

Court of King's Bench of Alberta

Citation: AGI SureTrack, LLC v OPISystems Inc, 2025 ABKB 609

Date: 20251022
Docket: 2401 07191
Registry: Calgary

Between:

AGI SureTrack, LLC

Plaintiff/Respondent

- and -

OPISystems Inc.

Defendant/Applicant

**Reasons for Decision
of the
Honourable Justice D.J. Reed**

I. Introduction

[1] The Applicant/Defendant, OPISystems Inc. (“**OPI**”) applies to have this action dismissed or stayed. It alleges that the Respondent/Plaintiff AGI SureTrack, LLC (“**AGI**”) is unnecessarily pursuing this action in Alberta at the same time it is pursuing actions in the Kansas District Court (“**Kansas Action**”) and the Western District of Missouri (“**Missouri Action**”).

[2] OPI argues that the Alberta Action is substantially similar to the Kansas and Missouri Actions, that Alberta is *forum non conveniens* and that permitting AGI to pursue the Alberta Action in the circumstances is an abuse of process, wasteful, and contrary to the public interest.

[3] AGI argues that the Alberta Action is different from the Kansas and Missouri Actions, that the Kansas Court has determined that the Alberta Action is a parallel action, not a duplicative one, and that as a result, Alberta is in fact the *forum conveniens* for the Alberta Action, that it is not an abuse of process, and should be permitted to continue.

[4] In reaching the decision I have, I have reviewed all filed affidavits, exhibits and transcripts. I have considered the arguments of the parties. Simply because I do not specifically reference a particular piece of evidence, argument, or authority, does not mean I have not considered it in reaching my decision.

II. Summary of Outcome

[5] The Alberta Court of King's Bench has jurisdiction over this matter. I refuse to exercise my discretion to decline that jurisdiction. The appropriate remedy here is that this Action be stayed until further Order of this Honourable Court, pending final judgment in the Kansas Action or such other disposition such as resolution, withdrawal, delay, or other similar issues. This stay is subject to the limited exception that AGI is permitted (and has leave) to bring an application for pre-trial injunctive relief against OPI as it may see fit in relation to the matters pled in the Statement of Claim in this Action.

III. Background Facts

[6] AGI is a Missouri Limited company with its principal place of business in Lenexa, Kansas. It is a subsidiary of Ag Growth International Inc., a publicly traded Canadian company whose headquarters are in Winnipeg.

[7] OPI is an Alberta company that conducts business in Canada and the United States of America ("US").

[8] Both companies sell their own version of proprietary grain management systems which are at the heart of the disputes between them. AGI sells the BinManager grain management system. OPI sells the OPI Blue grain management system. These systems are intended for use in the agricultural sector. They are installed in bins and monitor a variety of parameters to ensure that temperature, moisture, and other conditions are optimal for the grains being stored in the bins.

[9] Underlying all three lawsuits are allegations that certain employees and executives (including Adam Weiss, Seth Tackett, Brett Andricks, Timothy Penrod, and Ian Wade), all of whom are US residents, left AGI and moved to OPI and with them, took AGI's confidential information and provided it to OPI. AGI then alleges these people, and the information they took, are being used by OPI to advance OPI Blue and to move into AGI's market in the US as well as expand in Canada, through a variety of actions and interactions with other entities, causing it loss and damage.

IV. Procedural History

A. The Alberta Action

[10] The Alberta Action was commenced on May 23, 2024. It was served on OPI on May 30, 2024.

[11] AGI is the Plaintiff. OPI is the only Defendant. The causes of action pled are conspiracy, breach of confidence through knowing receipt of confidential information, and unjust enrichment. It seeks redress for harm to AGI in Alberta and Canada.

[12] The Alberta Action also details OPI's interactions with Intellifarms Northern Division, Inc. ("IFND") in the US. IFND is a defendant in the Missouri Action.

[13] It seeks, as remedies, declaratory relief related to breaches of AGI's rights to what is alleged to be confidential information; a declaration of unjust enrichment; injunctive relief that is prohibitory in nature related to the alleged confidential information; damages or an accounting; a constructive or resulting trust over OPI's profits; and punitive damages related to the Canadian impacts of OPI's actions.

[14] This application was filed on July 31, 2024. It originally sought an extension of time to defend or in the alternative to strike or stay the action.

