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Docket: CI 23-01-39362
(Winnipeg Centre)

Indexed as: Zhang & Associates Chartered Professional Accountants Inc. et al v. Zhang et al
Cited as: 2024 MBKB 164

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

ZHANG & ASSOCIATES CHARTERED)	<u>Peter Halamandaris and</u>
PROFESSIONAL ACCOUNTANTS INC.,)	<u>Caitlin Dyck</u>
PRAIRIE POINT CHARTERED PROFESSIONAL)	for the plaintiffs
ACCOUNTANTS INC., CHI ZHANG AND LUIS)	
RUBIN CPA LTD.,)	
)	
)	
)	
plaintiffs,)	
)	
- and -)	
)	
SUJUAN (SU) ZHANG, SUJUAN ZHANG)	<u>E. Beth Eva</u>
CHARTERED PROFESSIONAL ACCOUNTANT)	for the defendants
LTD., QZ BUSINESS SOLUTIONS INC., HUA)	
RUI QIN AND SIHENG ZHAO,)	
)	
)	
defendants.)	
)	
)	Judgment Delivered:
)	November 1, 2024

ASSOCIATE JUDGE GOLDENBERG

INTRODUCTION

[1] The plaintiffs filed a statement of claim (the "Claim") against the defendants, setting out numerous causes of action. The defendants have brought a motion to strike out portions of the Claim, for further and better particulars of the allegations contained in the Claim and for production for inspection of documents referred to in the Claim and

documents in the possession, power and control of the plaintiffs. The defendants also seek an order striking out the Claim or portions thereof should the plaintiffs fail to provide sufficient and proper particulars of the allegations and causes of action in the Claim.

DECISION

[2] For the reasons that follow, I find that certain portions of the Claim ought to be struck for failure to disclose a reasonable cause of action, but with leave to amend some of the struck portions. Further, I find that the plaintiffs must provide further or better particulars regarding some of the allegations in the Claim.

EVIDENCE ON THE MOTION

[3] The defendants rely on the affidavit of Dana Granger, affirmed May 8, 2023. It includes communications between counsel and requests by the defendants for documents to plead to the allegations in the Claim. It also includes the defendants' requests for particulars and to inspect documents and the plaintiffs' responses to those requests.

[4] The plaintiffs rely on the affidavit of Nicole Leno-Slack affirmed May 26, 2023, which sets out correspondence dated March 3, 2023, from the Manitoba Human Rights Commission, serving the plaintiff Zhang & Associates Chartered Professional Accountants Inc. with a Complaint of Discrimination under the Human Rights Code (Manitoba) made by the defendant Sujuan Zhang against that plaintiff.

FACTUAL BACKGROUND

[5] The following factual background is from the Claim. For this motion, I am to presume the allegations of fact set out in the Claim are true unless they are patently ridiculous or incapable of truth.

[6] The relationships between certain plaintiffs on the one hand and certain defendants on the other are alleged to be based on employment and certain share arrangements.

[7] The plaintiff Zhang & Associates Chartered Professional Accountants Inc. (the "Firm") is a Manitoba corporation that carries on business as a firm of professional accountants. The plaintiff Chi Zhang ("Zhang") is a professional accountant who owns shares of the Firm. The plaintiff Luis Rubin CPA Ltd. is a Manitoba corporation that owns shares of the Firm. The plaintiff Prairie Point Chartered Professional Accountants Ltd. ("Prairie") is a Manitoba corporation.

[8] The defendant Sujuan (Su) Zhang ("Su") is a professional accountant and is the principal of the defendant Sujuan Chartered Professional Accountant Ltd. ("Su Corp"). Su Corp is a Manitoba corporation. The defendant QZ Business Solutions Inc. ("QZ") is a Manitoba corporation. The defendant Hua Rui Qin ("Qin") is an accountant and is Su's daughter. The defendant Siheng Zhao ("Zhao") is a professional accountant and is the son-in-law of Su and the husband of Qin.

[9] In June 2016, Su was hired by the Firm as an employee to work as an accountant.

[10] In May 2019, Zhao became employed by the Firm as a student enrolled in the chartered professional accountants' program.

[11] On November 1, 2020, the Firm underwent a reorganization in which Su Corp was issued voting shares in the Firm. The plaintiffs say half of those shares were given to Su to hold on trust for Zhang (the “Zhang Trust Shares”). Prairie also transferred shares to Su Corp. The plaintiffs say that Su Corp held half of those in trust for Prairie (the “Prairie Trust Shares”). (The Zhang Trust Shares and Prairie Trust Shares are collectively called the “Trust Shares”).

[12] Zhao resigned his employment with the Firm on August 31, 2021.

[13] QZ was incorporated on December 14, 2022; Qin and Zhao were QZ’s directors and shareholders.

[14] Su’s employment with the Firm was terminated on December 22, 2022.

[15] The plaintiffs allege that Su intended to leave her employment with the Firm and solicit the Firm’s clients to transfer to QZ. They also allege that Su, Qin and Zhao conspired with each other to cause harm to the Firm by incorporating QZ and to solicit the clients of the Firm in breach of Su’s duty of loyalty, fiduciary duty and the terms of her employment agreement with the Firm.

THE GROUNDS FOR THE MOTION

[16] The defendants rely on the Court of King’s Bench Rules, Man Reg 553/88 (“KBR”) 25.06, 25.10, 25.11(1), and 30.04.

[17] Pursuant to KBR 25.11(1), the defendants say that portions of the Claim should be struck out on the basis that they fail to disclose a reasonable cause of action and contain allegations that constitute argument, conclusions of law and are otherwise

scandalous, frivolous or vexatious, or are an abuse of the process of the court and/or may prejudice or delay the fair trial of the action.

[18] Pursuant to KBR 25.10, the defendants served the plaintiffs with a request for particulars of specific allegations contained in the Claim. The defendants say that the plaintiffs failed to provide proper particulars and, in some cases, have refused to give any particulars.

[19] Pursuant to KBR 30.04(3), the court may order production for inspection of relevant documents, including documents referred to in the pleadings. The defendants served the plaintiffs with a request to inspect documents referenced in the Claim. The defendants say the plaintiffs have refused or failed to produce all requested documents.

LIST OF ISSUES TO BE DETERMINED

[20] The following are the issues to be determined on this motion, corresponding to the causes of action or issues to which they relate. The references to paragraphs are to paragraphs in the Claim which the defendants seek to strike for which they seek further particulars.

(1) **Trust Shares and Breach of Trust:**

(a) Whether the third sentence of paragraph 14, paragraph 15 except for the first sentence, the last sentence of paragraph 16, and the relief sought in paragraph 1(a), relating to the alleged Trust Shares, should be struck for failing to disclose any reasonable cause of action, without leave to amend.

(b) In the alternative, whether further particulars of the allegations in paragraphs 14, 15, 16 and 21 should be provided, as well as production of the agreement alleged in paragraph 21.

(2) **Employment and Termination:**

Whether further particulars of the allegations in paragraphs 20, 21, 22 and 23, relating to Su's employment and the termination thereof should be provided.

(3) **Conspiracy:**

(a) Whether paragraphs 27, 28 and 29, the first bullet points in each of paragraphs 31 and 36, and the relief claimed in paragraph 1(f) should be struck out for failing to disclose any reasonable cause of action for conspiracy of inducing breach of contract, without leave to amend.

(b) In the alternative, whether the last sentence of paragraph 27 and in paragraph 29 the words "Qin and Xhao had no legitimate interest in QZ", should be struck out as being argument.

(c) Further and in the alternative, whether further particulars should be provided with respect to the allegations contained in paragraphs 29 and 31, and the damages sought in paragraph 1(f).

(4) **Inducing Breach of Contract:**

(a) Whether paragraph 30 and the relief claimed in paragraph 1(f) should be struck out for failing to disclose any reasonable cause of action for conspiracy or inducing breach of contract without leave to amend.

