

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Military Metals Corp. v. The Boehm
Collective LLC*,
2026 BCSC 1099

Date: 20260615
Docket: S245764
Registry: Vancouver

Between:

Military Metals Corp.

Plaintiff

And

**The Boehm Collective LLC, James Boehm
and Amanda Solomon**

Defendants

Before: The Honourable Justice Loo

Reasons for Judgment

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Place and Date of Hearing:

Vancouver, B.C.
May 1, 2026

Place and Date of Judgment:

Vancouver, B.C.
June 15, 2026

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Introduction

[1] The defendants James Boehm and Amanda Solomon (the “individual defendants”) seek to strike out the plaintiff’s claims against them under R. 9-5(1)(a) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 [*Rules*].

[2] The action arises from the purchase of 100 percent of the “membership interests” in Tyrus LLC (“Tyrus”) by the plaintiff Military Metals Corp. (“MMC”). The seller was the corporate defendant The Boehm Collective LLC (“Boehm LLC”). The transaction was governed by a written agreement dated July 15, 2022 (the “Purchase Agreement”). Prior to the transaction, Boehm LLC was the 100 percent owner of Tyrus.

[3] Before and until the transaction closed on July 15, 2022, Mr. Boehm was the founder, manager and directing mind of Boehm LLC and Ms. Solomon was Tyrus' Chief Executive Officer. Neither Mr. Boehm nor Ms. Solomon was a party to the Purchase Agreement.

[4] MMC advances misrepresentation claims against both Boehm LLC and the individual defendants.

The pleadings

[5] Paragraph 22 of the notice of civil claim (the “NOCC”) states:

22. Boehm Collective, James Boehm, in his role as the founder, manager, and directing mind of Boehm Collective, and in his personal capacity, and Solomon, in her role as Chief Executive Officer of Tyrus, and in her personal capacity having agreed to the Consulting Agreement with Tyrus and [MMC], represented, among other things, the following to [MMC]:

- (a) the financial statements of Tyrus were accurate;
- (b) there were no significant financial developments and material financial changes related to Tyrus and its business;
- (c) the financial statements of Tyrus provided to [MMC] were prepared in accordance with GAAP and fairly presented the assets, liabilities, revenues, earnings, results of operations and financial condition of Tyrus;
- (d) Tyrus had royalty revenues of \$385,826.30 USD between February 28 and July 6, 2022;
- (e) payments owing to service providers were up to date;

(f) Tyrus was in compliance with all laws relating to employment of labour and employment practices;

(g) the existing indebtedness of Tyrus was accurately disclosed to [MMC];
and

(h) that the representations and warranties contained in the Purchase Agreement were true and correct in all material respects as of the date of the Closing Certificate.

(together, the “Representations”).

[6] As is evident from this paragraph, the NOCC does not distinguish between Representations allegedly made by Boehm LLC and Representations allegedly made by the individual defendants. The opening words of para. 22 plead that the Representations were made by Boehm LLC, Mr. Boehm, and Ms. Solomon.

[7] Elsewhere in the NOCC, the plaintiff pleads that Boehm LLC made certain contractual representations and warranties in the Purchase Agreement. All of the Representations alleged to have been made by Boehm LLC, Mr. Boehm, and Ms. Solomon in para. 22 of the NOCC are also alleged to have been made by Boehm LLC in the Purchase Agreement.

[8] In the NOCC at paras. 10–11 of the Legal Basis, the plaintiff pleads that the individual defendants and Boehm LLC owed duties of care to the plaintiff; that there was a special relationship between Boehm LLC, Mr. Boehm and MMC “as a result of the parties’ business relationship and the consulting relationship between Solomon, Tyrus, and [MMC]”; and that the individual defendants “personally” made the Representations. However, these propositions are baldly stated without any elaboration or reference to material facts which might underlie them.

[9] In relation to Mr. Boehm, the NOCC also alleges:

- a) that Boehm LLC delivered a closing certificate certifying that the representations and warranties of Boehm LLC in the Purchase Agreement were true and correct in all material respects, and that Mr. Boehm signed the closing certificate on behalf of Boehm LLC (Statement of Facts, para. 14);

- b) that Mr. Boehm negotiated and signed the Purchase Agreement on behalf of Boehm LLC (Statement of Facts, para. 9); and
- c) that as the sole directing mind of Boehm LLC, Mr. Boehm personally directed Boehm LLC to make the Representations (Statement of Facts, para. 24).

