

# Court of King's Bench of Alberta

**Citation: Williamson v 715057 Alberta Ltd. et al, 2025 ABKB 257**

**Date:** 20250425  
**Docket:** 2001 06551  
**Registry:** Calgary

Between:

**The Estate of Kent Williamson, also known as Richard Kent Williamson, also known as R. Kent Williamson by its Litigation Representative, Jeff Williamson**

Plaintiff/Respondent

- and -

**715057 Alberta Ltd. Operating as THS Septic & Civil Solutions, 1592898 Alberta Ltd., Travis McIntyre, AAA Corporation Ltd. and John Doe**

Defendants/Applicants

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**Reasons for Decision  
of the  
Honourable Justice J.C. Kubik**

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Appeal from the Decision by  
J.R. Farrington, The Honourable Applications Judge

Dated the 19<sup>th</sup> day of March, 2024

## INTRODUCTION

[1] Between August 2015 and August 2018, an entity identified as THS Septic & Civil Solutions (“THS”) provided various services associated with the installation of a septic system

for connection to the County of Lacombe wastewater system (the “System”) on lands legally described as:

Plan 1169MC

Lot 6

Reserving thereout all mines and minerals as set-forth in transfer 72591DG  
(the “Property”)

[2] THS provided quotes for the work and invoiced the same upon completion. The work was performed by Kris Novotney (“Novotney”) on behalf of THS. All invoices were paid in full.

[3] In May 2018, THS was contacted by Ellen Williamson who reported issues with the System. Novotney, on behalf of THS, attended at the Property and subsequently performed repairs to the System, including replacement of the grinder pump and piping. THS recommended and performed additional work at the Property, including the installation of heat tracing, a frost plug, and a back flow preventor valve. This work was completed between May 2018 and August 2018, was invoiced, and paid.

[4] On May 28, 2020, the Estate of Kent Williamson (the “Plaintiff”) filed a Statement of Claim against 715057 Alberta Ltd. operating as THS Septic & Civil Solutions (“715057”), 1592898 Alberta Ltd., Travis McIntyre (“McIntyre”) and two unnamed Defendants. The action alleges breach of contract, negligence, faulty workmanship and negligent misrepresentation. In addition, the action seeks to pierce the corporate veil, alleging personal liability against McIntyre, who is the sole director and officer of 715057 Alberta Ltd.

[5] 715057 admits in its pleadings that it performed the work as alleged. 715057, along with the other Defendants, deny any knowledge of problems with the System after August 2018. The Defendants also deny any contract with the Plaintiff, that any representations were made, assert that they met the required of standard of care, and deny any liability for the damages alleged, pleading that any losses arose as a result of the Plaintiff’s own acts or omissions.

[6] On March 19, 2024, Applications Judge Farrington heard the Defendants’ Summary Dismissal Application. While he granted summary dismissal of the action against 1592898 Alberta Ltd., he dismissed the balance of the application, finding that the Defendants had not met the test for summary judgment. Specifically, he held that the evidentiary record was insufficient as it relied heavily on hearsay evidence. He was satisfied that the Defendants had failed to prove that there was no genuine issue requiring trial.

[7] The Defendants appeal this decision. They argue that there is no genuine issue requiring trial as there is no provable cause of action against the Defendants because:

- (a) there was no contract between the Defendants and the named Plaintiff;
- (b) there is no connection between the Defendant, McIntyre, and the Plaintiff; and
- (c) there is no evidence that the work done was inadequate or caused damage to the Plaintiff.

[8] The Plaintiff did not cross-appeal Applications Judge Farrington’s decision to dismiss the action against 1592898 Alberta Ltd.

## STANDARD OF REVIEW

[9] An appeal from an Applications Judge is a hearing on the record and may include any additional evidence that is relevant and material, as determined by the hearing judge: Rule 6.14 *Alberta Rules of Court*. The standard of review is correctness: *Bahcheli v Yorkton Securities Inc*, 2012 ABCA 166.

