

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *BC General Employees' Union v.
Vancouver City Savings Credit Union,*
2025 BCSC 1510

Date: 20250807
Docket: S223482
Registry: Vancouver

Between:

BC General Employees' Union

Plaintiff

And

Vancouver City Savings Credit Union

Defendant

Before: The Honourable Justice Lawn

Reasons for Judgment

In Chambers

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Place and Date of Hearing:

Vancouver, B.C.
April 11, 2025

Place and Date of Judgment:

Vancouver, B.C.
August 7, 2025

Introduction

[1] This is an application by the plaintiff BC General Employees' Union (the "Union") to amend its pleadings to add a claim for specific performance. The defendant Vancouver City Savings Credit Union ("Vancity") opposes the application.

Background

[2] The background to this matter is fully canvassed in reasons for judgment on an interlocutory injunction application, delivered following a two-day hearing: *BC General Employees' Union v. Vancouver City Savings Credit Union*, 2022 BCSC 2222 (the "injunction decision").

[3] In brief: the Union and Vancity were in the midst of negotiations to renew their collective agreement set to expire on December 31, 2019. Improvements to the employer-governed pension plan were a key objective for the Union, which sought a jointly trustee defined benefit pension plan. Vancity was amenable to transition to a defined benefit plan for all employees, both unionized and non-unionized, but the parties disagreed as to the arrangements for plan governance. Eventually the parties signed a letter agreement which addressed the design of a new plan.

[4] The Union's position is that this agreement is a contract in which the parties agreed to a jointly sponsored defined benefit plan and a means to design and implement the plan. Vancity's view is that the letter of agreement was no more than an agreement to try to agree on design and implementation, and while design was agreed upon, implementation was not. On the injunction application, Vancity asserted that this was due to the Union's insistence on appointing one-half of the board of trustees, despite having only 30% of the persons who would be covered by the plan.

[5] In her reasons for judgment, Justice Matthews examined the letter of agreement at some length. She held at para 66 that there was a serious question to be tried as to whether it was an enforceable contract or merely an agreement to agree. She also found serious questions to be tried as to whether that contract was

breached, and whether Vancity's conduct was a breach of its duty of good faith and honesty in contractual performance (para 75-76).

[6] Ultimately, however, she denied the injunction on the basis of irreparable harm and balance of convenience. She held that the relief sought by the Union — an order enjoining Vancity from implementing a pension plan for non-unionized employees (the “Vancity Pension Plan”) — was not related to the relief it could claim at trial, saying:

[87] However, there is no linkage between the conduct that BCGEU seeks to enjoin in this issue. Vancity does not intend to implement a Vancity sponsored defined benefit pension plan for unionized employees in contravention of the wishes they expressed in the letter of agreement to have a jointly sponsored plan. Vancity intends to implement the plan for its non-unionized employees. There is no evidence that by doing so, the unionized employees will be worse off than they currently are or less able to realize their goal of a jointly sponsored plan, either through this litigation or in future bargaining.

[88] BCGEU has brought this litigation and may use its future bargaining power to address what it considers to be Vancity's breach of contract and lack of good faith in walking away from the jointly-sponsored pension plan for the unionized members. There is no evidence that BCGEU's ability to do so or to ultimately achieve a jointly-sponsored plan is jeopardized if Vancity proceeds with its single sponsor plan for the non-unionized employees.

...

[92] However, my primary concern on the balance of convenience is the lack of connection between what the BCGEU seeks to enjoin and its claims in the underlying action.

[7] The injunction decision was not appealed.

Issues on this Application

[8] This application gives rise to the following questions:

1. Did the Union in its Amended Notice of Civil Claim irrevocably elect damages for breach of contract, over a claim for specific performance?
2. If so, does this preclude it from now seeking specific performance, such that its application for an amendment ought to be refused on the basis that it discloses no reasonable claim?

3. If not, ought the application to amend be refused in any event, on the basis of actual prejudice, or because it is an abuse of process?

Legal Principles

[9] Amendments are generously permitted, to allow the real question between the parties to be determined. The circumstances where amendments are refused include where a proposed amendment fails to disclose a reasonable cause of action; or where it will cause actual prejudice to other parties.

[10] It is only in “the clearest cases” that a pleading will be struck as disclosing no reasonable claim: *Fengyun v. He*, 2017 BCSC 110 at para 48.