[10] In relation to Ms. Solomon, the NOCC also alleges:

- a) that she was the Chief Executive Officer of Tyrus and negotiated the Purchase Agreement (Statement of Facts, para. 9);
- b) that as the Chief Executive Officer of Tyrus, she was personally responsible for the preparation of Tyrus's financial statements, for reporting Tyrus's financial status and compliance with legal obligations to Boehm LLC and the plaintiff, and for making the Representations to MMC (Statement of Facts, para. 25); and
- c) that she entered into a consulting agreement with MMC under which, after the transaction closed, she would provide consulting services to MMC as general manager of Tyrus and would be appointed to MMC's advisory board (Statement of Facts, para. 17).

Issues

[11] There are two issues to be determined. I will address them in turn:

- a) whether the plaintiff's claims against the individual defendants ought to be struck; and
- b) if so, whether the plaintiff ought to be granted leave to amend.

Discussion and analysis

Should the claims against the individual defendants be struck?

Legal principles and authorities

[12] Rule 9-5(1)(a) provides that the court may order the whole or any part of a pleading to be struck or amended on the ground that it discloses no reasonable claim. The application under R. 9-5(1)(a) proceeds on the basis that the facts pleaded are true unless they are manifestly incapable of being proven.

[13] A claim will only be struck under R. 9-5(1)(a) if it discloses no reasonable claim or defence. The threshold for determining whether there is a reasonable claim has been variously described as "plain and obvious", "beyond a reasonable doubt", and having "no reasonable prospect of success": *Homma v. University of British Columbia (School of Music)*, 2023 BCSC 1926 at para. 46.

[14] Counsel brought several authorities to my attention. In my view, two are of particular assistance.

[15] In *The Owners, Strata Plan KAS 3410 v. Meritage Lofts Inc.*, 2022 BCCA 109 [*Meritage Lofts*], an action had been commenced against a company and an architect for alleged defects in the construction of a building, and a defendant sought leave to add certain directors as third parties.

[16] The Court of Appeal stated that the merits test for leave to file a third-party notice was the same as the test on a R. 9-5 application. Accordingly, leave to file a third-party notice would only be denied because the proposed claim lacked merit if it were plain and obvious that the pleadings disclosed no reasonable cause of action and the claim was bound to fail.

[17] In that context, the Court of Appeal stated that the question to be determined was whether the proposed third-party notice disclosed an independent cause of action against the defendants in their personal capacities or whether they were being sued based on their status as directors or employees of the defendant company alone.

[18] The chambers judge had held that the proposed third party notice was sufficient to plead an independent cause of action against the directors personally. In the course of its analysis dismissing the appeal, the Court of Appeal stated the following principles:

- a) 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: para. 27;
- b) 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: para. 27;
- c) While companies and their owners, principals and employees have separate legal personalities, the rule that persons are responsible for their *own* tortious conduct applies even when they are acting *bona fide* within the course of employment in pursuit of corporate purposes and the company is vicariously liable for their actions: para. 28;
- d) Importantly, in order to establish an independent cause of action against a corporate owner, principal or employee, material facts sufficient to support a personal tort claim apart from any corporate liability must be specifically pleaded: para. 29
- e) It is not enough to plead undifferentiated allegations against the corporation and its directors and employees: para. 29.

[19] In *Metro-Can Construction (AT) Ltd. v. Alderbridge Way Limited Partnership*, 2024 BCSC 369 [*Metro-Can*], the plaintiff construction company sought \$8.6 million in damages arising from unpaid work on a failed development project. It sued the developer and the owner of the project lands for those damages and sought the

same damages against various persons who were directors, shareholders and investors in corporate entities involved in the project (collectively, the “applicants”).

[20] The plaintiff pleaded that the applicants made representations “either personally or as agents” for certain of the corporate defendants. The applicants sought to have the plaintiff’s misrepresentation claims against them dismissed pursuant to R. 9-5(1)(a).

[21] The Court held that while the plaintiff had pled the essential elements of misrepresentation, the pleading as a whole was deficient.

[22] In particular, the Court held that the pleading did not explain why the applicants would personally owe a duty of care to the plaintiff: para. 29. Further, there were no facts pleaded that would permit one to conclude that any misrepresentations were made by the applicants other than in their capacities as representatives of the various project entities. A director cannot be held personally liable for simply controlling the activities of the corporation: para. 30.

[23] For these reasons, the claims against the applicants were struck.

Application of the law to the facts

[24] The question to be determined is whether it is plain and obvious that the NOCC discloses no reasonable claims against the individual defendants.

[25] For the reasons that follow, I have concluded that this threshold has been met and the claims against Mr. Boehm and Ms. Solomon must be struck.

[26] I will first address the claims against Mr. Boehm.

[27] As stated, the NOCC does not distinguish between Representations allegedly made by Boehm LLC and Representations made by Mr. Boehm. As the Court of Appeal held in *Meritage Lofts*, it is not enough to plead undifferentiated allegations against a corporation and its directors and employees: para. 29.

