

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Steelhead LNG Limited Partnership v.*
ARC Resources Ltd.,
2026 BCSC 1863

Date: 20261001
Docket: S248932
Registry: Vancouver

Between:

Steelhead LNG Limited Partnership, and Steelhead LNG Corp.
Plaintiffs

And

**ARC Resources Ltd., Pembina Pipeline Corporation, Cedar LNG Partners LP,
Cedar LNG Partners (GP) Ltd., and Marty L. Proctor**
Defendants

Before: Associate Judge Bilawich

Reasons for Judgment

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(by videoconference)

Place and Date of Hearing:

Vancouver, B.C.
July 30, 2026

Place and Date of Judgment:

Vancouver, B.C.
October 1, 2026

Introduction

[1] The defendant Pembina Pipeline Corporation (“Pembina”) applies to strike out the amended notice of civil claim (“Amended NOCC”) as against it, without leave to amend. It argues that the amended pleading fails to disclose a reasonable claim as against it.

[2] In an earlier application in this action, Pembina also applied to strike out the original notice of civil claim (the “NOCC”) as against it, on much the same basis. That application came before me on May 12, 2025. On July 22, 2025, I issued reasons, indexed as *Steelhead LNG Limited Partnership v. ARC Resources Ltd.*, 2025 BCSC 1399 (the “First Reasons”). I made an order striking out the NOCC as against Pembina, but with leave for the plaintiffs (referred to collectively as “Steelhead”) to file an amended pleading which addressed the issues I had identified.

[3] On September 5, 2025, Steelhead filed its Amended NOCC. On December 19, 2025, Pembina filed the current application, seeking to strike it out as well. Pembina says the amendments fail to address the issues identified in the First Reasons and that new matters which have been added also lack merit.

Background

[4] I set out the background to this litigation in the First Reasons, at paras. 3-15. The Amended NOCC is now 49 pages in length. It contains an extensive recitation of facts.

[5] For this application, the parties focused on the following claims as being the ones which Steelhead is currently pursuing against Pembina:

- a) The tort of inducing breach of contract; and
- b) Unjust enrichment.

[6] Steelhead has also plead that Pembina and the Cedar defendants were acting in concert and are jointly liable in respect of the tort of inducing breach of contract.

Applicable Law – Striking Pleadings

[7] Pembina's application is made pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 ("SCCR"):

(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,

...

and the court may pronounce judgment or order the proceeding to be stayed or dismissed and may order the costs of the application to be paid as special costs.

[8] Sub-rule (2) states that no evidence is admissible on an application under sub-rule (1)(a).

[9] The approach taken to applying sub-rule (1)(a) is summarized in *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 [*Nevsun*] at paras. 64 and 66:

[64] A pleading will only be struck for disclosing no reasonable claim under rule 9-5(1)(a) if it is "plain and obvious" that the claim has no reasonable prospect of success (*R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42 (CanLII), [2011] 3 S.C.R. 45, at para. 17; *Odhavji Estate v. Woodhouse*, 2003 SCC 69 (CanLII), [2003] 3 S.C.R. 263, at paras. 14-15). When considering an application to strike under this provision, the facts as pleaded are assumed to be true "unless they are manifestly incapable of being proven" (*Imperial Tobacco*, at para. 22, citing *Operation Dismantle v. The Queen*, 1985 CanLII 74 (SCC), [1985] 1 S.C.R. 441, at p. 455).

...

[66] This Court admonished in *Imperial Tobacco* that the motion to strike is a tool that must be used with care. The law is not static and unchanging. Actions that yesterday were deemed hopeless may tomorrow succeed. ... Therefore, on a motion to strike, it is not determinative that the law has not yet recognized the particular claim. The court must rather ask whether, assuming the facts pleaded are true, there is a reasonable prospect that the claim will succeed. The approach must be generous and err on the side of permitting a novel but arguable claim to proceed to trial. [para. 21]

[10] A claim should not be struck where, if amended, it could disclose a reasonable cause of action: see *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386 at para. 10 and *Carhoun & Sons Enterprises Ltd. v. Canada (Attorney General)*, 2015 BCCA 163 at para. 133.

Inducing Breach of Contract

[11] The parties agree the elements necessary to establish a claim for the tort of inducing breach of contract are summarized in *Super-Save Enterprises Ltd. v. Del's Propane Ltd.*, 2004 BCCA 183 at para. 2:

- (a) the existence of a contract;
- (b) the defendant was or can be assumed to have been aware of the existence of the contract;
- (c) the defendant intended to cause the breach; and
- (d) the defendant caused or induced a breach; and
- (e) the plaintiff suffered damage as a result.

[12] I will now consider whether Steelhead has plead the required elements.

(a) Existence of a contract

[13] The parties appear to agree that Steelhead has identified contracts between it and ARC which are the focus of the inducing breach of contract claims.

[14] Steelhead alleges Pembina induced breach of various contracts it had with the defendant ARC Resources Ltd. ("ARC"), either on its own or in concert with the defendants Cedar LNG Partners LP ("Cedar LP") and Cedar LNG Partners (GP) Ltd. ("Cedar GP"). [I refer to Cedar LP and Cedar GP collectively, "Cedar".] In Part 3: Legal Basis, at para. 136, this is summarized as:

136. Induced breach of contract and/or intentional interference with contractual relations, by Pembina, acting alone or in concert with Cedar, in respect of the contracts referred to in paragraphs 134 or 135.