[11] The Union’s proposed amendment requires an examination of a well-known principle of contract law, in order to determine whether the Union’s claim of specific performance is a reasonable claim in the circumstances. In *Dosanjh v. Liang*, 2015 BCCA 18, aff’g 2014 BCSC 162, the Court of Appeal set out a concise summary of the law on the rights of a party to accept repudiation of a contract:

[33] The trial judge summarized the general law with respect to a party’s right to accept a repudiation of a contract at para. 50 of her judgment:

...

- A party to a contract has two alternatives if the other party repudiates the contract: the innocent party may accept the repudiation or affirm the contract.
- If the innocent party accepts the repudiation, the contract is at an end, both parties are relieved of their obligations under it, and the innocent party may sue for damages immediately without waiting for the time that the contract should have been performed.
- If the innocent party affirms the contract, the contract remains alive in all respects for both parties, and the risk exists that the party beginning as the innocent party will subsequently commit a breach of its own.
- If the innocent party wishes to accept the repudiation, he or she must make his or her election known.
- Once made, the election is irrevocable.

[12] The Court of Appeal focused on the fourth principle: there must be clear evidence that a party has affirmed a contract, although that affirmation may be

implied and not expressed. The innocent party must also be shown to have had knowledge of the facts giving rise to the breach and the legal right to choose between the alternatives: *Dosanjh* at para. 35. The non-breaching party is entitled to a reasonable amount of time to make its election, and during that time the court should be cautious in its assessment of equivocal acts and statements: *Dosanjh* at para. 37.

[13] In *Fengyun v. He*, supra, beginning at para 52, Justice Harris summarized the law on this point in detail, concluding at para 61:

[61] Given the clear authority of the Court of Appeal and this court since the decision in *Dobson*, I consider that the Master was correct in concluding that the law requires an election of rights in the event one party repudiates the contract and that the election by an innocent party to accept the repudiation, once made, is irrevocable as reflected in *Dosanjh v. Liang* at para. 33; *JEKE Enterprises Ltd. v. Northmont Resort Properties* at paras. 449-453; *Tri City Capital Corp. v. 0942317 B.C. Ltd.* at paras. 149 - 151; *Morrison-Knudsen Co. Inc. v. British Columbia Hydro and Power Authority*, 1978 CanLII 1977 (BC CA), [1978] B.C.J. No. 1218 at 140; *Inmet Mining Corp. v. Homestake Canada Inc.* at paras. 203-205; *Arbutus Garden Homes Ltd. v. Arbutus Gardens Apartments Corp.* at paras. 126-134.

[62] The conclusion that the law on election has been clearly established is also supported by the Ontario Court of Appeal in *Charter Building Company v. 1540957 Ontario Inc.*, 2011 ONCA 487, where the court held that once a party accepts repudiation of a contract, that party is no longer entitled to assert its rights under the contract and the court has no discretion to rule otherwise. ...

[14] Clearly, the innocent party must make its election known to the party in breach, but the law does not dictate how it must do so. In *Kent v. Kalyk*, 2017 BCSC 1074, this Court stated:

[60] An election can be communicated directly, by either oral or written words, or may be inferred from the conduct of the innocent party in the particular circumstances of the case: *Brown* at paras. 45-48; cited with approval in *Trieu v. Diep*, 2015 BCSC 950 at para. 37.

[15] Many of the cases detail the conduct of the innocent party, in determining whether or not such communication has occurred.

[16] For example, in *Morden v. Pasternak*, 2023 BCCA 252, aff'g 2022 BCSC 433, the question was whether by remarketing the property, the plaintiff/vendor had by its

conduct irrevocably accepted the defendant's repudiation by anticipatory breach. Voith JA held that despite re-marketing, the vendor "remained open" to selling to the defendant despite also indicating that the deal was "dead." The trial judge's determination that in the circumstances, there had been no acceptance of the defendant's repudiation, was upheld.

[17] A plaintiff demanding or accepting return of its deposit is generally viewed as an acceptance of the defendant's repudiation: see, e.g., *Penty v. Mogul Investments Ltd.*, 28 B.C.L.R. 399, 1981 CanLII 447 (C.A.); *MacNaughton v. Stone*, [1950] 1 D.L.R. 330, 1949 CanLII 117 (O.N.S.C.). Similarly, entering into a new contract prior to the time for completion of the original contract can often be found to be conduct indicative of an acceptance of repudiation: see, e.g., *Pasternak v. Morden*, BCSC supra at para. 67, citing *E. & B. Mortgages Ltd. v. Skrivanos*, 118 D.L.R. (3d) 139 at paras. 8–12, 1980 CanLII 262 (B.C.S.C.).

