

Court of King's Bench of Alberta

Citation: National Bank of Canada v Sunterra Food Corporation, 2025 ABKB 599

Date: 20251014
Docket: 2501 06120
Registry: Calgary

Between:

National Bank of Canada

Applicant

- and -

Sunterra Food Corporation, Trochu Meat Processors Ltd., Sunterra Quality Food Markets Inc., Sunterra Farms Ltd., Sunwold Farms Limited, Sunterra Beef Ltd., Lariagra Farms Ltd., Sunterra Farm Enterprises Ltd., Sunterra Enterprises Inc., Ray Price, Debbie Uffelman and Craig Thompson

Respondents

**Endorsement
of the
Honourable Justice Michael J. Lema**

I. Introduction

[1] Do these CCAA proceedings reach and, if so, should they govern what is at least in part an inter-creditor dispute?

[2] Specifically, should the Court compel one claimant against the various Canadian Sunterra entities to advise whether it proposes to sue another claimant and, if so, the basis or bases and associated quantum of its claim(s) against the other claimant, on pain of having those claim(s) barred otherwise, to assist the other claimant in proving and valuing an contribution-and-

indemnity claim against the Canadian Sunterra entities or some of their directors and officers (or both) in these proceedings?

[3] The answer is no, as explained below.

II. Background

[4] National Bank of Canada, the primary lender to various Canadian Sunterra companies, seeks an order obliging Compeer Financial PCA, a U.S. lender, to advise by September 30, 2025 (or, presumably, based on submissions at the application, an extended deadline) whether it intends to pursue recovery from NBC for losses caused by NBC's dishonouring of certain cheques payable by some of the Canadian companies to certain Sunterra U.S. entities or Compeer itself. And, if so, the basis or bases of Compeer's anticipated claims against NBC and the range (in dollars) of those anticipated claims.

[5] NBC's proposed order says that, if Compeer does not perform this step or these steps (as applicable) by the deadline, Compeer's claim(s) against NBC in respect of the dishonoured cheques are barred.

[6] Per NBC, it needs the requested details to prove in the present CCAA proceedings a contribution-and-indemnity claim against the Canadian entities related to the dishonoured cheques i.e. tagging them with some or all of whatever liability Compeer succeeds in attaching to NBC. (The contribution-and-indemnity claim would be in addition to NBC's direct claim against the Canadian entities for loans advanced.)

[7] Further per NBC, section 11 of the CCAA provides jurisdiction to make the requested order. As well, the CCAA case law confirms that, while ordinarily the statute does not extend to addressing inter-creditor disputes (instead focusing centrally on claims against the insolvent company), the CCAA will reach, and govern, such disputes where their resolution would promote the accomplishment of CCAA purposes.

[8] Per Compeer, NBC has sufficient information to identify its legal exposure to Compeer on the dishonoured cheques by definition, since it was NBC's own decisions to dishonour them, in circumstances known to NBC, that underlie its potential liabilities to Compeer. In any case, Compeer says it does not have all the information it needs to decide what claim(s) it has or may have against NBC in respect of the dishonoured cheques, whether it will pursue NBC for those claim(s), and the actual or potential range of its claims.

[9] As well, per Compeer, NBC's cases are distinguishable, with the cited "inter-creditor disputes" not properly thus characterized, instead involving matters intertwined with the CCAA proceedings, including the proper administration of court-approved plans of reorganization.

[10] Other arguments raised by both sides are noted and addressed in the analysis below.

[11] For greater certainty, I note that Compeer has not yet sued NBC (if it sues at all) on or in respect of the dishonoured cheques, and (though the parties did not address limitations in any substantive way) it appears that the limitation period to do so has not yet expired and will apparently not expire until after December 2025, when further applications are scheduled in this matter, including one (as I understand it) to determine whether NBC can prove a contribution-and-indemnity claim against some or all of the Canadian entities and, if so, value that claim for the purpose of the CCAA proceedings.

III. Analysis

A. CCAA proceedings do not extend to resolving pure inter-creditor disputes

[12] It is not a proper use of a CCAA proceeding to determine disputes between parties other than the debtor company: *Stelco (Re)*, 2005 CanLII 42247 (ONCA) (para 32). See also *Green Growth Brands Inc (In the matter of a plan of compromise or arrangement)*, 2020 ONSC 3565 (paras 33-37).