[15] The relevant contracts are identified in Part 3, paras. 134 and 135 are the agreements referenced in Part 1, paras. 43 and 51. Para. 43 refers to a Mutual Non-

Disclosure Agreement dated April 10, 2014, between Steelhead and Seven Generations Energy Inc. ("7G"), and two written extensions thereof:

43. During the first half of 2014, Steelhead and 7G began discussing a potential business relationship that would enable 7G to gain access to valuable new markets for the natural gas it produced, become a significant investor in Steelhead, and become an important partner in Steelhead's LNG export projects. **On April 10, 2014, Steelhead and 7G executed a Mutual NDA in connection with these discussions (which extended by written agreements effective April 10, 2017 and April 10, 2018).**

[bolding added]

[16] The agreements referenced in para. 51 are:

51. Between early 2016 and August 2016, 7G's LNG Team undertook significant diligence on Steelhead. The parties ultimately entered a series of agreements, including:

- a. the **Amended and Restated Master Investment Agreement dated August 5, 2016;**
- b. the **Second Amended and Restated Limited Partnership Agreement dated August 5, 2016;**
- c. the Amended and Restated Development Agreement made as of August 5, 2016 (as also amended and restated on February 6, 2017); and
- d. the Amended and Restated Option Agreement made as of August 5, 2016 (and as later amended and restated on February 6, 2017).

[bolding added]

[17] Steelhead says on or about April 7, 2021, ARC acquired or merged with 7G, which makes ARC successor to 7G's interest in the foregoing agreements: see Part 1, para. 4.

[18] At para. 52, Steelhead says ARC's obligations under the agreements referred to in paras. 51(a) and (b) remain in effect:

52. The obligations of ARC under the Amended and Restated Master Investment Agreement and the Second Amended and Restated Limited Partnership Agreement, including confidentiality obligations thereunder, remain in effect to this date.

(b) The defendant was, or can be assumed to have been aware of the existence of the contract

[19] Pembina says Steelhead has not alleged that it, separate and apart from Cedar, had knowledge of the relevant contracts. It also notes Steelhead did not amend para. 113 of the original NOCC, which has a blanket allegation which inappropriately lumps Cedar and Pembina together:

113. **Cedar, and by extension, Pembina** and the Haisla Nation, knew or ought to have known that Steelhead and ARC were engaged in the agreements referred to above, and that ARC had possession of, and was using, Steelhead Confidential Information. The fact that ARC was in possession of, and actively using, Steelhead Confidential Information, including in breach of ARC's duties and contractual obligations to Steelhead, was pleaded in a public Notice of Civil Claim (and amendments thereto) filed in BCSC File No. S-197484 (Vancouver) dated July 4, 2019.

[bolding added]

[20] Steelhead argues that para. 113 adequately sets out that Pembina was aware of the relevant contracts between 7G / ARC and Steelhead. Both Cedar and Pembina knew of the referenced prior court action because they were both "entities in the natural gas industry". It says its prior action against ARC was so notorious that all participants in the industry were aware of it.

[21] In the First Reasons at paras. 27-28, I found that Steelhead's use of blanket allegations in the NOCC was problematic:

[27] Pembina complains that Steelhead has made inappropriate use of blanket allegations throughout the NOCC which repeatedly lump Cedar and Pembina together. I agree. Blanket allegations are only appropriate if Cedar and Pembina are in an identical relationship vis-à-vis Steelhead, which is not the case. Cedar is the owner and proponent of the Project. Pembina has several distinct roles and relationships, including as (a) shareholder of Cedar GP and limited partner of Cedar LP, (b) as Operator of the Project and (c) as party to the Pembina LTSA. Pembina wears several distinct legal 'hats', so to speak.

[28] In *Canfor Pulp Limited Partnership v. Siemens Building Technologies Ltd.*, 2016 BCSC 2089 at para. 22, the court sets out why blanket allegations are objectionable:

[22] When several causes of action are being alleged against multiple parties, a statement of claim or third party notice must clearly

identify what facts relate to what cause of action and to which party. It is inappropriate to lump defendants together in a pleading and to make blanket allegations against them, unless those defendants were in an identical relationship with the plaintiff. Such pleadings are necessarily imprecise, are overly general, and make it impossible to discern on what basis each of the defendants could be held liable. Such a pleading may be struck for failing to clearly define the issues of fact and law that are to be determined by the court and/or for being vexatious, prejudicial to a fair trial of the proceeding, and an abuse of process; ...

[22] Steelhead did not amend para. 113 to address the blanket allegation problem. It also appears to rely on its previously pending legal action against ARC as the basis for suggesting “Cedar, and by extension Pembina” knew or ought to have known of the specific allegations raised in the notice of civil claim in filed in that previous action.

[23] I do not agree that the fact that Steelhead's earlier action against ARC was a publicly accessible court record is a sufficient factual basis for asserting Pembina was aware or ought to have been aware of the contents Steelhead's notice of civil claim in that action. I was not directed to any legal authority which supports such a proposition. Steelhead does allege that Pembina was conducting due diligence for Cedar leading up to the formation of the ARC-Cedar Liquefaction Tolling Services Agreement, but there is no allegation that Pembina actually became aware of the relevant agreements between Steelhead and 7G/ARC in the course of so doing.

[24] In my view, Steelhead has not adequately plead a clear factual basis supporting the proposition that Pembina was or can be assumed to have been aware of the existence of the subject contracts.

(c) The defendant intended to cause the breach

[25] Pembina says the requirement that a defendant actually understand it was procuring a breach of a contract is strict. It relies on *Maxam Opportunities Fund Limited Partnership v. 729171 Alberta Inc.*, 2015 BCSC 271 [Maxam] at paras. 175-177:

175 The knowledge element of this tort is strict. In *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at para. 93, Mr. Justice Cromwell stated in relation to the tort of inducing breach of contract that "It is now commonly accepted that...the plaintiff must prove that the defendant actually understood he or she was procuring a breach of contract: see, e.g., *OBG*, at para. 39, *per* Lord Hoffmann" [emphasis added].

176 The referenced paragraph in *OBG* [*OBG Ltd. v. Allan*, [2007] UKHL 21] states:

To be liable for inducing breach of contract, you must know that you are inducing a breach of contract. It is not enough that you know that you are procuring an act which, as a matter of law or construction of the contract, is a breach. You must actually realize that it will have this effect. Nor does it matter that you ought reasonably to have done so.

