

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Spire Option Holder LLC v. Kwaxdlau  
Project Limited Partnership,*  
2026 BCSC 82

Date: 20260119  
Docket: S247470  
Registry: Vancouver

Between:

**Spire Option Holder LLC, formerly Denham Spire 2 LLC**

Plaintiff

And

**Kwaxdlau Project Limited Partnership, Kwaxdlau  
Project GP Ltd., Polaris LNG LP, Polaris LNG (GP) Ltd.,  
Cedar LNG Partners LP, Cedar LNG (GP) Ltd. and  
Haisla Nation**

Defendants

Before: The Honourable Justice Fowler

## Reasons for Judgment

In Chambers

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Place and Date of Summary Trial:

Vancouver, B.C.  
October 16, 2025

Place and Date of Judgment:

Vancouver, B.C.  
January 19, 2026

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**INTRODUCTION**

[1] The plaintiff, Spire Option Holder LLC (“Spire”), entered into an agreement with the defendants, including Polaris LNG LP and Polaris LNG (GP) Ltd., (collectively “Polaris”), entitled the Equity Participation Rights and Option Agreement (the “Option Agreement”). Simply stated the Option Agreement granted Spire participation rights to subscribe for an equity interest in an LNG project being developed by the defendants, known as the Cedar LNG Project.

[2] Spire alleges the Option Agreement was breached by the defendants. Spire filed a notice of civil claim (NOCC) on October 30, 2024, and an amended notice of civil claim (Amended NOCC) on April 9, 2025.

[3] Polaris filed a response to the Amended NOCC on April 23, 2025.

[4] Polaris now seeks an order that Spire’s claim against Polaris be summarily dismissed pursuant to Rule 9-6(4) and Rule 9-6(5)(a) of the *Supreme Court Civil Rules*, on the basis that it does not disclose a genuine issue for trial.

**BACKGROUND**

[5] In November 2020, Polaris, Kwaxdlau Project Limited Partnership (“KPLP”) and Cedar LNG Export Development Ltd (“Cedar Development”) signed a Project Development Agreement which the parties refer to as the Cedar LNG Project. Spire is not a party to the Project Development Agreement.

[6] At the same time, Polaris signed the Option Agreement with Spire and the other defendants, KPLP, Kwaxdlau Project GP Ltd., Cedar LNG Partners LP (“Cedar LP”), Cedar LNG (GP) Ltd., and Haisla Nation.

[7] The Option Agreement granted Spire rights to purchase equity securities in the Cedar LNG Project, if equity securities were offered to investors as part of the final investment decision (“FID”).

[8] In June 2021, Polaris sold its equity interest in the Cedar LNG Project to Pembina by a Sale Agreement. In aid of the Sale Agreement, Polaris signed an

Assignment and Assumption Agreement with Pembina, KPLP, Cedar Development, and Cedar LP (the “Assignment Agreement”). In this agreement, Polaris assigned all its rights, titles and interests in and to, and all benefits under the Project Development Agreement to Pembina.

[9] At the same time, Pembina signed an Amended and Restated Project Development Agreement with KPLP and Cedar LP, which now governs the continued development of the Cedar LNG Project.

[10] Polaris did not assign the Option Agreement to Pembina.

[11] Polaris did not seek to renegotiate the Option Agreement with Spire after Polaris signed the Assignment Agreement.

[12] Polaris remains a party to the Option Agreement it signed with Spire, even after signing the Sale Agreement and the Assignment Agreement.

[13] In June 2024 Cedar LNG Project announced the FID. I understand that the Project will be funded through debt and capital contributions.

[14] The heart of the dispute between Spire and the defendants is whether the FID triggered Spire’s option rights under the Option Agreement, and whether the structuring of the FID was done intentionally to circumvent Spire’s rights under the Option Agreement.

