IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Krivaia v. Hungerford,*
2026 BCSC 408

Date: 20260311
Docket: S253288
Registry: Vancouver

Between:

Svetlana Krivaia and Sergei Krivoi

Plaintiffs

And

Stephanie Hungerford and Andrew Hungerford

Defendants

- and -

Docket: S255340
Registry: Vancouver

Between:

Sergei Krivoi

Plaintiff

And

Stephanie Hungerford and Andrew Hungerford

Defendants

Before: The Honourable Justice Shergill

Reasons for Judgment

Rule 9-5(1) Application

The Plaintiffs, appearing in person:	S. Krivaia S. Krivoi
Counsel for the Defendants:	C.E. Hunter, K.C. M. Zapach

Place and Dates of Hearing:	Vancouver, B.C. September 29, 2025 February 19-20, 2026
Place and Date of Judgment:	Vancouver, B.C. March 11, 2026

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I. OVERVIEW

[1] This hearing concerns two applications brought by the Defendants, Stephanie Hungerford and Andrew Hungerford, to strike the claims commenced against them by the Plaintiffs, Svetlana Krivaia and Sergei Krivoi. The Strike Applications are brought under Rule 9-5(1) of the *Supreme Court Civil Rules* in two separate actions.[1]

[2] The parties were once neighbours. They lived on adjoining properties. Their relationship was marred with ongoing conflict that escalated when a fence that divided their two properties needed repairs.

[3] The parties' dispute made its way to this Court in April 2025, when the Plaintiffs filed their first action against the Defendants.[2] In the First Action, the Plaintiffs made various allegations, including that the Defendants had committed harassment, nuisance, trespass, privacy invasion, property encroachment, defamation, and negligent or intentional infliction of emotional distress.

[4] Mr. Krivoi commenced a second lawsuit against the Defendants in July 2025,[3] in which he made additional allegations of defamation, invasion of privacy, intentional infliction of mental suffering, nuisance, and harassment. The primary impetus for the Second Action was statements made by the Defendants in their filed response to the First Action, which Mr. Krivoi alleged caused him reputational and psychological harm.

[5] The Defendants filed these Strike Applications in September 2025, on the grounds that the initiating pleadings in both actions failed to disclose a reasonable cause of action, are unnecessary, frivolous or vexatious, prejudicial and embarrassing, and/or constitute an abuse of process. In the alternative, they asked that the First Action be struck with leave to amend the claim to bring it into compliance with the *Rules*. Similar alternative relief was not sought for the Second Action.

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[1] B.C. Reg. 168/2009 [*Rules*].
[2] Action No. S-253288.
[3] Action No. S-255340.

[6] The hearing of the Strike Applications commenced before me on September 29, 2025. The matter did not conclude, and it was set for a further two days in February 2026.

[7] The Plaintiffs filed a Notice of Discontinuance of the Second Action on February 11, 2026, about one week prior to the hearing re-commencing. In light of the Discontinuance, the Defendants' Strike Application for the Second Action is no longer necessary.

[8] On February 19, 2026, the Plaintiffs advised the Court that they wished to amend their pleading in the First Action to only pursue damages in trespass, encroachment, and unjust enrichment. They asked for leave to amend the pleading accordingly, and bring it into compliance with the *Rules*.

[9] The amendments proposed by the Plaintiffs address many of the concerns raised in the Strike Application related to the First Action, such as the viability of the claims advanced, as well as their scandalous, frivolous, or vexatious nature. Nevertheless, the Defendants argue that the proposed amendments are an abuse of process and that the Plaintiffs should not be given any opportunity to amend. I disagree.

[10] For the reasons that follow, I find that the Plaintiffs should be granted leave to amend their pleading in the First Action to bring it into compliance with the *Rules*.

II. ISSUES

[11] The following issues are raised in this Application:

a) Is the pleading an abuse of process?

b) Should the Plaintiffs be granted an opportunity to amend their pleading?

c) What costs award should be made for this Application?

[12] I turn now to determining the issues in dispute.

III. ANALYSIS

[13] Rule 9-5(1) provides this Court with the authority to strike a pleading or order it to be amended. It stipulates that:

> (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,
>
> (b) it is unnecessary, scandalous, frivolous or vexatious,
>
> (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
>
> (d) it is otherwise an abuse of the process of the court,
>
> 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.