[10] In this case, in addition to the materials before Judge Farrington, the appeal record includes an additional Affidavit filed by McIntyre. This Affidavit includes an explanation regarding his review of the business records of THS and repeats much of the evidence he gave at questioning on his prior Affidavit.

## LAW REGARDING SUMMARY JUDGMENT

[11] An applicant who establishes that there is no genuine issue requiring a trial is entitled to summary judgment or dismissal. There will be no issue requiring trial when the judge is able to make the necessary findings of fact on the record before them, apply the law to those facts, and be satisfied that the process reflects a proportionate, timely and cost-effective means to achieve a just result: *Hyrniak v Mauldin*, 2014 SCC 7 [*“Hyrniak”*].

[12] *Hyrniak* has been refined by the Alberta Court of Appeal in the context of our own rules of court: *Weir-Jones Technical Services v Purolator Courier Ltd*, 2019 ABCA 49 [*“Weir-Jones”*]. In that case, the court determined that the applicant’s burden of proof is on a balance of probabilities, both with respect to the factual elements of the case and the question of whether there is a genuine issue requiring trial. The responding party must only demonstrate that the record, the facts or law, preclude a fair disposition: *Weir-Jones*, at para 32. In *Weir-Jones* the Alberta Court of Appeal set out a 4-part analysis, as follows:

- a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
- b) Has the moving party met the burden on it to show that there is either “no merit” or “no defence” and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities, or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
- c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party’s case, by identifying a positive defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.
- d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

[emphasis in original]

[13] As noted in *H2 Canmore Apartments LP v Cormode & Dickson Construction Edmonton Ltd*, 2023 ABKB 659, evidence on a summary judgment application must be admissible and the court should be cautious in admitting hearsay evidence if it would not otherwise be admissible at trial.

[14] As further noted in *Hannam v Medicine Hat School District No 76*, 2019 ABCA 49, at paras 147-151 [*"Hannam"*], neither conflicting evidence nor issues of credibility preclude a summary determination, provided they can be resolved on the evidence before the court and leave no genuine issue for trial. The court must be able to apply the law to the facts. There may be occasions where the state of the law precludes summary disposition.

[15] In *Weir-Jones*, the court noted that a respondent cannot resist summary judgment or create a genuine issue requiring trial by speculating as to the substance of the record which might be available at trial. This approach however does not require a respondent to prove its trial case at the summary judgment hearing: at para 43. Rather, a respondent must only demonstrate that the moving party has failed to show that there is no genuine issue requiring trial. This is consistent with the fairness principle inherent in the test for summary judgment and ensures that meritorious actions can be litigated in accordance with the rules governing litigation of civil matters.

## **RECORD**

[16] The evidence in this case consists of the pleadings, Affidavits of Travis McIntyre ("McIntyre"), Jeff Williamson ("Jeff") and Chad Williamson ("Chad") and cross-examination transcripts of each affiant.

[17] McIntyre is named personally as a Defendant and is also the corporate representative of 715057. His Affidavit evidence is informed by his review of the corporate records and his discussions with employees of 715057. He confirms the admissions made in the Statement of Defence, that 715057 performed the work in question at the Property. On questioning he confirmed that the quotes were the contract and were prepared by employees of the corporation. Copies of the quotes and invoices were appended to his Affidavit and are not in dispute.

[18] McIntyre denied that the Defendants entered a contract with the Plaintiff. It is his evidence that the contracts were between 715057 and Jeff, Chad or Ellen Williamson.

[19] Finally, McIntyre swore that he was not involved in the day-to-day work of 715057, had no involvement in the work done on the Property, and had no contact or communication with Jeff, Chad or Ellen Williamson. He confirmed this evidence on questioning.