(b) In the alternative, whether further particulars should be provided with respect to the allegations contained in paragraph 30 and the damages sought in paragraph 1(f).

(5) **Sale of Shares under s. 207 of *The Corporations Act*:**

(a) Whether paragraph 32 and the relief claimed in paragraph 1(b) should be struck out for failing to disclose any reasonable cause of action or claim pursuant to s. 207 of *The Corporations Act*.

(b) Whether further particulars of the allegations in paragraph 32 should be provided.

(6) **Zhao Repayment of CPA Program Costs:**

(a) Whether the External Learning Approval form referred to in paragraph 33 should be provided.

(b) Whether further particulars of the allegations in paragraphs 34 and 35 should be provided, as well as the production of the payment documents referred to in paragraph

THE LAW GENERALLY

[21] The law relating to striking a pleading for failure to disclose a reasonable cause of action is well settled and is not in dispute between the parties.

[22] In *Winnipeg (City) v. Caspian Projects Inc. et al*, 2020 MBQB 129, this court set out the legal test:

87 The legal test for determining whether a statement of claim should be struck out for not disclosing a reasonable cause of action and the rigours attached to that test have been discussed in a number of Manitoba cases. **It is well-established that a claim will only be struck where it is plain and obvious - assuming**

the facts to be true - that the pleading discloses no reasonable cause of action. Any such determination requires the Court to conclude that the claim has no reasonable prospect of success. Where a reasonable prospect of success does exist, the matter should be allowed to proceed to trial. See *Rebillard*. The remedy of striking out a pleading for disclosing no reasonable cause of action has been identified as a remedy that should be used "sparingly" as it is reserved for only the "clearest of cases", *Grant v. Winnipeg Regional Health Authority et al.*, 2015 MBCA 44 (CanLII) ("*Grant*") at para. 36. It has also been accepted that the claim "should be read generously notwithstanding any imprecision in the language" (at para. 37). Further, factors like the novelty of the claim or the length and complexity of the issues are not reasons to strike out a pleading. See *Grant* at para. 37.

(emphasis added)

[23] Likewise, the parties regarding the general legal principles relating to the provision of particulars.

[24] The Court of Appeal in *Dumont v. Canada (Attorney General)*, [1991] M.J. No. 621, 75 Man.R. (2d) 273, (Man. C.A.) sets out general principals and purposes of particulars, as follows:

29 All counsel agree that the principles to be applied in this case are those found in the decision of the Federal Court of Appeal in *Gulf Canada Limited v. The "Mary Mackin"*, [1984] 1 F.C. 884 at 889 to the effect that the plaintiffs are obliged to provide particulars where same are necessary

(a) to inform the Defendants of the nature of the case they have to meet as distinguished from the mode in which it is to be provided;

(b) to prevent the Defendants from being taken by surprise;

(c) to enable the Defendants to know what evidence they ought to be prepared with and to prepare for trial;

(d) to limit the generality of the Plaintiffs' claim;

(e) to limit and decide the issues to be tried, and as to which discovery is required; and

(f) to tie the hands of the Plaintiffs so that they cannot, without leave, go into any matters not included in their claim.

Paragraph (f) is particularly pertinent here.

[25] In *Manitoba v. Rothmans*, 2014 MBQB 160, the court considered when and in what circumstances a plaintiff should be ordered to provide further and better particulars:

45 In assessing the adequacy of a pleading or the particulars provided to supplement it, the paragraphs in question should not be considered in isolation, as

was noted in *R.I.S. Equities Inc. v. Spivak* (1991), 77 Man.R. (2d) 81 (Q.B.) at para. 7:

Particulars are ordered whenever pleadings omit to specify requisite information in law or by the rules of pleading. See *Calpern v. Shore, supra*. As each request for particulars is considered, I am mindful that impugned paragraphs of the statement of claim should neither be considered in isolation to other paragraphs nor without regard to particulars furnished by the plaintiffs that have been acknowledged to be satisfactory.

46 When a court is being asked to order further and more complete particulars, the case by necessity will be determined on its own facts. See *Stelter v. TD Canada Trust, supra*, at para. 9.

ISSUE#1: TRUST SHARES AND BREACH OF TRUST

[26] The Claim alleges that certain shares in the Firm that were issued to Su Corp were to be held in trust for each of Zhang and Prairie. The plaintiffs seek an order that these shares be tendered to the Firm for cancellation.

[27] The defendants say that the allegations relating to the alleged trusts and the relief sought should be struck out on the basis that they disclose no reasonable cause of action without leave to amend. They say that it is clear from the allegations in the Claim and particulars provided that no trust was ever created or could exist, as alleged or at all.

[28] The plaintiffs say they have pled and provided through particulars and documents the necessary elements to support the trust claims. The plaintiffs say it is, therefore, not plain and obvious that the Claim would fail, and these paragraphs should not be struck.

[29] The plaintiffs have pled the following regarding the alleged trusts (with the portions sought to be struck set out in bold):

1. a) **an order that the Zhang Trust Shares and Prairie Trust Shares, as defined herein, held in the name Sujuan Zhang Chartered Professional Accountant Ltd. ("Su Corp") are tendered to the plaintiff Zhang & Associates Chartered Professional Accountants Inc. (the "Firm") for cancellation for the sum of \$1;**

14. Effective November 1, 2020, the Firm underwent a corporate reorganization. As part of the reorganization Su Corp was issued 20 Class A common voting shares. **10 of the Class A common voting shares were given to Su as a result of her past contribution and loyalty to the Firm and the other 10 Class A common voting shares were given to her to hold in trust for Zhang (the "Zhang Trust Shares").**

15. In addition, Prairie transferred 20 Class A common voting shares to Su Corp. **Notwithstanding that the transaction was described as a sale, all parties understood that Su Corp. held 10 of those shares in trust for Prairie (the "Prairie Trust Shares"). Su paid the sum of \$12,500 for 10 Class 'A' voting shares, but paid no consideration for the Prairie Trust Shares. (The Zhang Trust Shares and Prairie Trust shares are collectively referred to as the "Trust Shares").**

16. On or about August 1, 2021, a further reorganization of the Firm took place. As a result of the reorganization, Su Corp exchanged the shares that it owned for 30 Class B common shares and 10 Class C common shares. **The Zhang Trust Shares were converted from Class A common shares to Class B common shares and the Prairie Trust Shares were converted from Class A common shares to Class C common shares.**

21. On or about December 20, 2022, the Firm hired an accountant. The Trust Shares were to be transferred to the accountant. Su called a meeting on December 22, 2022. One day prior to meeting, Su deleted client files from the Firm's server. At the meeting Su voiced her displeasure about the salary of the accountant that had been hired and also demanded that only half of the Trust Shares be transferred to the new accountant with the balance remaining with her. At the meeting Su also said that she did not trust, and could never trust, the other two shareholders of the Firm.

[30] The plaintiffs provided further information in their response to the request for particulars, including:

Regarding the Zhang Trust Shares referred to in paragraph 14:

- Information about the consideration paid for the Class A common voting shares issued by the Firm to Su Corp by providing the November 1, 2020, meeting minutes and subscription (response to particular 2(a)).

- The November 1, 2020, minutes indicate that Su Corp was issued 20 Class A common shares for \$0.20, being payment in full of the consideration for the shares.
- That the trust agreement was made between Zhang and Su/Su Corp was an oral agreement and included the term that Su Corp would hold the shares in trust until Zhang designated a person to whom the shares would be transferred (response to particular 2(c)).

Regarding the Prairie Trust Shares referred to in paragraph 15:

- Information about the transfer of the Prairie Trust Shares by providing the share purchase agreement made on November 1, 2020 (response to particular 3(a)).
- The share purchase agreement provides for the sale of 20 Class A shares in the Firm from Prairie to Su Corp for \$25,000.
- That Zhang, Luis Rubin, and William Hemenway were the parties who understand that Su Corp held the Prairie Trust Shares in trust for Prairie notwithstanding that the transaction was described as a sale (response to particular 3(b)(i)).
- That the alleged understanding was an oral agreement made in discussions and that there is no specific date that the agreement was made (response to particulars 3(b)(ii)).
- That the trust agreement in relation to the Prairie Trust Shares was made with Prairie and Su Corp, was made orally in the time proceeding the

execution of the share purchase agreement, and that there is no specific date for the agreement (response to particular 3(b)(iii)).

