Date: 20251211
Docket: CI 22-01-37727
(Winnipeg Centre)
Indexed as: SM Industries Ltd. et al. v. Casera Credit Union Limited
Cited as: 2025 MBKB 152

COURT OF KING'S BENCH OF MANITOBA

B E T W E E N:

	)	Patricia L. West
SM INDUSTRIES LTD., S M VENTURES INC.,	)	Brent Tichon (Articling Student-At-Law)
ANGELINA MARIA HIRSCH, and	)	for the plaintiffs
ALVIN S. HIRSCH,	)	
plaintiffs,	)	Kalev A. Anniko
- and -	)	Nicholas Mark
	)	for the defendant
CASERA CREDIT UNION LIMITED,	)	
defendant.	)	Judgment Delivered:
	)	December 11, 2025

TOEWS J.

INTRODUCTION

[1] The defendant, Casera Credit Union Limited ("Casera"), brought a motion for summary judgment against the four plaintiffs in this action – two corporate plaintiffs, SM Industries Ltd. and S M Ventures Inc. (respectively referred to as "Industries" and "Ventures" and collectively referred to as the "corporate plaintiffs" or the "SM Companies") and two individual plaintiffs, Angelina Maria Hirsch and Alvin S. Hirsch (referred to as "Ms. Hirsch" and "Mr. Hirsch" respectively or collectively, as the "individual plaintiffs").

[2] At the conclusion of the hearing on December 2, 2025, I granted Casera's motion for summary judgment in respect of the individual plaintiffs, orally dismissing the action brought by the individual plaintiffs, but reserving judgment in respect of the corporate plaintiffs. I advised the parties that in view of the imminent trial date in this matter, I would provide them with my decision in respect of the corporate plaintiffs on December 4, 2025, with written reasons in respect of all four plaintiffs to follow.

[3] On December 4, 2025, I advised all parties by email that I was also granting Casera's motion for summary judgment against the corporate defendants. In the result, the defendant's motion for summary judgment is successful in respect of all four plaintiffs and the action against the defendant is dismissed in its entirety. Accordingly, the defendant's request at the conclusion of the hearing on December 2, 2025, that the trial be shortened from December 8-12, 2025 to December 10-12, 2025, is moot.

[4] These are my reasons for granting the defendant's summary judgment motion and dismissing the plaintiffs' action.

BACKGROUND

[5] Casera is a credit union carrying on business in Winnipeg, Manitoba, but as a result of a name change it now carries on business as Access Credit Union. However, for the purposes of these reasons and in light of the pleadings and other material filed in this matter, these reasons will continue to refer to the defendant as Casera.

[6] There are various concerns raised by the individual plaintiffs in their material in respect of alleged treatment by Casera. Although I will deal with the plaintiffs' concerns in the course of these reasons in so far as that is necessary, in my opinion the facts set

out in the defendant's material are not materially in dispute. In my opinion, the facts set out in the defendant's material as well as those set out in the plaintiff's material can properly form the underpinning for the legal conclusion that summary judgment should be granted in favour of the defendant. Where there is some disagreement in respect of the facts, that disagreement does not need to be resolved by a trial. That can be dealt with in the course of a summary judgment hearing pursuant to the authority provided to me by the case law and the Manitoba Court of King's Bench Rules. No further trial of an issue is required.

[7] The SM Companies are Manitoba corporations, each having Paul Minsky ("Mr. Minsky") as their sole director and officer. Ms. Hirsch is Mr. Minsky's daughter and has an active role in the bookkeeping and financial management of the corporate plaintiffs.

[8] Industries had been a customer of Casera since approximately 2009, and since that time had a demand line of credit operating facility from Casera with a limit of $150,000.00 (the "Operating Facility") and a limit of $100,000.00 for a demand line of credit payroll facility ("Payroll Facility" together with the Operating Facility, the "Demand Facilities"). On or around December 18, 2009, Industries provided Casera with general security over all its present and after-acquired property as security for its present and future obligations to Casera (the "Industries Security Agreement"). In and around January 18, 2019, at the request of Industries, Casera accepted a temporary increase in the Operating Facility (the "Bulge") to an authorized limit of $500,000.00, reducing back to $150,000.00 no later than April 30, 2019.

