

Federal Court



Cour fédérale

Date: 20251114

Docket: T-209-25

Citation: 2025 FC 1824

Ottawa, Ontario, November 14, 2025

PRESENT: The Honourable Mr. Justice Lafrenière

BETWEEN:

**HIS MAJESTY THE KING IN RIGHT OF
CANADA**

Plaintiff

and

**101137743 SASKATCHEWAN LTD. AND
RAYMOND JED HEMMING**

Defendants

JUDGMENT AND REASONS

[1] By motion dated September 24, 2025, the Plaintiff, His Majesty the King in Right of Canada, seeks an order for summary judgment pursuant to Rule 213(1) of the *Federal Courts Rules*, SOR/98-106 [Rules] against the Defendants, 101137743 Saskatchewan Ltd. [Corporate Defendant] and Raymond Jed Hemming, for the outstanding loan amount advanced to the Corporate Defendant under the *Agricultural Marketing Programs Act*, SC 1997, c 20 [AMPA], totalling \$311,046.14 as of September 10, 2025, a declaration that Defendants have made a

fraudulent representation within the meaning of section 178(1)(e) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 [BIA], plus interest and costs.

[2] The Defendants do not dispute the Plaintiff's entitlement to judgment for the loan and formally concede the debt before this Court. Judgment for the debt shall go accordingly.

[3] The Defendants oppose the Plaintiff's request for the declaratory relief on the basis that the Federal Court lacks jurisdiction to grant such relief under the BIA. In reply, the Plaintiff concedes that this Court does not have the jurisdiction, on this application, to make a declaration pursuant to section 178(1)(e) of the BIA.

[4] The Plaintiff submits, however, that this Court can make a finding of fact that a fraudulent misrepresentation was made. While that may be, it bears underscoring the high bar required to succeed on a motion for summary judgment

[5] Rule 215(1) states that the Court shall grant summary judgment only if it is satisfied there is no genuine issue for trial with respect to a claim or a defence. The test on a motion for summary judgment is whether the case is so doubtful that it does not deserve further consideration at a future trial, not whether it could not possibly succeed at trial (*Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 at para 33). This translates into "a heavy burden on the moving party" (*CanMar Foods Ltd v TA Foods Ltd*, 2021 FCA 7 at para 24).

[6] In the present case, the Plaintiff has not met the heavy burden of proof required to establish a common-law relationship between Mr. Hemming and Ms. Baschuk. The Plaintiff's motion record includes an affidavit that attaches notes taken by a government officer as an exhibit. The notes purport to recount conversations with Ms. Baschuk to support the position that Mr. Hemming and Ms. Baschuk were in a common-law spousal relationship. However, the contents of the notes are clearly hearsay as they are not supported by an affidavit from the officer who took the notes. Moreover, the statements allegedly made by Ms. Baschuk to the officer are double hearsay. In contrast, Mr. Hemming has provided affidavit evidence denying the existence of a common-law relationship. Mr. Hemming was not cross-examined on his affidavit and his evidence stands unchallenged. In light of the conflicting evidence, summary judgment should not be granted as there is a genuine issue to be tried on the merits.

[7] There are additional reasons to deny summary judgment on the declaratory relief requested by the Plaintiff that the judgment debt is not dischargeable in bankruptcy due to alleged fraudulent misrepresentation.

[8] First, such a declaration is not claimed in the prayer for relief. The Plaintiff's failure to plead the declaratory relief in the Statement of Claim is a radical defect.

[9] Second, the Statement of Claim fails to allege material facts in support of all of the essential elements of a claim of fraudulent misrepresentation. The misrepresentation the Plaintiff identifies is pleaded at paragraphs 11 and 12 of the Statement of Claim:

11. As part of the Application, the Defendants represented that they were not related to any

producer who had an outstanding advance owing pursuant to the terms of the AMPA. However, the Plaintiff states that the Individual Defendant's common-law spouse, Janet Baschuk, had obtained a cash advance for the 2013-2014 crop year and had defaulted on the same. Janet Baschuk was, at all material times, a related party to the Corporate Defendant and Individual Defendant.

12. The Plaintiff states that the Defendants fraudulently misrepresented that they were not related to another party who was in default of a cash advance loan pursuant to the terms of the AMPA, knowing that the representation was false or being reckless and careless as to whether the representations were true or false. The CCGA relied on the representation to advance the funds to the Corporate Defendant.

[10] A claim for fraudulent misrepresentation, which is a very serious allegation, requires specific allegations of (1) a false statement by the defendant; (2) the defendant knowing that the statement is false or being indifferent to its truth or falsity; (3) the defendant having an intent to deceive the plaintiff; (4) the false statement being material and the plaintiff having been induced to act; and, (5) the plaintiff suffering damages (*EnerWorks Inc v Glenbarra Energy Solutions Inc*, 2012 ONSC 414 at para 58). Particulars of the alleged fraud must be pleaded in the Statement of Claim pursuant to Rule 181(1)(a) (*Bergeron v Canada (Correctional Service)*, 2016 FC 235 at para 13).

[11] In terms of element 1, the Plaintiff has not alleged that Mr. Hemming made any personal representations in the application. As for elements 3 and 5, there are simply no material facts pled to support such allegations.

[12] For the above reasons, the Plaintiff's motion for summary judgment relating to the debt is granted, as well as the fees and disbursements as claimed at paragraph 9 of the affidavit of Shelley Warner, other than those related to the motion for summary judgment. The balance of the relief requested by the Plaintiff is dismissed, without prejudice to the Plaintiff's right to seek leave to amend the Statement of Claim, if so advised, and to move to summary trial.

[13] The Defendants request that they be awarded their costs for successfully resisting the Plaintiff's request for the declaratory relief. However, given the divided success in the motion overall, and in the absence of any submissions on costs, including any appropriate lump sum amount, as required by paragraph 82 of the *Amended Consolidated General Practice Guidelines* (June 20, 2025), I decline to award costs to either party.

JUDGMENT IN T-209-25

THIS COURT'S JUDGMENT is that:

1. The motion for summary judgment is granted in part.
2. The Defendants shall jointly and severally pay to the Plaintiff the amount of \$315,483.04, inclusive of interest to the date of Judgment, plus costs and disbursements in the amount of \$1,447.82.
3. Interest on the total amount of \$316,930.86 shall accrue from the date of Judgment at the rate of 5.00 percent per annum.
4. The motion is otherwise dismissed.

"Roger R. Lafrenière"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-209-25

STYLE OF CAUSE: HIS MAJESTY THE KING IN RIGHT OF CANADA v
101137743 SASKATCHEWAN LTD. AND
RAYMOND JED HEMMING

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

JUDGMENT AND REASONS: LAFRENIÈRE J.

DATED: NOVEMBER 14, 2025

WRITTEN REPRESENTATIONS BY:

Travis Kusch FOR THE PLAINTIFF

David J. Ukrainetz FOR THE DEFENDANTS

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