- That the trust agreement provided that Su Corp would hold the Prairie Trust Shares in trust until such time as Prairie designated a person to whom the shares would be transferred (response to particular 3(b)(iii)).

Regarding the conversion of the Zhang and Prairie Trust shares (paragraph 16):

- The minutes of the August 1, 2021, meeting were provided (response to particular 4).
- The minutes indicate that pursuant to Articles of Amendment, the Firm shall issue certificates. That included issuing Zhang 50 Class A common shares and Su Corp 30 Class B common shares and 10 Class C common shares.

[31] In support of their position, the defendants rely on various authorities including Donavan W.M. Waters, Q.C. *Waters' Law of Trusts*, 5th Ed. (2021, on-line: Proview, Thomson Reuters Canada Limited) ("*Waters*"). Their brief sets out considerable detail on what is required to find a trust, including that there must be a settlor, trustee and beneficiary, as well as what is required to satisfy the three certainties of a trust.

[32] In addition to *Waters*, the defendants rely on two Ontario cases in support of their position that there is no reasonable cause of action pled for breach of trust: ***Khavari et al. v. Mizrahi et al***, 2016 ONSC 101, and ***Mitchell v. Lewis***, 2015 ONSC 4614.

[33] In ***Khavari***, the court finds that there was not a trust; rather, a transfer of shares was found to be a contractual agreement. The court found no settlor, no disposition of trust property from a settlor to a trustee, and no express declaration of trust by a trustee.

While the court finds that there was no trust, there is no analysis in the decision about what is required to plead a breach of trust.

[34] In *Mitchell*, the matter before the court was a motion to strike the claim for failure to disclose a reasonable cause of action relating to a number of different causes, including breach of trust. The claim pled a breach of both a written and an oral trust agreement. While the court was not prepared to strike the claim as failing to disclose a reasonable cause of action related to the written trust, it did strike the claim as it related to the alleged breach of an oral trust.

[35] The plaintiffs alleged there was an oral trust agreement to hold monies owing to the plaintiffs in trust and a breach of that trust by improperly diverting money to other defendants. In striking the statement of claim as it relates to the alleged verbal trust, the court found as follows:

22 Absent a written trust agreement, a trust can be created in one of two ways: either from a person's words or acts or by imposition of law. *Waters' Law of Trusts in Canada*, (4th edition, 2012, Carswell, p. 19. As a result, when asserting a claim for breach of trust, particularly an oral trust, it is important to plead the material facts that give rise to the trust as well as the breach. Even on a generous reading, the Claim does not come close to achieving that requirement in respect of the alleged trust in respect of monies owing by GLGI pursuant to the Agreement.

23 As noted, the alleged trust with respect to monies owing to the plaintiffs pursuant to the Agreement is alleged to arise from the Agreement, the Trust Agreement and orally. Apart from a general assertion in paragraph 38, there is no allegation that the Agreement provided the monies due were to be held in trust, notwithstanding that the essential terms of the Agreement are pleaded in some detail in paragraphs 22 and 23. The Agreement itself contains no mention of a trust. Nor is there any mention of monies being held in trust in the Trust Agreement.

24 In respect of the allegations that Robert and Wendy agreed to hold the monies owing under the Agreement in trust, the pleading fails to plead sufficient facts to establish when the trust arose, what its terms were and the basis for Robert and Wendy being personally engaged as opposed to acting on behalf of GLGI. There are no material facts pleaded to support the alleged oral trust. Just bald allegations that GLGI, Robert and Wendy agreed to hold the monies owing in trust. In my view,

given the absence of material facts to establish the existence of a trust, the breach of trust claim relating to monies owing under the Agreement cannot succeed and should be struck.

[36] In support of its position that it has properly pled a cause of action for breach of trust, the plaintiffs rely on ***Fraser v. National Bank Financial Ltd.***, 2014 MBQB 106 in which the court addresses a motion to strike portions of the statement of claim that allege that certain shares were held on trust for the plaintiff.

[37] The plaintiff in ***Fraser*** pled the following, which the court found was sufficient to meet the requirements for pleading the existence of trust:

8 The particular paragraphs in the statement of claim to which the defendant objects are as follows:

1. (b) a declaration that the defendant holds 2,857 common shares of National Bank of Canada in trust for the plaintiff;

5. During the plaintiff's term of employment by Wellington West Capital Inc., the plaintiff purchased shares of Wellington West Holdings Inc., which shares were held in trust by Wellington West Holdings Inc. on behalf of the plaintiff (the "Wellington West Shares").

12. The defendant holds the NBC shares in trust on behalf of the plaintiff.

17. The plaintiff has demanded delivery of the NBC shares held in trust on his behalf by the defendant, but the defendant has refused to deliver the NBC shares to the plaintiff.

[38] The court found as follows:

14 The plaintiff submits that it has pled the necessary constituent elements to support a trust: the plaintiff owned the shares, Wellington West and later National Bank held the shares, Wellington West held and National Bank holds the shares "on behalf" of the plaintiff, and the plaintiff retains his ownership interest in the shares. Accordingly, the essential foundational facts have been pled and it is not plain and obvious, (the test on a motion to strike for no reasonable cause of action) that this claim cannot succeed.

15 I agree with the plaintiff. There is no basis to strike these allegations. The defendant refers to *Waters Law of Trusts in Canada* (2nd ed., Carswell, Toronto, 1984.) The learned author states at page 5:

Among common lawyers the following definition is generally regarded as being one of the best: "All that can be said of a trust, therefore, is that it is the relationship which arises whenever a person called the trustee is compelled in equity to hold property, whether real or personal, and whether by legal or equitable title, for the benefit of some persons (of whom he may be one, and who are termed beneficiaries) or for some object permitted by law, in such a way that the real benefit of the property accrues, not to the trustees, but to the beneficiaries or other objects of the trust. Another familiar definition...is to be found in *Underhill's Law of Trusts and Trustees*:

A trust is an equitable obligation binding a person (who is called the trustee) to deal with property over which he has control (which is called the trust property), for the benefit of persons (who are called the beneficiaries or *cestuis que trust*), of whom he may himself be one, and anyone of whom may enforce the obligation.

16 In my view, the statement of claim as it is provides sufficient material facts supporting the allegation of a trust. I would add that claims of trust in these or similar terms in pleadings are not unusual, but the defendant did not refer me to one case where the court has struck a claim or part of a claim because trust allegations such as these were not more fully elaborated in the pleadings.

[39] When I compare the facts of the present case to those in ***Mitchell*** and ***Fraser***, I find that they compare more closely to ***Mitchell***. In this case and in ***Mitchell***, there are allegations of oral trusts regarding property, which trusts are not referred to in various written documents about the property. In ***Mitchell***, there was an alleged oral trust with respect to monies owed to the plaintiff pursuant to a written contract, in relation to which there was also a written trust agreement. Neither the contract itself nor the written trust agreement mentioned the alleged oral trust.

[40] In the present case, there are alleged oral trusts over the shares, but the trusts are not mentioned in any of the documents provided by the plaintiffs as part of the particulars provided. That includes the minutes of the November 1, 2020, meeting, the November 1, 2020, share purchase agreement, and the minutes of the August 1, 2021, meeting.

[41] In *Fraser*, the plaintiff alleged that he had purchased shares in the defendant corporation, which were held in trust by the corporation on his behalf. The plaintiff said that he demanded delivery of the shares, but the defendant refused to deliver them. The relief sought was a declaration that the defendant holds the shares in trust for the plaintiff.