[14] The court has discretion to strike the pleading and dismiss the underlying action if any of the grounds in Rule 9-5(1) are established: *Larouche v. Pure Gold Mining Inc*., 2024 BCSC 1889 at para. 26, citing *Sandhu v. Sandhu*, 2023 BCSC 1860 at paras. 23–24.

[15] When considering an application brought under Rule 9-5(1), the Court does not need to analyze each of the grounds discretely or in isolation from each other. They are capable of being read together: *Gaucher v. British Columbia Institute of Technology*, 2021 BCSC 289 at para. 59, citing *Willson v. British Columbia,* 2012 BCSC 1256 at para. 17; *Besler v. Clausen*, 2025 BCSC 1353 at para. 40.

[16] Although the Defendants are no longer relying on grounds (a) to (c) of Rule 9-5(1), it is useful to provide some explanation of what an analysis under those grounds entails.

[17] An originating pleading may be dismissed under Rule 9-5(1)(a) if it discloses no reasonable claim. To succeed under this ground, the applicant must show that it is "plain and obvious" that the pleadings disclose no reasonable cause of action; that the claim has "no reasonable prospect of success"; or that the action is "certain to fail": *Kozma v. Island Health*, 2021 BCSC 687 at para. 8.

[18] Pursuant to Rule 9-5(2), no evidence is admissible on an application under subrule (1)(a). This means that the court conducts its analysis on the basis that the facts pleaded are true, unless they are manifestly incapable of being proven: *Gaucher* at para. 56, citing *Young v. Borzoni*, 2007 BCCA 16 at paras. 30–32.

[19] A "frivolous" pleading under Rule 9-5(1)(b) is one that is without substance, is groundless or fanciful, or is a waste of the court's time. A pleading is "vexatious" or "unnecessary" where it does not go to establishing the plaintiff's cause of action or fails to advance any known legal claim: *Mohebbi v. North Vancouver RCMP*, 2015 BCSC 2083 at para. 18, citing *Borsato v. Basra*, 2000 BCSC 1898 at para. 24, *Citizens for Foreign Aid Reform Inc. v. Canadian Jewish Congress*, 91 A.C.W.S. (3d) 362, 1999 CanLII 5860 (B.C.S.C.) at para. 47.

[20] A pleading is considered "embarrassing" within the context of subrule (1)(c) where it is so confusing it is difficult to understand the claim being pleaded. It is also "embarrassing" when it is so irrelevant that allowing the pleading to stand would impose useless expenses and prejudice the trial by involving parties in a dispute that is tangential to the main claim: *Mohebbi* at para. 19, citing *Citizens for Foreign Aid Reform Inc.* at para. 47, *Keddie v. Dumas Hotels Ltd. (Cariboo Trail Hotel)* (1985), 62 B.C.L.R. 145 at 147, 1985 CanLII 417 (B.C.C.A.).

[21] I turn now to ground (d) of Rule 9-5(1), which relates to abuse of process.

[22] Abuse of process may take many different forms. It can be established where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or where it is employed for some ulterior or improper purpose; where proceedings are without foundation or serve no useful purpose; and where multiple or successive proceedings cause or are likely to cause vexation or oppression: *Mohebbi* at para. 20, citing *Babavic v. Babowech* (1993), 42 A.C.W.S. (3d) 447, 1993 CarswellBC 2950 (B.C.S.C.) at para. 18.

A. History of Proceedings

[23] The Plaintiffs filed their Notice of Civil Claim ("NOCC") in the First Action on April 30, 2025. In it, they advanced six alleged causes of action: nuisance; defamation; harassment; intentional infliction of mental suffering; negligent misrepresentation; and discriminatory conduct. They sought injunctive and declaratory relief, damages (general, special, and punitive), and costs. They quantified their claim for costs as $85,000.

[24] The Defendants filed their Response to Civil Claim ("RTCC") in the First Action on June 4, 2025.

[25] The Plaintiffs amended their NOCC in the First Action on two occasions. Each of the iterations of their NOCC cite case law that the Defendants say does not exist.

[26] The first amendment to their NOCC was made as of right on June 25, 2025 ("ANOCC"). In the ANOCC, the Plaintiffs added new alleged causes of action, including invasion of privacy, unjust encroachment, trespass to land, neighbour harassment, and inconsistent defence. They also expanded the relief sought and the monetary value of their claims. On the same day, the Plaintiffs filed a lengthy Reply to the RTCC.