**PLEADINGS**

[15] The Option Agreement provided Spire with the right to subscribe for up to an aggregate of 10% of all equity securities offered to investors in each Cedar LNG FID Offering, in consideration for Spire making a Cedar LNG Feed payment. Spire pleads that they made the Feed payment.

[16] Spire alleges that the Cedar LNG FID funding that was negotiated between some of the defendants met the Option Agreement definition of “Equity Securities”, triggering Spire’s option subscription rights under the agreement. Spire alleges that

the defendants have wrongfully repudiated the option rights of Spire and that Spire suffered loss and damage as a consequence.

[17] In addition, Spire alleges that the defendants breached their duty of contractual good faith by designing the FID structure to circumvent or prevent Spire from exercising its options under the Option Agreement.

[18] Further, Spire relies on an indemnification term of the Option Agreement which they submit makes Polaris severally liable to indemnify Spire for the loss suffered by Spire, by reason of KPLP or Polaris, or both KPLP and Polaris's breach of the Option Agreement.

[19] In very simple terms, the defendants, other than Polaris, plead in response that the FID structure did not trigger option subscription rights under the Option Agreement, that the defendants acted in good faith and that Spire has not suffered loss or damage.

[20] Polaris pleads in its response to civil claim that it is not a proper party to Spire's action because Polaris sold its entire equity interest in the Cedar LNG Project, through an Equity Purchase and Sale Agreement (the "Sale Agreement"), to Pembina Pipeline Corporation ("Pembina"). As a result of this Sale Agreement, Polaris submits that it no longer had the ability to perform under the Option Agreement, that Polaris committed no actionable wrong, and therefore Spire does not have a cause of action against Polaris.

[21] Polaris also pleads that it is not otherwise liable to indemnify Spire for the loss and damage Spire allegedly suffered due to the actions of other defendants.

[22] Notably, Polaris does not plead in response to the Amended NOCC that Spire has suffered no loss and damage. In fact, Polaris takes no position on Spire's claim against KPLP for indemnity for loss and damage suffered by Spire arising from KPLP's breach of the Option Agreement.

**ISSUE**

[23] I reiterate that the applicant, Polaris, seeks a final order that the Plaintiff's claim against it be summarily dismissed pursuant to Rule 9-6(4) on the basis that it does not disclose a genuine issue for trial within the meaning of Rule 9-6(5)(a).

**ANALYSIS**

**Nature of Summary Judgment Application**

[24] In *Haghdust v. British Columbia Lottery Corporation*, 2011 BCSC 1627, Justice Savage summarized the purpose of the summary judgment procedure as well as the legal standard for finding that there is no genuine issue for trial:

[13] Rule 9-6, under which this application is made, is the successor under the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 to the old Rule 18. BCLC relies on subsections 9-6(4) and 9-6(5) which read as follows:

**Application by answering party**

(4) In an action, an answering party may, after serving a responding pleading on a claiming party, apply under this rule for judgment dismissing all or part of a claim in the claiming party's originating pleading.

**Power of court**

- (5) On hearing an application under subrule (2) or (4), the court,
  - (a) if satisfied that there is no genuine issue for trial with respect to a claim or defence, must pronounce judgment or dismiss the claim accordingly,
  - (b) if satisfied that the only genuine issue is the amount to which the claiming party is entitled, may order a trial of that issue or pronounce judgment with a reference or an accounting to determine the amount,
  - (c) if satisfied that the only genuine issue is a question of law, may determine the question and pronounce judgment accordingly, and
  - (d) may make any other order it considers will further the object of these Supreme Court Civil Rules.

[14] The underlying purpose of the summary judgment procedure has been described as preventing claims (or defences) "...that have no chance of success from proceeding to trial" because "[t]rying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system": *Canada (Attorney General) v. Lameman*, 2008 SCC 14 at para. 10.