[42] The defendant in *Fraser* sought and received some particulars but was refused others, including whether the trust agreement was written or oral. In denying the request for further particulars, the court found that the defendant had not met the onus of persuading the court that the particulars were required to prepare a statement of defence. The court found that the defendant could respond productively as to whether or not it holds any shares in trust for the plaintiff.

[43] The plaintiffs say they have pled and/or provided, through particulars and documents, the necessary elements to support a trust: that Zhang and Prairie owned the Zhang and Prairie Trust Shares, that Su Corp held the Zhang and Prairie Trust Shares on behalf of Zhang and Prairie, and Zhang and Prairie retained their ownership of the Zhang and Prairie Trust Shares.

[44] I agree that the plaintiffs have pled that Su Corp holds the Zhang and Prairie Trust Shares in trust on behalf of Zhang and Prairie respectively. As for ownership, I do not agree with the plaintiffs' assertion that they have pled that Zhang owned the shares or that they retained ownership in their respective shares.

[45] With respect to Zhang and the Zhang Trust Shares, there is nothing pled to say that Zhang owned and continues to own the shares. Rather, there is only the bald assertion that the shares were given to Su to hold in trust for Zhang.

[46] As part of the particulars, the plaintiffs provided the November 1, 2020, meeting minutes and subscription. The minutes show that on that day, at **9:00 a.m.**, 100 Class A voting common shares were issued: 50 to Zhang, 30 to Prairie and 20 to Su Corp. They state that Su Corp has paid the consideration for the 20 Class A common shares and that these shares are issued to Su Corp as fully paid. There is no mention in the November 1, 2020, minutes that Su Corp held 10 shares in trust for Zhang.

[47] Paragraph 14 of the Claim says that there was a reorganization of the Firm on November 1, 2020. It does not shed any light on what shares were held by Zhang before that date. For example, it does not say that Zhang previously owned the shares that were issued to Su Corp on November 1, 2020. In short, no material facts pled give rise to the alleged trust regarding the Zhang Trust Shares.

[48] The plaintiffs say that the reasons for the creation of the trusts is evidence, not material fact. Nevertheless, more is needed to properly allege what gave rise to the alleged trust. There are insufficient material facts, including pleading that Zhang was the owner of the trust shares (if that is indeed the case) and the material facts that pled the shares to be held by Su Corp for Zhang despite Su Corp having apparently paid for them in full on November 1, 2020.

[49] With respect to Prairie and the Prairie Trust Shares, there is more pled about these shares than the Zhang Trust Shares. From the November 1, 2020, minutes from 9:00

a.m., it is shown that Prairie owned 30 Class A common shares, having paid for these in full.

[50] Then, a Share Purchase Agreement made at **2:00 p.m.** on November 1, 2020 (the "SPA"), shows an agreement for the sale of 20 Class A common shares from Prairie to Su Corp for \$25,000. There is no mention in the SPA to Su Corp holding 10 of those shares in trust for Prairie. However, in paragraph 15 of the Claim, the plaintiffs allege that notwithstanding that the transaction was described as a sale, all parties understood that Su Corp held 10 of the shares in trust for Prairie. Further, the Claim alleges that Su Corp paid consideration of \$12,500 for 10 of the Class A common shares but paid no consideration for the 10 Prairie Trust Shares.

[51] Therefore, as it relates to the Prairie Trust Shares, some further material facts have been pled that do show that, as of November 1, 2020, Prairie had owned 30 Class A common shares and agreed to sell 20 Class A shares to Su Corp for \$25,000 but received only \$12,500. The particulars provided confirm that there was an oral agreement in the time preceding the execution of the SPA that Su Corp would hold 10 of the shares in trust for Prairie.

[52] However:

- Article 2.1 provides that Su Corp shall purchase the shares from Prairie free and clear of all liens and encumbrances of any kind and nature whatsoever.
- Article 3.2 provides that the purchase price will be paid in full by the issuance of a demand promissory note in favour of Prairie in the principal amount of the purchase price.

- Article 9.6 provides that the SPA constitutes the entire agreement between the parties and supersedes and replaces all prior and contemporaneous representations, warranties, understandings or agreement, written or oral

[53] Accordingly, even though there are more facts pled with respect to the Prairie Trust Shares than the Zhang Trust Shares, I still find that there are insufficient material facts pled to establish the alleged oral trust, particularly given that the oral trust agreement was made before the execution of the SPA.

[54] The next insufficiency I find in the pleadings regarding the alleged trusts is that the Claim alleges that the Trust Shares were converted yet does not plead the material facts that give rise to an apparent variation of the trust agreements.

[55] Paragraph 16 of the Claim alleges that a further reorganization took place on August 1, 2021. It alleges that Su Corp exchanged the shares it owned (presumably 40 Class A common shares) for 30 Class B common shares and 10 Class C common shares. The minutes of the August 1, 2021, meeting do reflect that 30 Class B, and 10 Class C common shares were issued to Su Corp at that time, and the preamble indicates that the directors are required to issue share certificates to the shareholders representing the new share classes to which their shares in the corporation have been converted.

[56] The Claim alleges that the Zhang Trust Shares were converted from Class A common shares to Class B common shares and the Prairie Trust Shares were converted from Class A common shares to Class C common shares. There is no mention in the August 1, 2021 minutes, that the Trust Shares were converted. Nor are there any material facts pled that give rise to the conversion of the Trust Shares and what

presumably is a change to the terms of the original trusts. Nor is there anything pled to show that Zhang or Prairie owned the Class B and C shares, which presumably have become the subjects of the trust agreements. There is a bold assertion that the conversion took place, but nothing more.

[57] In addition to the concerns I have noted about the insufficiency of material facts giving rise to the Trust Shares and variation of the Trust Shares, I also find that there are insufficient material facts pled that give rise to the breach of the trust agreements.

[58] At paragraph 21 of the Claim, the plaintiffs allege that the Trust Shares were to be transferred to an accountant hired by the Firm and that Su demanded that only half of the Trust Shares be transferred to the new accountant. The plaintiffs refused to provide any particulars on the basis that the particulars constitute evidence as opposed to material facts, are not necessary for the defendants to plead and is information within the knowledge of Su.

[59] The plaintiffs have not expressly pled that Su Corp has breached the trusts.

[60] As part of their particulars, the plaintiffs have advised that part of the trust agreements regarding the Trust Shares was that Su Corp would hold them until Zhang and Prairie, respectively, designated a person to whom the shares would be transferred. In paragraph 21, they claim that the Firm hired an accountant on December 20, 2022, and the Trust Shares were to be transferred to the accountant.

[61] The plaintiffs refused to provide particulars, including the date Su was informed that the accountant had been hired and even the name of the accountant. The Claim does not expressly state that Su Corp was told to transfer the Trust Shares (now

presumably 10 Class B and 10 Class C) to the new accountant, let alone told this by Zhang and Prairie. That can perhaps be inferred from later in paragraph 21 where it states that Su demanded that only half of the Trust Shares be transferred to the new accountant. Nevertheless, in my view, there are insufficient material facts pled giving rise to the alleged breaches of trusts.

[62] As noted in *Mitchell*, when asserting a claim for breach of trust, particularly an oral trust, it is important to plead the material facts that give rise to the trust and the breach. I find that the Claim does not adequately set out the material facts that give rise to the trusts, the amendment or conversion of the trusts, and the breaches of trust. Therefore, I find that the paragraphs relating to the trusts and breaches of trust ought to be struck.

[63] Accordingly, I am striking out the third sentence of paragraph 14, paragraph 15 except for the first sentence, the last sentence of paragraph 15, and the relief sought in paragraph 1(a), relating to the alleged Trust Shares.

[64] The defendants say that I should strike without leave to amend because it is plain and obvious not only that no cause of action has been pled but also that no trusts were or could have been created by Zhang in relation to the Class B shares and Prairie in relation to the Class C shares.