[20] McIntyre provided detailed evidence about the work 715057 performed or did not perform at the Property and conversations alleged to have occurred between various Williamsons and Novotney, who was described as a former employee of 715057. In addition, he described various observations purportedly made by Novotney when he attended the Property in May 2018. Those observations related to damage to the System, opinion evidence as to the cause of the damage, and whether the System was properly maintained. On questioning McIntyre was unable to advise whether Novotney provided any training or information to the Williamsons about how to operate the System. He did admit that Novotney did all the work on the System, and during the course of that work was an employee of 715057.

[21] None of the information pertaining to Novotney's interaction with the Williamsons or his observations and opinion are within the firsthand knowledge of McIntyre. In addition, McIntyre did not speak directly to Novotney (now a former employee of 715057) to obtain this information. Instead, this information was relayed to McIntyre through another employee of 715057. While he swears that he believes the information to be true, it still constitutes hearsay evidence.

[22] McIntyre also swore that the Plaintiff made no complaints about any of the work done by 715057. The basis for this statement is his review of the business records of THS. He states that no notice of complaints was brought to the attention of the Defendants until they became aware of the Statement of Claim.

[23] The Affidavit of Jeff Williamson states that he is the Personal Representative of the Estate of Kent Williamson, which estate owns the Property. In this capacity, he instructed the System to be installed. He provided copies of email communications with THS and specifically Novotney, Kayla Boyd, and Kim McIntyre. These emails relate to and include quotes and invoices for the work done by THS at the Property in 2015. In addition, his Affidavit includes email communications between Chad and various employees of THS, as well as various quotes and invoices for the work completed by THS at the Property in 2018. These documents show references to "Kent" and to the "Estate".

[24] On questioning, Jeff confirmed that Kent Williamson died in March 2011, and that he is the only Personal Representative of Kent Williamson's Estate. He testified that he believed he personally disclosed that he was Personal Representative of the Estate to both Novotney and Kim McIntyre, although he confirmed that all the quotes either named him, Chad, or Ellen personally. He testified that the estate paid the invoices, and in one case reimbursed Chad for invoices he paid.

[25] Jeff swore that when he dealt with THS he was never advised that he was dealing with 715057 and did not come to be aware of the corporation's existence until he commenced legal proceedings. His evidence is that THS was not registered to 715057 until September 29, 2017, after the initial work on the Property had been completed. This is substantiated by the Corporate Registry searches. On questioning, Jeff testified that based on the representations of Novotney and Kim McIntyre he believed THS to be a "company". He confirmed that he did not believe he was dealing with a sole proprietorship and agreed that at the time of contracting he didn't believe he was dealing with an individual named McIntyre. He further confirmed that he was not under the false impression that he was dealing with only an individual and not a corporation.

[26] Jeff confirmed that McIntyre never personally or directly made any representations to him regarding the work at the Property and that the two never spoke or communicated with each other in any way. He did testify however that representations with respect to the work were made by McIntyre through THS. He agreed, when specifically asked, that nothing McIntyre did personally affected the Plaintiff in this case

[27] Chad also swore an Affidavit in these proceedings. His evidence is that he was only peripherally aware of the work performed on the system in 2015 and 2016. At questioning, he confirmed that he had not seen the materials from Lacombe County regarding installation of new systems and connection to the County Wastewater System.

[28] He stated that on May 19, 2018, he received a call from his sister Ellen reporting a sewer back-up in the Cabin. He attended at the Property with Novotney shortly thereafter and was present at the property when Novotney opened the septic holding tank. Chad observed a ruptured PVC U-joint, near the mouth of the tank.

[29] He provided hearsay evidence of his conversations with Novotney including advice that sewage had been pushed up through the PVC pipe to the tank. According to Chad, Novotney stated that fluid in the PVC pipe likely froze and cracked during the winter, causing the rupture and flood, and that the cracked PVC pipe caused the pump to run for an extended period and burn out.