[27] On July 16, 2025, the Plaintiffs filed a Further Amended Notice of Civil Claim ("FANOCC") in the First Action. It is unclear why the Registry accepted this document for filing, as this second amendment was made without leave or consent as required by Rule 6-1(1). In addition to adding further allegations, the Plaintiffs significantly increased their damages and costs claims.

[28] Also on July 16, 2025, Mr. Krivoi commenced the Second Action, in which he alleged that statements made by the Defendants in their RTCC in the First Action were defamatory. Mr. Krivoi also repeated many of the same allegations raised in the First Action and claimed further amounts for damages and costs.

[29] The Defendants filed a Response to Civil Claim in the Second Action on August 8, 2025.

[30] The Defendants sold their property a few weeks later in August 2025.

[31] The Defendants filed this Strike Application (and a parallel application in the Second Action) on September 16, 2025.

[32] On February 11, 2026, the Plaintiffs filed their Notice of Discontinuance ending the Second Action.

B. Proposed Amendment

[33] On February 19, 2026, the Plaintiffs advised the Court that they would be preparing a further amended claim for consideration in the Strike Application. They provided the Court with their proposed Second Further Amended Notice of Civil Claim ("proposed 2FANOCC" or "Proposed Amendments") on February 20, 2026.

[34] The proposed 2FANOCC presented to the Court on February 20, 2026, is a concisely pled document. In contrast to the rambling pleadings that have been previously filed by the Plaintiffs, the substantive portions of the proposed 2FANOCC are set out in a single page.

[35] The proposed 2FANOCC abandons nine of the eleven alleged causes of action pled in the original FANOCC but maintains the claims of trespass and unjust encroachment. It also introduced, for the first time, s. 36 of the *Property Law Act*,[4] as a statutory basis for their encroachment claims.

[36] Under part 1 of the proposed 2FANOCC, the Plaintiffs have narrowed their allegations to concerns of trespass related to the fence, which they assert was built without their consent and encroaches on their property.

[37] They seek the following damages: (a) damages for trespass from 2012 when the fence was constructed, to August 2025 when the Defendants sold the property; (b) alternatively, compensation under s. 36 of the *PLA*; (c) a declaration that the fence encroaches upon the Plaintiffs' property; (d) an order requiring removal of the encroaching structure, or alternatively compensation, pursuant to s. 36 of the *PLA*;

[4] R.S.B.C. 1996, c. 377 [*PLA*].

(e) pre-judgment and post-judgment interest under the *Court Order Interest Act*;[5] and (f) costs.

[38] The Defendants agree that this Court should conduct the analysis on the basis of the Proposed Amendments, rather than on the original FANOCC.

[39] The Proposed Amendments significantly change the arguments under consideration in this Application. Whereas the Defendants originally argued that all the grounds under Rule 9-5(1) were met, they now only argue that the pleading is an abuse of process, and that no opportunity to amend should be granted. This argument is considered below.

C. Is the pleading an abuse of process?

[40] It is the position of the Defendants that the trespass and encroachment claims are abusive because they:

a) have been commenced for an ulterior motive;

b) seek relief against the Defendants which is not legally available;

c) are internally inconsistent;

d) are manifestly incapable of proof; and

e) are tainted by the Plaintiff's reliance on fictitious authorities.

[41] I turn to the first allegation.

1. Motive for the Litigation

[42] For the reasons that follow, I find that there is insufficient basis to conclude that the Plaintiffs are motivated by an improper purpose in advancing their claims of trespass or encroachment.

[5] R.S.B.C. 1996, c. 79.

[43] There is no dispute that proceedings brought for a purpose other than the assertion of legitimate rights constitute an abuse of process: *Mohebbi* at para. 20, citing *Babavic* at para. 18.

[44] The Defendants argue that the trespass and encroachment claims were not brought to vindicate a genuine property right. Rather, the Plaintiffs commenced the Actions to retaliate against their former neighbours after their fence dispute escalated. They ask me to infer this from various things, including: the parties' longstanding acrimonious relationship; the late introduction of the trespass and encroachment claims; the constantly evolving claims against the Defendants, including the Plaintiffs' abandonment of numerous other allegations; and the Plaintiff's failure to commence any action against the current owners of the property, who are the only parties from whom they could have meaningful relief. Even if all these things were true, taken together, they do not rise to the level required for me to infer that the Plaintiffs' have brought this lawsuit for an improper or collateral purpose.