[13] An exception is where the resolution of such disputes is “inextricably connected to the restructuring process”: *Stelco Inc (Re)*, 2006 CanLII 16526 (ONCA) (paras 11 and 12) and *Alderbridge Way GP Ltd*, 2023 BCSC 1718 (Fitzpatrick J.) (paras 34-57). For examples of such connections, see *Stelco (2006)* (paras 5-10), *Alderbridge* (paras 58-72) and *Dynamic Technologies Group Inc (Re CCAA)*, 2023 ABKB 172 (Mah J.).

[14] NBC did not point to any cases where CCAA proceedings were extended to inter-creditor disputes to assist in proving and valuing claims in those proceedings.

[15] I do not see such a purpose as “inextricably connected to the restructuring process” or as “likely to further the remedial purposes of the CCAA” (*US Steel Canada Inc (Re)*, 2016 ONCA 662 (para 102)).

[16] The CCAA provides a mechanism for proving and (if proved) valuing claims: ss 19 and 20 CCAA. That mechanism has apparently been adequate for proving and valuing claims even where the claims are for contribution and indemnity i.e. turn in part on separate claims involving the claimant and one or more third parties. Even where those claims are contingent, as appears to be the case here, with the existence of NBC’s (possible) claim-over against the Canadian Sunterra entities depending on whether Compeer decides to pursue NBC on the dishonoured cheques and, in turn, whether NBC’s indemnification rights extending to such claim(s). On the suitability of the CCAA claims process for proving and valuing such claims, see *Conforti Holdings Ltd (In the matter of the proposal to creditors of)*, 2022 ONSC 3264 (Cavanagh J.) (paras 42-51).

[17] See also *SemCanada Crude Company (Celtic Exploration Ltd #2, Re)*, 2012 ABQB 489 (Romaine J.):

It may well have been difficult to value a contingent claim for future suspension damages that was filed before the Claims Bar Date, but that is often the nature of a contingent or future claim. In particular, there may have been issues relating to when the IGPA could reasonably be reinstated. As noted by SemCAMS, contingent claims are routinely filed in CCAA proceedings and in proceedings under the BIA. [para 27]

[18] Again, NBC did not point to any case where, for CCAA proving and valuation purposes, the CCAA proceeding reached into those separate claims for any purpose.

[19] NBC itself acknowledged in its application (para 10) that “... it is possible to determine and value the NBC v Sunterra Claim in the absence of [the] details [sought from Compeer]”, albeit submitting that “the process would benefit from, and would be significantly more efficient and efficacious [with those details].”

[20] Compeer stated that it may obtain more information about its possible claim against NBC after conducting certain already-scheduled examinations, which might clarify the nature and

scope of its possible claim against NBC. Compeer did not state or imply that it was averse to providing such information to NBC, only that it was premature (now) to ask for such information and, in any case, to compel Compeer to provide it, particularly on pain of losing its claim entirely via a claims-bar provision (as discussed further below).

[21] In these circumstances, the “inextricable connection” to the CCAA proceedings is lacking.

[22] Leaving the normal approach – CCAA proceedings do not extend to resolving inter-creditor disputes – in place.

B. No likely benefit to the CCAA process via the proposed order

[23] Alternatively, if potential assistance in the CCAA proof-and-valuation-of-claims process reflects an inextricable connection or would likely further the CCAA’s remedial purposes, as explained below I perceive no such assistance here.

[24] The terms of NBC’s proposed order (reproduced here) illuminate this point.

Compeer ... is required to **file an election** (“the Compeer Election”), on or before September 30, 2025 [or extended deadline, as discussed at the conclusion of the application on September 3, 2025] (the “Compeer Claims Bar Date”), in which Compeer: (i) indicates **whether it intends to advance a claim against NBC** in respect of any facts, circumstances or matters giving rise to a Compeer v NBC Claim [i.e. a defined term focusing on the dishonoured cheques described above]; and, (ii) if Compeer indicates that it intends to advance such a claim, requiring Compeer to: (a) **outline the bases** of such claim(s); and (b) provide a **range of the quantum** of such claim(s). [emphasis added]

[25] Starting with the **election element**, Compeer has already advised NBC that it *may* pursue it for losses caused by the dishonoured cheques.

[26] As I understand NBC’s position, as apparently reflected in the “file an election” requirement, the order, if granted, would require Compeer to answer “yes” or “no.”

