating officer, and Mr. Bernabe was the chief executive officer. Mr. Flanagan pleads that he was also VINN's "original investor", by injecting \$20,000 into the company. Thereafter, Mr. Flanagan solicited significant additional financing from family members and business associates.

[7] In early 2022, VINN reached an agreement with iNovia for a large investment in VINN, initially to be \$10 million. That figure was based on financial information provided to iNovia by representatives of VINN, including Mr. Bernabe, that put VINN's monthly sales at \$290,000. In fact, those sales were approximately \$50,000.

[8] At the time iNovia agreed to its investment, it also sought and obtained agreement from VINN that there would be some changes to VINN's corporate structure. Those changes included the removal of Mr. Flanagan from the board of directors, and his replacement with the defendant Nijjar, a representative of iNovia. Mr. Flanagan remained a shareholder and employee of VINN.

[9] In April, 2022, iNovia learned of VINN's true sales numbers, and as a result, decreased its investment from \$10 million to \$3 million.

[10] What occurred in the approximately six months post-April 2022 will likely be central to Mr. Flanagan's claims at trial. In short, he claims that it was Mr. Bernabe who was responsible for the serious misrepresentations made to iNovia at the time of the iNovia investment, and that he, Flanagan, thereafter lobbied for Bernabe's removal from the board. Mr. Flanagan claims that there was initially support for his proposal, but over time, other board members and VINN employees turned against him, and began "scapegoating" him as the person responsible for the misrepresentations.

[11] On October 17, 2022, Mr. Flanagan claims he was constructively dismissed by Mr. Bernabe, who essentially gave him two options: either accept a significant

demotion and pay cut, or accept termination with a limited severance package. When Mr. Flanagan demurred, he was terminated.

[12] If Mr. Flanagan can prove his claims related to the termination, he appears to have a relatively strong claim against VINN for wrongful dismissal. He has properly pleaded that claim, along with two related claims of breach of employment duties and breach of good faith in contractual dealings. Those claims are not at issue on this application to strike.

[13] Apparently not content to simply pursue the wrongful dismissal claim, Mr. Flanagan makes the aforementioned claims in tort. In so doing, Mr. Flanagan casts the liability net as widely as it could possibly be cast, attempting to capture a panoply of allegedly tortious conduct committed by a broad cast of characters. As noted, the defendants initially included VINN's corporate solicitors. By framing his claim this way, Mr. Flanagan appears to be throwing darts blindfolded, hoping that one will hit the bullseye. Another analogy which seems apt is attempting to fit a host of square pegs into an insufficient number of round holes. That is the overarching sense that emerges from reading the notice of civil claim.

[14] The "Statement of Facts" is helpfully divided with sub-headings. After setting out the background, the financing, and the misrepresentations, the ANoCC has a heading entitled "Improper Conduct." Thereafter, at paras. 35-38, the ANoCC sets out a variety of things said to constitute misconduct by each of: VINN; VINN's directors; iNovia; and, the corporate lawyers.

[15] Many of the things said to be misconduct cannot objectively be viewed as such. An obvious example is that one aspect of VINN's misconduct is said to be "accepting the altered investment" of iNovia. One aspect of iNovia's misconduct is said to be providing the altered investment.

[16] Some of the alleged misconduct, although it may potentially be viewed that way, is wholly unrelated to Mr. Flanagan, and could not conceivably give rise to a cause of action by him, certainly not these causes of action. For example, VINN is

alleged to have failed in some of its corporate reporting and governance responsibilities.

[17] The overarching issue which is created by the structure of the pleadings is this: for most of the discrete torts pleaded, the conduct said to bottom the claim merely circles back to the previously defined “misconduct”. I reproduce here the entire pleading related to the claim of negligence, as an example.

61 Each of the defendants owed a duty of care to Flanagan.

62. Each of the defendants breached their standard of care, particulars of which include but are not limited to:

- a) VINN’s Misconduct;
- b) the Directors’ Misconduct;
- c) iNovia’s Misconduct;
- d) the Lawyers’ Misconduct; and/or
- e) such further particulars as may be advised.