[18] In this case, while the Union points to its conduct, Vancity points to the effect of the Union's pleading.

[19] The question of acceptance of repudiation through pleadings is addressed in *Beauchamp v. Coastal Corporation*, [1984] 1 F.C. 833 at 836–837, 1984 CanLII 5318, where the Court explained that one cannot elect to plead specific performance after having already elected to plead damages, since the election for damages amounts to a repudiation of the contract:

I have found no authority, however, for the converse proposition that a plaintiff may first elect damages and then later seek specific performance, and I do not think it is sound law. The reason one may first elect specific performance and later elect damages is that specific performance is based on the continued existence of the contract. So specific performance having failed, the plaintiff can at that time repudiate the contract and seek damages instead. But if he has first clearly elected for damages, in my view he cannot later claim specific performance because the election for damages amounts to a repudiation of the contract which cannot later be revived to sustain a claim for specific performance. As explained in Sharpe, *Injunctions and Specific Performance* (1983), paragraphs 776-777:

Where the promisee decides to claim damages, he is said to "accept the breach". His election is to treat the contract as having been broken

at the point of breach and in effect, to discharge the promisor from any further contractual obligation other than to pay damages.

The accepted position is that subsequent insistence upon specific performance is inconsistent with the acceptance of the promisor's breach. The effect of acceptance, or the assertion of a damages claim, is to discharge both parties from further performance, and hence, specific performance is no longer possible.

[20] In oral argument, the Union submitted that even if the pleading does not use the words “specific performance”, it encompasses a claim for that remedy, such that an amendment may not be strictly necessary.

[21] I was not taken to any law on that issue but it is clear that it is not always necessary for a pleading to use the words “specific performance” for the court to find that the claim is available. In *Munro v. James*, 2020 BCSC 1348 at paras. 189–191, Justice Francis held that the plaintiff’s pleading sought specific performance without using those exact words, because it claimed declaratory relief, with respect to their rights, as well as a proprietary interest, which would not be available to them if the agreement were set aside. Francis J. also held that she had the discretion to grant a remedy not explicitly sought in the pleadings. Therefore, in the context of that case, Francis J. found that the plaintiff was still entitled to specific performance.

The Plaintiff’s Position

[22] The Union argued that, generally speaking, it is only in the clearest cases that the court ought to refuse to grant an amendment on the basis that it shows no reasonable claim, citing *Innoventure S & K Holdings Ltd. v. Innoventure (Tri-Cities) Holdings Ltd.*, 2006 BCSC 1567 at para. 24.

[23] The Union also pointed to the principle that pleadings may be amended at any time during litigation including during or after the trial, citing *Smithies Holdings Inc. v. RCV Holdings Ltd.*, 2018 BCSC 1831, and cited examples of cases where late-breaking amendments have been permitted.

[24] These principles are uncontroversial but do not address the central question I must answer: has the union accepted Vancity's repudiation of the agreement at issue here by electing to sue for damages only?

[25] On that point, the Union says that it has neither accepted Vancity's repudiation, nor made an election to seek damages over specific performance. It cites *Guraya v. Kaila*, 2019 BCCA 367, on the requirements for specific performance:

[51] The first requirement is that the plaintiff must have kept the contract open for performance. If the plaintiff accepted the breach by the defendant as bringing the contract to an end, the plaintiff's remedy would be limited to damages for breach of contract. But in this case, the plaintiffs affirmed the contract by suing for specific performance.

[52] The second requirement is that there be some fair, real and substantial justification for the claim for specific performance as opposed to damages: *Semelhago v. Paramadevan*, [1996] 2 S.C.R. 415 at 430. There is no longer a presumption that real estate is unique; evidence must be led to support the remedy of specific performance. The general principles for consideration of this remedy were reviewed by this Court in *Youyi Group Holdings (Canada) Ltd. v. Brentwood Lanes Canada Ltd.*, 2014 BCCA 388. In that judgment, Justice Newbury emphasized that each case was fact-dependent, requiring a consideration of both the plaintiff and the property to determine whether damages would be an appropriate remedy.

[26] Importantly, however, I observe that in *Guraya* the plaintiff had affirmed the contract by suing for specific performance: it was the claim for damages that was the amendment sought, and not the other way around.