[27] While Compeer would apparently prefer, in the circumstances it describes (i.e. incomplete information), to provide a “may pursue” response, I infer that, if faced with a “yes” or “no” election, Compeer would invariably answer “yes” i.e. at minimum to preserve potential recourse against NBC on the cheques. Particularly with nothing in the order creating any prejudice or disadvantage to Compeer, after a “yes” election, if it were later to decide against pursuing NBC on the cheques or, if a pursuit had been launched, abandoning it. In other words, a “yes” election would not appear to lock Compeer into pursuing NBC regardless of any re-evaluation of present circumstances or a downstream change of circumstances.

[28] I find that NBC’s understanding of Compeer’s present position would not increase appreciably via the election itself, with no real chance, in the present circumstances, that Compeer would elect “no” and with a “yes” election being the product of what I find would be inevitable desire on Compeer’s part to preserve its rights. In other words, Compeer’s position will continue (on the ground) to be “maybe” or “it depends”, albeit preserved under cover of a non-binding “yes” election.

[29] On the “bases” aspect, NBC understands from Compeer’s direct claim against some or all of the Canadian entities that it is alleging a tracing claim, which NBC understands references and is aimed, at least in part, at recovering against NBC in respect of the dishonoured cheques.

[30] Accordingly, NBC is apparently looking for Compeer to outline whether it alleges any other basis or bases for recovery on or in respect of those cheques.

[31] As a bank, NBC is presumably familiar with the recourse(s) of collecting banks where cheques are dishonoured (i.e. to the extent Compeer had that status in respect of some or all of the cheques) and those of drawees or holders of dishonoured cheques (i.e. to the extent Compeer had that status on any of the cheques) or otherwise what liabilities it may have to Compeer in respect of the cheques in the circumstances here.

[32] In other words, in advance of Compeer starting an action against NBC (if it does at all) and even without a catalogue of potential liability from Compeer as contemplated by the proposed order, NBC is presumably already aware of the liabilities it has or may have incurred to Compeer on the dishonoured cheques.

[33] And, as noted by Compeer, NBC (by definition) has a window into its own decisions to dishonour the cheques, including its own understanding of the prevailing circumstances and its rationale(s) for dishonouring.

[34] As well, the proposed order does not call for details of the requested bases, whether particulars, facts, or evidence.

[35] Accordingly, Compeer could properly, and might, respond to the proposed order, bases-wise, by answering “tracing claims as detailed in our claim against the Canadian entities directly, plus all liabilities to Compeer otherwise triggered by the dishonouring of the cheques, whether under statute (including the *Bills of Exchange Act*), the common law, or in equity i.e. the orthodox species of liability to downstream parties where cheques are dishonoured.”

[36] Which I infer NBC is already familiar with, at least in terms of the potential grounds of liability relating to dishonoured cheques.

[37] Particularly where Compeer has advised that its causes of action against NBC “would presumably not be fraud, conspiracy or oppression” i.e. some or all of the causes of action Compeer asserts against the CCAA debtors and their principals (or some of them).

[38] NBC’s real concern is more likely with the quantum of Compeer’s claims.

[39] From earlier materials on this file, I understand that Compeer suffered losses from certain chequing-relate activities of the Canadian and U.S. Sunterra entities of approximately \$35 million (USD) and that it may have recovered approximately \$15 million (USD) via certain asset sales in the U.S. i.e. that it is currently owed approximately \$20 million (USD) by the U.S. entities.

[40] It may be that Compeer is able to achieve more recoveries out of the U.S. entities.

[41] It may also achieve recoveries via its claims already asserted against some or all of the Canadian entities.

[42] It may have other sources of recovery i.e. beyond those noted and its possible claim against NBC.

[43] I infer that Compeer's "lack of information" also extends to the possible quantum of its claim against NBC i.e. given possible recoveries on these other fronts.

[44] I also infer, given the narrow information sought on this aspect in the proposed order ("a range of quantum of such claim(s)"), that, if obliged to provide such information via the proposed order, Compeer would not provide a range that would or could impair its position i.e. would not see any need to cap its own claim i.e. would in all likelihood provide a range like "while lacking full information at present, it may be that, via the cheque dishonouring in question, NBC became liable to us for some or even all of our cheque-related losses i.e. \$35 million (USD), of which we have recovered \$15 million (USD). Accordingly, we currently provide a range of possible recovery against NBC of up to \$20 million (USD), plus a further \$X million (USD) in consequential losses, interest, costs, and other amounts, for a grand total range of up to \$20 + X million i.e. if it turns out that we do not recover any material amounts on other fronts or, alternatively, if we are not obliged at law to exhaust or factor in other recoveries when pursuing NBC."