177 It is "not enough that a breach was merely a foreseeable consequence of the defendant's conduct": *Correia v. Canac Kitchens*, 2008 ONCA 506 at para. 99. If the "breach of contract is neither an end in itself nor a means to an end, but merely "foreseeable consequences", then it is not "intended" as a matter of law": *OBG* at para. 43.

[26] Pembina says Steelhead has not alleged that it, separate and apart from Cedar, had knowledge of the relevant contracts between Steelhead and 7G/ARC. As noted in the previous section, I have concluded that Steelhead has not adequately plead that element of the test.

[27] Pembina also says Steelhead has not alleged that it sought to induce ARC to breach the subject contracts. It highlights para. 114 in the Amended NOCC [Steelhead's amendments are underlined]:

114. Cedar and Pembina's conduct was intentional. Pembina solicited ARC and started negotiations. Cedar chose to engage with ARC, "to focus on one party" and not on any other gas producer in Canada. ...By working together to negotiate, coordinate, and enter into the ARC-Cedar Liquefaction Agreement, ...Cedar and Pembina each intentionally and necessarily interfered with or caused a breach of the contractual relationships between Steelhead and ARC referred to above, and the consequences of their actions, including said interference or breach was known or ought to have been known by Cedar and Pembina.

And para. 131:

131. Steelhead has been harmed by the Defendants' conduct described above. The Defendants have excluded Steelhead from participation in one of a very small number of viable LNG developments in Canada. Steelhead has lost the invaluable and time-limited opportunity to develop an LNG facility

(whether as a partner or other contributor), given the scarcity of suitable sites, partners, and capital. **Steelhead has suffered loss in the form of diminishment of the value of its intellectual property, including over the value of its Confidential Information which has been unlawfully disclosed, misappropriated, and misused, including as induced by Cedar and Pembina.** Further, Steelhead has suffered harm by misuse of its information shared confidentially at the board level and the refusal of the Defendants to compensate Steelhead for the use of that and other Confidential Information or intellectual property, including in the form of a license, royalty, or other payment.

[bolding added]

[28] Pembina notes that Steelhead alleges it, either acting independently or in concert with Cedar, solicited, negotiated with, coordinated due diligence and ultimately secured ARC's participation in the Cedar LNG Project. It alleges Pembina had dealings with ARC, but it does not allege Pembina sought to have ARC breach contractual obligations it owed to Steelhead, either as an end in itself or as a means to an end. It says there is nothing improper about it negotiating with a potential LNG customer, with the goal of securing a Liquefaction Tolling Services Agreement. There is an allegation that ARC's contractual breaches were a foreseeable consequence of Pembina's dealings with ARC, but that is not sufficient to support a claim for inducing breach of contract.

[29] Steelhead argues that where there is actual knowledge that a breach will result, the intent element is satisfied. Breach as an express or malicious goal would also qualify, but this is not necessary. It refers to *OBG v. Allan*, [2007] UKHL 21 at para. 42 [which is cited with approval in *A.I. Enterprises Ltd. v. Bram Enterprises Ltd.*, 2014 SCC 12 at para. 93 and in *Maxam* at paras. 175-177]:

42. The next question is what counts as an intention to procure a breach of contract. It is necessary for this purpose to distinguish between ends, means and consequences. **If someone knowingly causes a breach of contract, it does not normally matter that it is the means by which he intends to achieve some further end or even that he would rather have been able to achieve that end without causing a breach.** Mr Gye would very likely have preferred to be able to obtain Miss Wagner's services without her having to break her contract. But that did not matter. Again, **people seldom knowingly cause loss by unlawful means out of simple disinterested malice. It is usually to achieve the further end of securing an economic advantage to themselves.** As I said earlier, the Dunlop employees who took

off the tyres in *GWK Ltd v Dunlop Rubber Co Ltd* (1926) 42 TLR 376 intended to advance the interests of the Dunlop company.

[Bolding added]

[30] Steelhead says an induced breach is established where the breach is not the end in itself, but merely a means to an end. The fact that a defendant's end was to advance its own economic self-interest does not absolve it of liability if it pursued that end knowing that a breach was the means to achieve it.

[31] Steelhead says it has plead that Pembina knew ARC was using Steelhead's Confidential Information in its dealings with Pembina and that ARC's breaches of the relevant contracts were intentionally caused and a known and necessary consequence of Pembina's conduct, not merely foreseeable. See para. 114 of the Amended NOCC, reproduced above.

[32] In view of my earlier conclusion that Steelhead has not adequately plead a clear factual basis for the proposition that Pembina was or can be assumed to have been aware of the subject contracts, it follows there is no foundation for allegations that Pembina intended to cause or induce them to be breached. Steelhead has not adequately plead a clear factual basis for this element of the test.

(d) The defendant caused or induced a breach

[33] Pembina also says the Amended NOCC fails to plead material facts which allege it in fact caused or induced the alleged breach. To the contrary, Steelhead has plead that ARC made an independent decision to breach contractual obligations owed to Steelhead, for its own purposes. At paras. 23-24:

23. Soon after, 7G merged with ARC, forming Canada's third largest natural gas producer. It first pursued its own projects without Steelhead. Then, when ARC learned about the Cedar LNG Project, with its similarity to the LNG facility concept designed by Steelhead, ARC leapt at the opportunity. Since ARC already knew, based on the considerable of time spent with Steelhead's engineers and executives and the documentation made available to 7G (now ARC) by Steelhead as part of their relationship, that such a concept was technically and economically feasible, ARC was able to make an enormous financial commitment to Cedar accounting for half the capacity of the newly-announced "state-of-the-art" Cedar LNG Project. ARC, working directly with Pembina who led negotiations and due diligence relating to ARC's

commitment, substantially abbreviated any semblance of a normal diligence process by unlawfully leveraging, exploiting and using the knowledge it gained from Steelhead under the guise of a genuine partnership.