[9] As a condition of the Bulge, Ventures, a more recently incorporated company related to Industries and utilized as part of Industries' business, provided an unlimited guarantee of Industries' obligations to Casera. This guarantee was supported by a general security agreement over all of Ventures' present and after acquired personal property (the "Ventures Security Agreement" and together with the Industries Security Agreement, the "Security Agreements").

[10] By the terms of the General Security Agreements, each of the SM Companies agreed explicitly to the following with respect to their accounts receivable (at para. 10 of the General Security Agreement):

> Notwithstanding any other section or provision of this agreement, the Credit Union may collect, realize, sell or otherwise deal with the receivables or any part thereof in such manner, upon such terms and conditions and at such time or times, whether before or after default, as may seem to it advisable and without notice to the Debtor. …

[11] The purpose of the Bulge was to finance Industries' operations over the winter while it carried out snow plowing work, much of which was generally paid in full later in the spring.

[12] In accordance with the agreement between the parties, Casera increased the credit limit of the Operating Facility to $500,000.00. Industries however, failed to reduce the balance below $150,000.00, by April 30, 2019, as required.

[13] Instead, on April 30, 2019, Ms. Hirsch emailed the Casera account manager for the SM Companies, Jason Klassen ("Mr. Klassen"), and advised that the Bulge would not be reduced as required, and requested until October 31, 2019, to retire it, or asked alternatively that an additional $200,000.00 loan be provided to Industries.

[14] Ms. Hirsch also advised that her father, Mr. Minsky had financed $500,000.00 worth of repairs to Industries' equipment, which she confirms in her affidavit was funded by the Operating Line, despite both her and Mr. Minsky knowing that this was an inappropriate use of the Operating Line.

[15] Mr. Klassen agreed to extend the date for repayment of the Bulge to May 31, 2019, to allow for the receipt and review of the SM Companies' financial statements, at which point the request would be considered.

[16] Following receipt of financials, Mr. Klassen met with Mr. Minsky and Ms. Hirsch on June 20, 2019, and informed them Casera had decided not to continue its relationship with the SM Companies, and that the Facilities would need to be paid out in full by October 31, 2019. This was confirmed in a letter Casera sent to Industries dated June 28, 2019 (the "Demarket Letter").

[17] The Demarket Letter set out a number of concerns and grounds on which Casera advised it was basing its decision, including default in paying down the Bulge, regular overdrafts and NSF payments, and cash flow issues.

[18] It is not disputed by the plaintiffs that the overdrafts and NSF payments did occur. Ms. Hirsch confirms in her evidence that this was a regular occurrence, and that for a period of some years prior to the Demarket Letter, Casera would routinely refuse to allow overdrafts on the Facilities and object to them.

[19] During the months leading up to October 31, 2019, Casera continued to allow Industries to utilize the Demand Facilities. In late October 2019, Ms. Hirsch advised on behalf of Industries that it was applying for a loan to retire the indebtedness to Casera.

In light of this representation, and in anticipation of imminent payout in full, Casera did not take any steps upon the expiry of the October 31, 2019, demand deadline.

[20] The anticipated financing loan fell through in January 2020. Nonetheless, Casera understood that the SM Companies were still working towards a payout and anticipating receivables and so it took no steps to enforce the security at that time.

[21] In or around January 2020, Ms. Hirsch and Mr. Hirsch made a $95,000.00 loan to Industries. Ms. Hirsch says they obtained Casera's agreement that they could pay themselves back in priority to Casera's security. Casera disputes this, but in all events, there is no dispute that the plaintiffs did not disclose at the time of the loan, that they were facing a potential claim from Revenue Canada for tax arrears of various types.

[22] To that end, on or about February 25, 2020, Casera received requirements to pay from Revenue Canada totalling $104,647.45, for Industries' obligations to Revenue Canada, the effect being that Casera was required to pay any amounts it would otherwise release to Industries to Revenue Canada instead. At that time, the amount owing to Casera from Industries totalled $419,876.53.

[23] On or about February 27, 2020, upon receipt of a large receivable, payment was made by Industries reducing the Demand Facilities, but Industries remained indebted to Casera in excess of $90,000.00.

[24] Ms. Hirsch subsequently advised Casera that another receivable, likely sufficient to pay out the Demand Facilities, was anticipated in March 2020. No such payment was made.

[25] Accordingly, on or about March 20, 2020, or approximately nine months after the Demarket Letter, Casera, through counsel, made a demand on Industries and Ventures, and concurrently delivered Industries and Ventures with Notices of Intention to Enforce Security.