[45] In other words, I cannot foresee that Compeer, acting rationally, would, in the present circumstances, answer "no" to the pursuit-of-NBC election, do anything other than list the already implicitly-asserted tracing recourse and all known-to-law liabilities triggered by cheque-dishonouring, or limit its range estimate below the absolute maximum of its conceivable claim(s) against NBC.

[46] I also note that the proposed order does not ask Compeer to provide a range or ranges per asserted ground of liability (e.g. "we estimate recovery of up to \$X million from NBC on [ground #1], \$Y million on [ground #2], etc.), instead calling only for a range of overall recovery.

[47] NBC is presently aware of all that information.

[48] Accordingly I do not foresee that NBC would receive any materially and incrementally helpful information from Compeer via the proposed order.

[49] In any case, NBC's counsel advised at the application that, if Compeer wished to reserve a right to amend its response (e.g. as I understand it, to add a new basis of liability or revise its claim range) with newly acquired information, it could do so.

[50] For that matter, the proposed order does not purport to block Compeer from revising its responses (e.g. to add a further ground of liability or revise its claim range) on account of pre-existing and discoverable information or even pre-existing and known but now reconsidered information e.g. "we overlooked but now invoke ground of recovery E, and we knew about but had discounted but now invoke ground of recovery F, and we also have reconsidered our range estimate, based on the same information, which we now set at \$[new figure] million (USD)."

[51] In other words, as presently framed, the proposed order only calls for point-in-time information, which (per its terms) Compeer could change, whether between now and the December hearing on the proof and valuation of NBC's contribution-and-indemnity claim or afterwards, and whether on the basis of new information, existing information not yet factored in, or even existing information reconsidered.

[52] Viewed differently, as much as NBC might wish to pin down Compeer as part of understanding NBC's potential liability to it for the cheque dishonouring and, in turn, obtain more clarity on the scope and extent of its contribution-and-indemnity claim against the

Canadian Sunterra entities, the order leaves Compeer free to depart from its point-in-time position e.g. whether to add perceived grounds of liability or increase its loss-range estimate or even to subtract grounds (“we are no longer pursuing X or Y theories of liability”) or reduce its estimate.

[53] In such circumstances, it is hard to see what additional clarity any point-in-time set of positions casts on either the Compeer v NBC claim or NBC’s claim-over against the Canadian Sunterra entities.

[54] In its brief, NBC characterized the present circumstances as “shadow boxing” with Compeer i.e. with uncertainty over whether the latter will pursue relief on the cheques and, if so, on what basis or bases and for what perceived losses.

[55] But as explained above, the proposed order would not move things out of the shadows.

[56] In other words, the limited and changeable information sought by the proposed order would not materially assist in the CCAA claims process.

C. Claims-bar provision not warranted

[57] In any case, even if Compeer should be compelled to comply with the order (i.e. if it were found that doing so would or would likely yield materially useful information for the December application), NBC has failed to show the necessity of enforcing the order with a claims-bar provision.

[58] NBC is not proposing that Compeer’s potential claim against it be determined (i.e. on the merits) within the Sunterra CCAA proceedings.

[59] As noted, it is simply seeking information from Compeer to assist in advancing its (NBC’s) contribution-and-indemnity claim in those proceedings.

[60] The hammer of a claims-bar provision is both incongruous and disproportionate here, with Compeer’s claim ultimately, if pursued, being advanced in separate (non-CCAA) proceedings i.e. no need to corral and move Compeer’s claim through the CCAA claims process.

[61] If an election order were granted here, and if Compeer failed to comply, other court-order-enforcement remedies could be invoked.

IV. Conclusion

[62] NBC has not shown that requiring Compeer to make the proposed election and, if electing “yes”, to provide the requested information would yield materially and incrementally helpful information.

[63] In other words, that the proposed information would materially boost the CCAA proceeding here.

[64] In any case, the acknowledged right of Compeer to amend the information, whether new information emerged or otherwise, materially undercuts the ostensible certainty created by any order responses.

[65] In other words, the proposed order would not materially increase certainty here.

[66] And no claims bar date is warranted here in any case.

[67] I dismiss NBC's application for the proposed order.

Heard on the 5th day of September, 2025.

Dated at Calgary, Alberta this 14th day of October, 2025.

Michael J. Lema
J.C.K.B.A.

Appearances:

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