[45] It is not unusual in neighbour disputes for parties to have had a lengthy history of acrimony which predates the litigation. While the filed pleadings certainly reflect that acrimony, that does not derogate from the validity of the trespass and encroachment allegations.

[46] It is also not uncommon for parties to amend pleadings to add additional claims. This is partly why the *Rules* permit the first amendment as of right. In this case, the Plaintiffs provide a reasonable explanation at paras. 17–19 of the ANOCC that they did not learn of the trespass until after the original NOCC had been filed. They added the trespass claim within two months of filing the initial NOCC. While the trespass claim is not articulated in the same manner as it currently stands, the Plaintiffs' have made clear efforts to refine the claim and remove allegations that are not supported in law. The fact that this happened after the hearing on the Strike Applications had started, means that the Plaintiffs are making efforts to be responsive to concerns raised.

[47] The Plaintiffs also explained to the Court why they had not commenced any litigation against the current owners of the property. They believed that the trespass and encroachment claims lay solely against the Defendants because they were the ones that had installed the fence.

[48] This brings me to the second concern raised.

2. Availability of Relief

[49] A claim for trespass may be available to the Plaintiffs against both the current owners and the Defendants who installed the offending structure. As explained in *Baxandall v. Campbell*, 2024 BCSC 529, trespass occurs when a "structure or other object is placed on another's land". In such a situation, "both the 'initial intrusion' and the 'failure to remove it' constitute actionable wrongs", such that a "subsequent 'purchaser of the offending chattel or structure' may be liable, 'until the condition is abated'": *Baxandall* at para. 86, citing *Peter Ballantyne Cree Nation v. Canada (Attorney General)*, 2016 SKCA 124 at para. 136.

[50] This does not mean that the Plaintiffs are required to sue all potential defendants to establish the *bona fides* of their claim in trespass against the Defendants at bar. While their failure to sue the current owners may impact what remedies or relief they can ultimately recover through this lawsuit, it does not derogate from the potential viability of their claim against the Defendants.

[51] As to the Defendants' argument that the trespass, if established, is trivial and inconsequential, I note that quantum is a matter for trial and does not determine if a cause of action exists. Further, trespass is actionable without proof of damage: *Baxandall* at para. 81, citing *Phillips v. Keefe*, 2010 BCSC 2005 at para. 75, *Gambling v. Dykes*, 2021 BCSC 938 at para. 50.

[52] The Plaintiffs' claim for relief from encroachment under s. 36 of the *PLA* appears to be more narrowly available. In the proposed 2FANOCC, the Plaintiffs ask for removal of the encroaching structure or alternatively, compensation in lieu.

[53] Section 36 of the *PLA* provides the following remedy for encroachment on adjoining property:

> **Encroachment on adjoining land**
>
> **36** (1) For the purposes of this section, **"owner"** includes a person with an interest in, or right to possession of land.
>
> (2) If, on the survey of land, it is found that a building on it encroaches on adjoining land, or a fence has been improperly located so as to enclose adjoining land, the Supreme Court may on application
>
> (a) declare that the owner of the land has for the period the court determines and on making the compensation to the owner of the adjoining land that the court determines, an easement on the land encroached on or enclosed,
>
> (b) vest title to the land encroached on or enclosed in the owner of the land encroaching or enclosing, on making the compensation that the court determines, or
>
> (c) order the owner to remove the encroachment or the fence so that it no longer encroaches on or encloses any part of the adjoining land.

[54] Thus, under s. 36(2), a court may grant the property owner an easement or vested title over the encroached lands in exchange for appropriate compensation, or it may order the owner to remove the encroachment.

[55] On the face of it, this provision suggests that the Plaintiffs would only have recourse under s. 36 of the *PLA* from the current owners. However, while *Taylor v. Hoskin*, 2006 BCCA 39 could be read as supporting this interpretation, the Court in *Taylor* did not specifically consider this issue.

[56] At the hearing on February 19, 2026, Ms. Krivaia stated that the plaintiffs "want our land back" and seek to "regain our boundaries". While the s. 36 relief is pled in the alternative, it is important to note that the Defendants cannot be ordered to remove an encroachment from land that they no longer own or possess.

