Court of King's Bench of Alberta

Citation: JH Drilling Inc v Barsi Enterprises Ltd, 2026 ABKB 48

Date: 20260121
Docket: 1503 13709
Registry: Edmonton

Between:

JH Drilling Inc

Plaintiff

- and -

Barsi Enterprises Ltd, Don Goulet, and Darcy Underwood, Carrying on Business as Misty Valley Trucking

Defendants

- and -

Barsi Enterprises Ltd

Plaintiff by Counterclaim

- and -

JH Drilling Inc and John Harms

Defendants by Counterclaim

Reasons for Decision of the Honourable Justice L.K. Harris

I. Overview

[1] The Defendants apply for an Order summarily dismissing the Plaintiff's claim against them.

[2] This application is brought in the context of a long-running action for breach of contract, and counterclaim for misrepresentation which I have been case managing.

[3] In the spring of 2025, I heard an application brought by the Plaintiff for summary judgment and an Order either striking or summarily dismissing the Counterclaim (the "JHD Application"). I dismissed the JHD Application: ***JH Drilling Inc v Barsi Enterprises Ltd***, 2025 ABKB 288 (***JHD #1***). The parties could not agree on costs, and subsequently, I issued a decision awarding costs to the Defendants: ***JH Drilling Inc v Barsi Enterprises Ltd***, 2025 ABKB 456 (***JHD #2***). After that decision was released, the parties wrote to me to advise that the matter had been settled.

[4] The Plaintiff then refused to sign the Settlement Agreement drafted by the Defendants' counsel. The Defendants have responded by filing this application, seeking summary dismissal of the Plaintiff's claim and a declaration that the parties have a binding settlement agreement.

II. Factual Background

[5] The Plaintiff, JH Drilling Inc. ("JHD"), brought an action against the Defendants for breach of contract. The Defendants, Barsi Enterprises Ltd. ("Barsi") and Don Goulet ("Goulet"), in turn issued a counterclaim against JHD for, *inter alia*, misrepresentation. JHD's principal is John Harms. Mr. Harms is also acting as JHD's counsel in this matter. The Defendants are also represented by counsel.

[6] The detailed factual background is set out in ***JHD #1*** and will not be repeated fully here. Suffice it to say that JHD purported to assign a surface material lease to Barsi for the purposes of allowing Barsi to excavate sand and gravel. The lease did not produce to Barsi's expectations, and ultimately Barsi abandoned it, leading JHD to issue a Statement of Claim for a breach of the agreement in September, 2015.

[7] Following the issuance of ***JHD #2***, the parties engaged in settlement discussions, all apparently via email (the "Settlement Emails"). The content of those discussions is disclosed in an email chain appended to the Affidavit of Craig Barsi filed November 13, 2025, in support of this application.

[8] The discussions were initiated by the Plaintiff on July 7, 2025, when the Plaintiff inquired if the Defendants would advise of the terms under which they were prepared to resolve "this matter". Counsel for the Defendants responded that they would consider a settlement "along the lines of a fair split of the proceeds from the sale of the gravel that is sitting on the property".

[9] On July 9, 2025, the Plaintiff responded with three points, including the following:

> "who will be responsible for the decade arrears of rent, about $6,000, and final reclamation and recertification of the lease including revegetation to the satisfaction of the Forest Officer, and any other requirements, which are always rising as with all the orphan wells and resulting bankruptcies, and monitoring it for years probably, which we believe would be a cost of contingent liability of up to a quarter million or more, and consultant fees? Your side will probably say

> that JHD will have to pay for all that, unless your side wants to assume a portion of liability for that, like for example 50%, or to pay a portion of it on an ongoing basis, or a lump sum up front. I am assuming that your client prefers the lease and all lease responsibilities to stay with JHD."

[10] Later that day, counsel for the Defendants responded:

> "My client will not agree to be responsible for any reclamation, etc. Once the gravel is sold and the proceeds are split, that will be the end of it for my client.
>
> If any deal will happen, it will simply be the selling of gravel and splitting the proceeds (we are open to discussing what percentage each party gets from the sale). So, the question for you is this: if my client sells the gravel, will you settle for a split of the proceeds and if so, what percentage of split do you propose?"

[11] The following day, Mr. Harms responded with an email proposing a "partial settlement" on the following terms:

(a) The Defendants would retain the gravel and have the right to sell it;

(b) JHD would retain the Seal Lease and waive all claims for rent, reclamation, non-renewal or "other lease-duties" claims, and waives all "assignment or non-assignment claims or defences"

(c) The litigation would continue in relation to all other claims advanced.

[12] Counsel for the Defendants advised that his client would not agree to any partial settlement.

[13] Mr. Harms made a further inquiry about a partial settlement. There is nothing in the materials before me which disclose a response to that email by the Defendants. Then, on July 21, 2025, Mr. Harms emailed counsel for the Defendants as follows:

> "We understand your proposal to be full discontinuances all around without costs, and sale of the gravel pile 50/50. Is that correct?"

[14] Counsel for the Defendants responded, "Yes, we would need a full release as part of that. This offer is open until the end of this month."