[65] I agree with the defendants that based on the Claim and documents and particulars provided to date, that it is not apparent that trusts were or could have been created. Nevertheless, I am not satisfied that this is a case that would warrant not granting leave to amend in case the plaintiffs are able to adequately plead this cause of

action. While the plaintiffs have already been given the opportunity to provide particulars, given the severity of striking for no cause of action, I am prepared to grant them leave to amend. Leave to amend is granted as it relates to the creation and breach of trusts. If the plaintiffs choose to amend, the claim must plead the material facts that give rise to both trusts, any valid variation of those trusts, and the breach of those trusts.

ISSUE #2: EMPLOYMENT AND TERMINATION

[66] In paragraphs 20 to 23 of the Claim, the plaintiffs make allegations that Su engaged in certain conduct during her employment that justified the termination of her employment and/or was in breach of her fiduciary duties. The alleged conduct also leads into and is relied upon for further allegations and alleged causes of action for conspiracy, inducing breach of conduct, and a claim under s. 207 of *The Corporations Act*, C.C.S.M. c. C225. The defendants say that full particulars of these allegations are required but were not included in the Claim, and have also been refused in the plaintiffs' response to particulars.

[67] The plaintiffs say that the particulars requested are within the knowledge of one or more defendants, are not required to respond to the claims and/or constitute evidence, not material facts required for pleadings.

[68] Paragraphs 19 to 23 of the Claim provide as follows:

19. The Firm says that as a result her position as a director and the nature of her employment, Su was a key employee and as such owed the Firm a fiduciary duty not to solicit the Firm's client following the termination of her employment. In addition, Su owed the Firm duties of loyalty and confidentiality.

20. In the early part of 2022, six employees resigned their employment with the Firm due to Su acting in an abrasive, intimidating and confrontational manner. Su was warned, but continued to act in such a manner toward employees.

21. On or about December 20, 2022, the Firm hired an accountant. The Trust Shares were to be transferred to the accountant. Su called a meeting on December 22, 2022. One day prior to meeting, Su deleted client files from the Firm's server. At the meeting Su voiced her displeasure about the salary of the accountant that had been hired and also demanded that only half of the Trust Shares be transferred to the new accountant with the balance remaining with her. At the meeting Su also said that she did not trust, and could never trust, the other two shareholders of the Firm.

22. As a result of Su's past conduct and conduct at the meeting, her employment with the Firm was terminated at the meeting.

23. The same day Su was terminated, she instructed another employee not to attend the Firm's Christmas party and instead that day both of them contacted clients of the Firm with the intention to have those clients transfer their business from the Firm to Su.

[69] In the present case, there is no cause of action relating to the termination of Su's employment with the Firm. Nevertheless, there are allegations related to the breach of Su's employment agreement as well as the breach of her duties of loyalty and confidentiality and her fiduciary duty to the Firm.

[70] The plaintiffs have chosen to plead the reasons why Su's employment was terminated. Having done so, I have considered whether the defendants are entitled to further particulars regarding the allegations. My findings concerning the balance of the particulars sought on this motion regarding the termination of Su's employment are as follows:

Paragraph 20

[71] The particulars requested on this motion are as follows:

6. With respect to allegations in paragraph 20 of the Statement of Claim, full particulars of:
- c) the allegations that Su was warned, including the date Su was allegedly warned, the person who gave the warning, the specific warning that was given, and whether the warning was given orally or in writing;
 - d) the allegations that Su continued to act in such a manner towards employees, including full particulars of the manner in which Su allegedly acted towards employees, the names of the employees, the dates she engaged in such conduct, whether there were any complaints by employees and if so, by whom, when and the specific nature of the complaint, and whether Su was informed of any such conduct or complaints, and if so, by whom, when and how.

[72] The plaintiffs allege that Su had been warned about her behaviour. With the plaintiffs having made that allegation, it was appropriate for the defendants to ask for particulars about the alleged warning. On the other hand, the details requested about the allegations that Su continued to act in this manner are evidence as opposed to material facts and are not necessary for Su to plead to the Claim.

[73] The plaintiffs are directed to answer particular 6(c).

Paragraph 21

[74] The particulars requested on this motion are as follows:

8. With respect to the further allegations in paragraph 21 of the Statement of Claim, particulars specifying:
- a) the names of the clients and details of the specific client files that Su allegedly deleted from the Firm's server on December 21, 2022, and the date the Firm allegedly discovered the deletions;

[75] I agree with the plaintiffs that the particulars requested constitute evidence as opposed to material facts and are not necessary for the defendants to plead to the Claim.

Paragraph 22

[76] The particulars requested on this motion are as follows:

9. With respect to the allegations contained in paragraph 22 of the Statement of Claim, full particulars of the alleged past conduct and conduct at the meeting that resulted in the alleged termination of Su's employment with the Firm, and particulars of the termination, including who made the decision to terminate her employment, when and how it was conveyed to Su, and the terms of her termination, including the effective date and salary and other compensation owing and/or paid or given to her.

[77] The plaintiffs advised in their response to particulars that the past conduct referred to was the conduct already referenced in the Claim. I agree with the plaintiffs that the balance of the information requested is evidence, not material facts, and is not necessary for the defendants to plead to the Claim.

Paragraph 23

[78] The particulars requested on the motion are as follows:

10. With respect to paragraph 23 of the Statement of Claim, full particulars of the allegations contained therein, including:

- a) the name of the employee that Su allegedly instructed not to attend the Firm's Christmas party, and the date of the Firm's Christmas party;
- b) the names of the clients allegedly contacted by each of Su and the other employee, how they were contacted, the date they were allegedly contacted, and details of the nature and content of the contact with the clients by each of Su and the other employee.

[79] I agree with the defendants that they are entitled to know the name of the employee that Su allegedly instructed not to attend the Christmas party and the date they allegedly contacted clients of the Firm with the intention of having them transfer their business from the Firm to Su. The allegation in paragraph 23 that Su, and at her instruction another employee, contacted clients of the Firm, is significant to the claims of breach of employment and breach of Su's duty of loyalty and fiduciary duty. The

defendants are entitled to know the name of the employee and the date of the alleged conduct. I find that information to be material facts, not evidence, and information the defendants are entitled to in order to properly respond to the allegations.

[80] Paragraph 23 indicates that Su instructed the other employee on the same date that her employment was terminated. From the preceding two paragraphs, it is made known that her employment was terminated at a meeting on December 22, 2022. However, it is not clear from paragraph 23 whether the plaintiffs are alleging that the day Su spent contacting clients of the Firm was the day her employment was terminated or the day of the Christmas party. While the date of the Christmas party may not be relevant to the allegations, I find that the date that Su allegedly contacted the clients is a material fact.

[81] Accordingly, I direct the plaintiffs to respond to Particular 10(a) by providing the name of the employee and the date that Su and that employee allegedly contacted clients of the Firm.

[82] On the other hand, I agree with the plaintiffs that the information sought at Particular 10(b) is evidence, not material facts, and is not necessary for the defendants to respond to the Claim.

ISSUE #3: CONSPIRACY

[83] The defendants say that the plaintiffs' claim of conspiracy, as set out in paragraphs 27 to 29 of the Claim, is deficient because it fails to plead material facts in relation to the agreement amongst the defendants to conspire, the precise purpose of the conspiracy, the overt acts of the alleged conspirators, and the resulting injury and damage.

[84] In this case, the plaintiffs have pled as follows, with the portions the defendants seek to strike set out in bold:

9. The defendant Hua Rui Qin ("Qin") is an accountant and resides in Winnipeg, Manitoba. Qin is the daughter of Su.

10. Zhao is a professional accountant and resides in Winnipeg, Manitoba. Zhao is the son-in-law of Su and husband of Qin.

...