24. Cedar, and by extension its owners including Pembina, are now the **beneficiaries of ARC's conduct**. Pembina is also an independent beneficiary. For example, having successfully solicited ARC's participation, Pembina was (a) able to avoid taking on 100% of the financial commitment and supply and offtake risk associated with the Cedar LNG Project's liquefaction capacity and (b) was able to ensure the project reached FID, preserving its commercial interests in supplying and operating it (independent from its rights as a shareholder). The Cedar LNG Project could not have been financed, and therefore could not have been launched, without ARC's participation and significant commitment to backstop half of the project's liquefaction capacity.

[bolding added]

[34] And at para. 108:

108. In conducting due diligence (with Pembina), negotiating (with Cedar and Pembina), and concluding (with Cedar) the ARC-Cedar Liquefaction Agreement, ARC also communicated, leveraged, provided access to Pembina and Cedar, or otherwise leveraged, exploited and used the Steelhead Confidential Information (including that conveyed in circumstances of trust to 7G's executives on Steelhead's board) for ARC's, Cedar's, and Pembina's independent benefit.

[35] See also para. 113, reproduced above.

[36] Steelhead argues that Pembina is failing to read the Amended NOCC as a whole. There are repeated allegations that Pembina solicited ARC's participation in the Cedar Project and started negotiations with ARC to that end. It points to paras. 96 and 97, which say Pembina, in its own capacity, led the due diligence and negotiations with ARC which led to the Cedar-ARC MOU, and later the ARC-Cedar Liquefaction Tolling Services Agreement, including undertaking a wide variety of activities toward those ends, including wearing its "non-shareholder hats":

96. ... Pembina—in its own capacity—led the due diligence process with ARC, and then led negotiations for a Memorandum of Understanding between Cedar ... and ARC to supply and liquefy natural gas using the newly announced Cedar LNG Project. (the "ARC-Cedar MOU"). Among other things, Pembina entered into agreements directly with ARC for that purpose, created and provided ARC with access to documents and/or data rooms,

scheduled and participated in bilateral meetings with ARC (without Cedar present), was the principle point of contact with ARC, and responded to inquiries, questions, and issues raised by ARC all of which was to facilitate the negotiations and due diligence review. On March 14, 2023, ARC publicly announced that it signed the ARC-Cedar MOU.

97. Pembina then led negotiations and due diligence for a binding definitive Liquefaction Tolling Services Agreement between ARC and Cedar (the “ARC-Cedar Liquefaction Agreement”). Among other things, Pembina entered into agreements directly with ARC for that purpose, created and provided ARC with access to documents and/or data rooms, scheduled and participated in bilateral meetings with ARC (without Cedar present), was the principle point of contact with ARC, responded to inquiries, questions, and issues raised by ARC, made introductions for ARC to multiple potential offtakers, and provided ARC with updates regarding key project development timelines, all of which was to facilitate the negotiations and due diligence review. On April 4, 2024, ARC, Pembina, and Cedar jointly announced that they had finalized the terms of the ARC-Cedar MOU and had ... executed the “ARC-Cedar Liquefaction Agreement This agreement is structured in the form of an LNG tolling agreement, described above. In simple terms, ARC is paying Cedar and Pembina a toll for use of the Cedar LNG Facility.

[37] Steelhead also points to paras. 14.1, 14.2, 15, 23-24, 76, 96-97, 110 and 114 of the Amended NOCC.

[38] Steelhead has arguably identified steps Pembina was allegedly involved in which led to ARC and Cedar entering into the ARC-Cedar Liquefaction Tolling Services Agreement. To the extent that ARC is alleged to have breached the subject agreements between Steelhead and 7G/ARC in the course of doing so, there is arguably a connection between Pembina’s steps and the alleged breach. It is not clear in what capacity Pembina was acting when doing so. This element of the test is arguably met, but is less clear than it should be.

(e) The plaintiff suffered damage as a result

[39] Pembina says Steelhead is not seeking damages for inducing breach of contract or intentional interference with contractual relations. In the First Reasons, I noted that Steelhead had advanced a claim for damages for unjust enrichment of “all Defendants”, but the damages claim did not appear to relate to the claims inducing breach of contract. See First Reasons at paras. 21-22:

[21] It is useful to keep in mind the relief that Steelhead is seeking. Part 2 - Relief Sought includes:

- a) Various forms of temporary and permanent injunctive relief as against “the Defendants”;
- b) A claim for damages, special damages and/or an accounting of profits relating to:
 - i. Improper misuse and disclosure by ARC and/or Mr. Proctor of Steelhead’s Confidential Information;
 - ii. ARC’s and/or Mr. Proctor’s breach of their contractual duties;
 - iii. Unjust enrichment of “the Defendants”; and
 - iv. ARC’s knowing receipt of trust property (i.e. the Confidential Information) provided by Steelhead to its board members and board observers (including Mr. Proctor), and the subsequent use of and dealing with that trust property in a manner inconsistent with the trust relationship between Steelhead and its board members and observers;
- c) Punitive damages relating to the Defendants’ high-handed conduct to Steelhead;
- d) Declaratory relief that ARC and Mr. Proctor have breached certain contracts;
- e) A constructive trust over all or part of the capacity now owned or assigned to ARC under the [ARC LTSA] and any LNG sales agreements made by ARC relating to said capacity;
- f) An order that ARC return to Steelhead all documents that include or relate to the Confidential Information, and further and/or in the alternative, an order that ARC destroy all documents that include or reflect Steelhead’s Confidential Information;
- g) Tracing remedies, including to any beneficiaries or assignees;
- h) Interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c 79; and
- i) Costs.

[22] I note that Steelhead does not expressly seek constructive trust relief (similar to e) immediately above) in relation to either of the two agreements to which Pembina is a party – the Pembina LTSA or the Operating and Management Agreement.

[40] See also First Reasons at para. 36:

[36] In Part 2 [Relief Sought] Steelhead also does not seek any declaratory or similar relief asking the Court to make a finding that Cedar and Pembina were acting in concert and jointly liable for a tort. **In Part 3 [Legal Basis] there is a reference to Cedar and Pembina having induced a**

breach of contract and/or intentionally interfered with contractual relations between 7G [later ARC] and Steelhead, in relation to various contracts referred to in paras. 134 or 135 of the NOCC [2014, 2016 and 2017 agreements between 7G and Steelhead]. However, there is no apparent corresponding claim for damages or other relief in Part 2 relating to Cedar or Pembina having induced a breach of contract or interfered with contractual relations. There is a claim for damages for unjust enrichment of “all Defendants”, but that does not appear to relate to the claims of inducing breach of contract or intentional interference.