[28] In its application response, the plaintiff states that it is not seeking to hold the individual defendants liable for contractual representations made by Boehm LLC in the Purchase Agreement. However, the NOCC does not say that Mr. Boehm made Representations separate and apart from those made by Boehm LLC.

[29] Further, the NOCC fails to explain why Mr. Boehm should be held personally liable for any such Representations that might be proven. As stated in *Meritage Lofts*, in order to find an individual director or employee of a company personally liable, the Court must identify a personal cause of action in tort that is independent of corporate liability. Further, in order to establish such an independent cause of action, material facts sufficient to support a personal tort claim apart from any corporate liability must be specifically pleaded: paras. 28–29.

[30] The NOCC states that Mr. Boehm negotiated and signed the Purchase Agreement and signed the closing certificate *on behalf of* Boehm LLC, but the fact that he took these steps on behalf of Boehm LLP cannot make him personally liable for any Representations. A director of a company cannot be held personally liable for simply controlling the activities of the corporation: *Metro-Can* at para. 30.

[31] As in *Metro-Can*, there are no facts pleaded that would lead one to conclude that any Representations were made by Mr. Boehm other than in his capacity as a representative of the project entities. Further, while the NOCC asserts a “special relationship” between Mr. Boehm and the plaintiff, it does not describe how that relationship is separate or different from his relationship with the plaintiff in his capacity as a representative of Boehm LLC.

[32] For these reasons, in my view, it is plain and obvious that the NOCC does not disclose a reasonable claim against Mr. Boehm.

[33] In my view, the same result must prevail with regard to the claims against Ms. Solomon. Her circumstances are slightly different from those of Mr. Boehm because she appears to have had no direct connection to Boehm LLC. She was the Chief Executive Officer of the target corporation, Tyrus, which prior to the purchase

was owned by Boehm LLC. She is alleged to have assisted in negotiating the Purchase Agreement, and she is alleged to have been personally responsible for the preparation of Tyrus' financial statements.

[34] The NOCC pleads in general terms that Ms. Solomon made the Representations in "her personal capacity" and that she is "personally responsible" for making the Representations to the plaintiff. However, the NOCC does not state facts to show that Ms. Solomon acted independently, in a personal capacity, or with a separate identity or interest.

[35] Rather, the plaintiff pleads expressly that Ms. Solomon was acting in her role as Chief Executive Officer of Tyrus when she prepared Tyrus' financial statements, reported Tyrus' financial status and compliance with legal obligations to Boehm LLC and the plaintiff, and made the Representations: NOCC, Statement of Facts, para. 25. As stated above, a director of a company cannot be held personally liable for simply controlling the activities of the corporation: *Metro-Can* at para. 30.

[36] As with respect to Mr. Boehm, the NOCC does not say that Ms. Solomon made Representations separate and independent from those made by Boehm LLC. Further, nothing in the NOCC explains why the plaintiff might be entitled to look to Ms. Solomon in this regard, instead of to Tyrus, or at all. No material facts sufficient to support a personal tort claim apart from any corporate liability are specifically pleaded.

[37] The fact that Ms. Solomon agreed to a consulting agreement with Tyrus and MMC is irrelevant to the issue. I cannot see how her agreement to act as general manager of Tyrus and to sit on MMC's advisory board after the closing of the transaction could possibly make her liable for Representations allegedly made in her capacity as Chief Executive Officer of Tyrus before the transaction, and MMC has not explained how this might be so.

[38] For these reasons, in my view, it is plain and obvious that the plaintiff's pleas against Ms. Solomon disclose no reasonable claim.

[39] The plaintiff argues that the applications advanced by the individual defendants are, at their core, complaints regarding particulars, and that the appropriate remedy is for the individual defendants to demand particulars or to seek orders that particulars be provided under R. 3-7(22). However, I do not agree with this characterization of the individual defendants' position.

[40] This is not a case in which the pleading is simply missing details such as dates or times. Rather, there is no plea at all that the individual defendants made Representations separate and independent from Boehm LLC or Tyrus. Further, there are no material facts specifically pleaded which if proven would ground personal liability: *Meritage Lofts* at para. 29.

[41] The individual defendants have advanced secondary arguments that certain clauses in the Purchase Agreement—referred to as “reliance”, “no other representation” and “entire agreement” clauses—are “insurmountable hurdles to a viable cause of action”. I have some doubt that these clauses could ground defences that would be sufficiently plain and obvious to justify the striking of the claims against the individual defendants under R. 9-5(1)(a), but it is not necessary to address these arguments given the conclusions that I have reached above.

Should leave to amend be granted?