[15] The Rule provides that if a Court is "satisfied that there is no genuine issue for trial with respect to a claim or defence", the Court "must pronounce judgment or dismiss the claim accordingly: Rule 9-6(5)(a). In my view, this standard, that there is "no genuine issue for trial" is no different than the "bona fide triable issue" standard under the old rule. Thus, for a claim to be

dismissed on a summary judgment application, it must be manifestly clear that there is no matter to be tried: *Progressive Construction Ltd. v. Newton* (1981), 25 B.C.L.R. 330 (S.C.).

[25] The meaning of “manifestly clear” was explained in *Beach Estate v. Beach*, 2019 BCCA 277:

[65] In my view, the judge on this record simply could not conclude “beyond a reasonable doubt” that there was here “no genuine issue for trial” in respect of the allegations impugning the Settlement Agreement. “Beyond a reasonable doubt” is the high bar set by Justice Esson (then of the Supreme Court) in *Progressive Construction Ltd.*, quoted with approval by this Court in *Montroyal Estates Ltd. v. D.J.C.A. Investments Ltd.* (1984), 55 B.C.L.R. 137. There the court (per Lambert J.A.) adopted this summary of the law stated by Esson J. in *Progressive Construction Ltd.*:

The cases do not establish an invariable rule as to what steps must be taken to resist a R. 18 application for summary judgment. On all such applications the issue is whether on the relevant facts and applicable law, there is a bona fide triable issue. The onus of establishing that there is not such an issue rests upon the applicant, and must be carried to the point of making it “manifestly clear”, which I take to mean much the same as beyond a reasonable doubt. If the judge hearing the application is left in doubt as to whether there is a triable issue, the application should be dismissed.

In essence, if the defendant is bound to lose, the application should be granted, but if he is not bound to lose, then the application should be dismissed.

[26] The proper approach to evidence on a Rule 9-6 application was also explained in *Beach*:

[48] Rule 9-5 is a challenge on the pleadings. Rule 9-6 is a challenge on a limited review of evidence. A defendant can succeed on a Rule 9-6 application by showing the case pleaded by the plaintiff is unsound or by adducing sworn evidence that gives a complete answer to the plaintiff’s case: *B & L Holdings Inc. v. SNFW Fitness BC Ltd.*, 2018 BCCA 221 at para. 46, quoting *Progressive Construction Ltd. v. Newton* (1981), 25 B.C.L.R. 330 at 335; *International Taoist Church of Canada v. Ching Chong Taoist Association of Hong Kong Ltd.*, 2011 BCCA 149 at para 14. Such evidence generally is adduced in the form of an affidavit. If the court is satisfied that the plaintiff is bound to lose or the claim has no chance of success, the defendant must succeed on the Rule 9-6 application: *Canada v. Lameman*, 2008 SCC 14 at paras. 10–11. Conversely, if the plaintiff submits evidence contradicting the defendant’s evidence in some material respect or if the defendant’s evidence in support of the Rule 9-6 application fails to meet all of the causes of action raised by the plaintiff’s pleadings, the application must be dismissed: *B & L Holdings Inc.* at para. 46, quoting *Progressive Construction Ltd.* at 335.

[49] Although an application under Rule 9-6 invokes the court's consideration of evidence, it is not a summary trial: *Century Services Inc. v. LeRoy*, 2015 BCCA 120 at para. 32. The judge is not permitted to weigh evidence on a Rule 9-6 application beyond determining whether it is incontrovertible: any further weighing may only be done in a trial: *Tran v. Le*, 2017 BCCA 222; *Skybridge Investments Ltd. v. Metro Motors Ltd.*, 2006 BCCA 500 at paras. 8–12.

[27] The summary judgment rule (Rule 9-6) was explained by the Supreme Court of Canada in *Canada (Attorney General) v. Lameman*, 2008 SCC 14:

[10] This appeal is from an application for summary judgment. The summary judgment rule serves an important purpose in the civil litigation system. It prevents claims or defences that have no chance of success from proceeding to trial. Trying unmeritorious claims imposes a heavy price in terms of time and cost on the parties to the litigation and on the justice system. It is essential to the proper operation of the justice system and beneficial to the parties that claims that have no chance of success be weeded out at an early stage. Conversely, it is essential to justice that claims disclosing real issues that may be successful proceed to trial.