[bolding added]

[41] Pembina notes that Steelhead did not make any amendments to “Part 2: Relief Sought” to attempt to address that issue.

[42] Steelhead disputes whether a failure to seek damages in connection with an induced breach of contract is determinative of whether it has plead sufficient material facts to support such a claim. It goes on to assert that it has actually done the former, pointing to para. 133(e)(i) and (ii) of the Amended NOCC:

133. Steelhead seeks:

...

e. Damages, special damages, and/or an accounting of profits relating to:

i. the improper misuse and disclosure by ARC and/or Proctor of Steelhead's Confidential Information;

ii. ARC's and/or Proctor's breach of their contractual duties;

...

[43] Steelhead argues the Amended NOCC should be read generously, not narrowly: *Finkel v. Coast Capital Savings Credit Union*, 2017 BCCA 361 at para. 17.

[44] Steelhead has made a general allegation that it has suffered harm as a result of “conduct described above”. See para. 131:

131. Steelhead has been harmed by the Defendants' conduct described above. The Defendants have excluded Steelhead from participation in one of a very small number of viable LNG developments in Canada. Steelhead has lost the invaluable and time-limited opportunity to develop an LNG facility (whether as a partner or other contributor), given the scarcity of suitable sites, partners, and capital. Steelhead has suffered loss in the form of diminishment

of the value of its intellectual property, including over the value of its Confidential Information which has been unlawfully disclosed, misappropriated, and misused, including as induced by Cedar and Pembina. Further, Steelhead has suffered harm by misuse of its information shared confidentially at the board level and the refusal of the Defendants to compensate Steelhead for the use of that and other Confidential Information or intellectual property, including in the form of a license, royalty, or other payment.

[45] I do not agree that that para. 133(e)(i) and (ii) qualify as a clear claim for relief as against Pembina for inducing breach of contract. Pembina is not mentioned in relation to those sub-paragraphs. They both focus on ARC and a second defendant, Mr. Proctor. One might be prepared to forgive that as deficient drafting, but this was specifically flagged as an issue in the First Reasons. Steelhead opted to not make amendments to address it. If damages, declaratory relief or some other form of remedy are **not** being sought against Pembina for having allegedly induced breach of contract, then arguments regarding whether it has plead material facts making out the necessary elements of such a claim are rendered moot.

[46] I conclude that there are facts alleged which support a broad claim that Steelhead has suffered damages generally, however, the link to Pembina is unclear. Steelhead's failure to clearly seek declaratory relief or damages as against Pembina for inducing of breach of contract also continues to be unaddressed in the Amended NOCC, which in my view is fatal until and unless it is resolved through further amendments.

Conclusion – Inducing Breach of Contract

[47] For the reasons indicated, I conclude that Steelhead has not adequately pleaded all of the elements required to make out a claim that Pembina induced a breach of contract.

Unjust Enrichment

[48] The parties agree that the elements required to make out a claim for unjust enrichment are set out in *Kerr v. Baranow*, 2011 SCC 10 [*Kerr*] at para. 32:

a) An enrichment of or benefit to the defendant,

- b) A corresponding deprivation of the plaintiff, and
- c) The absence of a juristic reason for the enrichment.

[49] In the Amended NOCC, Steelhead alleges that Pembina will benefit from the Defendants' alleged wrongful conduct in its capacity as a natural gas producer / supplier and as Operator of the Cedar LNG Project, in addition to its capacity as an owner and limited partner. See paras. 17-18:

17. This claim arises from the Defendants' unlawful exploitation of Steelhead's information and know-how relating to the liquefied natural gas industry and technology, and their subsequent dealings to develop a liquefied natural gas facility in British Columbia culminating with the Cedar LNG Project, all to the unfair and improper exclusion of Steelhead.

18. In the absence of this wrongful conduct:

- a. Cedar (as proponent and ...owner) would not have been able to secure the billions in natural gas supply commitments and financial commitments that enabled ... a positive final investment decision ("**FID**") to proceed with the Cedar LNG Project. ...
- b. Pembina (as natural gas producer and supplier) would have had to shoulder 100% of the investment, supply and offtake risk associated with the liquefaction capacity in the Cedar LNG Project, something Pembina was intent on avoiding. Any supplier would be obliged to pay a tolling fee regardless of whether they supply (supply risk) or secure buyers abroad (offtake risk). This would have also jeopardized a positive FID for the Cedar LNG Project, and therefore Pembina's commercial interests in supplying it.
- c. Without a positive FID, Pembina (as Operator) would not have had a project to operate, and accordingly would forgo all commercial interests associated with doing so.
- d. ARC would not have been able to secure ... half the liquefaction capacity in the Cedar LNG Project, worth billions of dollars on the international market.

[50] Also see para. 24:

24. Cedar, and by extension its owners including Pembina, are now the beneficiaries of ARC's conduct. Pembina is also an independent beneficiary. For example, having successfully solicited ARC's participation, Pembina was (a) able to avoid taking on 100% of the financial commitment and supply and offtake risk associated with the Cedar LNG Project's liquefaction capacity and (b) was able to ensure the project reached FID, preserving its commercial interests in supplying and operating it (independent from its rights as a shareholder). The Cedar LNG Project could not have been financed, and

therefore could not have been launched, without ARC's participation and significant commitment to backstop half of the project's liquefaction capacity.

[51] Pembina argues that the requirement for there to be a "corresponding deprivation" means that Steelhead must not only establish that the Pembina has been enriched, but that the enrichment of the Pembina corresponds to the deprivation that Steelhead has suffered.