63. Each of the defendants’ breach of standard of care caused or contributed to the Damages.

64. It was reasonably foreseeable that the defendants’ breach of standard of care would cause harm to Flanagan.

[18] The two exceptions to the above-noted are the claims for inducing breach of contract and civil conspiracy, which allege slightly different facts against the defendants. I will return to those pleadings in due course.

**History of Pleadings/Litigation**

[19] The plaintiff filed his notice of civil claim on May 2, 2023.

[20] The lawyer defendants scheduled a motion to strike for June 29, 2023. That application was adjourned generally by consent after the plaintiff filed his amended notice of civil claim on June 27, 2023.

[21] The present application was filed on October 27, 2023, and was scheduled to be heard together with the lawyer defendants’ new motion to strike on December 15, 2023. There was no judge available to hear the matter, and it was adjourned.

[22] On April 29, 2024, I heard the lawyer defendants' application to strike, and granted it in its entirety in oral reasons delivered May 28, 2024.

[23] This application was heard over two days, May 2 and 3, 2024. The applicant completed submissions prior to the lunch break on May 2, 2024. Thereafter, the plaintiff/respondent commenced submissions, which extended into May 3, 2024. Prior to continuing submissions on that day, plaintiff's counsel handed up a proposed further amended notice of civil claim. To date, there has been no formal application seeking leave to file that pleading.

**Legal Framework**

[24] Supreme Court Civil Rule 3-1(2) sets out the requirements for a pleading in a notice of civil claim. The relevant portions for this application are:

- (2) A notice of civil claim must do the following:
  - (a) set out a concise statement of the material facts giving rise to the claim;
  - (b) set out the relief sought by the plaintiff against each named defendant;
  - (c) set out a concise summary of the legal basis for the relief sought;
  - ...

[25] (g) otherwise comply with Rule 3-7. This application is premised on Rule 9-5(1)(a), which reads:

- (1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
  - (a) it discloses no reasonable claim or defence, as the case may be,

[26] Rule 9-5(2) states that no evidence is admissible on an application under subrule (1)(a). Thus, in considering this application, I must accept as true the facts pleaded by the plaintiff, unless they are manifestly incapable of being proven. In considering this subrule and its application, the Supreme Court of Canada observed as follows in *R. v. Imperial Tobacco Canada*, 2011 SCC 42, at para 22:

A motion to strike for failure to disclose a reasonable cause of action proceeds on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Operation Dismantle Inc. v. The Queen*, [1985] 1 S.C.R. 441, at p. 455. No evidence is admissible on such a motion: r. 19(27) of the *Supreme Court Rules* (now r. 9-5(2) of the *Supreme Court Civil Rules*). It is incumbent on the claimant to clearly plead the facts upon which it relies in making its claim. A claimant is not entitled to rely on the possibility that new facts may turn up as the case progresses. The claimant may not be in a position to prove the facts pleaded at the time of the motion. It may only hope to be able to prove them. But plead them it must. The facts pleaded are the firm basis upon which the possibility of success of the claim must be evaluated. If they are not pleaded, the exercise cannot be properly conducted.

[27] A plaintiff must clearly set out material facts in its pleading. Speculation, assumption and bald conclusory assertions are non-compliant with Rule 3-1: *Kindylides v. Does*, 2020 BCCA 330, at paras. 33-35.

[28] The primary basis on which the defendants seek to strike the pleaded causes of action is that there are no facts pleaded, or capable of being pleaded, which support those causes of action.

## **Legal Analysis**

### **Breach of Fiduciary Duty**

[29] Mr. Flanagan alleges breach of fiduciary duty against each of Bernabe, Avant, Archibald, Nijjar and/or other directors of VINN. The ANoCC did not plead any facts capable of supporting the existence of such a duty. The proposed further amended NoCC pleads that the directors had “an independent relationship of trust and confidence with Flanagan” based on Mr. Flanagan’s status as a co-founder and initial investor, his removal from the board following the iNovia investment, and the nature of his ongoing employment duties.

[30] Even with those proposed amendments, the pleading is fatally deficient. There are no material facts pleaded in support of the fiduciary relationship alleged. The law is clear that directors owe a fiduciary duty to the corporation. If the interests of stakeholders differ from those of the corporation, the directors’ duty is to the corporation: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69, para. 37.



