Court of King's Bench of Alberta

Citation: Camrose Regional Exhibition and Agricultural Society v Camrose (City), 2026 ABKB 40

Date: 20260116
Docket: 2303 00590
Registry: Edmonton

Between:

Camrose Regional Exhibition and Agricultural Society

Plaintiff

- and -

The City of Camrose

Defendant

Memorandum of Decision
of
Applications Judge B.W. Summers

Introduction

[1] In the application before me brought in Special Chambers the Defendant ("the City") applied for summary dismissal of this action under r 7.3 of *Alberta Rules of Court*. The Plaintiff Camrose Regional Exhibition and Agricultural Society ("CRE") opposed the application.

Facts

[2] CRE managed lands ("the Grounds") where agricultural events, rodeos, trade shows and the annual Big Valley Jamboree were hosted.

[3] The Grounds consisted of lands owned by CRE ("CRE Lands"), which were mortgaged to Alberta Treasury Branches ("ATB") and approximately 133 acres leased from the City under

an agreement dated October 14, 1980, and amended effective May 15, 2007 ("Leased Lands"). The term of the lease of the Leased Lands expires on October 13, 2055 ("Lease").

[4] CRE developed a campground ("Campground") on approximately 18 acres of the Leased Lands ("Campground Lands").

[5] In late 2020 and early 2021, CRE had two events occur that it describes as creating "dire circumstances" for CRE. Those events were:

(a) Canada Revenue Agency ("CRA") advised CRE that some of CRE's activities were contrary to its charitable purposes and in particular CRE's operation of the Campground was a non-charitable activity and such operation must cease; and

(b) ATB advised that CRE's account had been moved into the distressed assets department for rehabilitation and potential enforcement steps due to poor financial health of and performance by CRE.

[6] CRE determined that a sale of the Campground could address both of these problems.

[7] On June 21, 2021 CRE met with the City to discuss selling the Campground since the Campground was on the Leased Lands and the Lease provided that the City had a right of first refusal to purchase the Campground. At this meeting City officials advised that the City would be willing to waive its right of first refusal and CRE advised that it would be seeking to sell the Campground ("June 21, 2021 Discussion").

[8] On July 5, 2021 a report was provided by City Administration to City Council seeking direction with respect to sale of the Campground. This report provided three options, as follows:

(a) Compensate the CRE for the removal of this area from their lease and operate the campsite as a City run facility;

(b) Compensate the CRE for the removal of this area from their lease, close the campsite, rezone the area and market the lands for industrial use; and

(c) Allow CRE to break out a portion of the lands from their lease to allow for the sale of the campsite operation to a third party, with lease conditions to be set by Council ("Third Option").

[9] City Administration recommended the Third Option. The Third Option provided for a removal of the 18-acre area making up the Campground Lands and another 12 acres to revert back to the City for industrial lot development.

[10] The two key figures that were responsible for most of the communications between the parties were Dianne Kohler, Executive Director of CRE and Patricia MacQuarrie, General Manager of Community Development for the City.

[11] On July 21, 2021 Patricia MacQuarrie sent an email to Dianne Kohler that stated:

> Hi Dianne,
>
> Thank you for the engaging conversation, as usual. You will be receiving a letter from the Mayor as well, but I am glad we had a chance to discuss prior to your Board meeting.
>
> As per our conversation this afternoon, I have attached the map image that you can share with the board.

To recap the conversation generalities, without prejudice:

- The area indicated in red (dash and solid) could be removed from your current lease and will require and (sic) amending agreement to the current lease
- The solid red area (approximately 18 acres) could be available to your purchaser for lease from the City of Camrose

  -The lease with the new owner would be negotiated between the City and the new owner, potentially at approximately $1000/month plus taxes

  -The new owner would be responsible for all infrastructure over the tenure of the lease

  -The lease would go no longer than 2055 at which point all lands and improvements revert back to the City

  -The leased area would likely require a cross access agreement between the CRE and the new owner and potentially with the City as well
- The dashed red area would be returned to the City for our use but potentially requires a cross agreement between the CRE and the City.