B. The Kansas Action

[15] The Kansas Action was commenced by AGI against Tackett and Weiss in August of 2023, and commenced against OPI on April 24, 2024 by way of an Amended Complaint. It was served on OPI on June 11, 2024.

[16] AGI is the Plaintiff. OPI, Integrus USA, LLC ("Integrus"), Tackett and Weiss are the Defendants. The causes of action pled are: breach of contract as against Tackett and Weiss due to breaches of their employment agreements, including breach of their non-competition and non-solicitation agreements with AGI; breach of the duties of good faith, fair dealing and loyalty allegedly owed by Weiss; tortious interference with contract and business expectancy as against Tackett and Weiss; breaches of the US *Defend Trade Secrets Act* as against all defendants; and breaches of the Kansas *Uniform Trade Secrets Act* as against all defendants.

[17] I note that AGI alleges, and the record indicates, that there are exclusive jurisdiction clauses in the agreements with Tackett and Weiss that give Kansas exclusive jurisdiction over the contractual disputes related to them.

[18] It seeks, as remedies: direct, indirect and special damages, including lost profits; legal fees; preliminary and permanent injunctive relief regarding prohibiting the defendants from the acts alleged, as well as injunctive relief requiring the defendants to return, destroy or not disclose the alleged confidential information.

[19] The Kansas Action, at the time of the hearing of this application, has been significantly advanced. Steps taken in that action to date include the completion of nearly all pre-trial steps, although there has been some delay, caused apparently by OPI's reluctance to produce records it has been ordered to produce by the Kansas District Court.

[20] OPI notes in its argument that AGI has completed depositions of all OPI witnesses in the Kansas and Missouri Actions. Protective Orders have been issued in both actions.

[21] There is no doubt that if the Kansas Action proceeds to trial, it will do so prior to this Action.

a. OPI's Procedural Actions Related to the Kansas Action

[22] On July 10, 2024, OPI filed a motion to dismiss or stay the Kansas Action pending the outcome of the Alberta Action. That motion was heard on September 13, 2024. It was denied.

[23] In that motion, OPI took the position that the Kansas and Alberta Actions were nearly identical, and that the Alberta Action ought to proceed, with Kansas declining jurisdiction. The record before me suggests that OPI argued strenuously that Alberta was the appropriate forum for the matters in the Kansas Action to be determined.

[24] In denying OPI's motion, the Kansas District Court found, among other things, that:

- (a) The Alberta Action was limited to claims under Canadian law for damages and other relief in Canada as opposed to the claims in the Kansas Action for damages and other relief in the US;
- (b) The Kansas Action involved more claims and more parties than this Action;
- (c) AGI could suffer prejudice if it could not obtain injunctive relief in the US, and likely could not pursue its federal and state law statutory claims against OPI in Canada;
- (d) There was no real risk of inconsistent results due to the above, and courts can avoid awarding duplicative damages;
- (e) The Kansas Action seemed to the Court to be a parallel action to the Alberta Action;
- (f) It was uncertain whether injunctive relief granted in the Kansas Action could be enforced in Canada; and
- (g) The Kansas Action had progressed further than the Alberta Action.

[25] On November 1, 2024, OPI applied to consolidate the pre-trial proceedings of the Kansas Action and Missouri Action before the United States Judicial Panel on Multidistrict Litigation (“**JPML Motion**”). The JPML motion was denied. The arguments that OPI relied upon in support of its motion were the alleged nearly identical factual allegations in the two cases.

[26] OPI filed a further application to stay the Kansas Action while the JPML Motion was pending. That motion was dismissed.

[27] The record before me also shows that OPI had, as of the date of the application, for various reasons refused to agree to cooperative suggestions from AGI as to evidence gathering and confidentiality in relation to the US and Canadian litigation. AGI also directed me to delays in the Kansas Action which it says were caused by OPI. There is, on the Kansas Action record, evidence that the Court in that action has found OPI to be delinquent in its production obligations as ordered by the Court and has missed court ordered deadlines regarding what AGI calls key document discovery issues related to OPI possession of AGI confidential information.

C. The Missouri Action

[28] The Missouri Action is comprised of three different suits that I understand have been consolidated. None of them include OPI. They are actions by AGI against Andricks, Penrod, Wade and IFND (and others). The pertinent parts of that consolidated action alleges, among other things, breach of contract and employment obligations, breach of duty of good faith and loyalty, computer abuse and computer tampering, tortious interference, and breach of confidence under the *Defend Trade Secrets Act* and the *Missouri Uniform Trade Secrets Act*.