[26] At the time of these demands, the SM Companies had legal counsel assisting them with matters related to Casera. Accordingly, Industries' then counsel wrote to Casera's counsel on March 27, 2020, proposing a payment plan of $5,000.00 a month commencing May 1, 2020 – a plan which would have seen another year and a half until the approximately $90,000.00 owing would be paid.

[27] Casera's counsel responded to that letter by letter dated March 31, 2020, confirming Casera's continued commitment to ending its relationship with the SM Companies, confirming that promised payouts had not occurred, and confirming that the payment plan was not acceptable and that Casera would be proceeding with its remedies.

[28] On or around April 1, 2020, Casera became aware that Industries and/or Ventures had opened accounts with Sunova Credit Union. Further, Casera became aware that a $95,000.00 cheque was issued from Industries' payroll account to Ms. Hirsch, which was deposited on or around January 14, 2020, in a Casera account jointly held by Mr. and Ms. Hirsch.

[29] Casera, through counsel, put Sunova Credit Union on notice of Casera's security interest in the receivables of Industries and Ventures and further made demand of Ms. Hirsch to return the $95,000.00 paid to her from Industries and have it applied to

Industries' indebtedness to Casera. No further steps were taken by Casera at that time with respect to the payment to Ms. Hirsch.

[30] Casera states it continued to try to work with the SM Companies but maintains the SM Companies refused to provide requested financial disclosure, and refused to commit to the payment plan they were proposing unless Casera agreed to discharge its security over certain collateral.

[31] As there was no resolution and the SM Companies remained indebted to Casera pursuant to the Demand Facilities and Ventures' guarantee, Casera took steps to enforce its security. Specifically, in or about May 2020, Casera's solicitor sent letters to a number of known customers of the SM Companies and directed that any receivables payable to the SM Companies be paid directly to Casera (the "Receivables Letters").

[32] During the period of time that the Receivables Letters were in effect, Ms. Hirsch sought to obtain financing from Casera to pay out the balance of the Demand Facilities. However, Ms. Hirsch was not prepared to provide security against her home to Casera and did not proceed further with her request for financing from Casera.

[33] In or around September 2020, payments were received in accordance with the Receivables Letters, and so letters revoking the direction were sent out to the customers, terminating the demand. A small excess of funds was delivered to counsel for the SM Companies and the accounts closed.

[34] While the substantive history between the parties, including the agreements between the corporate plaintiffs and the defendant, is not in dispute, the plaintiffs have raised concerns about the defendant's conduct *vis-à-vis* the individual plaintiffs and asks

the court to consider these allegations in the context of its consideration as to whether a trial of an issue is required in respect of this action.

[35] The individual plaintiffs assert in the pleadings that this alleged conduct, particularly in respect of the sending of the Receivables Letters and the freezing of the individual plaintiffs' bank accounts, was high-handed and that damages that flowed from these actions were reasonably foreseeable.

[36] In my opinion, the plaintiffs' brief does not accurately reflect the evidence before the court in a number of respects. For example, at paragraph 27 of their brief, it is stated:

> Despite its knowledge and approval of the terms governing the Payroll Loan, the Defendant sent a letter to the Individual Plaintiffs on or about March 27th, 2020, alleging that the Individual Plaintiffs had embezzled $95,000.00 from SM.

[37] The authority cited for this assertion in the plaintiffs' brief is the affidavit of Ms. Hirsch sworn April 24, 2025, and specifically paragraph 39 of that affidavit where she states:

> Notwithstanding that Jason [Klassen] knew and approved of how we were handling these accounts, Alvin and I received a letter dated March 31, 2020 from David Jackson, counsel for Casera, alleging that the payment had been made "out of the course of business" and demanding that we repay $95,000.00 to Casera (the March 31st letter).

[38] The substance of the March 31, 2020 letter from Mr. Jackson is more accurately reflected by Ms. Hirsch at paragraph 39 of her affidavit rather than in the submissions in the plaintiffs' brief at paragraph 27. Mr. Jackson does indeed state in the March 31 letter that:

> … This payment was made out of the ordinary course of business and contrary to the trust provisions of the security granted by the [corporate plaintiffs] to Casera.