All of the above would, of course, have to go through our legal team, and potentially a survey of the area, to make sure the boundaries and terms are all agreeable to the parties.

Please let me know if you have any questions.

("July 21, 2021 Email")

[12] On August 24, 2021 the Mayor of the City sent to CRE a letter stating the following:

Thank you for the meeting on June 21, 2021. City of Camrose Council discussed your offer at the July 5, 2021 Committee of the Whole meeting and authorized Administration to respond as per below, without prejudice.

The City of Camrose is waiving on first right of refusal for the purchase of the CRE Campground. However, the City is willing to allow the CRE to break the lease of the Northern most approximate 34 acres, as per the amendment to the lease agreement dated May 15, 2007 and the motion of Council dated June 14, 1999. This will allow the CRE to transfer ownership of and responsibility for the infrastructure for the Campground to a third party, who would then be required to enter into a lease agreement with the City for the approximately 18 acres that the campground occupies, at market rate, until 2055 in order to align with the lease to the Camrose Regional Exhibition. The current Council direction has estimated that the market rate as approximately $1000.00 per month plus taxes. This information is an estimate only and the new owner of the Campground would be required to negotiate directly with the City of Camrose for the new lease. The

> City would retain the remaining approximately 16 acres outlined in the lease agreement for its own purposes.
>
> We have attached an approximation of the leased area for your review, however any renegotiation would likely require a formal survey of the lands for the new owner of the Campground.
>
> Please let us know if CRE would like to amend the current lease agreement to reflect the above and we will go forward from there.
>
> ("August 24, 2021 Letter")

[13] CRE proceeded to try and find a buyer for the Campground. There seems to have been little to almost no formal communications between CRE and the City until October of 2022, when CRE came forward with a third-party purchaser. However, CRE suggests that there were informal communications between Dianne Kohler and Patricia MacQuarrie, but if the Campground situation was discussed between them it is not recalled.

[14] CRE reached an informal agreement with Big Valley Jamboree Inc ("BVJI") to sell the Campground for $350,000 and part of the CRE Lands for $2,150,000. CRE provided the August 24, 2021 Letter to BVJI and it was aware that it would have to negotiate a lease with the City.

[15] On October 7, 2022 Dianne Kohler emailed Patricia MacQuarrie and advised that CRE was "closing in on a campground sale". That email also asked: "Just wondering if you could detail in an email the lease agreement proposals (time, costs, etc.) so that we may educate the buyer".

[16] Patricia MacQuarrie responded by email on October 11, 2022, stating: "So I ran this past Malcom to confirm the terms from before and he wants to take it to Council on Monday to get their confirmation as it is a new Council. I should be able to let you know on Tuesday. Does that work?" Malcolm Boyd was the City Manager.

[17] Dianne Kohler responded on the same date, saying: "That works...I am happy to come to explain to council as to the reasoning on the sale and details if Malcolm would like."

[18] Patricia MacQuarrie's response was: "Oh, perfect. I think it is a ratification of the previous decision, but will let you know."

[19] City Mayor P. J. Stasko advised Dianne Kohler on October 12, 2022 that there was no need to go to City Council and directed Malcolm Boyd to provide to CRE the July 21, 2021 Email and the August 24, 2021 Letter.

[20] A Special Meeting of the CRE membership was held on November 3, 2022 and the proposed agreement with BVJI was approved. Mayor Stasko and Patricia MacQuarrie were in attendance.

[21] In her affidavit Dianne Kohler gave further evidence that Mayor P. J. Stasko met with CRE's president, Brian Byers on November 7 and 23, 2022 and he (Brian Byers) "...confirmed to me that at this meeting the City affirmed the binding terms and validity of the August 24, 2021 Agreement".

[22] On November 14, 2022 Patricia MacQuarrie advised Dianne Kohler that the City was interested in negotiating with respect to certain industrial lots ("Industrial Lots") located on the

Leased Lands. CRE states that this was “an abrupt change by the City and was in direct contradiction of all previous correspondence between the City and CRE”.