[29] The Missouri Action, at the time of the hearing of this application, has also been significantly advanced. In fact, a trial date had been set for January 2026, but I understand this date was recently vacated prior to the application before me, and that new trial dates will be set.

V. Issues

[30] OPI raises two broad issues requiring determination on this application. They are:

- (a) Should this Action be dismissed or alternatively stayed, pursuant to the doctrine of *forum non conveniens* and Rule 3.68; and/or
- (b) Should this Action be stayed to prevent a multiplicity of proceedings pursuant to Rules 1.4 and 3.72 and the *Judicature Act*, RSA 2000, c J-2.

[31] I address each issue, and the sub-issues raised under them, in turn. I also address any pertinent facts during my analysis.

VI. Law and Analysis

A. Rule 3.68, Jurisdiction, and Alberta as *Forum Non Conveniens*

[32] Rule 3.68 states in part:

Court options to deal with significant deficiencies

3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:

- (a) that all or any part of a claim or defence be struck out;

[...]

- (d) that an action, an application or a proceeding be stayed.

(2) The conditions for the order are one or more of the following:

- (a) the Court has no jurisdiction;

[...]

- (d) a commencement document or pleading constitutes an abuse of process;

[...]

[33] Under Rule 3.68(2)(a), jurisdiction is presumptively established where objective factors demonstrate a real and substantial connection between the subject matter of the litigation and the chosen forum: *Van Breda v Village Resorts Ltd*, 2012 SCC 17 at para 82. In *Van Breda* at para 90, the Court outlined presumptive connecting factors for cases concerning a tort, which include the following:

- (a) the defendant is domiciled or resident in the province;
- (b) the defendant carries on business in the province;
- (c) the tort was committed in the province; and
- (d) a contract connected with the dispute was made in the province.

[34] Any one of these presumptive connecting factors is sufficient to establish jurisdiction *simpliciter*. AGI concedes that this Court has jurisdiction *simpliciter* because OPI carries on business in Alberta. The heart of this argument turns on whether Alberta is *forum non conveniens*, as OPI now argues.

[35] As the party asserting *forum non conveniens*, OPI bears the burden of demonstrating on a balance of probabilities that Kansas is clearly the more appropriate forum, having regard to fairness and efficiency: *Van Breda* at paras 108-109.

[36] In enumerating a list of non-exhaustive factors to consider as a part of the analysis, the Court stated at para 105 that “[a] party applying for a stay on the basis of *forum non conveniens* may raise diverse facts, considerations and concerns. Despite some legislative attempts to draw up exhaustive lists, I doubt that it will ever be possible to do so. In essence, the doctrine focusses on the contexts of individual cases, and its purpose is to ensure that both parties are treated fairly and that the process for resolving their litigation is efficient.”

[37] The factors must be considered globally and include:

- (a) The comparative convenience and expense for parties and witnesses;
- (b) The applicable law;
- (c) The desirability of avoiding a multiplicity of legal proceedings;
- (d) The desirability of avoiding conflicting decisions in different courts;
- (e) The enforcement of an eventual judgment; and
- (f) The fair and efficient working of the Canadian legal system.

Van Breda at para 105.

[38] Other factors that can be considered include the location of the parties and witnesses, the cost of transferring the case to another jurisdiction or declining the stay, the impact of a transfer on the conduct of the litigation or on related or parallel proceedings, and loss of juridical advantage: *Van Breda* at paras 110-112.

[39] While I adhere to the six-factor framework above to order my analysis, under them, I consider all facts and factors in discussing them.

a. *Forum Non Conveniens*

i. The Comparative Convenience and Expense for Parties and Witnesses

[40] This factor involves considerations of where each party resides, inconvenience to potential witnesses, location of records and cost, among other things.

[41] OPI is an Alberta company, headquartered here. AGI is based in Kansas. The related party mentioned in the Statement of Claim in this Action, IFND, is based in South Dakota. Integris is based in Kansas.

[42] The witnesses at trial in Alberta would include US based employees, as well as Canadian based employees of OPI. It seems on balance that there may be more US domiciled fact witnesses than Canadian witnesses.

[43] Many (if not all) of the proposed witnesses have already been deposed in the Kansas and Missouri Actions, some more than once. Practically speaking, those witnesses likely will already have testified at trials in those jurisdictions, if they proceed, long before this Action goes to trial.

