

# Court of King's Bench of Alberta

**Citation: National Bank of Canada v Sunterra Food Corporation, 2025 ABKB 606**

**Date:** 20251017  
**Docket:** 2501 06120  
**Registry:** Calgary

**In the Matter of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as Amended**

**And in the Matter of a Plan of Compromise or Arrangement of 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 Farms Enterprises Ltd., and Sunterra Enterprises Inc.**

Between:

**National Bank of Canada**

Applicant/Cross-Respondent

- 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/Cross-Applicants

**Compeer Financial, PCA**

Respondent

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

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## I. Introduction

[1] Should senior bank executives and representatives of an auditing firm be required to undergo Rule 6.8 questioning at the Sunterra Parties' request i.e. without (for the bank executives) any Rule 5.17 scrutiny of whether they have or appear to have relevant and material information?

[2] In the unique circumstances here, the answer is yes. Outlined below are my decisions in three produce-witnesses-to-be-examined applications heard on October 15, 2025.

## II. Sunterra Parties' Applications

### A. NBC's president

[3] Concerning the Sunterra Parties' application for an order that National Bank of Canada's President, Mr. Laurent Ferreira, be examined by the Sunterra Parties' counsel, that application is granted, for the following reasons.

[4] NBC and Sunterra crafted what I find is a comprehensive and exhaustive process for (among other matters) identifying persons to be examined in connection with the December 2025 claims hearing.

[5] As part of that identification process, the parties created a limited (maximum two persons) category of witness whose obligation to submit to examination turns on only two factors: (a) being a current or former NBC employee, officer, or director; and (b) selection by Sunterra.

[6] On that aspect, I find clause 10 of Schedule A of the NBC Scheduling Order to be ambiguous i.e. as between an interpretation that the reference to Rule 5.17 requires an independent assessment of whether that Rule's requirements are met and one under which the Sunterra Parties make that call.

[7] While ordinarily litigants do not provide their own rulings on the application (or not) of the Rules of Court, and even less common are scenarios where one side makes the call, I find, in light of various signals in the scheduling order, that the ambiguity is resolved in favour of the latter interpretation ("Sunterra Parties make the call").

[8] First, see clause 9:

Each of the witnesses that are **identified by a Party as being additional individuals falling within the scope of Rule 5.17 ...** pursuant to the process below **shall be questioned ....**

[9] Per that clause, the Sunterra selection alone triggers the duty to undergo examination, with no independent scrutiny of the proposed witness's fit (or not) under the rule. As well, the "process below" referred to in clause 9 is simply that selection under clause 10.

[10] Second, see clause 13:

**... each individual who is identified by the Sunterra Parties as falling within the scope of Rules 5.17 ... shall be made available for questioning ....**

[11] Here again, the duty to undergo examination is triggered by selection by Sunterra.

[12] Third, the scheduling order does not contemplate an objection to a witness selection or a process (e.g. a court application) for resolving the dispute over a selected witness. As distinct from clause 15, which provides a dispute-resolution mechanism for objected-to questions and for disagreements over undertakings.

[13] Given what I infer was painstaking attention to mapping out the steps to the December hearings, finding that the parties intended an independent scrutiny of whether Rule 5.17 was satisfied, implicitly involving a court application to resolve disputes, would amount to rewriting the agreement.

[14] Fourth, the order's timeline confirms that the selection governs e.g. with affidavits due from selected persons (i.e. if they choose to provide one) within one week of being selected i.e. with no realistic time built in for a court application to settle a dispute.

[15] Fifth, the street runs both ways, at least on the NBC front. Per clauses 11 and 12, NBC has, and apparently exercised, the same selection power for Sunterra witnesses, apparently with no objection from them that an independent Rule 5.17 analysis was required i.e. to the extent any reasonable debate on that issue may have existed.

[16] Overall, I find that, by agreeing to the scheduling order, NBC effectively abandoned its right to challenge the Sunterra witness selections. The order was intended to provide certainty (via identifying the steps allowed en route to the December hearings) and discipline (i.e. the sequencing and strict timing of those steps) in the lead-up to the December hearing

[17] The parties left some procedural rights on the side when agreeing to a streamlined and intended-to-be-straightforward process. Including setting aside inquiries into whether selected witnesses (i.e. in the category at issue here) necessarily pass the Rule 5.17 test.

[18] Mr. Ferreira is a current NBC employee (in fact, the apex one). It may turn out that he does not have much, if any, relevant and material information to provide. Or any that is incremental i.e. beyond what other NBC witnesses have provided or will provide.

[19] And I acknowledge his undoubted heavy workload and responsibilities.

[20] However, NBC committed to the scheduling order, including what I have found are clear and unconditional selection rights for the Sunterra Parties. Which entitle them to examine him.

[21] I will leave the scheduling details to the parties, other than directing that Mr. Ferreira's examination be conducted remotely and at a time or times convenient to him. I am not setting a time limit on the examination. I anticipate that the Sunterra Parties' counsel will conduct the examination in an efficient and organized manner and that NBC's counsel will be equally engaged to make it so.

### **B. Compeer's president and chief risk officer**

[22] Concerning the equivalent application by Sunterra on the Compeer side, I grant that application too, as it is even clearer per that scheduling order that the only preconditions to the two Compeer executives (Mr. Jase Wagner – Chief Executive Officer, and Mr. Bill Moore – Chief Risk Officer) being examined are that they are Compeer employees and that Sunterra has selected them for examination.

[23] The reasons above are generally applicable here and are even more compelling with no reference to Rule 5.17 in the scheduling order, instead one to Rule 6.8, which in the present

context (i.e. the way in which that rule is folded into this scheduling order) does not require any independent assessment of the proposed witnesses' likely relevant and material evidence (if any).

[24] Given the overall structure of the procedural order, I find that that reference to Rule 6.8 is purely to invoke its procedural mechanics (including associated Rules 6.16 to 6.20) i.e. not to subject a given selection to independent "likelihood of relevant and material information" scrutiny.

[25] As with the NBC order, if the parties had intended that there be such scrutiny, the order would have been crafted differently.

[26] Accordingly, and here too recognizing the undoubted heavy workload and responsibilities for both Compeer executives, Compeer signed on to this protocol, presumably (as I found with NBC) deciding that its advantages outweighed its disadvantages i.e. was overall the best possible process that could be negotiated.

[27] And, as with NBC, Compeer must live up to its commitment.

[28] I direct that these examinations be conducted remotely, with no timing restriction i.e. other than as reflected in the scheduling order. I will leave the other scheduling details to the parties, making the same observations as above on the anticipated organized and efficient conduct of them.

### **III. NBC's Application**

[29] Concerning NBC's application for an order compelling examinations of KPMG personnel, I grant that application, accepting and adopting the arguments outlined by NBC in its separate brief on this front and rejecting Sunterra's arguments that no illumination of relevant and material matters is likely to come from such examinations, emphasizing here KPMG's central role as the auditor of the Sunterra Parties up to at least 2023.

### **IV. Closing note**

[30] I invite Sunterra's counsel to prepare and submit an order on the first and second aspects above and NBC's counsel to do the same on the third aspect.

[31] To the extent any party seeks costs of these applications, any such requests can be raised and addressed at the December hearings, by which time the approved examinations will have been conducted and their ultimate utility can be gauged.

Heard on October 15, 2025.

**Dated** at Calgary, Alberta on October 17, 2025.

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

**Appearances:**

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For the Applicant Sunterra Parties

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