Court of Appeal for Saskatchewan

Docket: CACV4632

Citation: *MeatMeatGo Inc. v Squareflow New Media Inc.*, 2025 SKCA 123

Date: 2025-11-27

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Between:

MeatMeatGo Inc., Lyndon Lisitza, and Callie Lisitza

Appellants
(Defendants/Plaintiffs by Counterclaim)

And

Squareflow New Media Inc. and Barend Jacobus Van Heerden

Respondents
(Plaintiffs/Defendants by Counterclaim)

Before:	Caldwell J.A. (in Chambers)
Disposition:	Application granted
Written reasons by:	The Honourable Justice Neal W. Caldwell
On application from: Application heard:	QBG-RG-00897-2022, Regina (Sask) November 12, 2025
Counsel:	Michael Marschal for the Appellants Jonathan Milani for the Respondents

Caldwell J.A.

I. INTRODUCTION

[1] The prospective appellants, MeatMeatGo Inc., Lyndon Lisitza and Callie Lisitza, have applied for directions. They seek a declaration that an August 26, 2025, decision of the Court of King's Bench (*Squareflow New Media Inc. v MeatMeatGo Inc.* (26 August 2025) Regina, QBG-RG-00897-2022 (Sask) [*Decision*]) is a final decision or that leave to appeal is otherwise not required pursuant to *The Court of Appeal Act, 2000*, SS 2000, c C-42.1, and, if leave is required, they ask for an order granting them leave to appeal against the *Decision*.

[2] The applicants (defendants/plaintiffs by counterclaim) and the respondents, Squareflow New Media Inc. and Barend Jacobus Van Heerden (plaintiffs/defendants by counterclaim), were business partners at one time. That relationship has broken down, resulting in cross-claims as to who owns the software used in the business.

[3] On an *ex parte* basis, the respondents obtained an *Anton Piller* order (see *Anton Piller KG v Manufacturing Processes Ltd.*, [1976] Ch 55 (CA) [*Anton Piller KG*]) authorising them to search and seize property of the applicants [APO]. After an independent supervising solicitor had executed a search and seized property under that order, the applicants sought to have the order set aside, arguing that the respondents had not provided the judge with full and frank disclosure of relevant information when they obtained the APO. In the *Decision*, the same judge who had granted the APO declined to vacate it. In the course of that matter, the judge admitted into evidence an affidavit proffered by the respondents [Affidavit].

[4] As noted, the applicants intend to appeal against the *Decision* and, given the ruling in *Aecon Mining Construction Services, a division of Aecon Construction Group Inc. v K+S Potash Canada GP*, 2023 SKCA 102, 485 DLR (4th) 685, they seek directions as to whether the *Decision* is one that requires leave to appeal. Their first position is that the *Decision* is a final order from which leave is not required by reason of s. 7(2) of *The Court of Appeal Act, 2000*. They alternatively submit that leave is not required by reason of s. 8(2)(a)(iii) of that Act because the *Decision* addresses the granting or refusal of injunctive relief. Lastly, if leave to appeal is required, the

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applicants argue in the further alternative that the proposed appeal raises issues of sufficient merit and importance to warrant the attention of a panel of this Court.

[5] For the reasons that follow, I conclude that the APO is an interlocutory order for which leave to appeal is not required by reason of s. 8(2)(a)(iii) of *The Court of Appeal Act, 2000*. Accordingly, as the time to do so has expired by reason of this application, I grant the applicants leave to file a notice of appeal against the *Decision*.

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II. ANALYSIS

A. Interlocutory and final orders

[6] In *Métis Nation - Saskatchewan v Saskatchewan (Environment)*, 2023 SKCA 35, 479 DLR (4th) 345, Leurer J.A. (as he then was) summarised the jurisprudence describing the features of interlocutory and final orders:

> [27] The basic distinction between final and interlocutory orders is easy to state. As explained by Ottenbreit J.A. in *Saskatchewan Medical Association v Anstead*, 2016 SKCA 143, it "has long been the law in this jurisdiction that orders which do not finally dispose of the 'substantive issue' in an action are not final but interlocutory". Conversely, "an order is final when, if allowed to stand, it finally disposes of the rights of the parties" (at para 56). More recently, Kalmakoff J.A. stated that, "[a]t a very general level, an interlocutory decision is one made during the progress of an action or other proceeding that relates to some intermediate matter at issue in the case, not to the ultimate matter in issue" (*Poffenroth Agri Ltd. v Brown*, 2020 SKCA 68 at para 15, [2021] 5 WWR 302, referring to The Honourable Stuart J. Cameron, *Civil Appeals in Saskatchewan: The Court of Appeal Act & Rules Annotated*, 1st ed (Regina: Law Society of Saskatchewan Library, 2015) at 118). Later, Kalmakoff J.A. also observed that the "determination of whether an order is final or interlocutory in nature turns on whether the order effectively disposes of the rights of the parties, in a final and binding way, with respect to a substantive issue" (at para 18, emphasis added). If an order has this effect, it is final in nature.