[31] If what is alleged is an *ad hoc* fiduciary duty, there must be facts pleaded capable of supporting: (1) an undertaking by the alleged fiduciary to act in the best interests of the beneficiary; (2) a defined person or class of persons vulnerable to a fiduciary's control; and, (3) a legal or substantial practical interest of the beneficiary that stands to be adversely affected by the fiduciary's exercise of discretion or control (*Alberta v. Elder Advocates of Alberta Society*, 2011 SCC 24, para. 36).

[32] The new proposed facts speak to the vulnerability of Mr. Flanagan, but say nothing about any undertaking by the alleged fiduciaries to act in the best interests of Mr. Flanagan. As to the third criteria noted above, there are no facts pleaded which directly address this component. Rather, there is a pleading which amounts to a bare assertion that the named individuals breached their duties by causing or contributing to the previously defined "misconduct", the wrongful termination, and (in the proposed amended NoCC) the conspiracy agreement.

[33] The failure to plead material facts in support of the existence of an *ad hoc* fiduciary duty and breach of same, even in the latest proposed amended NoCC, persuades me that there are no facts capable of being pleaded in that regard. For that reason, I find it is inappropriate to grant leave to amend the pleading. The pleading of breach of fiduciary must be struck without leave to amend, and the claim dismissed.

[34] Finally, in relation to this claim I note that if what is proposed to be proved by Mr. Flanagan is that the named individuals unlawfully conspired with one another to effect his termination from VINN and cause him other harm, all such conduct is captured by the conspiracy pleading, which is not being struck.

### **Negligence**

[35] I have previously set out the entirety of the pleading under this heading contained in the ANoCC. The proposed further amended NoCC contains one addition, in relation to the alleged duty of care owed to Mr. Flanagan. That duty of care is said to arise as a result of Mr. Flanagan's status as a co-founder and initial investor, his removal from the board of directors, and the nature of his continuing

employment duties following his removal from the board. In short, it mirrors the pleading in support of the alleged fiduciary relationship.

[36] As with that pleading, there are no actual facts pleaded which support the existence of a duty of care. Equally, there are no facts pleaded which speak to a breach of the standard of care. The alleged breaches circle back to the earlier defined “misconduct”, and, in the proposed further amendment, the conspiracy agreement.

[37] Again, the failure to plead material facts capable of supporting the elements of this tort even in the proposed further amended NoCC persuades me that there are no facts capable of being pleaded in that regard. This pleading too must be struck in its entirety, without leave to amend, and the claim dismissed.

[38] I also note parenthetically that the addition of the conspiracy to the pleaded breach of the standard of care adds nothing substantive to this claim, and indeed confuses matters. The torts of negligence and unlawful conspiracy do not comfortably co-exist on a single set of facts. It is difficult to envisage circumstances in which defendants could negligently involve themselves in an unlawful conspiracy, which is an intentional tort.

**Intentional Interference with Economic Relations**

[39] At the outset, I note that in respect of this claim and the claim of inducing breach of contract, plaintiff’s counsel conceded mid-hearing they cannot be sustained against VINN. I will thus confine my consideration to the other defendants.

[40] The elements of the tort of intentional interference with economic relations were summarized in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12, at para. 5, and distilled by the Court of Appeal in *Low v. Pfizer*, 2015 BCCA 506, as being:

- a) An unlawful act committed against a third party;
- b) intended to cause economic harm to the plaintiff; and

c) resulting in economic harm to the plaintiff (para. 77).

[41] Here, there is no pleading alleging an unlawful act committed against the third party, VINN. That alone is fatal to this claim.

[42] The proposed further amended NoCC adds two long paragraphs which attempt, wholly unsuccessfully, to salvage this claim. It is alleged that the personal defendants, through their previously defined misconduct and the conspiracy agreement, breached various duties they owed to VINN, and breached an unspecified contract with VINN. Again, there are no facts pleaded in support of these claims, merely bald assertions with baked-in legal conclusions.

[43] With respect to iNovia, it is alleged that, through its previously defined misconduct and the conspiracy agreement, iNovia breached unspecified contract(s) with VINN, and further breached its duty of honesty and fair dealing in contractual relations owed to VINN. There are no facts pleaded in support of any parts of this claim.

[44] The matters I have identified above lead to only one conclusion, namely that the pleading of intentional interference with economic relations is fatally deficient, and incapable of being cured through further amendment. This pleading is struck in its entirety, and the claim dismissed.