[44] OPI argues that as a result, Part 5 discovery in Alberta would be “duplicative, unjust, and wasteful”. It also argues that the Court has no authority to compel foreign witnesses to testify at trial. While AGI raises the possibility of collaboration via an agreement to avoid duplicative discovery, OPI says that AGI has not agreed to forego additional discovery in Alberta, and that the protective orders in the Kansas and Missouri Actions currently forbid the use of the confidential information protected by them outside of that litigation.

[45] OPI also argues that while AGI operates in Canada, there is no evidence of BinManager ever having been sold in Canada. If BinManager was sold in Canada, it appears to have been on a miniscule basis or not at all, or such sales are recent. OPI thus argues that without sales in Canada, AGI could not be said to have suffered any losses in Canada. I note at this point that argument is somewhat speculative given the early stage of this Action. Also, it does not address the fact that AGI also seeks to restrain the conduct of OPI in Canada via this Action.

[46] Concerning to me is that while this Action is different in legal grounds and scope to the Kansas and Missouri Actions (as I note below), there is significant overlap, particularly between the witnesses, facts and evidence between them.

[47] A review of the factual allegations in the Statement of Claim in this Action and the factual allegations in the Kansas and Missouri Actions disclose significant overlap, such that this Court, in trying this Action, will be called upon to make similar, if not identical, fact findings as the Kansas and Missouri courts. Further, in the absence of any agreement between the parties, that practically requires, as OPI notes, re-deposition (discovery) of nearly all or substantially all the witnesses who have already been deposed in the US actions. Further, certain of the contractual claims against employees likely need to be determined in Kansas to lay the factual framework for parts of this Action. While there are absolutely no contract claims being made in Alberta, the nature of the factual pleas in the Statement of Claim suggest that the obligations in certain contracts related to certain employees are important for the causes of action pled.

[48] I note that there may be an overlap between the damages awarded in the Kansas Action and this one. Alleviating this to some degree, I do agree that courts can be careful not to award duplicative damages, especially in a case like this where there is no practical risk that the trial of this Action will occur prior to decisions being rendered in the Kansas and Missouri Actions (or those suits being abandoned after resolution or otherwise). Further, if AGI presents the case it says it will to this Court, it will only be focused on Canadian loss and damage.

[49] My concerns under this portion of the analysis could be overcome by one of two things occurring: a trial and a decision in either Kansas or Missouri which makes fact findings the parties are prepared to live with in the circumstances, and/or a cooperation agreement sufficient to reduce overlap in the discovery process in Alberta, coupled with an agreed statement of facts on certain issues determined in Kansas over which the parties agree it has exclusive jurisdiction.

ii. The Applicable Law

[50] The Action before the Court, as I have noted, pleads the common law economic torts of conspiracy and breach of confidence through knowing receipt of confidential information, and

seeks a declaration of unjust enrichment, among other things. It seeks redress here for wrongs alleged to have been committed here.

[51] OPI argues that AGI has admitted, in argument in the Kansas Action, that this Action is far narrower than that one. It also argues that this is supportive of OPI's position that Kansas is the clearly more appropriate forum. It argues that AGI's attempts to delineate the scope of this Action as something discrete and different from that which is being brought forward in Kansas should fail, suggesting that this Action and the Kansas Action are not in fact parallel, but overlap considerably. OPI concedes that the Kansas Action contains pleas against the individual employees that are not advanced in the Alberta Action but argues that the Statement of Claim in this Action sets out the same allegations and facts pleaded against those employees, as AGI's causes of action in Alberta depend upon establishing those facts to make out the causes of action here.

[52] AGI argues that the Statement of Claim in this case pleads causes of action in Canadian law against OPI, for alleged economic torts committed in Canada, and that OPI has mischaracterized this claim.

[53] I agree with AGI. Despite OPI's attempts to characterize it as otherwise, legally, this Action is distinctly different at law than the Kansas Action, which is based upon Kansas and US law and pleads causes of action that are available in Kansas, including the breaches of US statutes I have outlined above. Further, it also contains breach of contract claims against employees, which are absent in this Action.