[7] The order admitting the Affidavit into evidence is interlocutory because it was made "during the progress of an action or other proceeding that relates to some intermediate matter at issue in the case, not to the ultimate matter in issue" (*Poffenroth Agri Ltd. v Brown*, 2020 SKCA 68 at para 15, [2021] 2 WWR 302 [*Poffenroth*]). The order dismissing the applicants' motion to vacate the APO is interlocutory in this case because it was made in respect of an extraordinary pre-trial remedy designed to preserve evidence for use in the trial of the respondents' claims and the

applicants' crossclaims. In that regard, the judge's decision regarding the APO does not dispose of any rights relating to the merits of the litigation among the parties (*Poffenroth* at para 21).

[8] I cannot agree with the applicants' submissions in support of their contention that the order dismissing their application is final. They assert that the operative effect of that order was to "conclusively determine whether [their] property seized in the course of the [carrying] out of the APO would be returned to them or released to the Respondents". They further posit that the order "exhausted [their] rights to contest the seizure or seek the return of their property in the Court of King's Bench" and that it thereby "definitively determined that [their] property would not be returned to them, and instead, would be released to the Respondents (subject to claims of privilege)". I cannot accept that argument because, as Kalmakoff J.A. held in *Poffenroth*, an order is not a final order simply because it finally disposes of the issue that was put before the Chambers judge who made the order. That proposition is a non sequitur because it essentially neutralises the distinction between final and interlocutory since most orders dispose of the issue raised in an application in one way or another.

[9] I also find that the facts of this case readily distinguish it from *West Central Pelleting Ltd. v Agracity Ltd.*, 2010 SKCA 145, [2010] 3 WWR 683, where an *Anton Piller* order was treated as a final order. Unlike the applicants in this matter, the appellant in that case was not a party to the ongoing litigation; it was a third-party whose property had been seized during the execution of the order against a party to the litigation. In that scenario, reasoning from the appellant's perspective, Richards J.A. (as he then was) held that the order dismissing a third-party's application to set aside an *Anton Piller* order was final because it finally disposed of the third-party's litigation rights by ending its participation in the litigation. That is not the scenario in this matter.

[10] In short, I conclude that the orders made under the *Decision* are interlocutory because they do not finally dispose of the rights of the applicants with respect to the merits of the litigation.

B. An order involving the granting or refusal of an injunction

[11] If the order dismissing the application to set aside the APO is interlocutory, the applicants submit that leave to appeal from that order is not required by reason of s. 8(2)(a)(iii) of *The Court of Appeal Act, 2000* because the order addresses the granting or refusal of an injunction:

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Interlocutory appeals

8(1) Subject to subsection (2), no appeal lies to the court from an interlocutory decision of the Court of King's Bench unless leave to appeal is granted by a judge or the court.

(2) Leave to appeal an interlocutory decision is not required in the following cases:

(a) cases involving:

(i) the liberty of an individual;

(ii) the custody of a minor;

(iii) the granting or refusal of an injunction; or

(iv) the appointment of a receiver;

(b) other cases, prescribed in the rules of court, that are in the nature of final decisions.

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[12] As the applicants correctly assert, an *Anton Piller* order is recognised at law as a type of urgent injunctive relief that authorises a pre-trial search and seizure of property in civil litigation (*Celanese Canada Inc. v Murray Demolition Corp.*, 2006 SCC 36 at para 30, [2006] 2 SCR 189 [*Celanese*]; Robert J. Sharpe, *Injunctions and Specific Performance*, loose-leaf (Rel 2025-01) (Toronto: Thomson Reuters, 2018). The respondents acknowledge that an *Anton Piller* order is a form of injunctive relief. Indeed, that was how they characterised the matter in their application for an *ex parte Anton Piller* order. Furthermore, the judge referred to and treated the respondents' application as an application for an injunction. I cannot read the *Decision* otherwise than as the judge understanding that he was granting injunctive relief when he granted the APO. In that context, the applicants could not-unwarrantedly rely on the maxim *res ipsa loquitor*.