[30] Chad stated that a new grinder pump was installed, and the system was replumbed at Novotney's recommendation. The invoicing confirms the work was completed. Chad also described that Novotney added a valve and created a homemade tool to open and close the valve and advised Chad to obtain a special tool to open and close the County valve. He also provided Chad with maintenance instructions.

[31] Chad swore that in July or August 2018, he contacted Novotney regarding a back flow preventor valve, which Novotney installed on August 1, 2018. This installation is confirmed by the invoicing.

[32] Chad also described damage to the cabin resulting from the sewer back-up in 2018, the repairs undertaken, and ongoing problems experienced after 715057 completed the repair work in 2018, including an additional sewer back up event from the septic holding tank onto the lawn in 2022.

[33] Finally, Chad's Affidavit included hearsay opinion evidence as to design and installation defects in the system installed by 715057 and the cost to remediate these alleged defects.

## **DECISION**

[34] I agree with Applications Judge Farrington's assessment on all issues. As noted in *Weir-Jones*, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

[35] The new evidence contained in McIntyre's Affidavit does not change the determination that the Defendants have not met the case for summary dismissal.

[36] There is conflicting evidence on material facts relating to the identity of the contracting parties, including whether the Defendants were aware they were dealing with the Plaintiff. The Defendants argue that all quotes and invoices were between either Jeff, Chad or Ellen Williamson and not the Estate. As a result, the Defendants argue that the pleadings disclose no cause of action for breach of contract. The email exchanges around the formation of the contract, however, include references to "Kent" and to the "Estate". Jeff testified at questioning that he had discussions with Novotney or Kim McIntyre, including that he was acting on behalf of the Estate. He also testified that all invoices but one were paid from an Estate bank account and that the single payment not paid directly from the Estate bank account was reimbursed to Chad from the Estate.

[37] There is also an issue relating to the legal entity or entities providing the services at the Property which gives rise to the question of whether McIntyre bears any personal liability as an

undisclosed principal for the work performed by THS, particularly prior to its registration as a trade name of 715057. While it is true that Jeff admitted on questioning that he had no direct contact or communication with McIntyre and that McIntyre had not personally made any representations about the work to be done on the System which caused harm to the Plaintiff, or that McIntyre personally did any of the work on the system or the Property, there remain questions as to the legal status of THS at the time of the initial work, and whether any representations were made by Novotney or Kim McIntyre as to the identity of the principal of THS. As noted by Judge Farrington, the facts of the relationship between the named Defendants is not sufficiently clear on this record to apply the law and determine whether summary dismissal is appropriate.

[38] Finally, on the record before the Court it is impossible to summarily resolve the issue of causation. The Defendants argue that the records of THS disclose that no complaints were made about the work done on the system and they were not advised of the damage until they received the Statement of Claim.

[39] The fact that the Defendants were unaware of the system failure or resulting damages is not determinative of causation. In addition, the hearsay evidence of Novotney, as to cause, is insufficient to meet the burden on the Defendants in this Summary Dismissal Application to prove the facts of its defence on a balance of probabilities, particularly where there are admissions by 715057 that it undertook the work to install, repair and improve the System following which there is evidence of a sewer back-up and resulting damage. This raises genuine issues requiring trial, which are properly addressed through Questioning under Part 5 of the *Alberta Rules of Court*, of McIntyre (r. 5.4) and Novotney (r. 5.17(1)(d)).

[40] Accordingly, the appeal is dismissed.

## **COSTS**

[41] As the Plaintiff is the successful party it shall have its costs of the appeal based on Column 2 of Schedule C of the *Alberta Rules of Court*.

Heard on the 16<sup>th</sup> day of January, 2025.

**Dated** at the City of Calgary, Alberta this 25<sup>th</sup> day of April, 2025.

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**J.C. Kubik**  
**J.C.K.B.A.**

## **Appearances:**

Ken C. Johnston  
Your Lawyer LLP  
for the Plaintiff/Respondent

Douglas S. Nishimura

Field LLP  
for the Defendants /Appellants