### **Inducing Breach of Contract**

[45] This claim relates to an allegation that all defendants other than VINN induced VINN to breach its employment contract with Mr. Flanagan. In the ANoCC, the operative paragraph reads:

Any or all of the defendants intentionally persuaded, induced and/or procured VINN's breach of the Employment Agreement.

[46] The proposed amended NoCC adds to the above quoted sentence: "as a result of the Conspiracy Agreement (as defined below)."

[47] It is thus clear that, apart from the facts alleged to be the conspiracy agreement, there are no facts pleaded in support of the conclusory statement related to inducement of breach of contract.

[48] With respect to the personal defendants, the claim against them could not be sustained, based on what is known as the exception in *Said v. Butt*, [1920] 3 K.B. 497. About that principle, the Court of Appeal said this, in *Hildebrand v. Fox*, 2008 BCCA 434:

The law is relatively clear that, based on *Said v. Butt*, an employee of a company which has breached a contract is not personally liable for the tort of inducing breach of contract or for another claim that is a disguised attempt to make a non-party liable on a contract (para. 70).

[49] With regard to iNovia, it is difficult to envisage what facts could be pleaded, beyond those alleged as part of the conspiracy claim, in support of this claim.

[50] The claim as contained in the ANoCC is fatally deficient, based on a failure to plead material facts. I decline to grant leave to amend. I note, as with the breach of fiduciary duty claim, the gravamen of the wrongful conduct, as reflected in the proposed further amendment, is captured by the allegation of civil conspiracy, which is not being struck.

[51] The pleading of inducing breach of contract is struck without leave to amend, and the claim dismissed.

### **Civil Conspiracy**

[52] In respect of the claim of civil conspiracy, I reach a different conclusion. The facts pleaded in support of this claim are sparse, and lacking in particularity, but not fatally deficient. Paragraph 77 of the proposed further amended NoCC pleads that, between May 30, 2022 and October 17, 2022, the defendants formed an agreement or agreements to:

- a) Remove Flanagan from all his executive and management roles at VINN;
- b) Terminate Flanagan's employment at VINN;

- c) Prevent Flanagan from disclosing the misrepresentations to investors and shareholders;
- d) Prevent Flanagan from holding Bernabe responsible for the misrepresentations;
- e) Prevent Flanagan from disclosing the reasons for iNovia's altered investment to investors and shareholders.

[53] Paragraph 78 pleads in brief compass the object and means of the conspiracy.

[54] There are few, if any, overt acts pleaded, and certainly no specificity as among the various defendants, but that in my view does not lead to a conclusion that the entire pleading must be struck. At this juncture, Mr. Flanagan may not have knowledge of details of the conduct of the various defendants. Ultimately, if Mr. Flanagan cannot put some meat on the bones of the alleged conspiracy, he may be unable to prove his claim at trial. However, I would not at this early stage dismiss that claim for this reason.

[55] It is open to the defendants to apply for further particulars of the conspiracy, or to bring whatever other applications the *Rules* permit once pleadings have closed and there has been some discovery.

### **Conclusion**

[56] In summary, the following portions of the amended notice of civil claim, filed June 27, 2023, are struck without leave to amend:

- 1) The claim of breach of fiduciary duty;
- 2) The claim of negligence;
- 3) The claim of intentional interference with economic relations;
- 4) The claim of inducing breach of contract.

[57] The aforementioned four claims are dismissed.

[58] The plaintiff has leave to file a further amended notice of civil claim, to reflect these Reasons, and must file same no later than 4:00 p.m. October 15, 2024.

[59] The defendants shall file an amended response to civil claim no later than 4:00 p.m. November 22, 2024.

[60] The formal order need not reflect the following directions, but for clarity, I add this: the amended notice of civil claim should contain all changes made to the civil conspiracy claim which were part of the as yet unfiled proposed amended notice of civil claim. In addition, the plaintiff may add any other further facts he chooses with respect to overt acts by any defendants said to be part of the conspiracy.

[61] With respect to costs, the defendants have enjoyed substantial success on this application, and are entitled to their costs in any event of the cause. I am not persuaded that this is a case where special costs are warranted, and costs shall be at Scale B.

“Tammen J.”