[23] At a meeting on November 21, 2022 Malcolm Boyd stated to CRE that it “...should agree to the City’s unilateral changes to the August 24, 2021 Agreement because he could just stall the deal.”

[24] In ensuing weeks, numerous communications between CRE and the City occurred regarding what would be acceptable terms. CRE maintained that the City was bound to the terms of the August 24, 2021 Letter. The City disagreed with that assertion and said that there was no binding agreement and the new Council could negotiate new terms.

[25] On December 23, 2022 BVJI informed CRE that it would not be closing on its agreements with CRE because the terms now offered by the City were unacceptable (including a shortened lease term).

[26] CRE sold one part of the CRE Lands on February 1, 2023 and the rest of the CRE Lands on September 27, 2024. CRE also auctioned much of its assets and equipment in order to remain solvent. CRE asserts that as a result of the sale of assets and equipment it could not host income-generating events such as livestock sales events or shows.

[27] CRE commenced action against the City on January 11, 2023. A minor amendment was made to the Statement of Claim on February 7, 2023.

CRE’s Claims

[28] The Amended Statement of Claim asserts that:

> Contract
>
> (d) either or both of the June 21 Discussion and August 24, 2021 Letter constitute a binding contract between CRE and the City;
>
> (e) the August 24, 2021 Letter constituted an offer from the City which CRE accepted in writing, orally or by CRE’s conduct; ((a) and (b) will be called “Alleged Contract”)
>
> (f) the City owed CRE contractual duties to perform its obligations honestly, and reasonably in good faith;
>
> (g) the City breached the terms of the Lease and the Alleged Contract as well as its duty of good faith by:
>
> (i) refusing to amend the Lease in accordance with the commercial terms of the Alleged Contract;
>
> (ii) refusing to grant to BVJI a lease on the same terms as the Alleged Contract;
>
> (iii) failing to exercise its discretion under sections 27 and 28 of the Lease in good faith, reasonably and in a manner consistent with the purposes for which it was granted with respect to approval of amendments to and subleases of the Lease;
>
> (iv) such further and other breaches as may be proven at trial.

Negligent Misrepresentation

(v) the City was aware of CRE's dire financial circumstances and the parties were in a special relationship;

(vi) the City owed CRE a duty of care based on their special relationship;

(vii) the City represented to the CRE that, without limitation that it would enable CRE to sell the Campground, it would enter into a lease with a purchaser of the Campground for a term to align with the Lease and such further and other representations that may be proven at trial ("City's Misrepresentations");

(viii) CRE reasonably relied upon the City's Misrepresentations and acted upon them by marketing the Campground;

(ix) the City knew or ought reasonably to have known that CRE would rely on its communications, including the Alleged Contract; and

(x) CRE suffered damages as a result of its reliance on the City's Misrepresentations.

Legal Analysis

Summary Determination

[29] The City's application is for summary dismissal under r 7.3 of Alberta *Rules of Court.* The following passage from the leading case of ***Weir-Jones Technical Services Incorporated v Purolator Courier Ltd,*** 2019 ABCA 49 sets out how the presiding judge should approach such an application:

> [47] The proper approach to summary dispositions, based on the ***Hryniak v Mauldin*** test, should follow the core principles relating to summary dispositions, the standard of proof, the record, and fairness. The test must be predictable, consistent, and fair to both parties. The procedure and the outcome must be just, appropriate, and reasonable. The key considerations are:
>
> a) Having regard to the state of the record and the issues, is it possible to fairly resolve the dispute on a summary basis, or do uncertainties in the facts, the record or the law reveal a genuine issue requiring a trial?
>
> b) Has the moving party met the burden on it to show that there is either "no merit" or "no defence" and that there is no genuine issue requiring a trial? At a threshold level the facts of the case must be proven on a balance of probabilities or the application will fail, but mere establishment of the facts to that standard is not a proxy for summary adjudication.
>
> c) If the moving party has met its burden, the resisting party must put its best foot forward and demonstrate from the record that there is a genuine issue requiring a trial. This can occur by challenging the moving party's case, by identifying a positive

defence, by showing that a fair and just summary disposition is not realistic, or by otherwise demonstrating that there is a genuine issue requiring a trial. If there is a genuine issue requiring a trial, summary disposition is not available.

d) In any event, the presiding judge must be left with sufficient confidence in the state of the record such that he or she is prepared to exercise the judicial discretion to summarily resolve the dispute.