[27] Similarly, in *Peterson v. 446690 B.C. Ltd.*, 2014 BCSC 1531, also relied on by the Union, the defendant was seeking to abandon a claim for specific performance and sue for the return of the deposit. The Union also cites *Penner v. Williamson*, 78 B.C.L.R. (2d) 237 at para. 56, 1993 CanLII 2080 (C.A.), which relies on *Dobson v. Winton & Robbins Ltd.*, [1959] S.C.R. 775 at 779, 1959 CanLII 19, for the principle that on one party's repudiation of a contract, the other acquires the right to claim damages and specific performance.

[28] None of these cases stand for the proposition that once a party has claimed damages — a claim that in effect acknowledges that “what is dead is dead” in the

colourful words of Lord Wilberforce (quoted by the Court of Appeal in *James v. Klaus*, 14 B.C.L.R. (2d) 124, 1987 CanLII 2657) — it can somehow breathe life into the contract for the purpose of making a claim of specific performance.

[29] The Union's response to this is factual: it says that at no point did it accept repudiation and at all times it has been consistent in its actions and communications to Vancity. The Union points specifically to communications to Vancity and Union members in April of 2022, as clear communication that it was forcing Vancity to "stick to their promise" and inviting Vancity in October of 2022 to "implement its obligation to proceed with a jointly-trusted plan". The Union argues that by so stating, it was clearly not accepting Vancity's repudiation.

[30] Thus, the Union's position appears to be that if its Amended Notice of Civil Claim is less than clear, certainty can be provided by the existence of communications and documents outside of the four walls of the pleading.

[31] The Union further submits that prejudice, as explained in *Canadian Dewatering L.P. v. Directional Mining and Drilling Ltd.*, 2018 BCSC 517 at paras. 22–23, has not occurred here. The onus is on Vancity to show actual prejudice; potential prejudice is not enough: *Jones v. Lululemon Athletica Inc.*, 2008 BCSC 719 at paras. 38–40.

[32] The Union argues that Vancity's alleged costs were incurred well before this action started, as it initiated its decision not to proceed with the jointly sponsored plan in October 2021. It points to the affidavit evidence of Vancity's representative where he states:

I was part of the decision to proceed with implementing the Vancity Pension Plan after the Union filed this action. The decision was made based on the facts that I and the other executives were aware of at the time, including that the Union was seeking damages for the alleged breach of the Letter of Agreement.

[33] The Union points out that Vancity's affiant does not say that the decision was based on the Union repudiating the contract and seeking only damages. The Union points to the affiant's first affidavit which shows that the decision in favour of a

Vancity plan was made before the Notice of Civil Claim was filed and for a number of reasons other than the reliance on the Union's pleading. If Vancity has spent money, it committed to do so long before the Union's action was initiated.

[34] The Union says it has not unduly delayed seeking this amendment, after the reasons of Matthews J. were issued. No trial or discovery dates have been set and there will be ample opportunity for the defendant to prepare a defence to the specific performance claim.

The Defendant's Position

[35] In response, Vancity argues that, if the letter of agreement is enforceable, then the Union has sought only declarations and damages in its Amended Notice of Civil Claim. The Union thereby irrevocably elected to accept Vancity's repudiation. Citing *Dosanjh* and *Fengyun*, Vancity says that the Union's proposed amendment discloses no reasonable claim because as a matter of law, the Union cannot reverse its election now, to seek specific performance.

[36] Vancity accepts that the inverse may be permissible: that is, a party may sue in specific performance and later elect damages, where the contract can no longer be performed (see *Fengyun* at paras. 55–56) but says that is not what occurred here.

[37] Vancity submits that the Union knew of Vancity's intention to implement the Vancity Pension Plan when it filed the original Notice of Civil Claim and the Amended Notice of Civil Claim. At Part 1, para. 63 of its Amended Notice of Civil Claim, the Union pleaded:

Despite the objections raised by the Union on December 2, 2021, Vancity has stated that it intends to proceed with the jointly designed plan as a solely sponsored pension plan by the third or fourth quarter of 2022. That is, it intends to implement the pension plan designed by the Design Committee, despite the fact that the designed plan was at all times the joint property of BCGEU and Vancity. Further, it intends to proceed even though its decision negatively and materially affects the interest of the employees on whose behalf the Union negotiated a jointly trustee plan. The Union will seek continuing injunction to preclude these actions occurring until either this Notice of Civil Claim has been determined, or the Union has had an opportunity to negotiate the plan with the Employer.