27. **Unbeknownst to the Firm, QZ was incorporated on or about December 14, 2022. QZ was incorporated by Qin and Zhao at the direction of Su. Qin and Zhao were the first directors and each owned 50% of the voting shares of QZ. At the time QZ was incorporated, Zhao was and continues to be employed with Grant Thornton as an accountant and Qin was attending medical school. As such, neither of them had a legitimate interest in the business of QZ.**

28. **The Firm says that QZ was incorporated to carry on the business of accounting and tax services and that Su intended to leave her employment with the Firm and solicit the Firm's clients to transfer to QZ.**

29. **The Firm says that Su, Qin and Zhao conspired with each other to cause harm to the Firm by incorporating QZ and to solicit the clients of the Firm in breach of Su's duty of loyalty, fiduciary duty and the terms of the Agreement. The Firm says that Qin and Zhao had no legitimate interest in QZ and the sole reason for their involvement in QZ was to assist Su in breaching the duties she owed to the Firm by soliciting the Firm's clients.**

...

31. As a result of the actions of the defendants outlined herein, the Firm has suffered damages including but not limited to:

- **loss of profit and market share;**

...

36. The plaintiffs say that an award of punitive damages is appropriate given the following conduct:

- **in incorporating QZ in order to solicit the Firm's clients in breach of the Agreement while Su was still a director of the Firm and owed the Firm a fiduciary duty and duty of loyalty;**

...

[85] The defendants sought considerable particulars regarding the allegations in these paragraphs. The plaintiffs refused to provide most of them. The plaintiffs' refusals are largely based on their position that the details of the alleged conspiracy are known only to the defendants at this time.

[86] In ***Ontario Consumers Home Services Inc. v. EnerCare Inc.***, 2014 ONSC

4154 the court sets out the following elements of a conspiracy:

21 To allege unlawful conspiracy material facts must be pleaded in support of the following elements:

- a) The defendants must act in combination, that is, in concert, by agreement or with a common design;
- b) Each defendant's conduct must be unlawful and in furtherance of the conspiracy;
- c) The defendants' acts must be directed towards the plaintiff;
- d) The defendants should have known that in the circumstances injury to the plaintiff would likely result; and
- e) Each defendant's conduct causes injury to the plaintiff.

[87] Numerous courts have accepted that the nature of a conspiracy claim resists detailed particularization. A review of these authorities was undertaken in ***Caspian*** in relation to a motion alleging the plaintiff failed to plead the objects and means of the conspiracy, as well as the overt acts and the injury/damage suffered. The court's review included the following at paragraphs 58 and 64 to 65:

58 In returning to the earlier-mentioned practical reality and challenges that accompany a pleading involving conspiracy, the City is correct to note that in the judgments in ***Dale*** and ***Jevco***, both suggest an appreciation for the unique position in which victims of fraud or conspiracy find themselves. That unique position provides a prism through which a court can consider a motion to strike such as the one brought by the defendants in the present case. That approach was recently confirmed in ***Prokuron Sourcing Solutions Inc. v. Sobeys Inc. and Lexmark Canada Inc.***, 2019 ONSC 7403 (CanLII) ("***Prokuron***"). The Court in ***Prokuron*** determined that the plaintiff's claim in conspiracy did include all material facts needed for the claim to stand and it went on to note "[i]t is unlikely that the victim of alleged conspiracy would ever know at the pleading stage the date on which the conspiracy was formed or the specific terms of conspiracy. These issues are for discovery, not the statement of claim" (at para. 30). A similar point was underscored in ***North York Branson Hospital v. Praxair Canada Inc.***, 1998 CanLII 14799 (ON SC), where the Court stated at para. 22 that "the very nature of the claim of conspiracy is that the tort resists particularisation at early stages." Also noted was that "[p]art of the character of a conspiracy is its secrecy and the withholding of information from alleged victims."

...

64 The defendants had alleged that the conspiracy claim was deficient as the City had failed to allege any special damages in consequence of the conspiracy and further, that the City had failed to particularize those special damages. Again, that argument is not persuasive.

65 When one examines paragraphs 1(b), 77, 116 and 117, it is reasonable to conclude that the City has indeed pled special damages. As it relates to the alleged failure to particularize, the City is well to rely upon the Court's reasoning in *Dale* wherein it is underscored that the tort of conspiracy resists particularization at the early stages of a litigation and that, as a victim of fraud and conspiracy, the City is not unreasonable to suggest that it is not in a position to particularize its special damages beyond what has already been pleaded at this stage. In fact, Rule 25.06(13) contemplates that a plaintiff is only required to plead the amounts and particulars of special damages "to the extent that they are known at the date of the pleading."

[88] In *Dale v. Toronto Real Estate Board*, 2012 ONSC 512 ("*Dale*"), the court rejected the defendants' argument that the plaintiff's claim made vague assertions and bald unsupported legal conclusions against the defendants, was insufficient to support a cause of action in conspiracy, and that insufficient particulars of the alleged conspirators' conduct were pled. The court noted the following at paras 53 and 55:

53 The defendants all contend that insufficient particulars of their conduct have been pleaded by the plaintiffs. I disagree. While the plaintiffs candidly admit a lack of detailed knowledge as to all of the factual nuances of the conspiracy, this is hardly surprising given the nature of the allegation. As Cumming J. aptly stated, when faced with similar circumstances in *North York Branson Hospital v. Praxair Canada Inc.*, [1998] O.J. No. 5993 (S.C.J.), at para. 22:

In truth, the very nature of a claim of conspiracy is that the tort resists detailed particularization at early stages. The relevant evidence will likely be in the hands and minds of the alleged conspirators. Part of the character of a conspiracy is its secrecy and the withholding of information from alleged victims. The existence of an underlying agreement bringing the conspirators together, proof of which is a requirement borne by a plaintiff, often must be proven by indirect or circumstantial evidence. A conspiracy is more likely to be proven by evidence of overt acts and statements by the conspirators from which the prior agreement can be logically inferred. Such details would not usually be available to a plaintiff until discoveries. These considerations and the general theme of *Hunt*, instructing courts not to shy away from difficult litigation, also militate against holding pleadings in civil conspiracy cases to an extraordinary standard.

...
55 In any event, in my view the plaintiffs' pleading adequately outlines the conspiracy alleged against the defendants. The pleading describes the parties and their relationships with each other. The pleading also alleges the unlawful agreement between the parties, outlines the purposes and goals of the conspiracy, and asserts the resulting special damages (ie. substantial economic damages) that were occasioned to the plaintiffs. While the impugned pleading provides few specific details with respect to the overt acts alleged to have been done by the individual defendants in furtherance of the alleged conspiracy, but rather speaks more collectively about their involvement and participation in the conspiracy, the pleading is legally sufficient and permits the defendants to respond to the allegation. See: *Normart Management Ltd. v. Westhill Redevelopment Co.*, at p. 104; *728654 Ontario Inc. (c.o.b. Locomotive Tavern) v. Ontario*, [2005] O.J. No. 4227 (C.A.) at para. 3-5.

[89] Following the analysis in *Caspian* and *Dale*, I am satisfied that details, including the date of the conspiracy formed, as well as the specific terms of the conspiracy, are unlikely to be known by the plaintiffs at this stage and are issues for discovery, not a statement of claim.

[90] I am satisfied that the plaintiffs have provided the material facts within their knowledge and have sufficiently pled the material facts required to plead conspiracy and that the impugned paragraphs ought not to be struck for failure to disclose a reasonable cause of action.

[91] In the alternative, the defendants seek to strike the last sentence of paragraph 27: "As such, neither of them had a legitimate interest in the business of QZ", and in paragraph 29 the words: "Qin and Xhao had no legitimate interest in QZ" as being argument. The defendants say these portions are also vague and unclear.

[92] I agree with the defendants that these portions of paragraphs 27 and 29 are argument and ought to be struck without leave to amend.

[93] Further and in the alternative, the defendants ask that I order further particulars with respect to the allegations contained in paragraphs 29 and 31, and the damages sought in paragraph 1(f).