To repeat, the analysis does not have to proceed sequentially, or in any particular order. The presiding judge may determine, during any stage of the analysis, that summary adjudication is inappropriate or potentially unfair because the record is unsuitable, the issues are not amenable to summary disposition, a summary disposition may not lead to a "just result", or there is a genuine issue requiring a trial.

Is the "Alleged Contract" a Contract?

[30] CRE states that all of the necessary terms to a contract were certain: a) the land to be affected by the Lease amendment; b) for a prospective purchaser, their lease with the City would be for a determined area, for a term ending in 2055, at a market rate to be negotiated, estimated to be $1,000.00 per month; c) City Administration was authorized to complete the transaction; and d) it was an offer open for acceptance and did not have a date at which it would be automatically withdrawn.

[31] The City disagrees that the terms were certain. The new Campground lease would have to be negotiated with the City, including the rent. A survey of the Campground Lands was necessary. Reference was also made in the July 21, 2021 Email to possibly needing cross agreements among the new owner, CRE and the City regarding access.

[32] The City also notes that the July 21, 2021 Email and the August 24, 2021 Letter were both stated to be "without prejudice". The latter specifically asked CRE if it wished to amend the current Lease to reflect the proposed terms and stated "we will go from there". That was not responded to. Rather 14 months later CRE asked the City to send to it the terms to which the City would be willing to agree.

[33] CRE puts forward alternative arguments as to how the Alleged Contract between the City and CRE was constituted.

[34] The first argument from the Amended Statement of Claim is that the June 21, 2021 Discussion is an oral contract. However, that argument was not made in CRE's Brief. The obvious reason is that the Lease provides, in clause 38:

> Unless otherwise specifically provided in this lease, no amendment, modification, or supplement to this lease shall be valid and binding unless set out in writing and executed by the parties hereto in the same manner as the execution of this lease.
>
> ("Clause 38")

[35] It is noteworthy that neither the Amended Statement of Claim nor CRE's Brief asserts that there is any contractual effect to the July 21, 2021 Email. That communication from the City was stated that it was a recap of a conversation, it was "without prejudice" and "All of the above

would, of course, have to go through our legal team, and potentially a survey of the area, to make sure the boundaries and terms are all agreeable to the parties." As noted above, the July 21, 2021 Email also referenced the possible need of access agreements among the new owner, CRE and the City.

[36] The second argument made by CRE is that the August 24, 2021 Letter was an offer from the City which was accepted by CRE's conduct of proceeding to try to find a buyer for the Campground using the August 24, 2021 Letter.

[37] Although CRE asserts that the City knew that CRE was trying to find a buyer, the evidence of communication in the year following issuance of the August 24, 2021 Letter is quite sparse and there is nothing that can be said to constitute a notice of acceptance.

[38] Counsel for CRE referred to the Supreme Court of Canada case of ***Saint John Tug Boat Co v Irving Refinery Ltd,*** [1964] SCR 614 ***("Saint John Tug Boat")*** where the plaintiff tug boat company claimed against the defendant refinery stand-by charges for one of its tug boats pursuant to a letter of offer that was never formally accepted. The Supreme Court of Canada found for the tug boat company as follows (at page 623):

> In my view the respondent must be taken to have known that the *Ocean Rockswift* was being kept "standing by" for its use until the end of February 1962, and to have known also that the appellant expected to be paid for this special service at the *per diem* rate specified in the monthly invoices which were furnished to it, but the matter drifted from day to day without any move being made on the respondent's behalf to either dispense with the service or complain about the charge. I do not think it was unreasonable to draw the conclusion from this course of conduct that the respondent was accepting the continuing special services on the terms proposed in the March letters and the appellant is accordingly entitled to recover the sums charged in the invoices up to and including the month of February 1962....