[39] However, there is no reference to "embezzlement" in the March 31 letter and indeed, during the course of plaintiffs' counsel's submissions it was conceded that the money was "misallocated" but not "misappropriated". Whether the money was misappropriated or misallocated by the plaintiffs, in my opinion there is nothing untoward in the letter of Casera's counsel given the plaintiffs' concession that the money was not properly allocated by the plaintiffs.

[40] Further allegations made by the plaintiffs that a representative of Casera made oral accusations of embezzlement against the individual plaintiffs at the defendant's place of business are not reliable. These accusations were made for the first time in the affidavit of Ms. Hirsch about five years after the time of the alleged accusations. Even the pleadings do not allege that any such accusations were made by the defendant's representative against the individual plaintiffs. The pleadings refer only to the very brief freezing of the individuals' bank accounts (perhaps one day - either February 26 or February 27, 2020) and the Receivables Letters as evidence of any "high-handed actions" in relation to the individual plaintiffs.

THE LAW

[41] The law regarding the circumstances in which the court may order summary judgment are not in dispute. Both counsel rely on the appropriate Court of King's Bench Rules and case law in their briefs.

[42] Counsel for the plaintiffs, in their brief, summarizes the law as follows:

> 40. Rule 20.03(1) of the *Court of King's Bench Rules* provides that a judge must grant summary judgment where it is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

41. The legal test for summary judgment was outlined in *Dakota Ojibway Child and Family Services et al v. MBH*, 2019 MBCA 91 ("Dakota") as follows:

    (a) The moving party bears the evidentiary burden of establishing that there is no genuine issue requiring a trial. In order to meet this burden, the moving party must first satisfy the motion judge that there can be a fair and just determination on the merits. The moving party must establish that the process will permit the judge to find the necessary facts and to apply the relevant legal principles so as to resolve the dispute such that proceeding to trial would not be proportionate, timely, or cost-effective.

    (b) Where the moving party meets the burden, the responding party must establish that there is a genuine issue requiring a trial or bears the evidentiary burden of establishing "that the record, the facts, or the law preclude a fair disposition". Where the responding party fails to meet its evidentiary burden, summary judgment will be granted.

    (c) This requires a two-step analysis. First, the motion judge must determine, based only on the evidence before him or her, and without using any additional fact-finding powers, if there is a genuine issue requiring a trial. If there appears to be a genuine issue requiring a trial, the second step requires the motion judge to determine if the need for a trial can be avoided by using the additional fact-finding powers; that is, weighing the evidence, evaluating credibility, drawing inferences and/or calling oral evidence.

42. Motions for summary judgment are not an appropriate forum for determinations on serious, legitimate issues of credibility. [citations omitted]

[43] While I agree with counsel for the plaintiffs that the relevant rule on a summary judgment motion is Manitoba Court of King's Bench Rule 20, it is instructive to reproduce the entire relevant portion of that rule which provides:

Conduct of Summary Judgment Motion

Responding evidence

20.02 In response to affidavit material or other evidence supporting a motion for summary judgment, a responding party may not rest on the mere allegations

or denials of the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.

Granting Summary Judgment

20.03(1) The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

Powers of judge

20.03(2) When making a determination under subrule (1), the judge must consider the evidence submitted by the parties and he or she may exercise any of the following powers in order to determine if there is a genuine issue requiring a trial:

(a) weighing the evidence;

(b) evaluating the credibility of a deponent;

(c) drawing any reasonable inference from the evidence;

unless it is in the interests of justice for these powers to be exercised only at trial.

[44] In its brief, the defendant also notes in the context of setting out the applicable law:

> 36. In *Dakota Ojibway* [*Child and Family Services et al v. MBH, 2019 MBCA 91*], the Court of Appeal considered these rules in light of the Supreme Court of Canada's decision in *Hryniak* and set out the test as follows:
>
> > [108] At the hearing of the motion, the moving party must first satisfy the motion judge that there can be a fair and just determination on the merits (i.e., that the process will permit him or her to find the necessary facts and to apply the relevant legal principles so as to resolve the dispute, and that proceeding to trial would generally not be proportionate, timely or cost-effective). In so doing, the moving party bears the evidential burden of establishing that there is no genuine issue requiring a trial.
> >
> > [109] If those requirements are met, the responding party must meet its evidential burden of establishing "that the record, the facts, or the law preclude a fair disposition" (*Weir-Jones* at para 32; and *Stankovic v 1536679 Alberta Ltd*, 2019 ABCA 187 at para 22; see also *Stankovic* at para 29) or that there is a genuine issue requiring a trial (e.g., by raising a defence). In other words, the responding party must establish why a trial is required (see