[11] For this reason, the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is “no genuine issue of material fact requiring trial”: *Guarantee Co. of North America v. Gordon Capital Corp.*, 1999 CanLII 664 (SCC), [1999] 3 S.C.R. 423, at para. 27. The defendant must prove this; it cannot rely on mere allegations or the pleadings: *1061590 Ontario Ltd. v. Ontario Jockey Club* (1995), 1995 CanLII 1686 (ON CA), 21 O.R. (3d) 547 (C.A.); *Tucson Properties Ltd. v. Sentry Resources Ltd.* (1982), 1982 CanLII 1218 (AB KB), 22 Alta. L.R. (2d) 44 (Q.B. (Master)), at pp. 46-47. If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal: *Murphy Oil Co. v. Predator Corp.* (2004), 365 A.R. 326, 2004 ABQB 688, at p. 331, aff'd (2006), 55 Alta. L.R. (4th) 1, 2006 ABCA 69. Each side must “put its best foot forward” with respect to the existence or non-existence of material issues to be tried: *Transamerica Life Insurance Co. of Canada v. Canada Life Assurance Co.* (1996), 1996 CanLII 7979 (ON SC), 28 O.R. (3d) 423 (Gen. Div.), at p. 434; *Goudie v. Ottawa (City)*, [2003] 1 S.C.R. 141, 2003 SCC 14, at para. 32. The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts: *Guarantee Co. of North America*, at para. 30.

### **Positions of the Parties**

[28] The applicant, Polaris, submits that after assigning its interest in the Cedar LNG project to Pembina, Polaris had no ability to perform the Option Agreement. More specifically, Polaris “was not involved in, consulted with, or otherwise made

aware of any decisions about whether or not to perform the Option Agreement. In fact, Polaris had no power or ability to make any decision to take any action to either perform or not perform the Option Agreement.”

[29] The plaintiff responds by noting that Spire was not a party to any project development agreements assigned by Polaris to Pembina. But in any event, Polaris never assigned the Option Agreement to anyone, and therefore Polaris remains obliged to perform under the Option Agreement.

**Additional Evidence**

[30] Mr. Steele, former President of Polaris, affirmed an affidavit in support of the application. In addition to providing facts consistent with the largely uncontentious background set out above, Mr. Steele states as follows:

- a) After the close of the Sale Agreement, Polaris no longer had the ability to perform under the Option Agreement.
- b) Polaris was not involved in, consulted with, or otherwise made aware of any decision whether or not to perform the Option Agreement after the close of the Sale Agreement.
- c) Because Polaris had sold its entire equity interest in the Cedar LNG Project, it had no ability to make any decision or take any step to effect any funding structure.

[31] Evidence on behalf of Spire was provided by Steven Smith, a senior investment professional at Trace Capital Management LP, responsible for the Spire investment. Given the importance of the evidence, I reproduce the totality of Mr. Smith’s affidavit evidence about the alleged breach of the Option Agreement:

**Option Agreement**

7. In November 2020, Spire entered into an agreement (the “**Option Agreement**”) under which it was granted the right to subscribe at the time of “final investment decision” (“FID”) for an equity interest in a major LNG development located on Haisla Nation lands near Kitimat BC called “Cedar LNG Project”.

8. Attached as **Exhibit B** to my affidavit is the Option Agreement.

9. FID for the Cedar LNG Project took place on June 25, 2024. Spire was not permitted to exercise its rights under the Option Agreement at that time, and filed its notice of civil claim in this proceeding on October 30, 2024.

[Emphasis in the original].