[39] This case is clearly distinguishable from our own. In ***Saint John Tug Boat*** the defendant's acquiescence was taken as acceptance as it was getting a benefit, that it knew about and it was being invoiced for that benefit. In our case there was no conduct of CRE that benefited the City. It is not even clear from the evidence that CRE's conduct of marketing the Campground was known to the City. If the August 24, 2021 Letter was an offer, it was not accepted by CRE's conduct.

[40] During oral argument, I asked counsel for CRE what if the shoe were on the other foot? That is, would the City have a cause of action against CRE simply on the basis that the City was aware that CRE was trying to sell the Campground? I think not. Furthermore, an acceptance by conduct does not get CRE past the requirement of writing and signed execution in Clause 38 of the Lease.

[41] CRE's argument that the August 24, 2021 Letter was an offer and CRE's conduct of trying to market the Campground was an acceptance is rejected.

[42] The third argument made by CRE was that the August 24, 2021 Letter was an offer from the City that was formally accepted by CRE on October 7, 2022 through the email that Dianne Kohler sent to Patricia MacQuarrie requesting that she provide the details for the potential lease agreement proposals (time, costs, etc.) to educate the buyer.

[43] There were communications from the City in October and November of 2022 suggesting that the City would be moving ahead on the same basis that was set out in the August 24, 2021 Letter including that Mayor P. J. Stasko: advised Dianne Kohler that there was no need to go back to City Council; instructed Malcolm Boyd to send to CRE the July 21, 2021 Email and the August 24, 2021 Letter; and confirmed to Brian Byers of CRE that the City affirmed the August 24, 2021 Agreement.

[44] Also relevant on this issue is that Patricia MacQuarrie communicated to Dianne Kohler that she expected the new City council to ratify the previous decision and that Malcom Boyd would be putting the issue before Council. Dianne Kohler offered to explain the reason for the sale to the City Council.

[45] An important argument made on behalf of the City on this issue is that both the July 21, 2021 Email and the August 24, 2021 Letter were stated to be without prejudice and were not intended to be accepted, or create an agreement, at that time.

[46] CRE put forward several cases where a court had ruled that a without prejudice offer could be accepted: ***Latimer v Park,*** 1911 CarswellOnt 422**;** ***Cook v Hanley,*** 2002 NBBR 130**,** 2002 NBQB 130**;** and ***Shepherd v Inglis,*** 2002 CarswellOnt 3048**.** These cases may collectively stand for the proposition that a without prejudice communication may not have protected status in determining if there is a contract between the parties and in some cases a without prejudice offer may be accepted.

[47] In my view there is not and should not be a hard and fast rule as to what a party intended when they indicate that correspondence is without prejudice. The phrase may mean different things to different people. It is certainly a term of art with specific meaning for lawyers. But for the lay person, I think that it is important to consider all of the circumstances surrounding the use of the phrase, in order to make a determination as to what was intended.

[48] The relevant surrounding circumstances in this case, include the following:

a) use of the phrase “without prejudice” in both the July 21, 2021 Email and the August 24, 2021 Letter;

b) the fact that the July 21, 2021 Email specifically said that “All of the above would, of course, have to go through our legal team, and potentially a survey of the area, to make sure the boundaries and terms are all agreeable to the parties”;

c) the July 21, 2021 Email referenced the need for cross agreements among the parties;

d) that Clause 38 of the Lease provides “...no amendment, modification, or supplement to this lease shall be valid and binding unless set out in writing and executed by the parties hereto in the same manner as the execution of this lease”;

e) that the August 24, 2021 Letter concluded: “Please let us know if CRE would like to amend the current lease agreement to reflect the above and we will go forward from there”; and

f) that the new Campground lease terms, including rent, still had to be negotiated.