[13] On the face of it, the order in question falls within the category of interlocutory decisions involving "the granting or refusal of an injunction", which do not require leave to appeal. As such, I will approach this issue by determining whether there is any reason to conclude that it is not that type of order.

[14] In that regard, the respondents submit that an *Anton Piller* order is not the *type* of injunction referred to in s. 8(2)(a)(iii) of *The Court of Appeal Act, 2000*. In this regard, they point to *Bourelle v Saskatchewan Government Insurance*, 2016 SKCA 81, 2 CPC (8th) 207 [*Bourelle*], where Richards C.J.S. held that s. 8(2)(a)(iii) "definitely does not comprehend any and every order involving some element of compulsion or prohibition" (at para 14).

[15] The principal reason I reject this line of argument is that the order in *Bourelle* was not – on its face – an injunction or otherwise considered to be injunctive relief. It certainly directed the appellant to attend on a physician for the purposes of a medical examination relevant to his insurance claims. However, Richards C.J.S. pointed out in *Bourelle* that court orders often and necessarily involve "commanding or preventing an action", which does not of itself make an order injunctive relief (at para 13). Looking to the factual and legal context in which the order in *Bourelle* had been made, he rejected the appellant's proposition that it was an injunction simply because it commanded the appellant to do something. He wrote:

> [11] However, any such approach to s. 8 of the Act would deny the realities of how this case has unfolded. SGI's notice of application sought the order in question pursuant to s. 36 of *The Queen's Bench Act*, 1998, SS 1998, c Q-1.01, and Rule 5-49 of *The Queen's Bench Rules*. Both of those provisions deal expressly with independent medical examinations. They make no reference to injunctions. Injunctions are dealt with in ss. 65 and 66 of *The Queen's Bench Act, 1998* and Rule 6-41 and following of *The Queen's Bench Rules*.
>
> [12] In addition, the merits of SGI's application have never been analyzed through an injunction-type lens. The governing framework for assessing an injunction application is well known and involves consideration of the strength of the applicant's case and the balance of convenience. See: *Potash Corporation of Saskatchewan Inc. v Mosaic Potash Esterhazy Limited Partnership*, 2011 SKCA 120, 341 DLR (4th) 407. Significantly, this type of analysis formed no part of the submissions made by Ms. Bourelle or SGI in the Court of Queen's Bench and, as well, it formed no part of the reasoning of the Chambers judge.
>
> [13 The reality is that most, and perhaps all, judicial decisions rendered in the course of trial-type proceedings could be characterized as falling under the broad rubric of orders "commanding or preventing an action." For example, an order excluding witnesses commands them to remain outside the courtroom. An order denying counsel a line of questioning prevents him or her from asking questions. And so on and so on. As a result, the broad approach advocated by Ms. Bourelle would frustrate s. 8 of the Act which, as noted, is self-evidently aimed at preventing appeals of interlocutory decisions unless leave is granted.
>
> [14] It is not necessary here to lay down an exhaustive definition of "injunction" for the purpose of s. 8(2)(a)(iii). However, that term should rather obviously be taken as referring to orders secured pursuant to provisions such as those found in *The Queen's Bench Act, 1998* and *The Queen's Bench Rules* that refer expressly to "injunctions." In any event, "injunction" in the context at hand definitely does not comprehend any and every order involving some element of compulsion or prohibition.

[16] As is evident, the question answered in *Bourelle* was not whether a type of injunctive relief fell outside the ambit of s. 8(2)(a)(iii), it was whether the order in question was indeed a type of injunctive relief. I can see nothing in the reasoning in Bourelle to suggest that some types of injunctions might not fall within the meaning of the word *injunction* in that provision. Put another

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way, *Bourelle* cannot be taken as excluding any order not expressly called an *injunction* in *The King's Bench Act* or *The King's Bench Rules* from the scope of s. 8(2)(a)(iii).