[52] Pembina argues that the enrichment which Steelhead alleges it will receive as a supplier and operator of the Cedar LNG Project does not correspond to the deprivation which Steelhead alleges it suffered due to Pembina's conduct. Absent such a connection, there is no reasonable claim against it in unjust enrichment.

[53] Further, Pembina says that the contracts which it entered into with Cedar regarding Pembina's role as supplier and operator of the Cedar LNG Project provide a juristic reason for Pembina's alleged enrichment.

[54] Steelhead argues that Pembina's argument fails to consider its Amended NOCC as a whole. The benefits which Pembina is alleged to have enjoyed are tied directly to its course of conduct to secure ARC's participation in the Cedar LNG Project. Its conduct is alleged to have induced ARC's breach. Pembina is alleged to have known that ARC was unlawfully exploiting Steelhead's Confidential Information in those dealings, and that this abbreviated any semblance of a normal due diligence process.

[55] Steelhead says it has suffered a corresponding harm, including being deprived of the exclusive use of its proprietary information and to have suffered diminishment of the value of its intellectual property, including its Confidential Information, as well as harm through misuse of its information shared confidentially. Steelhead says it was harmed by the same conduct which gave rise to Pembina's benefit.

[56] With regard to Pembina's argument that its contracts with Cedar represent a juristic reason which precludes a claim for unjust enrichment against it, Steelhead

says that *Kerr* refers to contracts or benefits between the relevant parties which might explain the benefit and deprivation which might otherwise form the basis for a claim. The Court looks at whether there is an obligation existing between the relevant parties which would justify the enrichment. Steelhead says Pembina's contracts with Cedar to be the project's operator and a supplier do not preclude it from being unjustly enriched. Pembina may well argue that its contracts constitute another juristic reason to deny recovery, but that is an argument which should be resolved at trial. It says Pembina has not met the "plain and obvious" standard for striking a pleading.

[57] I do not intend to set out a detailed analysis of the two disputed elements here. One of the authorities which was tendered is *Kazemi v. 1004633 B.C. Ltd.*, 2021 BCSC 1638. At para. 64, the Court noted:

[64] ...Although the Subtenant and Mr. Kazemi are not parties to the Lease, **the presence of a juristic reason in connection with an enrichment need not necessarily arise out of the relationship between the party asserting the claim for unjust enrichment and the party enriched. Rather, a contract with a third party may suffice to constitute a juristic reason to deny the relief sought:** *Bank of Montreal v. i Trade Finance Inc.*, 2009 ONCA 615 at paras. 36-39.

[bolding added]

[58] In all the circumstances, I cannot conclude that it is plain and obvious that the Amended NOCC fails to disclose a reasonable claim in unjust enrichment as against Pembina, or that this claim has no reasonable prospect of success. It appears to be arguable and should be determined at trial.

Acting In Concert / Joint Liability

[59] It appears that Steelhead's claim that Pembina and Cedar were acting in concert relates to its inducing breach of contract claim. In Part 3: Legal Basis, the only cause of action which references acting in concert are paras. 135.1 and 136:

135.1 Induced breach of contract and/or intentional interference with contractual relations, by Cedar ... acting alone or in concert with Pembina, in respect of the contracts referred to in paragraphs 134 or 135.

136. Induced breach of contract and/or intentional interference with contractual relations, by Pembina, acting alone or in concert with Cedar, in respect of the contracts referred to in paragraphs 134 or 135.

[60] Pembina says the amendments fail to address issues identified in my First Reasons, at para. 33-35:

[33] At para. 84 of *Mathieson*, the court referred to Justice Walker's decision in *Siegerist v. Tilton*, 2020 BCSC 549:

84 Justice Walker referred to the decision of the New Brunswick Court of Appeal, *Martin v. Martin* (1996), 176 B.B.R. (2d) 178, 1996 CanLII 18609 (C.A.). In *Martin*, the Court of Appeal affirmed the liability of two of the defendant brothers for battery, even though it was another brother who actually struck the plaintiff. The Court made the following comments:

19 I start with dispelling any doubt that torts such as battery cannot be committed jointly because of the argument that the battery of one defendant cannot be the battery of another. A battery can be committed jointly, *Hickman v. Poynts* cited in *Broome v. Wooton*, Yelv. 67, 80 E.R. 47. In fact, Glanville Williams in *Joint Torts and Contributory Negligence* (Stevens & Sons Ltd.: London, 1951) at page 14, is of the opinion that there is no tort incapable of being committed jointly.

20 In his approach to the question of whether the brothers were joint tortfeasors, the trial judge cited a passage from G.H.L. Fridman, Q.C., *The Law of Torts in Canada* (Toronto: Carswell, 1990) vol. 2, which emphasizes that **the defendants, in order to be joint tortfeasors, must be engaged in a common action for a wrongful purpose**. He cited from pages 347-48:

"For two or more persons to be considered to be joint tortfeasors, the tort in question must be committed by one of them on behalf of or in concert with another. The acts must be performed in furtherance of a common design. Mere similarity of design is not enough, there needs to be concerted action to a common end. Thus, whenever one party is vicariously liable for the acts of another, they will be joint tortfeasors. They will be considered to have acted in concert. In other instances, the necessary combination of concerted action must be established. Only in one situation, the case of non-feasance in breach of a joint duty, will actual or imputed combination be unnecessary. What is to be considered combined or concerted action has been the subject of numerous judicial decisions. It would seem that the various defendants must be engaged in a common action for a

wrongful, not a lawful purpose. They will not be acting in concert where they are acting together for a lawful purpose that is potentially dangerous."

21 I point out that there is nothing mysterious in the words "acting in concert". They mean simply "acting together". The trial judge then referred to the *Johnston v. Burton* decision where a judge of the Court of Queen's Bench in Manitoba held that the defendants were joint tortfeasors. One of the defendants was fighting with the plaintiff when the other defendants got involved in the fight, severely injuring the plaintiff.