> *Hryniak* at para 56). If the responding party fails to do so, summary judgment will be granted.
>
> [110] The analysis contemplated by Karakatsanis J in *Hryniak* is itself a two-step analysis (see para 66). First, the motion judge must determine if there is a genuine issue requiring a trial based only on the evidence, without using any additional fact-finding powers. If there is such an issue, the second step requires the motion judge to determine if the need for a trial can be avoided by weighing the evidence, evaluating credibility, drawing inferences and/or calling oral evidence (see r 20.07(2)).
>
> [111] There is no shifting onus; the standard of proof is proof on a balance of probabilities; and the persuasive burden of proof remains at all times with the moving party to establish that a fair and just adjudication is possible on a summary basis and that there is no genuine issue requiring a trial.

37. Accordingly, Casera bears the burden, on a balance of probabilities, of persuading this Honourable Court that there is no genuine issue requiring a trial to adjudicate the plaintiffs' claims. Likewise, upon Casera doing so, the evidentiary burden shifts to the plaintiffs to establish that a trial is necessary to determine a genuine issue that must be resolved to adjudicate their claims. As made clear in the Rules themselves, a party responding to a summary judgment motion must not rest on the mere allegations in their pleadings but must set out the specific evidence showing that there is a genuine issue requiring a trial.

THE POSITION OF THE DEFENDANT

[45] The defendant summarizes the issues and its position in this case as follows:

A) Is this matter appropriate for summary judgment?

> Answer: Yes. The essential facts of this claim are not in dispute. The real issue is whether the steps Casera took to enforce its security were lawful or not. Any factual issues in dispute do not raise genuine issues requiring a trial because the plaintiffs' claims cannot succeed regardless of how those disputes may be resolved, and in all events, can be resolved on this motion.

B) Did Casera breach contract?

> Answer: No. The legal and contractual right of Casera to take the steps it took is not in dispute. Casera provided ample notice to the plaintiffs of its demand for repayment of the Facilities, and of its intention to enforce its security. Further, Casera did not enforce its contractual rights in bad faith, as the discretion Casera exercised in enforcing its security was directly related to the rights granted to Casera by the plaintiffs as a matter of contract and as a matter of law. Further, as there is no breach, there are no damages.

C) Do the Hirsch's have a claim against Casera?

> Answer: No. The Hirsch's have not set out any basis for their claim and have failed to advance evidence or even an allegation with respect to damages.

THE POSITION OF THE PLAINTIFFS

[46] The plaintiffs take the position in their brief that the issue on the defendant's motion is whether this is an appropriate case for summary judgment.

[47] The plaintiffs submit that this is not an appropriate case for summary judgment in that an analysis of the bad faith conduct alleged by the plaintiffs requires consideration of the factual context in which these parties dealt with each other. It is not, the plaintiffs submit, simply a matter of contractual interpretation. The plaintiffs argue that the discretion afforded to the defendant pursuant to the contractual relationship must be exercised in good faith.

[48] The plaintiffs state at paragraph 47 of their brief that they do not dispute that the defendant gave them reasonable notice that it intended to enforce its security. However, the plaintiffs state that the defendant acted in bad faith in its exercise of discretion in enforcing its security. The plaintiffs submit that they should have been given notice of the defendant's decision to send out the Receivables Letters while

negotiations between the parties were being actively undertaken. This decision, they state, was capricious, arbitrary and outside the purpose for which the defendant was given discretion by its contracts with the plaintiffs. The defendant's choice, the plaintiffs' state, was "unreasonable and disproportionate and was done in bad faith."

[49] The plaintiffs argue that the defendant was provided with a discretion to choose between a variety of remedies to enforce its security, including the seizure of all secured assets, including the corporate equipment. It said that the plaintiff refused to remove its security in order to allow the defendant to sell the equipment in order to repay the loan.

[50] The plaintiffs argue that the exercise of the defendant's discretion to send the Receivables Letters left the impression that the corporate plaintiffs were on the verge of bankruptcy or receivership which the defendant ought to have known would subsequently impact the corporate plaintiffs' ability to receive and maintain contracts. Accordingly, the plaintiffs state the defendant's decision to send the Receivables Letters was fundamentally unreasonable.