[15] On July 30, 2025, Mr. Harms responded,

> "JHD accepts your offer sale of the gravel pile with proceeds to be split 50-50 as has been proposed by you in the past. This would be a full settlement of the main claim and the counter claim without costs."

[16] On August 7, 2025, counsel for the Defendants then responded:

> "I confirm we are in agreement and we have a deal as follows:
>
> 1. The parties will use their reasonable efforts to sell the gravel pile. The net proceeds will be split 50-50.
> 2. The main claim and counterclaim will be discontinued on a without costs basis.
> 3. There will be a full mutual release between the parties.

I will send you a draft settlement agreement that we can sign..."

[17] Counsel for the Defendants sent Mr. Harms a proposed Settlement Agreement and discontinuance on August 11, 2025. He sent a second follow-up email on August 21, 2025. On August 30, 2025, Mr. Harms sent to counsel for the Defendants a revised settlement agreement "for review". That revised Settlement Agreement included a provision that the Defendants would pay JHD $40,000.

[18] Defendants' counsel responded by stating that in his view, "we have a settlement" and inquiring if Mr. Harms was "trying to change the terms". That was followed up with a further email on September 15, 2025, asking Mr. Harms to send the executed Settlement Agreement that he had drafted, or alternatively, asking what in that Agreement did not reflect the Settlement Agreement that had been reached. Mr. Harms responded that the Settlement Agreement needed to reflect that the Defendants would "pay all royalties that are owed to the Government of Alberta".

[19] The Defendants' counsel responded that paying royalties "was never part of the deal" and that he would bring the within application.

[20] The Plaintiff filed a "Response to Barsi Application for November 28, 2025". Within that document, the Plaintiff seeks three forms of relief: first, leave to cross examine Mr. Barsi on his Affidavit, second, for an order directing Barsi to pay royalties and dismissing the Defendants' Settlement Agreement, and third, a "re-hearing" of its summary judgment application, which was the subject of ***JHD #1***. Of note, the Plaintiff did not file an application seeking this relief (although his request to cross examine on the supporting Affidavit was dealt with by way of an adjournment request which was heard in Court and denied orally). This document goes on to provide argument in response to the Application currently before the Court.

III. Issue

[21] This application raises the issue of whether the parties entered into a binding settlement agreement, and if so, whether the Action should be summarily dismissed as a result.

IV. The Parties' Positions

[22] The Defendants argue that on the evidence before the Court, the parties clearly reached a settlement agreement and that they are entitled to the enforcement of that Agreement through a summary judgment order. The Settlement Agreement, say the Defendants, is clear and straightforward, and does not include any provision for a payment by the Defendants to the Plaintiff or for the Defendants to assume any liability for the payment of royalties.

[23] On the other hand, the Plaintiff argues that the Settlement Agreement put forward by the Defendants' counsel was not what they had in mind, and that given the overall factual matrix of the underlying Action, it is unrealistic to believe that JHD would assume liability for any royalties that might come due to the Crown. The Plaintiff says that they assumed the Defendants would pay the royalties because, in the Plaintiff's view, the underlying lease was assigned to the Defendants.

V. Analysis

A. Did the Parties Reach a Settlement Agreement?

[24] The Settlement Emails disclose some important aspects about the negotiations. First, the only settlement acceptable to the Defendants would be one which permitted a split of the proceeds from the sale of the gravel, and which included a full mutual release and discontinuance of the Action as a whole. The Defendants were not interested in a partial settlement and were not interested in assuming any other liabilities associated with the lease. Second, Mr. Harms made attempts to persuade the Defendants to assume some responsibility for other liabilities that the Plaintiff perceived to exist in relation to the lease, without success. From the contents of Mr. Harms' July 9, 2025 email, Mr. Harms and the Plaintiff clearly were aware of the potential risks associated with the Defendants' position on settlement, which was that all "lease and all lease responsibilities" would stay with JHD.

[25] Even though royalty payments were never expressly mentioned by either the Plaintiff or the Defendant, one of the "lease responsibilities" that the Plaintiff attempted to persuade the Defendants to assume must be taken to include the responsibility to make royalty payments. From my review of the Plaintiff's "Response to Barsi Application" the issue of royalty payments was clearly an important issue to the Plaintiff, and it therefore is likely that it considered this issue to be included in the overall "lease responsibilities".

[26] Finally, there is no suggestion here that somehow the Plaintiff was coerced or unduly influenced into reaching a settlement agreement. Both parties were represented by counsel. It was the Plaintiff who initially raised the possibility of settlement, and the Plaintiff was able (albeit unsuccessfully) to advocate for the Defendants' assumption of other liabilities associated with the lease.

[27] A settlement agreement is a contract and is subject to the general law of contract regarding offer and acceptance. An enforceable agreement requires a mutual intention to create a legally binding contract and requires the parties to agree on essential terms: ***Beier v Proper Cat Construction Ltd.***, 2013 ABQB 351 at para 72 citing S. Waddams, The Law of Contracts 34 (6th ed. 2010) and ***Olivieri v Sherman***, 2007 ONCA 491 at para 41. The determination of whether the parties have agreed to all the essential terms will depend on the commercial context of the agreement.