[17] In this case, the respondents applied for an *Anton Piller* order properly invoking the inherent jurisdiction of the Court of King's Bench. In *British Columbia (Attorney General) v Malik*, 2011 SCC 18, [2011] 1 SCR 657, Binnie J. distinguished *Anton Piller* orders from preservation orders available under the *British Columbia Supreme Court Rules* (equivalent to preservation orders made under Rule 6-44 of *The King's Bench Rules*) because "*Anton Piller* orders for the preservation of evidence are available in British Columbia under the inherent jurisdiction of the Superior Court, which indeed is the source identified by Lord Denning in the eponymous case of [*Anton Piller KG*] and endorsed in *Yousif v. Salama*, [1980] 3 All E.R. 405 (C.A.)" (*Malik* at para 31). Justice Binnie concluded on this point by stating that "the particular wording of British Columbia's r. 46(1) does not assist the respondents" (at para 31). As such, the fact that *Anton Piller* orders are not called injunctions or mentioned by name in either *The King's Bench Act* or *The King's Bench Rules* is of no moment.

[18] In specific terms, the respondents' *ex parte* application to the judge for an *Anton Piller* order relied on Rule 1-4 (General authority of the Court to provide remedies), Rule 1-5 (Orders respecting practice or procedure), Rule 6-3 (Applications generally) and 6-4 (Procedure on applications without notice) of *The King's Bench Rules*. Rule 1-4(1)(a) provides that the Court of King's Bench may "give any relief or remedy described or referred to in *The King's Bench Act.* In that regard, s. 10-15(1) of *The King's Bench Act* broadly recognises the inherent jurisdiction of Court of King's Bench judges to grant the equitable remedies of mandamus and injunctive relief on an interlocutory basis:

> **Interlocutory mandamus, injunction or appointment of receiver**
>
> 10-15(1) A judge may, on an interlocutory application, grant a mandamus or an injunction or appoint a receiver if it appears to the judge to be appropriate or convenient that the order should be made.
>
> (2) An order pursuant to subsection (1) may be made unconditionally or on any terms and conditions that the judge considers appropriate.
>
> (3) If an injunction is sought, whether before, at or after the hearing of an action or matter, to prevent any threatened or apprehended waste or trespass, a judge may grant the injunction:
>
> (a) whether the person against whom the injunction is sought:
>
> (i) is or is not in possession under any claim of title or otherwise; or

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> (ii) if not in possession, does or does not claim a right to do the act sought to be restrained under any colour of title; and
>
> (b) whether the estates claimed by any of the parties are legal or equitable.

[19] As to the nature of an injunction, in *Google Inc. v Equustek Solutions Inc.*, 2017 SCC 34, [2017] 1 SCR 824, the Supreme Court held that the purpose of an interlocutory injunction is "to ensure that the subject matter of the litigation will be 'preserved' so that effective relief will be available when the case is ultimately heard on the merits" (at para 24). Because an injunction is an extraordinary form of relief, the approach in *RJR-MacDonald Inc. v Canada (Attorney General)*, [1994] 1 SCR 311 [*RJR-MacDonald*], and in *Mosaic Potash Esterhazy Limited Partnership v Potash Corporation of Saskatchewan Inc.*, 2011 SKCA 120, 341 DLR (4th) 407 [*Mosaic*], requires an applicant seeking interlocutory injunctive relief to persuade the judge that there is either a serious issue to be tried (for a prohibitive injunction) or a strong prima facie case (for a mandatory injunction), see *R v Canadian Broadcasting Corp.*, 2018 SCC 5, [2018] 1 SCR 196. In either case, the applicant must also demonstrate that there is a material risk of irreparable harm resulting if the injunctive relief is not granted and that the balance of convenience favours granting the requested relief.

[20] I agree with the respondents that the iteration in *Celanese* of the approach to an application for an *Anton Piller* order is not identical to that for an interlocutory injunction under *RJR-MacDonald/Mosaic*, but it is – in my assessment – a governing framework that employs an "injunction-type lens" for assessing that type of application (*Bourelle* at para 12). In *Celanese*, the Supreme Court held that, to justify the granting of the extraordinary remedy of an *Anton Piller* order, the applicant must satisfy four "essential conditions":