[32] Given the purpose of the procedure for summary judgment, to promptly and inexpensively weed out meritless claims or defences from proceeding to trial, and the concomitant duty of each party “to put its best foot forward” when presenting or resisting a summary judgment application, *Balfour v. Tarasenko*, 2016 BCCA 438 at paras. 41–43, the state of the evidence at this application is perplexing.

[33] I adopt the comments of Justice G.C. Weatherill in *Dong v. Real Estate Board of Greater Vancouver*, 2020 BCSC 2018:

[34] The question to be determined on an application under Rule 9-6 is whether the respondent “has put his best foot forward” with respect to the existence of material facts. The respondent cannot simply rely upon mere allegations in the pleading to defeat the application: *McLean v. Law Society of British Columbia*, 2016 BCCA 368 at para. 38.

[34] The evidence on behalf of Polaris is troublingly deficient. Apart from bald assertions that Polaris no longer had the ability to perform under the Option Agreement, there is no evidence of what steps it took, if any, to attempt to fulfill its obligations under the Option Agreement, after it had assigned all its rights, titles and interests in and to, and all benefits under the Project Development Agreement to Pembina.

[35] The evidence on behalf of the plaintiff is equally deficient. Spire has provided evidence that it “was not permitted to exercise its rights” under the Options Agreement, however, it has presented no evidence of what it would have done had it been permitted to exercise its rights. Therefore, there is no **evidence** that Spire has suffered any loss or damage, as pleaded in paragraph 17 of the Amended NOCC, for which damages could be awarded as a remedy.

[36] In addition, there is no evidence of what “not permitted to exercise its rights” means in respect of Polaris. There is no evidence of what Polaris was expected to do or what Polaris failed to do.

[37] When I consider the evidence that has been filed on this application the comments of Madam Justice Dickson in *Balfour* are most apposite:

[43] Each party must “put its best foot forward” when presenting or resisting a summary judgment application: *Lameman* at para. 11. Accordingly, under Rule 9-6, to the extent reasonably possible, each must provide evidence that the other’s claim is factually without merit, in whole or in part. Where the evidence presented conflicts, summary judgment is unlikely because the court’s role is not to weigh evidence and make factual determinations. It is to determine whether there is a *bona fide* triable issue. However, uncorroborated “bald assertions” of fact will likely not prevent summary judgment, unless the facts in question are not within the asserting party’s knowledge or control and there is a real possibility that they will be discoverable as the trial proceeds: *International Taoist Church of Canada v. Ching Chung Taoist Association of Hong Kong Limited*, 2011 BCCA 149 at paras. 9, 12–15; *Southeast Toyota Distributors Inc. v. Branch*, 1997 CanLII 2089 (BC SC), [1997] B.C.J. No. 1426 at para. 62 (S.C.), aff’d (1998), 1998 CanLII 4338 (BC CA), 47 B.C.L.R. (3d) 1 (C.A.).

**Do the Plaintiff’s Claims Reveal Genuine Issues for Trial**

[38] Spire has pleaded in their NOCC that under the Option Agreement, Polaris was liable to perform at least the following obligations:

- a) Polaris was obliged to and to cause the “Cedar LNG Project Owner” to grant to Spire the right to subscribe to Equity Securities;
- b) Polaris was obliged to or to cause the “Cedar LNG Project Owner” to provide various documents and information to Spire;
- c) Polaris was obliged to and to cause the “Cedar LNG Project Owner” to keep Spire informed of the progress of the Cedar LNG project towards FID; and
- d) Polaris was obliged to not permit the development of the Cedar LNG Project in “any manner designed to circumvent or prevent, or having the effect of circumventing or preventing” Spire from exercising its rights.

[39] Polaris argues on this application that Spire’s claim against Polaris is “meritless” and that “there is no genuine issue of fact for trial” because the evidence of Mr. Steele makes it clear that Polaris had no ability to perform the Options Agreement, and Polaris was not involved in or consulted with any decisions about performance of the Options Agreement.