[51] The plaintiffs deny that they refused to provide financial disclosure when the parties attempted to negotiate a reasonable repayment plan as alleged by the defendant.

[52] Although not in the pleadings, in their brief the individual plaintiffs are requesting aggravated damages as the result of the defendant's alleged treatment of the individual plaintiffs. They argue that the plaintiffs' claim for aggravated damages will require that

the court make factual determinations based on credibility and therefore this matter should proceed to trial.

DECISION

[53] There is no dispute here that the governing loan agreements, the guarantees and the security agreements with respect to the Demand Facilities are valid. There is no dispute that the SM Companies were in default. Furthermore, the plaintiffs agree that any demand pursuant to its security made by the defendant was valid and the notice provided to the plaintiffs was reasonable.

[54] In the present case the demand was made in response to, among other things, Industries' financial default. The corporate plaintiffs' accounts admittedly were not in good standing.

[55] I agree with the position set out by the defendant in its brief in which it acknowledges that Canadian law has recognized an organizing principle of good faith in contractual relationships. As the defendant states in its brief:

> 53. The organizing principle of good faith was given some shape by the Supreme Court of Canada in *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District,* 2021, SCC 7. In that decision, the Court identified a duty to exercise discretion afforded under a contract in good faith. As quoted by the Manitoba Court of Appeal in *Royal Bank of Canada v Universal Energy Resources Inc.*, 2021 MBCA 105 the Supreme Court posed the analysis as follows:
>
> > … [T]o determine whether a party failed in its duty to exercise discretionary power in good faith, one must ask the following question: was the exercise of contractual discretion unconnected to the purpose for which the contract granted discretion? If so, the party has not exercised the contractual power in good faith.
> >
> > In sum, then, the duty to exercise discretion in good faith will be breached where the exercise of discretion is unreasonable, in the sense that it is unconnected to the purposes for which the

> discretion was granted. This will notably be the case where the exercise of discretion is capricious or arbitrary in light of those purposes because that exercise has fallen outside the range of behaviour contemplated by the parties. The fact that the exercise substantially nullifies or eviscerates the fundamental contractual benefit may be relevant but is not a necessary pre-requisite to establishing a breach.
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> *RBC v Universal Energy Resources Inc et al.*, 2021 MBCA 105 at para 17 quoting *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, paras 69, 88

54. As further noted in the concurring reasons in *Wastech*:

> First, the purpose of good faith is to "secur[e] the performance and enforcement of the contract made by the parties". It cannot be used as a device to "create new, unbargained-for rights and obligations", or "to alter the express terms of the contract reached by the parties". Contracting parties cannot be held to a standard that is "contrary to the plain wording of the contract, or that involve[s] the imposition of subjective expectations".
>
> *Wastech Services Ltd. v Greater Vancouver Sewerage and Drainage District*, 2021 SCC 7, para 130 [concurring reasons, citations omitted]

55. In *RBC v Universal*, a unanimous Manitoba Court of Appeal confirmed that there was "no basis" for asserting that a lender making demand on a defaulted debtor was an exercise of discretion in bad faith.

> *RBC v Universal Energy Resources Inc et al.*, 2021 MBCA 105 at para 21

[56] I agree with the defendant's submission that there is no basis for arguing that Casera exercising its discretion to make demand and enforce security in the circumstances of this case was somehow unconnected to the purposes for which it was granted the right to do so in the first place. In my opinion, all of the steps taken by Casera were pursuant to its contractual rights and exercised in relation to the purpose for which those rights were granted – the recovery of a debt.

[57] Specifically, the corporate plaintiffs granted Casera the right to collect receivables as a matter of contract and as pointed out by the defendant in its brief, Casera was

legally entitled to do so in the face of default pursuant to ***The Personal Property Security Act***, C.C.S.M. c. P35 ("***PPSA***"), which specifically provides for the collection of intangible personal property like accounts receivable upon default (see ***PPSA***, s. 57(2):

> **Entitlement of secured party**
>
> **57(2)** Where the parties to a security agreement agree and, in any event, on default under a security agreement, a secured party is entitled
>
> (a) to notify a debtor on an intangible or chattel paper or an obligor on an instrument to make payment to the secured party whether or not the assignor was making collections on the collateral before the notification;
>
> (b) to take control of any proceeds to which the secured party is entitled under section 28; and
>
> (c) to apply any money taken as collateral to the satisfaction of the obligation secured.