[94] With respect to the request for particulars 13(a), which requests details regarding the alleged client solicitation, including the names of the solicited clients, I find this to be analogous to the situation discussed in *AON Reed Stenhouse Inc. v. Shaver et al*, 2014 MBQB 107 ("*AON Reed*"). In that case, the defendants sought particulars of the identity of clients and related information, and the claim was in reference to a specific and recent time frame, being a year before and after the termination. On this point, the court found as follows at paras 20, 22 and 23:

20 Surely, the personal defendant will know, or will be in a better position to know, which of the clients he solicited, or with whom he had contact, in the year after his termination were Aon clients with whom he had contact in the last year of his employment with Aon.

...

22 In *Friedman v. SMI Realty Group Inc.*, [1997] M.J. No 213 (QL), Master Sharp declined to order further particulars in a situation apparently somewhat similar to the case at bar. The plaintiff was a real estate agent suing his former employer for monies he claimed were owing to him. The employer counterclaimed alleging the plaintiff breached fiduciary and contractual duties. The employee's motion for particulars sought details of communications between him and third parties related to the alleged breaches. Master Sharp noted, at para 15, that the "plaintiff has not provided any evidence to suggest that much of the information he requests is not within his knowledge (although logically it must be)." She was satisfied that the rest of the information requested was information of an evidentiary nature which ought to be obtained through discovery.

23 The claim is clear in this respect. The defendants know exactly what is being alleged: any one reading the claim will know that the gist of the claim is that the defendants poached the plaintiff's clients or attempted to do so. Essentially, the defendants are seeking through this motion to require the plaintiffs to specifically identify all the clients and business that the plaintiff alleges the defendants tried to appropriate. The plaintiff may well not know the extent of it until discoveries are complete. The plaintiff cannot be expected to identify each and every Aon customer that the defendants canvassed or solicited, successfully or otherwise. In my view it would be unduly restrictive

at this stage to tie the plaintiff to identifying particular clients. I agree with the plaintiff that in essence this motion is an attempt by the defendant to ascertain what evidence the plaintiff has to support its allegations. This is a matter for discovery.

[95] I agree with the court's analysis in *AON Reed* and find that the plaintiffs are not required to provide particulars relating to the identity of the solicited clients.

[96] Therefore, and for the reasons set out earlier, I find that no further particularization of the claim for conspiracy is required at the pleading stage.

ISSUE #4: INDUCING BREACH OF CONTRACT

[97] The plaintiffs allege inducing breach of contract as follows at paragraph 30, which the defendants seek to strike.

30 The Firm says that QZ, Qin and Zhao were aware of the terms of the Agreement and induced and facilitated a breach of the Agreement by Su.

[98] The defendants say that the Claim does not disclose a reasonable cause of action against QZ, Qin and Zhao for inducing breach of contract. As a result, they sought particulars of the allegations. They say the particulars provided do not set out any material facts to support the Claim. Therefore, they ask that paragraph 30 of the Claim, the allegations of damages in paragraphs 31 and 36, and the relief in paragraph 1 f) as it relates to the claim for inducing breach of contract be struck without leave to amend.

[99] The particulars requested and response provided are as follows:

14. With respect to the allegations in paragraph 30 of the Statement of Claim, full particulars specifying:
 - a) how and when each of QZ, Qin and Zhao became aware of the terms of the Agreement;

The Firm is not in possession of this knowledge.

- b) how and when each of QZ, Qin and Zhao induced and facilitated a breach of the Agreement by Su, including details of the overt acts alleged to have been done by each of them and the dates of each overt act.

The overt acts involve the incorporation of QZ and the solicitation of clients of the Firm. The Firm is not aware of specific dates.

- c) the alleged breach of the Agreement by Su, including the terms or terms of the Agreement that were breached, the manner in which the Agreement was breached, and the date of the breach;

The breach of the Agreement was the solicitation of Firm's clients. There is no one date of breach and the plaintiffs are unaware of the dates of all of the breaches.

- d) the loss or damaged caused or sustained by the Firm or any of the other plaintiffs by the alleged conduct of each of QZ, Qin and Zhao.

The loss of clients resulting in loss of profit.

[100] In *Johnson v. BFI Canada Inc.*, 2010 MBCA 101 ("*Johnson*"), the Court of Appeal review the essential elements of the cause of action of inducing breach of contract. It reviewed several authorities that describe the elements in varying terms. The Court of Appeal at paragraph 52 refers to the following list of seven elements often referred to in Manitoba authorities:

- (1) there must have been a valid and subsisting contract between the plaintiff and a third party;
- (2) the third party must have breached its contract with the plaintiff;
- (3) the defendant's acts must have caused that breach;
- (4) the defendant must have been aware of the contract;
- (5) the defendant must have known it was inducing a breach of contract;
- (6) the defendant must have intended to procure a breach of contract in the sense that the breach was a desired end in itself or a means to an end; and
- (7) the plaintiff must establish it suffered damage as a result of the breach.

[101] In this case, in addition to paragraph 30 which the defendants seek to strike, the plaintiffs have pled:

13. On October 18, 2018, in exchange for a salary increase, Su signed an employment agreement ("the Agreement"). It was a term of the Agreement that for a period of two years following her employment, Su was not to, directly or indirectly, solicit any client or customer of the Firm for the purpose of inviting, encouraging or requesting the client to transfer businesses from the Firm to Su, Su's new employer to discontinue its relationship with the Firm.

23. The same day Su was terminated, she instructed another employee not to attend the Firm's Christmas party and instead that day both of them contacted clients of the Firm with the intention to have those clients transfer their business from the Firm to Su.

24. Certain members of the Firm utilized WeChat, which is a Chinese messaging application. The contact information for the Firm's Chinese clients was contained on the application and a group chat had been organized on the application to contact those clients. On or about December 22, 2022, Su terminated access to WeChat for everyone except herself with the intention of contacting the Firm's clients to have those clients transfer their business from the Firm to her.

28. The Firm says that QZ was incorporated to carry on the business of accounting and tax services and that Su intended to leave her employment with the Firm and solicit the Firm's clients to transfer to QZ.

29. The Firm says that Su, Qin and Zhao conspired with each other to cause harm to the Firm by incorporating QZ and to solicit the clients of the Firm in breach of Su's duty of loyalty, fiduciary duty and the terms of the Agreement. The Firm says that Qin and Zhao had no legitimate interest in QZ and the sole reason for their involvement in QZ was to assist Su in breaching the duties she owed to the Firm by soliciting the Firm's (sic) clients.

31. As a result of the actions of the defendants outlined herein, the Firm has suffered damages including but not limited to:

- loss of profit and market share;

...

[102] The defendants express concern that the alleged solicitation of clients was first referred to in the particulars provided. However, I am satisfied from reviewing the Claim that solicitation of clients is alleged in paragraphs 23, 24, 28 and 29 of the Claim.

[103] I find that it is not plain and obvious that the plaintiffs' claim for inducing breach of contract would fail and that they have pled all of the material facts necessary to make out a claim for inducing breach of contract. Therefore I find that these portions of the Claim should not be struck. I also find that the plaintiffs are not required to provide further particulars as requested by the defendants because the plaintiffs have provided the material facts required for the defendants to file a defence.

ISSUE #5: SALE OF SHARES UNDER *THE CORPORATIONS ACT*

[104] At paragraph 32 of the Claim the plaintiffs say that the relationships between Zhang and Rubin on the one hand and Su on the other has irretrievably broken down such that it is just and equitable that Su Corp be ordered to sell its 20 Class B common shares to the Firm for fair market value. They plead and rely on ss. 207 (1)(b)(ii) and 207(2) of *The Corporations Act*, which provide as follows:

Further grounds

207(1) A court may order the liquidation and dissolution of a corporation or any of its affiliated corporations upon the application of a shareholder,

...

(b) if the court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

Alternative order

207(2) Upon an application under this section, a court may make such order under this section or section 234 as it thinks fit.

[105] The defendants submit the plaintiffs have failed to plead the required elements for a claim under s. 207 of *The Corporations Act*.