[49] The importance of Clause 38 cannot be understated. That is, CRE and the City had a contractual agreement that no amendment to the Lease would be valid and binding unless it was

"set out in writing and executed by the parties hereto in the same manner as the execution of this lease". This binding contractual term between the parties helps inform as to the intent in making the July 21, 2021 Email and the August 24, 2021 Letter "without prejudice".

[50] Based upon the binding contractual term between the parties found in Clause 38 and all of the other surrounding circumstances set out above, I conclude that the City did not intend to create a binding contract at that stage and a reasonable objective observer, including CRE, would conclude that as well. In my opinion, CRE's position that there was a binding contract that the August 24, 2021 Letter was accepted on October 7, 2022 (or at any other time) is not maintainable.

[51] Although consideration of the subjective evidence of a party is not the proper way to determine intention, I note that counsel for CRE put forward in evidence the questioning of Ms. MacQuarrie as to why the term "without prejudice" was used by the City. Her response was (at page 44, line 22 to page 45, line 3):

> Yes, it's a very intentional term in the letter to indicate that this (sic) the direction of Council at the start of this process. There's terms contained in this letter that haven't been discussed with the CRE at all, so it's to indicate from the very beginning of this letter that this is the starting of the negotiation process.

[52] I wish to confirm that I determined the intent of use of the term "without prejudice" based on the objective evidence surrounding the circumstances of its use, rather than on the subjective evidence of Ms. MacQuarrie regarding her personal view.

The allegation that the City breached its duty of good faith and honest performance

[53] CRE's Amended Statement of Claim alleges that the City owed CRE a duty to perform its obligations under the Lease and "Amending Agreement" honestly and reasonably and in good faith. There is no defined term in the Amended Statement of Claim for "Amending Agreement". I believe that CRE meant to use the term "Amendment Agreement" which was defined in the Amended Statement of Claim to refer to either or both of the alleged oral agreements arising from the June 21, 2021 Discussion and the August 24, 2021 Letter. More specifically, CRE asserts that it was bad faith and dishonest conduct on the part of the City to try to negotiate a carveout of the Industrial Lots from the Lease and take advantage of CRE's precarious situation.

[54] CRE refers to principles laid down by the Supreme Court of Canada in ***Bhasin v Hrynew,*** 2014 SCC 71 and further discussed in ***CM Callow Inc v Zollinger,*** 2020 SCC 45**.**

[55] CRE's argument that it has a claim against the City for bad faith and dishonest conduct cannot be maintained since I have come to the conclusion that there was no "Amendment Agreement" arising out of the July 21, 2021 email or the August 24, 2021 Letter. There was an existing contract between the parties, being the Lease. But there is no allegation that the City acted in bad faith or dishonestly with respect to the City's obligations under the Lease.

CRE's allegation of negligent misrepresentation on the part of the City

[56] CRE makes the alternative argument that the August 24, 2021 Letter constitutes a negligent misrepresentation on the part of the City.

[57] CRE says that the test for negligent misrepresentation stated by the Supreme Court of Canada in ***Queen v Cognos Inc,*** [1993] 1 SCR 87 ***("Cognos")*** is as follows (at page 110):

> The required elements for a successful *Hedley Byrne* claim have been stated in many authorities, sometimes in varying forms. The decisions of this Court cited above suggest five general requirements: (1) there must be a duty of care based on a "special relationship" between the representor and the representee; (2) the representation in question must be untrue, inaccurate, or misleading; (3) the representor must have acted negligently in making said misrepresentation; (4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

[58] Counsel for the City agrees that the foregoing sets the test for negligent misrepresentation.

Did the City owe CRE a duty of care based on a "special relationship"?

[59] In ***Cognos*** the plaintiff sued the defendant employer for negligent misrepresentation in failing to tell the plaintiff at his job interview that the position he was being hired for did not have funding or budgetary approvals. The plaintiff left his previous employment in a different city believing that he was being hired for a long-term secure position. That was not the case. The Supreme Court of Canada considered the plaintiff's claim for negligent misrepresentation in the defendant failing to advise the plaintiff that there was not approved funding for the position.