[57] The Plaintiffs' self-represented status and lack of legal training undermine any suggestion that they are acting for an improper purpose by not adding the current owners as parties to this litigation. The Plaintiffs' seeming ambivalence about whether they would now seek to add the current owners as parties is also understandable. They explained that they prefer to try to work things out amicably

with the current owners before involving them in litigation. They also appeared surprised by the narrow interpretation of s. 36 advanced by the Defendants. It is possible that on further consideration or with the benefit of legal advice, the Plaintiffs may seek to add the current property owners to their claim. It is also possible that they may find some legal justification to challenge the Defendants' interpretation of s. 36. They should be given the opportunity to do that, rather than to have the s. 36 relief sought in their proposed 2FANOCC dismissed out of hand.

[58] I turn to the unjust enrichment claim. Although not clearly pled, since at least the filing of the ANOCC, the Plaintiffs have indicated an intention to pursue an unjust enrichment claim against the Defendants. They have explained that their failure to include it in the proposed 2FANOCC was unintentional. I am satisfied that they should be given an opportunity to advance this claim as part of their Proposed Amendments.

3. Consistency in Pleadings

[59] The Defendants argue that the Plaintiffs' claim that they have trespassed or encroached on the Plaintiffs' property, is irreconcilable with the first three iterations of their NOCC. The NOCC, ANOCC, and the FANOCC state the following:[6]

> On December 13, 2024, the Defendants verbally demanded that the Plaintiffs pay $10,000 for the replacement of a deteriorating wooden fence located on the Defendants' property …

[60] The Plaintiffs address this concern in two ways.

[61] First, they state that there is no contradiction as the fence does not run in a straight line along the property boundary. Rather, the fence "zigzags" between the parties' properties, such that at times it is located fully on the Defendants' property, and at other times it is located fully on the Plaintiffs' property. They state that the portion of the wooden fence that is referenced in that statement of the first three NOCC's is in fact located on the Defendants' property.

[6] at part 1, para. 3.

[62] This explanation provided by the Plaintiffs is plausible and supported by paras. 17–19 of their ANOCC and paras. 20–21 of their FANOCC,[7] where the Plaintiffs asserted that the fence in question was located on “shared property” between the Defendants and Plaintiffs and that the fence also encroached onto their land.

[63] I am satisfied that the assertion regarding the location of the fence (though poorly worded) does not reveal an inconsistency, particularly when the statement is properly interpreted and having regard to the three versions of the NOCC: *Este v. Esteghamat-Ardakani*, 2018 BCCA 290 at para. 93, leave to appeal to SCC ref’d, 38384 (14 March 2019).

[64] Second, the Plaintiffs argue that the *Rules* specifically permit inconsistent pleadings. While Rule 3-7(6) prohibits a party from pleading “an allegation of fact or a new ground or claim inconsistent with the party's previous pleading”, Rule 3-7(7) allows a party to plead inconsistent allegations in the alternative. The precise wording of these subsections is set out below:

> **Inconsistent allegations**
>
> (6) A party must not plead an allegation of fact or a new ground or claim inconsistent with the party's previous pleading.
>
> **Alternative allegations**
>
> (7) Subrule (6) does not affect the right of a party to make allegations in the alternative or to amend or apply for leave to amend a pleading.

[65] While the Plaintiffs did not plead this allegation in the alternative, this is not fatal to their position. At best this is an oversight rather than an effort to deliberately or knowingly advance an inconsistent position: *Este* at para. 93.

[66] Rule 3-7(7) specifically protects the right of a party to apply for leave to amend a pleading to plead an allegation of fact that may have been considered inconsistent with a previous pleading. To that end, I note that the Proposed Amendments do not refer to the fence being located on the Defendants’ property.

[7] at part 1 of both pleadings.

Instead, the Plaintiffs now assert that the fence "encroaches onto [their] property".[8] Thus, even if there was an inconsistency in the earlier pleadings, it has been corrected in the Proposed Amendments.

[67] I also do not agree that there is any inconsistency between the proposed 2FANOCC and the original FANOCC. The proposed 2FANOCC asserts that the fence "remained in place and encroached upon the Plaintiffs' Property throughout the Defendants' ownership and occupation".[9] The original FANOCC asserts that the Defendants demanded that the Plaintiffs pay for the replacement of a deteriorating wooden fence located on the Defendants property.[10] Claiming that the fence both remained on the Plaintiffs' property at all times and that the Defendants replaced the fence appear to be inconsistent claims. However, the Plaintiffs have explained the apparent contradiction by asserting that the fence was never fully replaced. Rather, only the most damaged portions of it were replaced, with the vast majority of the original fence structure remaining in place on the Plaintiffs property. Again, this is a reflection of a poorly articulated pleading, rather than an inconsistent one.