[34] The only express reference in the NOCC to Cedar and Pembina "acting in concert" appears in Part 1 [Statement of Facts], para. 15:

15. Pembina has acted and continues to act in concert with Cedar, with a common design toward the goal of designing, developing, and operating a liquefied natural gas facility, now known as Cedar LNG, as described below, for their mutual material financial Cedar LNG is expected to generate annual run-rate adjusted EBITDA of US\$200 million to US\$260 million, net to Pembina.

[35] I note that this allegation indicates Pembina and Cedar are acting in concert to develop the Project. It does not allege they were acting in concert for an improper purpose or were participating in a tortious conspiracy in furtherance of some wrong. In my view, Steelhead has not adequately set out the material facts which support a claim that Cedar and Steelhead were joint concurrent tortfeasors.

[bolding added]

[61] In the Amended NOCC, Steelhead modified Part 1, para. 15 as follows [amendments underlined]:

15. Pembina has acted and continues to act in concert with Cedar, with a common design toward the goal of designing, developing, and operating a liquefied natural gas facility, now known as Cedar LNG, as described below, for their mutual material financial benefit. More specifically, and as further described herein, Cedar and Pembina acted in concert to solicit (primarily Pembina), engage in due diligence (primarily Pembina), negotiate (Cedar and Pembina), and secure (Cedar) ARC's participation in the Cedar LNG Project. Cedar LNG is expected to generate annual run-rate adjusted EBITDA of US\$200 million to US\$260 million, net to Pembina.

[62] At para. 36 in the First Reasons (reproduced above) I noted that in Part 2 [Relief Sought], Steelhead was not seeking any declaratory or similar relief asking the Court to make a finding that Cedar and Pembina were acting in concert and jointly liable for the tort of inducing breach of contract.

[63] Pembina notes that Steelhead did not make any amendments to Part 2 of the Amended NOCC. It says there are no allegations in the Amended NOCC which support a reasonable claim that it and Cedar were acting in concert and jointly liable for the tort of inducing breach of contract.

[64] Steelhead focuses on the excerpt set out at para. 32 of the First Reasons and argues that all that is required is that the defendants' acts were performed "in furtherance of a common design" or that they engaged in "concerted action to a common end". The excerpt concludes with the statement that it is probably not necessary that they should realize they are committing a tort.

[65] Steelhead says it has alleged Cedar and Pembina acted in concert in furtherance of the tortious and inequitable conduct which is central to the claim: soliciting and securing ARC's participation, inducing ARC's breach of contract and enriching the defendants to Steelhead's detriment. The pleading must be read as a whole and the allegations taken in context. It says the allegation that Cedar and Pembina acted in concert is adequately pleaded.

[66] In this case, Steelhead's claim that Pembina and Cedar were acting in concert relate to Steelhead's claim for the tort of inducing breach of contract. This relates to certain contracts as between 7G/ARC and Steelhead which include confidentiality provisions.

[67] In the course of considering Steelhead's claim that Pembina had induced ARC to breach of those contracts was adequately pled, I concluded that Steelhead has not adequately plead a clear factual basis supporting the proposition that Pembina was or can be assumed to have been aware of the existence of the subject contracts. Steelhead was relying on para. 113 as the basis for that knowledge. In that paragraph, Cedar is also alleged to have become aware of the existence of the subject contracts in the same manner.

[68] In view of my conclusion that para. 113 is deficient *vis à vis* Pembina getting notice of the subject contracts, it follows that it is also deficient *vis à vis* Cedar

getting notice as well. Where an element which is essential to establish a claim for the tort of inducing breach of contract is missing as against both Pembina and Cedar, Steelhead cannot possibly succeed in a claim that they acted in concert to commit that particular tort.

[69] It is also a concern that Steelhead chose not to make any amendments to address the deficiencies I identified in para. 36 in the First Reasons relating to it not seeking any relief in Part 2 relating to the acting in concert / joint liability claim.

[70] I conclude that Steelhead has not adequately pleaded all of the required elements required to make out a claim that Pembina acted in concert with Cedar in relation to the inducing breach of contract claim.

Failure to Remove Claims Struck in the First Reasons

[71] Pembina complains that Steelhead failed to delete many allegations which also appeared in the original NOCC regarding Pembina's role as a shareholder and limited partner of the two Cedar defendants. Examples include:

- a) Pembina being an investor, financial sponsor, limited partner and shareholder of Cedar who has invested or committed hundreds of millions of dollars in Cedar, and that it continues to exercise control over Cedar as a shareholder or limited partner, including by appointing directors and officers of Cedar: paras. 5-7, 9-14;
- b) Cedar LNG is expected to generate annual run-rate adjusted EBITDA of US\$200 million to US\$250 million, net to Pembina: para. 15;
- c) Pembina has reported how lucrative and profitable its participation in the Cedar LNG Project will be: para. 19;
- d) Cedar, and by extension its owners including Pembina, are beneficiaries of ARC's conduct: para. 24;
- e) Pembina has received "material commercial benefits from the FID, and continue[s] to receive such benefits: para. 129.

[72] Pembina says these and other allegations which focus on its role as a shareholder / limited partner and financial benefits it did or may receive as such still

form the basis of relief which Steelhead seeks in the Amended NOCC. It also points to Steelhead's allegation that Pembina took steps to facilitate negotiation of the ARC Liquefaction Agreement. This is an agreement made between ARC and Cedar. Pembina is not a party to it. It argues that if it did take steps to facilitate negotiation of that agreement on Cedar's behalf, that would have been in its capacity as a shareholder and operator of Cedar. Any benefit which would accrue to it for having done so would be indirect, as shareholder and limited partner of the Cedar defendants. It refers to paras. 15, 76, 95-98, 106, 108, 110 and 114 of the Amended NOCC.

[73] Pembina says that continuing allegations which are based on it being a shareholder and/or limited partner of Cedar cannot remain in the Amended NOCC. I previously ordered them struck. Steelhead failed to comply with that order when drafting its Amended NOCC. Pembina says they should be removed, in accordance with my previous order.