[38] The same pleading can be seen in the original Notice of Civil Claim, filed April 27, 2022.

[39] Despite these pleadings, Vancity points out that the Union did not seek specific performance in either version of its claim.

[40] Nor did it do so at the same time as its injunction application — or even in the immediate wake of the injunction decision. The present application, says Vancity, is a late-breaking attempt by the Union to re-cast its case and should also be viewed as an abuse of process. It was disclosed to Vancity in correspondence in April 2023 when the Union sought Vancity's consent to the amendment, and the application filed on September 6, 2023.

[41] Vancity accepts the general principles governing the amendment of pleadings but emphasizes that the court will not sanction amendments which disclose no reasonable claim, applying the same test as in an application to strike. Vancity submits that the Court, in exercising its discretion to allow an amendment, must consider the factors set out in *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 at para. 166. These include the extent, reasons, and explanation for the delay; the degree of prejudice caused by the delay; and the extent of connection between the existing claims and proposed new cause of action.

[42] Vancity relies on *A & G Investment Inc. v. 0915630 B.C. Ltd.*, 2014 BCCA 425 at paras. 37–38, for the proposition that a party in the Union's position cannot adopt a "wait and see" approach. Either the contract is not repudiated and the rights and obligations under it still exist, or it is rescinded because of an accepted repudiation and then very different rights come into being.

[43] Vancity also takes the position that the Union sought its injunction as a way of maintaining the status quo until the next round of bargaining, at which point it could potentially strike over the pension plan issue. This, says Vancity, is antithetical to a claim for specific performance, which relies on the position that the party in the Union's position is keeping the contract alive.

[44] On the subject of prejudice, Vancity says it will suffer actual and meaningful prejudice if the claim is allowed to go ahead. Vancity points to the fact that the injunction decision was released on December 6, 2022. Thus Vancity says that in addition to relying on the initial Notice of Civil Claim (April 27 2022) and Amended Notice of Civil Claim (October 11, 2022), in moving forward with its decision in favour of the Vancity Pension Plan, it also relied on the injunction decision, in proceeding to implement its plan on January 1, 2023. To unwind that now would require a significant amount of additional work and expense in addition to the \$1.2 million it had spent to implement the plan. Vancity would have to terminate its plan in favour of a jointly sponsored plan. This prejudice would extend to Vancity's employees, it says, because any replacement plan would be more expensive and expose them to more risk. Vancity would also be left with obligations under the terminated plan.

Decision

[45] In order to determine whether the Union has clearly accepted Vancity's repudiation it is necessary to examine its pleading to see first of all, whether it contains a claim for damages for breach of contract, and second, if specific performance has not been pleaded, whether such a claim is nevertheless available on the pleading as framed, as was found in *Munro v. James, supra*.

[46] The Amended Notice of Civil Claim states, in material part:

Part 2: RELIEF SOUGHT

1. A declaration that the defendant Vancity breached the contract between the Union and Vancity when it wrongfully declared that the Pension Agreement was null and void on September 1 2021.
2. Alternatively, that a declaration that [sic] the defendant Vancity is estopped by treating the Pension Agreement as terminated on September 1, 2021 given its express representation that the date would not apply.
3. In the further alternative, a declaration that the defendant Vancity waived the date of September 1, 2021 and continued to meet with the Union's representatives of the Design Committee to implement the design agreed to by the Design Committee.
4. A declaration given that if Vancity had advised the Union that it has no intention of implementing a jointly trustee Defined Benefit Pension Plan, despite Vancity's express representation to the contrary, the parties should be placed in the position they would have been on February 27,

2020 if that misrepresentation had not occurred. That is, the Union and its members should be placed in the position that they can determine if they will exercise the Charter of Rights and Freedoms protected right to strike.

5. A declaration that the defendant Vancity misrepresented Vancity's commitment to implement a jointly sponsored Defined Benefit Pension Plan.
6. [Omitted pursuant to amendment]
7. In order to preserve the right of the Union and its members, an application will be made for injunctive relief.
8. Damages should be awarded for misrepresentation by the defendant Vancity when it purported to agree that it would enter into a jointly sponsored Defined Benefit Pension Plan. This would include an amount awarded to the Union in order to be compensated for all monies spent on the design process, including hours spent by the Union representatives of the Design Committee as well as hours spent by the support staff;
9. Punitive and aggravated damages should be awarded given the conduct of the defendant Vancity;

Part 3: LEGAL BASIS

...