[68] The Defendants have failed to establish that there exists an inconsistency in the pleadings that amounts to an abuse of process.

4. Capable of Proof

[69] I also reject the Defendants argument that the Plaintiffs are unable to prove their claim such that letting it stand amounts to an abuse of process.

[70] First, I disagree that the following assertion made by the Plaintiffs in the proposed 2FANOCC is incapable of being proven:

> 3. In or about 2012, during their ownership of the Defendants' Property, the Defendants constructed and maintain [*sic*] the fence that encroaches onto the Plaintiffs' property without consent.

[71] The Defendants argue that this assertion cannot be proven because the fence that was built in 2012 collapsed in December 2024 and was fully replaced.

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[8] Proposed 2FANOCC at part 1, para. 3.
[9] at part 1, para. 6.
[10] at part 1, para. 3.

This version of events is challenged by the Plaintiffs, who state that the fence was only partially replaced after it fell in December 2024. Ultimately, it will be the job of the trial judge to determine which party to believe.

[72] Second, I do not agree that the Letter of Consideration ("Letter") renders the claim unprovable. While the Letter appears to suggest that the Plaintiffs consented to the construction of the original fence in 2012, it is not a foregone conclusion that the trial judge will put much or any weight on it. Just because a fact may be difficult to prove, does not make it impossible to prove. The Plaintiffs may have a credible explanation for the Letter that does not undermine their position or which, if believed, renders the Letter unreliable.

[73] Third, the Defendants' argument that there is no survey evidence from the time when the original fence was standing does not mean that the Plaintiffs will not be able to prove trespass or encroachment from 2012 onwards. The Plaintiffs' survey which post-dates the reconstruction of the fence and the Defendants' sale of their property, is still potentially useful for supporting the allegation of continuing trespass. This is particularly the case if the trial judge believes the Plaintiffs' assertion that the fence has never been fully replaced and has been standing at the same location since 2012.

5. Fictitious Authorities

[74] I turn finally to the assertion that the Plaintiffs have perpetrated an abuse of process by relying on AI-hallucinated cases in their pleadings.

[75] The Defendants acknowledge that the AI-hallucinated cases do not appear in the proposed 2FANOCC. Nevertheless, these cases did appear in previous iterations of the Plaintiffs' pleadings. The Plaintiffs removed the references only after the matter was raised by the Defendants in their Strike Applications.

[76] As noted by Justice Masuhara in *Zhang v. Chen*, 2024 BCSC 285 at para. 29, citing fictitious cases in court filings can constitute an abuse of process as it is "tantamount to making a false statement to the court". If it goes unchecked it "can lead to a miscarriage of justice".

[77] This is why a party who relies on fictitious caselaw may face serious repercussions (even if the party is self-represented). This includes the striking of their pleadings, special costs, denial of costs, or a finding of abuse of process. See for example: *Arora v. Canadian National Railway*, 2026 FC 82 at paras. 26–31; *Halton (Regional Municipality) v. Rewa,* 2025 ONSC 4503 ("*Halton*") at paras. 39–55; *Lloyd's Register Canada Ltd. v. Choi*, 2025 FC 1233 ("*Lloyd's*"); *Specter Aviation Limited c. Laprade*, 2025 QCCS 3521 at paras. 32–60; *The Vancor Group Inc. v. 2744364 Ontario Limited*, 2025 ONSC 5925 at paras. 22–26; and *NCR v. KKB*, 2025 ABKB 417 at paras. 105–115.

[78] The fact that a party is self-represented does not immunize them from the duty to ensure that the cases they are relying on actually exist "and stand for the propositions for which they are advanced": *Halton* at para. 53.

[79] However, the knowledge, intention, and explanation provided by the person who relies on AI-hallucinated cases is an important consideration before the court will make a finding of abuse of process.

[80] The Defendants say that at the hearing on February 19, 2026, Ms. Krivaia did not accept that her authorities were hallucinated by AI, which is an aggravating factor based on *Lloyd's*. I do not interpret Ms. Krivaia's submissions in that way. In response to questions from the Court, Ms. Krivaia had difficulty explaining the process that she used to find the authorities that were referenced in her NOCC. I attribute part of this to her limited english language skills (which were evident throughout the three days of hearing) and partly due to her lack of knowledge about generative AI, how it works, or how she might have accessed it from her internet browser. When Ms. Krivaia finally understood the gravity of the situation, she appeared genuinely remorseful and apologetic. Importantly, the Plaintiffs have removed the fictitious authorities in their Proposed Amendments.