[106] Paragraph 32 of the Claim provides as follows:

32. Zhang and Ruin say that the relationship between them and Su has irretrievably broke down such that is just and equitable that Su Corp be required to sell its 20 Class B common shares to the Firm for fair market value. Zhang and Rubin plead and rely on sections 207(1)(b)(ii) and 207(2) of *The Corporations Act*, C.C.S.M. c. C225.

[107] The particulars requested regarding that paragraph and the responses provided are as follows:

16. With respect to the allegations in paragraph 32 of the Statement of Claim, full particulars specifying:

a) the conduct alleged to have resulted in the irretrievable breakdown of the relationship between Chi Zhang and Su, and Luis Rubin and Su, including the dates such conduct occurred;

The past conduct that is referred to is the conduct referred to in the statement of claim.

b) the nature of the breakdown in the relationship between Su and each of Chi Zhang and Luis Ruin, and between Su Corp and each of Chi Zhang and Luis Rubin CPA Ltd., as shareholders of the Firm

This constitutes evidence.

c) the specific effect or consequences alleged to have occurred as a result of the breakdown in the relationship between Su, Chi Zhang and Luis Rubin, and between the shareholders of the Firm;

This constitutes evidence.

d) the facts and grounds on which it is alleged to be just and equitable that Su Corp be required to sell its 20 Class B common shares to the Firm for fair market value.

Material facts have been pleaded and are outlined in the statement of claim. Anything beyond what has been outlined constitutes evidence.

[108] The defendants say that paragraphs 32 and 1 b) should be struck as the claim and order sought do not comply with s. 207 of *The Corporations Act* and because they have failed to plead the material facts and legal elements required for such an order.

[109] The court has wide discretion to fashion equitable remedies and it is not plain and obvious to me that the plaintiffs' claim for an order under s. 207 of *The Corporations Act* would fail.

[110] I also find that the plaintiffs should not be required to provide further particulars. I am satisfied that the defendants have sufficient knowledge of the case they have to meet and have the information required to plead a defence.

ISSUE #6: ZHAO REPAYMENT OF CPA PROGRAM COSTS

[111] Paragraphs 33 to 35 of the Claim provide as follows:

33. On or about May 1, 2019, Zhao became employed by the Firm as a student enrolled in the chartered professional accountants' program ("the CPA Program"). In connection with his employment, Zhao was given a copy of the Firm's human resources policy manual ("Policy Manual") and acknowledged receipt of same. The Policy Manual therefore formed part of Zhao's employment agreement with the Firm. The Policy Manual contains the following provision:

As per the External Learning Approval Form, the firm's policy on learning is as follows:

The firm agrees to cover the costs related to the duly approved training course indicated above. In return, employees agree that the total cost of real training and expenses will be amortized on a monthly basis in accordance with our firm External learning and professional development policy, where applicable

- 0 - \$3,500: 12 months
- \$3,501 and up: 36 months

If an employee voluntarily leaves the firm or are terminated for cause before the appropriate time period noted above is completed, the employee will repay the firm the unamortized portion of the training and expenses. The amount will be calculated on a pro rata basis from the last day of the training. This amount must be reimbursed in a single payment made no later than the employee's last day with the firm.

34. During Zhao's employment with the Firm, and his enrollment in the CPA program, it paid the sum of \$9,261.45 in respect of his continued education. Zhao resigned his employment with the Firm on or about August 31, 2021. Pursuant to the Policy Manual and his employment agreement, Zhao was therefore obligated to pay to the firm the sum of \$9,261.45. Following his employment with the Firm, Zhao became employed by Grant Thornton. The Firm says that Grant Thornton has paid the sum of \$9,261.45 to Zhao in order for him to repay the Firm. Despite demand, Zhao has refused to pay the Firm.

35. As a result of Zhao's breach of the employment agreement, The Firm has suffered damages in the amount of \$9,261.45.

[112] The defendants seek particulars and production of the External Learning Approval Form referred to in paragraph 33 of the Claim as well as particulars and documents relating to the amount paid in claims by the Firm for the CPA program costs and the demand for that payment.

[113] In its request for documents, the defendants requested the Policy Manual and the External Learning Approval form, but only the Policy Manual was provided which does not include the External Learning Approval Form. I direct that the External Learning Approval Form be provided to the defendants.

[114] In request for particular 19(d), the defendants requested, "the provisions or terms of Zhao's employment agreement which obligated Zhao to pay the Firm any costs for the CPA program for the alleged sum of \$9,261.45". The response was "contained within the Policy Manual". However, the defendants say that the information is not in the Policy Manual, or not all of it.

[115] The Policy Manual refers to the Firm having the discretion to recover reimbursement. I am not satisfied find that further particulars are required regarding the exercise of such discretion. Rather, that is evidence, not a material fact.

[116] In request for particulars as it relates to the amount paid and claimed by the Firm for the CPA costs and the demand, the request for particulars and responses are as follows:

19. With respect to the allegations in paragraphs 32, 33 and 34 of the Statement of Claim, particulars specifying:

a) the dates during his employment with the Firm that Zhao was enrolled in the Chartered Professional Accountants program (the "CPA Program");

This is evidence as opposed to material facts and within the knowledge of Zhao.

b) details of the sum of \$9,261.45 paid by the Firm in respect of Zhao's enrollment in the CPA Program, including the dates and amounts of each invoice and payment;

This constitutes evidence

c) the amortization period referred to in the Policy Manual for the cost of the CPA Program paid by the Firm, including the commencement and end date;

The Policy Manual has been provided.

...

f) the date on which Grant Thornton allegedly paid the sum of \$9,261.45 to Zhao in order for him to repay the Firm, and how and when the Firm allegedly became aware of the said payment and its purpose;

The date on which Grant Thornton paid the sum is within the knowledge of Zhao and not the plaintiffs.

[117] The plaintiffs say that they have pleaded and/or provided the particulars and documents required for the defendants to draft a defence to the claim, and all other particulars sought are either within the knowledge of Zhao or constitute evidence which is not required at this stage of the proceedings. I agree with the plaintiffs that no further particulars are required.

CONCLUSION

ISSUE #1: TRUST SHARES AND BREACH OF TRUST

[118] The third sentence of paragraph 14, paragraph 15 except for the first sentence, the last sentence of paragraph 16, and the relief sought in paragraph 1(a), relating to the alleged Trust Shares, are struck from the Claim for failure to disclose a reasonable cause of action, with leave to amend.

ISSUE #2: EMPLOYMENT AND TERMINATION

[119] The plaintiffs shall provide the following particulars:

- With respect to paragraph 20 of Claim:

The allegations that Su was warned, including the date Su was allegedly warned, the person who gave the warning, the specific warning that was given, and whether the warning was given orally or in writing (Particular 6(c)).

- With respect paragraph 23 of the Claim:

The name of the employee that Su allegedly instructed not to attend the Firm's Christmas party, and the date that Su and that employee allegedly contacted clients of the Firm (Particular 10(a)).

ISSUE #3: CONSPIRACY

[120] The last sentence of paragraph 27 and the words "Qin and Xhao had no legitimate interest in QZ" are struck from the Claim without leave to amend, except to make any necessary grammatical changes to the sentence in paragraph 29.

[121] No further particulars are ordered.

ISSUE #4: INDUCING BREACH OF CONTRACT

[122] No portions of the Claim for inducing breach of contract are struck and no further particulars are ordered.

ISSUE #5: SALE OF SHARES UNDER *THE CORPORATIONS ACT*

[123] No portions of the Claim relating to the relief under *The Corporations Act* are struck and no further particulars are ordered.

ISSUE #6: ZHAO REPAYMENT OF CPA PROGRAM COSTS

[124] The plaintiffs shall provide a copy of the External Learning Approval Form. No other particulars are ordered.

LEAVE TO AMEND

[125] The plaintiffs are granted 20 days from the date of the within order to file an Amended Statement of Claim.

FURTHER PARTICULARS

[126] The plaintiffs are ordered to provide the further particulars within 20 days of the signing of the within order.

COSTS

[127] Costs may be spoken to if they cannot be agreed upon.

J. L. Goldenberg
Associate Judge