[60] The Court found that the plaintiff and the defendant were in a "special relationship", stating the following (at page 116):

> There is some debate in academic circles, fuelled by various judicial pronouncements, about the proper test that should be applied to determine when a "special relationship" exists between the representor and the representee which will give rise to a duty of care. Some have suggested that "foreseeable and reasonable reliance" on the representations is the key element to the analysis, while others speak of "voluntary assumption of responsibility" on the part of the representor. Recently, in *Caparo Industries plc v. Dickman*, [1990] 1 All E.R. 568 (H.L.), a case unlike the present one in that there the whole issue revolved around the existence of a duty of care, the House of Lords suggested that three criteria determine the imposition of a duty of care: foreseeability of damage, proximity of relationship, and the reasonableness or otherwise of imposing a duty.
>
> For my part, I find it unnecessary -- and unwise in view of the respondent's concession -- to take part in this debate. Regardless of the test applied, the result which the circumstances of this case dictate would be the same. It was foreseeable that the appellant would be relying on the information given during the hiring interview in order to make his career decision. It was reasonable for the appellant to rely on said representations.

[61] In this case before me, I find that CRE and the City were in a "special relationship". CRE leased land from the City that was very important to its business. CRE fell into dire circumstances, bringing about the need to sell the Campground and amend the Lease. The City was aware of these dire circumstances. It was reasonably foreseeable that CRE would rely upon the August 24, 2021 Letter.

[62] The City did not argue that there was not a "special relationship" between it and CRE.

Did the City make a representation to CRE that was untrue, inaccurate or misleading?

[63] The City argues that there was nothing untrue, inaccurate or misleading within the August 24, 2021 Letter.

[64] Conversely, CRE argues that the misrepresentation made by the City was that the terms of the August 24, 2021 Letter would be honoured and CRE could rely upon the August 24, 2021 Letter to market the Campground. CRE also states that the City continued to make that misrepresentation right into November of 2022 when Mayor Stasko represented to Brian Byers that the August 24, 2021 Letter remained in effect and binding on the City and there was no need to return to City Council for approval. CRE says that this representation was untrue as the new City Council changed its position, requiring the addition of the Industrial Lots to be removed from the Lease.

[65] The City responds that if the August 24, 2021 Letter contained representations, it was not of existing facts that were not true, but were representations of future conduct and that no action for negligent misrepresentation is sustainable with respect to future conduct.

Are the City's representations as to future conduct, and if so, are they actionable?

[66] In ***Cognos*** the defendant employer argued that as its representations were as to what it would do in the future, such actions were not actionable. In that respect, Justice Iacobucci stated (at pages 129-130):

> Obviously, some aspects of the misrepresentations made to the appellant about the employment opportunity were, by their very nature, matters *in futuro*. Statements about the appellant's involvement with the respondent and his responsibilities should he be offered a position are representations that relate to future conduct and events. There are authorities supporting the view that only representations of existing facts, and not those relating to future occurrences, can give rise to actionable negligence: see, for example, *Williams v. School District No. 63 (Saanich)* (B.C.S.C.), *supra*; *Datile Financial Corp. v. Royal Trust Corp. of Canada* (1991), 1991 CanLII 7310 (ON SC), 5 O.R. (3d) 358 (Gen. Div.); *Foster Advertising Ltd. v. Keenberg* (1987), 1987 CanLII 5267 (MB CA), 38 C.C.L.T. 309 (Man. C.A.); and *Andronyk v. Williams* (1985), 1985 CanLII 774 (MB CA), 35 C.C.L.T. 38 (Man. C.A.).
>
> However, assuming without deciding that this view of the law is correct, the representations most relevant to the appellant's action are <u>not</u> those relating to his future involvement and responsibilities with Cognos, but those relating to the very existence of the job for which he had applied. That is a matter of existing fact. It was implicitly represented that the job applied for did in fact, <u>at the time of the interview</u>, exist in the manner described by Mr. Johnston. As found by the trial judge, however, such was not the case. The employment opportunity described to the appellant was not, at the time of the interview, a *fait accompli* for the respondent. Clearly, this misrepresentation relates to facts presumed to have existed at the time of the interview: the respondent's financial commitment to the development of Multiview and the existence of the employment opportunity