[54] I have assessed OPI's argument related to where the causes of action alleged arose. It is too soon to truly tell. I place limited weight on this argument. I acknowledge that there is conduct in both the US and Canada that will have to be assessed to apply the law to the facts. Nonetheless, the law to be applied in this Action is the law of Alberta, and if applicable, of Canada.

iii. The Desirability of Avoiding a Multiplicity of Legal Proceedings

[55] OPI argues that courts will often exercise their discretion to decline jurisdiction where there are multiple duplicative actions. It cautions the Court against taking a narrow, particular and formalistic approach to determining whether the proceedings are parallel. OPI suggests that the level of duplication in the actions requires outright dismissal of this Action.

[56] AGI argues, on the other hand, that OPI is not a defendant in the Missouri Action, only the Kansas Action. AGI's position on this issue is that the Kansas Action, Missouri Action and this Action were commenced in their respective fora because of the varying statutory laws, causes of action, places of domicile or residence, and in some cases, a choice of forum clause in applicable contracts, which it asserts is not improper. AGI also suggests that the Kansas and Missouri courts "endorsed multiple proceedings" in dismissing OPI's applications in those suits. It also points out that in the US actions, it seeks damages incurred in the US and to restrain conduct in the US, whereas it seeks the opposite here.

[57] There is no doubt there is significant factual overlap between this Action and the Kansas and Missouri Actions. However, as I have noted above, this Action proceeds on a completely different legal footing than the Kansas and Missouri Actions. This Action is not an abuse of process, as OPI has alleged.

[58] I agree with AGI that it seeks to enforce Canadian legal rights in Canada in this Action, and nothing more. However, that does not address the concerns I have raised above in relation to the duplicative nature of the fact-finding process that will necessarily have to be engaged in by this Court in hearing this Action. While not preferred, parallel proceedings would “not be disastrous”; since it is unlikely that they could be tried concurrently, the judgment of the first court to resolve matters germane to the second would likely be accepted as binding by the other jurisdiction in most cases: *TR Technologies Inc v Verizon Communications Incorporated*, 2011 ABQB 390 at para 41, citing *Amchem Products Inc v British Columbia (Workers’ Compensation Board)*, [1993] 1 SCR 897 at para 24.

[59] I note that any judgment rendered in Alberta against OPI would be enforced in Canada, meaning no cross jurisdictional enforcement issues arise in this Action.

b. The Desirability of Avoiding Conflicting Decisions in Different Courts

[60] Here, the only risk of conflicting decisions lies in the potential of conflicting fact findings, not conflicting decisions on the law itself which, as AGI notes, is different in all cases. Of course, there is a risk of inconsistent or conflicting factual findings, given the multiplicity of the actions. In substance, however, I do not see a risk of true conflict between the various courts and this Action. Either AGI will prove the causes of action pled in this case, and damage and loss in Canada, or it will not. None of these legal issues are before the courts of Missouri or Kansas. If there are damages issued by either of those courts that trench into what could be awarded here, that can be taken into consideration by the trial judge in this case.

c. The Enforcement of an Eventual Judgment

[61] OPI stresses in its materials that Canadian courts have adopted a generous and liberal approach to the recognition and enforcement of foreign judgments, one that is driven by the principle of comity. In support of this, it relies upon cases such as *Chevron Corp v Yaiguaje*, 2015 SCC 42 and *Pro Swing Inc v ELTA Golf Inc*, 2006 SCC 52. In particular, OPI argues that it is open to Canadian courts to enforce injunctive and declaratory relief issued in a foreign jurisdiction in Canada.

[62] AGI, however, argues that this Action has not been brought as a ‘back up’ to the Kansas Action, and given the stated concerns of the Kansas Court about whether injunctive relief issued in the US could be extended to Canada, it has concerns that even if the law relied upon by OPI is broad enough to permit *potential* enforcement of any such relief, there is a risk in this case that the Kansas Court would not even issue such relief.

[63] The Parties’ arguments on this point miss the mark. This factor is generally focussed on the enforcement of any judgment that may issue in *this* Action, not the other extant action which is argued to be the more appropriate forum (here, the Kansas Action).

[64] Here, there is no doubt that a judgment issued in this Action could be enforced against OPI, whether that judgment contained declaratory, injunctive or other relief, and damages or restitution. It is an Alberta resident, with assets in Canada. The converse is not so clear with respect to the Kansas Action and any judgment that may issue.