8. By Vancity's course of conduct, the Union and its members have suffered damages incurred in designing a jointly sponsored Defined Benefit Pension which Vancity knew would never be accepted by the Board as the Board and its Directors had no intention at any time to accept a jointly sponsored plan.

9. In addition to general damages, the conduct of the defendant Vancity justify [sic] awards of aggravated and/or punitive damages in amounts to be determined by the court sufficient to deter such conduct in the future.

10. Further, injunctive relief is appropriate in this case as the Union and its members will suffer irreparable harm without the granting of an injunction. In addition, the granting of an injunction will not cause the defendants any financial loss.

[47] This pleading, while not a model of clarity, is at its core a claim for damages for breach of contract. When paragraph 1 of Part 2: Relief Sought is read together with Part 3: Legal Basis, para 8, it is clear that the plaintiff's primary position is a claim for breach of contract damages. Given this fact, the law as set out in cases like *Beauchamp v. Coastal Corporation*, and *Fengyun*, both supra, applies to bar a subsequent plea for specific performance. This is because once the repudiation is accepted and a suit for damages brought, the contract is no longer on foot and able to be specifically performed.

[48] The Union argued that the pleading encompasses a claim for specific performance without using those words. Putting aside for a moment the fact that the pleading on its face makes the opposite election, I do not find that this is the case. A case in contrast is *Munro v. James*, where Francis J. found at para 189 that specific performance was available despite the pleading not using those words, because the plaintiffs sought a declaration of their rights under the agreement coupled with a proprietary interest in the property which they could only obtain if the Agreement were still in force. There are no analogous pleadings here. The injunction sought is interlocutory, and in aid of the preservation of the Union's right to strike. The pleadings related to the tort of misrepresentation do not assist in making out a claim for specific performance. This is not a contract for the sale of land, where there is an obvious proprietary interest at stake.

[49] The cases cited by the Union in support of its position that it has not repudiated the contract nor made an election to seek damages over specific performance do not assist them. They are cases in which the party in the Union's position first seeks specific performance and then elects to sue for damages: see, for e.g., *Guraya* at para. 51, where the Court observes that the plaintiff had kept the contract alive by suing for specific performance.

[50] The Union also points to various communications made to members and to Vancity to bolster its position that it clearly intended to keep this contract alive. In my view, these communications made outside of the litigation do not serve to revive a contract that the Amended Notice of Civil Claim has already put an end to, any more than would a late-breaking claim for specific performance. In the words of Lord Wilberforce cited above, "what is dead is dead".

[51] In any event, even if this pleading could be read as not containing an election to sue for damages for breach of contract, I find that the delay here and resulting prejudice would make it unfair to permit an amendment to add a claim for specific performance at this stage.

[52] I find that *Fengyun* governs this situation. See paras 78-82, where at para 82 Harris J. made specific reference to the rationale for the contractual principle that a party faced with a breach of contract must elect between the right to affirm the contract, and the right to accept its repudiation:

[82] In my view, it would be unjust not to consider whether the defendants have been prejudiced by the proposed amendment to plead specific performance where an underlying basis for an election of rights is to provide a measure of certainty to the parties and to prevent a party from altering his or her position in a manner which would cause material detriment to the other party.

[53] The overarching test is whether the amendments would cause “actual and meaningful prejudice which cannot otherwise be dealt with in costs”: *Fengyun* at para. 81. The court must ask whether the amendment will put the defendant into a position where it must be injured: *Fengyun* at para. 79, citing *Langret Investments S.A. v. McDonnell*, 21 B.C.L.R. (3d) 145 at paras. 44–45, 1996 CanLII 1433.

[54] The Union points to Vancity’s decision to move forward with the Vancity Pension Plan at least in 2022, when it says that Vancity knew of its communications to its members pressing for a joint plan. The question, however, is not when Vancity committed to spend the money, but whether there has been actual prejudice “caused by the delay”; see *Kwikwetlem First Nation*, supra at para 166. I accept Vancity’s evidence that it proceeded with implementation in January 2023, in the immediate wake of the injunction decision, and I find that it was entitled to rely on the Union’s election as set out in the pleadings in any event, in taking various steps towards that implementation.

[55] Given the result above it is not necessary for me to address Vancity’s argument that the proposed amendment is also an abuse of process, as an attempt by the Union to re-cast its case after failing in its injunction application.

[56] The plaintiff's application for an amendment is therefore dismissed.

"Lawn J."