[58] In my opinion, the core facts of the admitted default and the reasonableness of the notice, entitled Casera to enforce its security in the manner in which it did. On the basis of contract and the circumstances here, there is no right of the corporate plaintiffs to demand that the defendant realize against the secured equipment owned by the corporate plaintiffs rather than proceed as it did by way of the Receivables Letters. The defendant's exercise of its discretion is directly connected to the reason for the exercise of the discretion.

[59] The plaintiffs are not entitled to insist that the defendant realize on its security in a specific manner when they have contractually granted the defendant the right to realize on its security in this manner. The facts here lead me to the conclusion that in

the exercise of its discretion pursuant to the security granted to it by the corporate plaintiffs, Casera did not act in bad faith.

[60] I am also mindful of the allegation made by the plaintiffs that the defendant allegedly interfered with their ability to obtain alternate financing. I find that there is no evidence substantiating that allegation. Indeed, it makes no sense to me that the defendant would in fact try to prevent the plaintiffs from obtaining alternate funding when it was actively trying to realize on its security by having the plaintiffs pay off the outstanding line of credit and terminate its relationship with the plaintiffs.

[61] Furthermore, I do not agree with the plaintiffs' argument that the circumstances here give rise to liability under the tort of unlawful interference with economic relations. This tort can only arise where a defendant commits an unlawful act against a third party, which act intentionally causes economic harm to the plaintiff. There is no evidence of any unlawful act against a third party here which would give rise to liability pursuant to this tort.

[62] Having found on the basis of the facts here that Casera acted in accordance with its contractual and legal obligations and that it did not act in bad faith, it cannot be liable for any losses that the corporate plaintiffs allege with respect to any damages it may have suffered pursuant to Casera's efforts to realize on its security.

[63] Furthermore, the claims of the individual plaintiffs have no legal basis on which to find the defendant liable as a result of how the defendant exercised its discretion pursuant to the security agreements. The individual plaintiffs are neither officers or

directors of the corporate plaintiffs and are not personally bound by the security agreements between the corporate plaintiffs and the defendant.

[64] Even if I accept the individual plaintiffs' position over the denials of the defendant, that there was a very brief freeze of their personal accounts, perhaps amounting to one day, there is no evidence advanced by the individual plaintiffs that the freeze of their personal accounts and issues with on-line banking was a breach of any obligation owed to the individual plaintiffs by the defendant or that it caused any damages.

[65] Furthermore, I do not accept the allegation that the defendant's representatives, either at its place of business or by virtue of its legal counsel made any improper suggestions in respect of the individual plaintiffs conduct beyond the fact that the plaintiffs have themselves admitted that they "misallocated" funds subject to Casera's security. The argument made by plaintiffs' counsel that the defendants' legal counsel improperly suggested the individual plaintiffs were embezzling money, is not supported by the evidence.

[66] I agree with the defendant that there is a complete lack of reliable evidence needed to support any claim by the individual plaintiffs.

CONCLUSION

[67] I recognize that the persuasive burden of proof remains at all times on the moving party, the defendant in this case, to establish that a fair and just adjudication is possible on a summary basis and that there is no genuine issue requiring a trial.

[68] On the basis of the foregoing reasons, I am satisfied that there is no genuine issue requiring a trial. The defendant, being the moving party, has met the evidential burden of establishing that there is no genuine issue requiring a trial. It has satisfied me that there can be a fair and just determination on the merits, and that proceeding to trial would generally not be proportionate, timely or cost-effective.

[69] In accordance with the test established by the court in ***Dakota Ojibway Child and Family Services et al v. MBH***, 2019 MBCA 91, the defendant having met the evidential burden of establishing that there is no genuine issue requiring a trial, the plaintiffs must meet their evidential burden of establishing that the record, the facts, or the law preclude a fair disposition or that there is a genuine issue requiring a trial. In other words, the plaintiffs must establish why a trial is required. In my opinion, the plaintiffs have failed to do so and therefore summary judgment is granted in favour of the defendant. Accordingly, the statement of claim is dismissed in its entirety.

[70] The defendant is entitled to its costs on the basis of the applicable tariff. If the parties are unable to agree on costs, they may submit a written brief setting out their respective positions and forward it to me for my consideration in order to settle the matter of costs without the necessity of a further appearance before me.

_____ J.