[28] In ***JHD #1***, I cited ***Sattva Capital Corp. v Creston Moly Corp.***, 2014 SCC 53 for its description of the modern approach to contractual interpretation, being a practical, common sense approach, with the overriding concern being to determine the intent of the parties and the scope of their understanding through reading the contract as a whole, giving the words used their ordinary and grammatical meaning consistent with all of the surrounding circumstances: ***Sattva*** at para 47.

[29] It is clear from the Settlement Emails that the parties did have the intention to create a binding settlement agreement. The Plaintiff raised the possibility of settlement. The Defendants confirmed what they required to settle the action. The parties both confirmed in writing that they had a settlement.

[30] Next is the question of whether the parties agreed on essential terms. As was noted at para 35 of ***Fieguth v Acklands Ltd.***, 1989 CanLII 2744 (BC CA), there usually is no difficulty in establishing the essential terms in an agreement to settle a claim. I find that to be the case here.

[31] The essential terms of the Settlement Agreement are clear and straightforward. An objective reading of the Settlement Emails discloses that the parties would sell the gravel and split the net proceeds on a 50-50 basis. The parties would discontinue the entire Action and Counterclaim. They would each release the other from any further liabilities. Liability for royalty payments was not an essential term. The Defendants clearly rejected any attempt made by the Plaintiff to assume any liabilities over and above the efforts to sell the gravel and split the proceeds. Further, the Plaintiff knew this to be the case because it was the Plaintiff itself that raised the possibility and confirmed that he knew what the Defendants' position would be.

[32] Mr. Harms agreed to the terms of the settlement via an email dated July 30, 2025. He even reiterated the terms in that email. There is nothing within his acceptance which suggests that the Agreement was not complete, or that it was conditional in any way, or that the Defendants assumed liability for royalty payments. The Plaintiff could have rejected the proposal but instead decided to accept.

[33] The Plaintiff's assertion that it "assumed" the Defendants would pay the royalties is not supported by what Mr. Harms said in his July 9th email. Further, this assertion does not give rise to any doubt that a settlement agreement was reached.

[34] In my view, the parties have reached a binding settlement agreement, the terms of which are reflected in the proposed Agreement attached to Defence counsel's August 11, 2025 email.

B. Should the Plaintiff's Action be Summarily Dismissed?

[35] Pursuant to *Rule* 7.3(1)(b), a defendant may apply for summary judgment in respect of all or part of a claim where there is no merit to the claim or any part of it. The party moving for summary judgment must prove that there is no genuine issue requiring a trial: ***Clearbakk Energy Services Inc v Sunshine Oilsands Ltd***, 2023 ABCA 96 at para 5.

[36] ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd***, 2019 ABCA 49 at para 47 sets out the proper approach to summary judgment. There is no genuine issue requiring a trial when the judge can reach a fair and just determination on the merits on a motion for summary judgment. This occurs when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious, and less expensive means to achieve a just result: ***Weir-Jones*** at para 21, citing ***Hryniak v Mauldin***, 2014 SCC 7 at para 49.

[37] The key principles for summary judgment were summarized in ***PricewaterhouseCoopers Inc v Perpetual Energy Inc***, 2021 ABCA 16 at para 69, leave to appeal to SCC refused, 39597 (8 July 2021), as follows:

> Summary dismissal is appropriate where the record is sufficiently certain to resolve the dispute on a summary basis, or, in other words, there is no genuine issue requiring a trial. The moving party must establish on a balance of probabilities that there is "no merit" to the claim; the resisting party must put its best foot forward and demonstrate a genuine issue requiring a trial. In the end, the presiding judge must be left with sufficient confidence that the state of the record permits a fair summary disposition: ***Weir-Jones Technical Services Inc v Purolator Courier Ltd***, 2019 ABCA 49 at para 47, 86 Alta LR (6th) 240.

[38] The issue I must determine is whether the settlement agreement resolves the dispute between the parties, or whether it leaves a genuine issue for trial.

[39] In my view, that question must be that the settlement agreement entirely resolved the dispute between the parties. There is a binding settlement agreement between the parties in which the gravel will be sold and the proceeds split equally. The parties will enter into a mutual release and the main action, and the counterclaim will be discontinued. That will bring the entirety of this action to an end.

[40] Therefore, the Defendant's application for summary dismissal is granted.

VI. Conclusions

[41] The Defendants' application is hereby granted. The parties have entered into an binding settlement agreement in the form attached to Defence counsel's email of August 11, 2025. The Plaintiff's Action is hereby dismissed.

[42] As the Defendants were the successful parties they are presumptively entitled to their costs of this application. If the parties cannot agree on their costs, they may make written submissions to me addressing that issue, no more than 5 pages in length, within 30 days from this decision.

Heard on the 28th day of November, 2025.
Dated at the City of Edmonton, Alberta this 21st day of January, 2026.

L.K. Harris
J.C.K.B.A.

Appearances:

John Harms
JH Drilling Inc
for the Plaintiff/Defendants by Counterclaim

Benito Guido
Odishaw & Guido
for the Defendants/Plaintiff by Counterclaim