[74] Steelhead argues the amendments it made in the Amended NOCC focus on Pembina's independent conduct, separate and apart from Cedar, as well as its independent gains, separate and apart from its position as a shareholder and limited partner of Cedar. It says the amendments adequately address the core deficiency identified in my First Reasons. The "conduct-oriented" amendments focus on Pembina's independent role in securing ARC's participation in the project, including soliciting ARC's involvement, carrying out due diligence and negotiating terms surrounding ARC's participation. Examples of this are found in paras. 96 and 97 (reproduced above). The "gain-oriented" amendments focus on alleged gains as a natural gas producer / supplier to the Cedar LNG Project and as the project's Operator. It points to para. 18(b) and (c) (amendments are underlined):

18. In the absence of this wrongful conduct,:

...

b. Pembina (as natural gas producer and supplier) would have had to shoulder 100% of the investment, supply and offtake risk associated with the liquefaction capacity in the Cedar LNG Project, something Pembina was intent on avoiding. Any supplier would be obliged to pay a tolling fee regardless of whether they supply (supply risk) or secure

buyers abroad (offtake risk). This would have also jeopardized a positive FID for the Cedar LNG Project, and therefore Pembina's commercial interests in supplying it.

c. Without a positive FID, Pembina (as Operator) would not have had a project to operate, and accordingly would forgo all commercial interests associated with doing so.

...

[75] In the First Reasons at paras. 37-40, I noted as follows:

[37] Pembina also argues that that Steelhead's claims against it are based on its status as a shareholder of Cedar GP. A claim against a corporation does not give rise to a claim against underlying individual shareholders. The only exceptions are when (a) there is some basis to pierce the corporate veil, or (b) when the shareholder has committed an independent actionable wrong against the plaintiff. It relies on *Edgington v. Mulek Estate*, 2008 BCCA 505 [Edgington] at para. 20:

20 I consider the position taken by the purchasers largely ignores the longstanding principle that a corporation is in law an entity distinct and separate from its shareholders: *Salomon v. Salomon & Co.*, [1897] A.C. 22 (H.L.). Parties to transactions employ the use of corporate vehicles for a reason, as they are entitled to do. Shareholders, despite being in a position of control, do not, as a rule, incur liability for the breach of their corporation's contractual obligations. It is not a matter of control; the shareholders of a closely held company like Westpark invariably have control of the company.

[38] See also *The Owners, Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109 at para. 27:

27 One of the established principles upon which Messrs. Chahal and Minhas rely is the principle that a company is an independent entity with legal personality separate from its owners and principals: *Edgington v. Mulek Estate*, 2008 BCCA 505 at paras. 20-26; *Merit Consultants International Ltd. v. Chandler*, 2014 BCCA 121 at para. 19. While companies necessarily act through human agents, corporate owners and principals are not personally liable for the tortious conduct of a company merely by virtue of their status as owners and principals: *Merit Consultants* at para. 14. On the contrary, the corporate veil is rarely pierced and corporate owners and principals are rarely found liable for actions ostensibly carried out under a corporate name in the absence of findings of fraud, deceit, dishonesty or want of authority. Although findings of liability are always fact-specific, corporate owners, principals and employees are protected from personal liability when acting within the course of their employment unless "it can be shown that their actions are themselves tortious or exhibit a separate identity or interest from that of the company so as to make the act or conduct complained of their own": *Montreal Trust Co. of Canada v. ScotiaMcLeod Inc.* (1995), 129

D.L.R. (4th) 711 at 720, 1995 CanLII 1301 (Ont. C.A.), (leave to appeal to SCC ref'd [1996] S.C.C.A. No. 40).

[39] Likewise, when a claim is made against a limited partnership, that does not automatically allow that claim to also be made against the individual limited partners. The general partner is liable for debts and obligations of the limited partner. Individual limited partners are passive investors, similar to shareholders. Pembina relies on *Marshall v. United Furniture Warehouse Limited Partnership*, 2013 BCSC 2050 at paras. 65-68, *Scala Development Consultants Ltd. v. Spirit Bay Developments Limited Partnership*, 2024 BCSC 1755 at paras. 199, 214-215 and 226, and s. 77 of the *Partnership Act*, R.S.B.C. 1996, c. 348.

[40] Steelhead repeatedly emphasizes Pembina's role as a minority shareholder of Cedar GP in the NOCC. **I agree that claims which are based on it being a shareholder or limited partner only would offend the principles set out in *Edgington* and should be struck out.** However, Steelhead also refers to Pembina's role as Operator and as party to the Pembina LTSA. It also appears that Steelhead intends to allege that Pembina has committed some form of independent actionable tort against it, albeit that is not properly set out.

[bolding added]

[76] I agree that the references to Pembina's role as a shareholder and limited partner of Cedar, and to it indirectly benefitting in either or both of those capacities should have been excised when Steelhead was drafting the Amended NOCC. Their continued presence creates unnecessary confusion and effectively ignores my finding at para. 40 of the First Reasons.

[77] I order that Steelhead delete all references in the Amended NOCC to Pembina being an owner, shareholder and/or limited partner of the Cedar defendants, as well as references to it benefitting in those capacities.

Orders Made

[78] Pembina's application to strike Steelhead's claim against it for:

- a) Inducing breach of contract is granted;
- b) Unjust enrichment is dismissed; and
- c) Acting in concert / joint liability with Cedar to induce a breach of contract is granted.

[79] Steelhead is ordered to delete all references to Pembina being an owner, shareholder and/or limited partner of the Cedar defendants, and to Pembina benefitting in those capacities, is granted.

[80] Pembina asked that Steelhead not be granted leave to amend the struck claims. Steelhead did not address the issue of making further amendments in its application response. My sense is that it may be possible for Steelhead to address at least some of the issues I have identified through further amendments. If it wishes to try to do so, Steelhead has leave to file and deliver a Further Amended NOCC within 45 days from the date of release of these reasons.

[81] Pembina's application has been largely successful. It is entitled to costs of this application from Steelhead, in any event of the cause.

"Associate Judge Bilawich"