[42] In *Flanagan v. VINN Automotive Technologies Limited*, 2024 BCSC 1236 at para. 38, this Court cited the decision of the Court of Appeal in *Jones v. Bank of Nova Scotia*, 2018 BCCA 381 for the following statement of principle:

[35] Determining whether to permit an amendment is a preferable to dismissal of inadequate pleadings requires the exercise of a discretion by a trial judge. The exercise of that discretion may require consideration, including the degree to which the pleadings are deficient, of the extent to which the deficiencies may be addressed by an obvious or straightforward amendment, the apparent merit of the claim that may be made out with amendment and the prejudice that may be incurred by dismissing the claim.

[43] The plaintiff filed the NOCC on August 22, 2024, but was unable to serve the individual defendants until around August 2025. Ms. Solomon filed her notice of

application on September 29, 2025, approximately one month after being served with the NOCC. Mr. Boehm's notice of application was filed October 22, 2025.

[44] In order to be granted leave to amend when a notice of civil claim is struck, it is the plaintiff's obligation to demonstrate how the alleged deficiencies may be rectified, in order to demonstrate, as required by *Flanagan*, that the deficiencies may be addressed by an obvious or straightforward amendment or that the claim once amended would have apparent merit. However, MMC has made no effort to do so.

[45] Despite knowing for more than six months that the individual defendants were asserting that the claim was deficient, the plaintiff has not amended—nor indicated any intention to amend—the NOCC to address the deficiencies that the individual defendants have raised in their applications.

[46] If there were Representations made by the individual defendants separately and independently from those made by Boehm LLC, or if there were facts that would ground personal liability if proven, the plaintiff has had ample opportunity to amend its NOCC to include them, or to set out proposed amendments or additional pleas in response to these applications.

[47] This is not the type of case in which the relevant facts are only in the possession of the defendants. It is clear that the types of facts which ought to have been pleaded against the individual defendants would be known to the plaintiff if they existed. In these circumstances, it is reasonable for the Court to conclude that there are no such facts capable of being pleaded.

[48] In my view, the pleadings are materially deficient, and the deficiencies are not capable of being addressed by an obvious or straightforward amendment. Moreover, based on the plaintiff's failure to set out any facts which might ground personal liability, the claims against the individual defendants appear to have little or no merit. For these reasons, I decline to grant leave to MMC to amend the NOCC.

Conclusion and costs

[49] For the reasons stated above, I have concluded that the claims in the NOCC against Mr. Boehm and Ms. Solomon must be struck, without leave to amend.

[50] The individual defendants submit that special costs or uplift costs are appropriate in the circumstances of this case, in part because the plaintiff pleads fraudulent misrepresentation and in part because the plaintiff's pleas against the individual defendants were without merit. However, I cannot accept these submissions.

[51] It appears to be common ground between the parties that an award of special costs requires a finding of "reprehensible" conduct: see *Chung v. Quay Pacific Property Management Ltd.*, 2020 BCSC 1016 at para. 21. In appropriate circumstances, unfounded allegations of fraud or dishonesty may attract an award of special costs since the allegations are serious and potentially very damaging to those accused of deception: *Chung* at para. 20.

[52] However, an unsuccessful attempt to prove fraud or dishonesty does not inexorably lead to an award of special costs: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 26. Further, in *Westsea Construction Ltd. v. 0759553 B.C. Ltd.*, 2013 BCSC 1352 at para. 43, it was held that while meritless claims alone will not attract special costs, meritless claims that are pursued for some improper motive have generally done so.

[53] In this case, the claims of fraudulent misrepresentation have not been determined to be unfounded. The only determination that has been made on this application is that the personal pleas against the individual defendants cannot stand. Moreover, no improper motive, such as a desire for discovery or leverage in the litigation process, has been established.

[54] With regard to uplift costs, s. 2(5) of Appendix B of the *Rules* provides:

(5) If, after it fixes the scale of costs applicable to a proceeding under subsection (1) or (4), the court finds that, as a result of unusual circumstances, an award of costs on that scale would be grossly inadequate

or unjust, the court may order that the value for each unit allowed for that proceeding, or for any step in that proceeding, be 1.5 times the value that would otherwise apply to a unit in that scale under section 3 (1).

[55] The individual defendants submit that the allegations of fraud constitute unusual circumstances within the meaning of this section, but I do not agree, for the reasons stated above in relation to special costs—the claims of fraudulent misrepresentation have not been determined to be unfounded.

[56] The individual defendants assert that a costs award at scale B would be grossly inadequate or unjust, but I have been shown no evidence supporting that assertion. In any event, s. 2(6) of Appendix B provides that an award of costs is not grossly inadequate or unjust merely because there is a difference between the actual legal expenses of a party and the costs to which the party would otherwise be entitled.

[57] In light of the foregoing, the individual defendants' costs of the action shall be payable by the plaintiff at scale B.

“Loo J.”