[65] With respect to OPI’s argument that it is open to the Kansas Court to provide injunctive and declaratory relief to AGI that could be enforced in Canada, in *Pro Swing Inc*, the Supreme Court held that foreign non-monetary judgements may be recognized and enforced in Canada. Prior to *Pro-Swing*, Canadian courts only recognized and enforced monetary foreign

judgements. In recognition of modern commercial realities, the Supreme Court broadened the traditional common law rule.

[66] To be recognizable and enforceable, a non-monetary foreign judgement must meet both the traditional common law requirements for foreign monetary judgements as well as the additional requirements outlined in *Pro Swing: Lanfer v Eilers*, 2021 BCCA 241 at para 29.

[67] The Court must determine whether the foreign non-monetary judgement: a) was rendered by a court of competent jurisdiction, b) is final, and c) is of a nature that the principles of comity requires the domestic court to enforce: *Pro Swing* at para 31. Once established, the Court must determine whether to enforce the foreign judgement. This includes assessing any applicable defences, such as fraud, breach of natural justice, or public policy, as well as the impact of enforcing the non-monetary judgement: *Pro Swing* at paras 28, 30.

[68] Given their equitable nature, in determining whether to enforce foreign non-monetary judgements, Canadian courts must scrutinize the impact of their enforcement: *Pro Swing* at para 30. The impact of enforcement may be informed by various considerations including whether:

- a) The order is clear and specific;
- b) The order is limited in scope;
- c) Enforcement is the least burdensome remedy;
- d) The Canadian litigant will be exposed to unforeseen obligations;
- e) Third parties will be affected by the order; and
- f) The use of judicial resources is consistent with what would be allowed for domestic litigants.

Pro Swing at para 30.

[69] Although the Supreme Court declined to enforce the non-monetary judgement at issue in *Pro Swing*, foreign non-monetary judgements, including injunctions, have on occasion been recognized and enforced in subsequent cases: see *Dead End Survival, LLC v Marhasin*, 2019 ONSC 3569; *Zashko v Touchgate and Ahmed*, 2018 ONSC 3734; *Blizzard Entertainment Inc v Simpson*, 2012 ONSC 4312.

[70] Of course, all of this is speculative. Certainly, based upon the law in *Pro-Swing*, it is possible that if the Kansas Court issued injunctive relief that purported to extend to Canada (which seems unlikely on the evidence before me, including the comments made by the Kansas Court in determining the OPI stay application), a court here could potentially enforce such an order – but that is not a certainty by any means.

[71] What is clear is that if an Alberta Court issued injunctive and declaratory relief against OPI, it could be enforced in Alberta.

[72] Further, given the way the pleadings in the Kansas Action and this Action are drafted, it is entirely possible that a judgment in the Kansas Action will only address conduct, harm and compensation related to the US and not Canada. If this Action were not to proceed, AGI could be denied the relief it seeks for conduct, harm and alleged damages here.

d. The Fair and Efficient Working of the Canadian Legal System

[73] Here, OPI's arguments rest on what I would call a false premise: that AGI's claim here in Alberta is brought "merely to assuage its anxieties related to the enforcement of a future U.S. judgment it may never obtain." With respect, I agree with AGI that this misstates the nature and purpose of the Statement of Claim in this Action. The pleadings in the Kansas Action do not seek compensation for losses suffered by AGI in Canada. This Action does. There is a clear demarcation that exists in this case. Based upon the nature and structure of the pleadings in the Kansas Action, while enforcement proceedings may be brought post-judgment in Canada if OPI does not comply, that judgment will be of a nature and scope that would not be duplicative or would be minimally duplicative of any judgment issued by this Court after trial (and even then only potentially on a monetary basis).

[74] I also consider that there may well be a loss of juridical advantage to AGI if this Court declined jurisdiction over this dispute, given the causes of action pled are specific to this jurisdiction, and the relief sought is not sought in either of the Kansas or Missouri Actions.

e. Conclusion

[75] When I assess all the facts and arguments made and the factors outlined above, I do not think that Kansas is the clearly more appropriate forum for determining the claims AGI has brought against OPI in Alberta in this Action. In fact, the claims in this Action are not before the Court in Kansas. They are claims arising by operation of Canadian law, against a Canadian defendant, ultimately to seek compensation and relief related to the impact AGI alleges against OPI in Canada.

[76] Alberta has jurisdiction in this case. That jurisdiction should not be declined on the facts before me. Kansas is not the clearly more appropriate forum for determining these claims.