> [35] There are four essential conditions for the making of an *Anton Piller* order. First, the plaintiff must demonstrate a strong prima facie case. Second, the damage to the plaintiff of the defendant's alleged misconduct, potential or actual, must be very serious. Third, there must be convincing evidence that the defendant has in its possession incriminating documents or things, and fourthly it must be shown that there is a real possibility that the defendant may destroy such material before the discovery process can do its work: *Nintendo of America, Inc. v. Coinex Video Games Inc.*, [1983] 2 F.C. 189 (C.A.), at pp. 197-99; *Indian Manufacturing Ltd. v. Lo* (1997), 75 C.P.R. (3d) 338 (F.C.A.), at pp. 341-42; *Netsmart Inc. v. Poelzer*, [2003] 1 W.W.R. 698, 2002 ABQB 800, at para. 16; *Anton Piller KG*, at pp. 58-61; *Ridgewood Electric*, at para. 27; *Grenzservice*, at para. 39; *Pulse Microsystems Ltd. v. SafeSoft Systems Inc.* (1996), 67 C.P.R. (3d) 202 (Man. C.A.), at p. 208; *Ontario Realty Corp. v. P. Gabriele & Sons Ltd.* (2000), 50 O.R. (3d) 539 (S.C.J.), at para. 9; *Proctor & Gamble Inc. v. John Doe (c.o.b. Clarion Trading*

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International), [2000] F.C.J. No. 61 (QL) (T.D.), at para. 45; *Netbored*, at para. 39; *Adobe Systems Inc. v. KLJ Computer Solutions Inc.*, [1999] 3 F.C. 621 (T.D.), at para. 35.

[21] The test for an interlocutory mandatory injunction requires the establishment of a strong prima facie case as does *Celanese*. In addition, in *RJR-MacDonald*, the Supreme Court described irreparable harm in terms of "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other" (at 341). In *Mosaic*, Richards J.A. (as he then was) wrote that the court assessing whether to grant an interlocutory injunction "must weigh the risk of irreparable harm the plaintiff is likely to suffer before trial if the injunction is not granted, and he or she succeeds at trial, against the risk of the irreparable harm the defendant is likely to suffer if the injunction is granted and he or she prevails at trial". On that basis, it is not hard to equate a "real possibility relevant evidence will be destroyed or otherwise made to disappear" with irreparable harm (*Celanese* at para 1).

[22] Justice Richards further noted in *Mosaic* that an assessment of the balance of convenience "can accommodate a range of equitable and other considerations (at para 113). In my view, the balance-of-convenience aspect of the *Mosaic*/*RJR-MacDonald* test is addressed through the required terms of an *Anton Piller* order, which must protect the party against whom it is issued through a "carefully drawn order which identifies the material to be seized and sets out safeguards to deal, amongst other things, with privileged documents; a vigilant court-appointed supervising solicitor who is independent of the parties; and a sense of responsible self-restraint on the part of those executing the order" (*Celanese* at para 1).

[23] It is also relevant that the respondents in this matter gave an undertaking as to damages, as the court requires for the granting of injunctive relief. In *Mosaic*, Richards J.A. noted that "generally a plaintiff must give to the defendant an undertaking to pay the defendant any damages that the defendant sustains by reason of the injunction, should the plaintiff fail to prevail at trial" (at para 114).

[24] In the result, I conclude that the judge's decision not to vacate the APO is an interlocutory decision for which leave to appeal is not required by reason that it is an order involving the granting or refusal of an injunction.

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[25] The order admitting the Affidavit into evidence does not fall, however, under a category of interlocutory decisions under s. 8(2) of *The Court of Appeal Act, 2000* for which leave to appeal is not required.

C. Leave to appeal

[26] Because I have found that the decision not to set aside the APO is an interlocutory decision from which the applicants do not require leave to appeal, I decline to address the hypothetical merits of their application for leave to appeal against the *Decision*.

[27] However, I have not addressed the proposed appeal against the admission of the Affidavit. As I understand it, the respondents filed the Affidavit in response to the applicants' application to set aside the APO. The parties subsequently brought applications to strike certain evidence and the judge ruled upon those applications in the *Decision*. On that basis, I consider the order admitting the Affidavit to be an order made during the hearing of the applicants' application to set aside the APO that was only incidental to that application and did not dispose of the matter in issue in that application. As such, having the right to appeal against the order dismissing their application to set aside the APO, the applicants have leave pursuant to Rule 12(2) of *The Court of Appeal Rules* to also include in their notice of appeal an appeal against the incidental order admitting the Affidavit into evidence.

III. DISPOSITION

[28] As the order dismissing the application to set aside the APO under the *Decision* is one to which s. 8(2)(a)(iii) applies, the applicants do not require leave to appeal against it. In light of the effluxion of time since the issuance of the *Decision*, the applicants have leave to file their notice of appeal within 14 days of the date of this fiat.

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[29] Given the uncertainty of the law in this area and the quite helpful submissions of counsel for the applicants and for the respondents, I make no order as to costs.

"Caldwell J.A."

Caldwell J.A.

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