[81] I am satisfied that the Plaintiffs' conduct in relying on AI-hallucinated authorities was a grave mistake but was not designed to intentionally mislead the Court. While this does not excuse the Plaintiffs from their independent obligation to verify any authorities that they are relying on, it does mitigate their degree of moral

culpability. In my view, the Plaintiffs failure to independently verify the authenticity of their authorities is more appropriately addressed by way of a costs award, rather than a finding of abuse of process.

6. Conclusion

[82] The threshold to strike an action on account of it being an abuse of process is very high: *Robertson v. Lauchlin Enterprises Ltd*., 2025 BCSC 1600 at para. 45, citing *Saskatchewan (Environment) v. Métis Nation–Saskatchewan*, 2025 SCC 4 at para. 60.

[83] When considering the grounds raised by the Defendants, individually and collectively, and the circumstances as a whole, I find that they have failed to meet that high threshold.

[84] Consequently, the application to have the claim struck on the grounds of abuse of process cannot succeed.

D. Should the Plaintiffs Be Permitted to Amend Their Pleading?

[85] I turn to whether the Plaintiffs should be permitted to amend their pleading to rectify any deficiencies that currently exist.

[86] The Defendants are correct that a claim struck as an abuse of process cannot be cured by amendment: *Fitzpatrick v. Codiac Regional RCMP Force, District 12,* 2022 FC 841 at para. 63, citing *Pearson v. Canada*, 2008 FC 1367 at para. 48. However, I have not made a finding of abuse of process. Consequently, there is no bar to providing the Plaintiffs an opportunity to amend their pleading to bring it into conformity with the *Rules*.

[87] Indeed, providing the Plaintiffs with an opportunity for an amendment is warranted as it would avoid the possible injustice of denying a claim with potential merit. It also ensures that the parties can move this litigation forward, consistent with the objectives of *Rules* to promote a just, speedy, and inexpensive determination of proceedings on their merits: *Lover-Peace v. Erickson,* 2026 BCCA 53 at paras. 56–57.

[88] There are three claims that the Plaintiffs wish to advance against the Defendants: a claim under the common law for trespass; a claim for encroachment under s. 36 of the *PLA*; and a claim for unjust enrichment. The first two have been pled in the proposed 2FANOCC; the unjust enrichment claim was originally sought but mistakenly removed when the Plaintiffs drafted the document which contains their current Proposed Amendments.

[89] To succeed in a claim for trespass, the Plaintiffs must establish the following essential elements: (a) that the defendant made a direct interference with or intrusion onto the plaintiff's land; (b) that the interference was intentional or negligent; and (c) that the interference was physical: *Baxandall* at para. 82, citing *Gambling* at para. 50.

[90] Two of these three elements have been pled in the proposed 2FANOCC. The Plaintiffs should be permitted to amend the proposed claim to also plead the missing element, which is that the interference or intrusion was intentional or negligent.

[91] The claim for relief against the Defendants under s. 36 of the *PLA* is insufficiently pled. The Plaintiffs have not shown how they can succeed in this claim (or related s. 36 relief) since the Defendants are no longer owners of the property. The Plaintiffs are given leave to make an amendment to address this concern.

[92] The Plaintiffs have shown an intention to pursue a claim for unjust enrichment. They should be permitted to make an amendment so that they can plead the required elements for an unjust enrichment claim.

[93] I turn finally to the Reply filed by the Plaintiffs. This Reply was filed in response to the Defendants' RTCC. Both the RTCC and the Reply are predicated on claims that are no longer being advanced by the Plaintiffs. Further, the Reply contains many of the flaws that were present in the original NOCC and subsequent amendments.

[94] In the circumstances, it is appropriate to strike the Reply, with leave to the Plaintiffs to file a fresh reply that is responsive to the Defendants' amended RTCC. Any such Reply must conform with the *Rules*.