[77] However, as I indicate below, I do believe a conditional stay of proceedings is warranted in this matter due to the significant overlap in the factual allegations between this Action and the Kansas Action, and the dependency, to some degree, of the factual findings in the Kansas Action to the factual matrix at issue in this Action.

B. Strike or Stay: Rules 1.4 and 3.72, and the *Judicature Act*

[78] Truly duplicative litigation is wasteful of the resources of the parties and the Court, an abuse of process, and contrary to the public interest. Courts are conscious of avoiding duplicative litigation, potential inconsistent results, undue costs and the like: *Waud v Dawson-Dixon*, 2023 ABKB 158 at paras 15 and 16, citing *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44.

[79] I note here that OPI's arguments that the action be struck require a consideration of whether this Action is an abuse of process. OPI made this argument without any detailed analysis of the law on abuse of process.

[80] The doctrine of abuse of process is flexible and can arise in many different contexts: *PricewaterhouseCoopers Inc v Perpetual Energy Inc*, 2022 ABCA 111 at para 78. As noted by the Supreme Court in *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at para 37, "[t]he doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute."

[81] Abuse of process can exist where there is a multiplicity of proceedings. However, multiple proceedings do not automatically constitute an abuse of process. Courts should only strike pleadings as an abuse of process in the clearest cases: *Mikisew Cree First Nation v Alberta*, 2025 ABCA 304 at para 16, citing *Saskatchewan (Environment) v Métis Nation - Saskatchewan*, 2025 SCC 4 at para 60.

[82] Multiple proceedings may constitute an abuse of process where they involve the same parties, subject matter, injury, and remedies: *Ashraf v Munn*, 2021 ABQB 472 at para 23; see also *Mikisew Cree First Nation v Alberta*, 2024 ABKB 578 at para 139; *Lubicon Lake Nation v Penn West Petroleum Ltd*, 2015 ABQB 342 at para 29. Despite significant factual overlap, proceedings may not be duplicative if they are directed at different causes of action, such as in the present case: *Lubicon Lake Nation* at paras 38, 40.

[83] This case does not rise to the level of an abuse of process. As I have indicated, the proceedings are not truly duplicative from a legal perspective. There are distinct causes of action alleged, and this simply is not a case where I can find this Action ought to be struck as an abuse of process.

[84] OPI alternately argues that this Action should be stayed. Rules 1.4 and 3.72 and s. 8 of the *Judicature Act* outline the Court's authority to stay an action.

[85] Rule 1.4 provides in part:

Procedural orders

1.4(1) To implement and advance the purpose and intention of these rules described in rule 1.2 the Court may, subject to any specific provision of these rules, make any order with respect to practice or procedure, or both, in an action, application or proceeding before the Court.

(2) Without limiting subrule (1), and in addition to any specific authority the Court has under these rules, the Court may, unless specifically limited by these rules, do one or more of the following:

[...]

(h) adjourn or stay all or any part of an action, application or proceeding, extend the time for doing anything in the proceeding, or stay the effect of a judgment or order;

[...]

[86] Rule 3.72 states in part:

Consolidation or separation of claims and actions

3.72(1) The Court may order one or more of the following:

[...]

(c) that one or more claims or actions be stayed until another claim or action is determined;

[...]

(2) An order under subrule (1) may be made for any reason the Court considers appropriate, including, without limitation, that 2 or more claims or actions

(a) have a common question of law or fact, or

(b) arise out of the same transaction or occurrence or series of transactions or occurrences.

[87] Section 8 of the *Judicature Act* provides:

General jurisdiction

8 The Court in the exercise of its jurisdiction in every proceeding pending before it has power to grant and shall grant, either absolutely or on any reasonable terms and conditions that seem just to the Court, all remedies whatsoever to which any of the parties to the proceeding may appear to be entitled in respect of any and every legal or equitable claim properly brought forward by them in the proceeding, so that as far as possible all matters in controversy between the parties can be completely determined and all multiplicity of legal proceedings concerning those matters avoided.

[88] A stay is a discretionary remedy, and in exercising this discretion in the context of a multiplicity of proceedings, a court may consider whether:

- a) the issues in the proceedings are substantially the same;
- b) a continuance of the action would be oppressive or vexatious to the applicant or otherwise abuse the powers of the court; and
- c) the stay would not cause the respondent an injustice.