[40] In addition, Polaris submits that Spire has provided no evidence on this application that the Option Agreement was breached and that Polaris is liable for the breach.

[41] Ultimately, it is Polaris’s burden on this application to provide evidence that there is “no genuine issue of material fact requiring trial”. The defendant must prove this; it cannot rely on mere allegations or the pleadings. *Lameman* at para 11.

[42] If Polaris does establish with evidence that there is no genuine issue of material fact requiring a trial, only then must the plaintiff either refute or counter the defendant’s evidence or risk summary dismissal.

[43] The evidence presented by Polaris is effectively this: Because we assigned our rights under the Project Development Agreement, we could not perform our obligations under the Options Agreement. But there is no evidence of why not. For example, the Plaintiff pleads in the notice of civil claim that one obligation under the Options Agreement was for Polaris to provide documents and information to Spire. There is no evidence of what Polaris did to fulfill or try to fulfill this obligation. A second obligation under the Options Agreement was for Polaris to keep Spire informed of the progress of the Cedar LNG Project towards FID. Polaris has provided no evidence of what it did, or tried to do, to fulfill this obligation.

[44] The evidence of Polaris on this application is simply that they no longer had the ability to perform under the Option Agreement. It is the barest of assertions made in circumstances in which it is trite law that “self-induced impossibility or frustration” is no defence to a suit for breach of contract. *Birch v. GWR Resources Inc.*, 2017 BCCA 184 at para. 32; *KBK No. 138 Ventures Ltd. v. Canada Safeway*

*Limited*, 2000 BCCA 295 at para. 14; and *Dow Agrosciences Canada Inc. v. Philom Bios Inc.*, 2007 ABCA 122 at para. 50.

[45] The doctrine of frustration requires a court to consider “the terms and construction of the contract, read in the light of the then existing circumstances, and on the other hand the events which have occurred.” *David Contractors Ltd. v. Fareham U.D.C.*, [1956] A.C. 696, [1956] 2 All E.R. 145 (H.L.) cited with approval in *KBK No. 138 Ventures Ltd.* at para.13.

[46] In other words, to meet the claim of Spire, being that Polaris did not perform its obligations under the Options Agreement, one would expect considerably more evidence from Polaris of what efforts it made to avoid getting into the position where they could not perform the Options Agreement. In other words, evidence directed to the doctrine of frustration.

[47] I am left unpersuaded that the evidence presented by the applicant, Polaris, is sufficient to meet the high threshold, effectively to convince me beyond a reasonable doubt, that there is no genuine issue for trial. It is insufficient to simply assert in evidence that “I could not perform” obligations under a contract and provide no evidence of why not. This is particularly true when the circumstances allegedly rendering performance impossible were self-induced.

[48] I am sympathetic to Polaris because the material facts in the pleadings causally connecting them to any loss or damage suffered by the Plaintiff, seem woefully inadequate.

[49] However, Polaris did not respond to the Amended NOCC by pleading that Spire had suffered no loss or damage. And Polaris did not bring this application for summary judgement on the basis that there is no evidence that Spire suffered loss or damage. Consequently, I have determined that it would be unfair to Spire to grant summary judgment to Polaris on the basis that Spire has provided no evidence on this application of loss or damage.

[50] Spire defended the application for Summary Judgment on the basis upon which it was brought by Polaris, being that after selling its equity interest in the Cedar LNG Project, Polaris no longer had the ability to perform under the Option Agreement.

[51] The evidence presented by Polaris on this application has not persuaded me that there is “no genuine issue for trial.” The bald assertion of Mr. Steele that Polaris no longer had the ability to perform, is factually insufficient to meet the legal response of Spire that self-induced impossibility to perform a contract is no defence.

**CONCLUSION**

[52] The application by the defendant, Polaris, for summary judgment is dismissed.

[53] Costs will be in the cause.

“The Honourable Justice Fowler”