IV. ORDER MADE

[95] In relation to the relief sought in the Amended Notice of Application filed in the First Action, I order as follows:

1. Term 1 is dismissed as it is moot.

2. Term 2 is dismissed.

3. Term 3 is dismissed.

4. The Plaintiffs are granted leave to amend their second Further Amended Notice of Civil Claim, in substantially the same form as set out in the proposed 2FANOCC, but with the following further amendments:

    a) pleading all the essential elements of trespass, including that the Defendants' intrusion or interference on the Plaintiffs' property was intentional or negligent;

    b) pleading a factual and legal basis to support a cause of action against the Defendants under s. 36 of the *PLA*; and

    c) pleading a factual and legal basis to support a claim for unjust enrichment.

5. The Reply is struck.

6. The Plaintiffs may file a fresh Reply that is responsive to the Defendants' amended RTCC.

7. The Defendants are granted leave to bring a fresh application under Rule 9-5(1), in the event that the Defendants are of the view that the 2FANOCC or further Reply fail to meet the requirements of the *Rules.*

V. COSTS

[96] Rule 14-1(9) provides that:

> Subject to subrule (12), costs of a proceeding must be awarded to the successful party unless the court otherwise orders.

[97] An award of costs typically follows the outcome of the court proceeding and is awarded to the substantially successful party in the litigation: *Fotheringham v. Fotheringham*, 2001 BCSC 1321, leave to appeal ref'd 2002 BCCA 454 at para. 14.

[98] The Court has discretion to depart from the usual rule of awarding costs to the successful party, but that discretion must be exercised judicially: *Bazylak v. British Columbia*, 2025 BCSC 2346 at para. 81, citing *Cowherd v. Fraser Valley Health Region*, 2004 BCSC 698 at para. 4, *Giles v. Westminster Savings and Credit Union*, 2010 BCCA 282 at para. 73.

[99] When considering whether to depart from the usual rule that the successful party is entitled to their costs, the court may consider various factors, including: (a) misconduct of that party in the course of the litigation; (b) failure of the successful party to accept a formal offer to settle; and (c) any ruling against the successful party on one or more issues that took a discrete amount of court time (see *Culos Development (1996) Inc. v. Baytalan*, 2024 BCSC 1634 at para. 8, citing *Loft v. Nat*, 2014 BCCA 108 at para. 49; *JM Bay Properties Inc. v. Tung Cheng Yuen Buddhist Association*, 2025 BCSC 2281 at paras. 30–32).

[100] In this case, there are two matters that impact the award of costs. These relate to the Plaintiffs' conduct during litigation.

[101] First, while the Plaintiffs were technically successful in defeating the Application to have their claim struck for abuse of process, this success is significantly mitigated by the timing of their revised position and the current state of

their pleading. The Plaintiffs defeated the application to have most of their claims struck because they withdrew them prior to the Court making its decision. Their revised position abandoning many of the impugned claims came after the hearing had commenced and significant resources had been expended by the Defendants. Further, the Plaintiffs still need to make further amendments to bring the pleading into compliance with the Rules. These factors on their own are sufficient reason to deny the Plaintiffs costs of this hearing. They may also provide basis to award costs to the Defendants.

[102] Second, the Plaintiffs' reliance on, and failure to verify the authenticity of, AI-hallucinated cases constitutes misconduct that is worthy of rebuke. I have already explained the serious affront to justice that occurs when a party files a court document relying on fictitious cases. Even if the Plaintiffs did not know that the cases they had cited in their pleading were false, their failure to check and independently verify the authenticity of their legal authorities is a serious oversight. This is sufficient reason on its own to deprive the Plaintiffs of any costs to which they might otherwise have been entitled. It may also provide the basis for a special costs award.

[103] In light of the above, I conclude that costs of the hearing should be awarded to the Defendants. This leaves the question of whether the Defendants are entitled to costs or special costs.

[104] I invite the parties to provide written submissions on what type of costs award should be made in favour of the Defendants, in accordance with the following schedule:

a) The Defendants are to file and serve their written submissions on costs, not to exceed 5 pages in length, by 4:00 p.m. on March 23, 2026.

b) The Plaintiffs are to file and serve their responding submissions on costs, not to exceed 5 pages in length, by 4:00 p.m. on March 31, 2026.

c) The Defendants are to file and serve their reply submissions, if any, not to exceed 2 pages in length, by 4:00 p.m. on April 7, 2026.

d) The parties may change the above timing for the exchange of written submissions, provided that it is by consent and that I am notified of the new deadlines.

[105] All written submissions are to be sent to my attention via email to Supreme Court Scheduling.

"Shergill J."