Waud at para 18, citing *Alberta v Alberta Union of Provincial Employees*, 1984 ABCA 130 at paras 9-17.

[89] The burden is on the party seeking the stay to establish these factors: *1499925 Alberta Ltd v NB Developments Ltd*, 2023 ABKB 114 at para 99. The court must also bear in mind the goals of efficient dispute resolution and management of court resources: *UCANU Manufacturing Corp v Graham Construction and Engineering Inc*, 2015 ABCA 22 at para 7. In undertaking this analysis, relevant considerations include the degree of overlap between the competing proceedings, the balance of the prejudice to the parties, the potential for inconsistent results, and the need to conserve judicial and private resources: *NB Developments Ltd* at para 99.

[90] The *Rules of Court*, the *Judicature Act*, and the Court's inherent jurisdiction grant the Court broad discretion to control its processes to ensure claims are fairly and justly adjudicated in a timely and cost-effective manner: *Armstrong v Gula*, 2023 ABKB 270 at para 38. In the context of a multiplicity of proceedings, relevant considerations include the risk of inconsistent judgements and the promotion of judicial economy: see *Waud* at para 29; *Wright v Air Canada*, 2021 ABPC 61 at para 32.

[91] While a stay is a discretionary remedy, the dismissal of an action is an extraordinary remedy that should only be exercised in the clearest of cases. This is not such a clear case, and I reject OPI's arguments that this Action should be dismissed. That is too harsh a remedy,

especially where the causes of action advanced by AGI in this Action could only be determined in Alberta.

[92] In determining the appropriate remedy, the impact of both a stay and a dismissal must be considered. Where adjudicating one proceeding may assist in deciding or narrowing the issues in another proceeding, a stay may be appropriate: *W(T) (Next Friend of) v Alberta (Public Trustee)*, 2006 ABQB 243 at para 15. In contrast, where a stay may cause uncertainty regarding which issues are duplicative, striking duplicative claims may be appropriate: see *Donaldson v Farrell*, 2011 ABQB 11 at para 16. That is not the case here.

[93] I see the Kansas Action and the Alberta Action as dovetailed, but not overlapping, from a legal issues/cause of action standpoint. However, as I have noted, there is a significant overlap in the facts that must be proven in Alberta and the facts that are in issue in the Kansas Action, and to a lesser extent, the Missouri Action. Those actions are significantly more advanced.

[94] I am concerned about the Alberta Action proceeding prior to the Kansas Action being finally determined, for the reasons outlined in this decision. The best way to alleviate the real risk of issues with duplicative discovery, and issues regarding findings of fact that may overlap in the two jurisdictions, given the fact that the agreements related to the employment and non-compete are being properly litigated in Kansas, is to stay this Action on conditions.

[95] Since there is alleged conduct and harm occurring in Canada that may continue if a full stay is granted, I find it is necessary to provide AGI access to the Court should it wish to advance an application for pre-trial injunctive relief. In that regard, there will be an exception to the stay of proceedings I have imposed, and AGI has leave, without further order of the Court, to file such an application to be heard in the normal course. I am not seized of any issues in this litigation.

[96] I believe this is the most appropriate way to acknowledge the substantially similar factual allegations at play, the comparative significant advancement of the Kansas Action, the requirement for certain issues solely within the jurisdiction of the Kansas Court to be determined which also underpin the Alberta Action (such as the contract claims advanced there), while also acknowledging that AGI may require interim relief from this Court, in Canada, based upon the allegations made in the pleadings.

VII. Conclusion

[97] In the result, this Action is stayed until further Order of this Honourable Court, pending final judgment in the Kansas Action or such other disposition such as resolution, withdrawal, delay, or other similar issues. This stay is subject to the limited exception that AGI is permitted (and has leave) to bring an application for pre-trial injunctive relief against OPI as it may see fit in relation to the matters pled in the Statement of Claim in this Action.

[98] If the parties are unable to agree on costs, they have leave to file costs briefs not to exceed five pages plus authorities and any other reference materials within 45 days of this decision, and I will issue a written costs endorsement.

Heard on the 05th day of September, 2025.

Dated at the City of Calgary, Alberta this 22nd day of October, 2025.

D.J. Reed
J.C.K.B.A.

Appearances:

Thomas W.R. Ross, KC and Alexander MacDonald
for the Applicant, OPISystems Inc.

Mat Brechtel
for the Respondent AGI SureTrack, LLC