> offered. It is not a "remark by a defendant concerning the outcome of a future event" (*Williams v. School District No. 63 (Saanich)* (B.C.S.C.), *supra*, at p. 240), a "representation . . . as to future occurrences" (*Datile Financial Corp. v. Royal Trust*, *supra*, at p. 379), a "statement of intention or forecast of the future" (*Foster Advertising Ltd. v. Keenberg*, *supra*, at p. 325), or "forecasting" (*Andronyk v. Williams*, *supra*, at p. 57).

[67] In this case before me, it cannot be said that the City made a misrepresentation in the August 24, 2021 Letter that was not then true.

[68] There are several reported cases of alleged misrepresentation on the part of a municipal body where the court had to consider whether those alleged misrepresentations were present representations of fact or promises with respect to future conduct. Those cases, worthy of closer examination are as set out in the following paragraphs.

[69] In ***Motkoski Holdings Ltd v Yellowhead (County),*** 2010 ABCA 72 a developer sued the County with respect to land acquired by the developer from the County which, some time in its past, had a landfill situated on it. Among the developer's claims against the County, was the assertion that the County made representations to the developer that were actionable. The Court of Appeal stated, in part (at paragraphs 44-47):

> [44] There is therefore some room for an action for negligent misrepresentation about the future, although it is more difficult to prove that predictions about the future are "inaccurate". However, an action for misrepresentation generally cannot be based on a representation about how the speaker intends to act in the future, unless the representation amounts to a covenant that the speaker will act in that way. As it was stated in ***Arrow Construction Products Ltd. v. Nova Scotia (Attorney General)*** (1996), 1996 NSCA 88 (CanLII), 150 N.S.R. (2d) 241, 27 C.L.R. (2d) 1 (C.A.):
>
> > . . . The *Hedley Byrne* Principle deals with representations, not promises. It is important to distinguish between a representation and a promise. A representation is a statement relating to some existing fact or past event. A promise is a statement of intention to do something in the future. . . .
>
> Unless consideration has been given, the plaintiff is generally not entitled to rely on a representation about how the defendant intends to conduct itself. That liability sounds in contract, if at all.
>
> [45] The supposition that actions for misrepresentation will generally be based on misrepresentations of fact is even stronger when allegations of fraud are made. As was said by Lord Herschell in ***Derry v. Peek*** at p. 374, to make out fraud the plaintiff must show: "that the representations were statements of fact rather than statements of law or of intention, promise or mere puffery". If nothing else, it is very difficult to prove that statements about future intentions are fraudulent: ***Prather v. King Resources Co.***, 1972 ALTASCAD 89 (CanLII), [1973] 1 W.W.R. 700, 33 D.L.R. (3d) 112 at pp. 706-7 (Alta. S.C., App. Div.).
>
> [46] Turning to the express representations relied on by the trial judge, it can be observed that the first representation, that the appellant would facilitate the

development, was not a representation of an existing fact. It was at best an indication of future intentions, something which is generally not actionable unless it amounts to a covenant to act in the future in accordance with the expressed intention. Further, this first representation was in no sense false or inaccurate. The appellant did facilitate the development. It investigated the site, it entertained the respondent's offer to purchase, it put the lands out for tender, it sold the lands, and it subdivided and rezoned the lands.

[47] The second representation is also an expression of a future intention: to study the suitability of the site. Given the express provision in the agreement that the appellant did not warrant the condition of the soils, or make any other representation regarding the lands, this representation could not have amounted to a covenant of any kind.

[70] In ***Neufeld v Mountain View (County),*** 2016 ABQB 676 the plaintiff developer (Neuroese) purchased lands in the County for development based upon existing municipal plans that encouraged high density development. A new council, opposed to high density development passed a new development plan that was inconsistent with the plaintiff's development plans. The developer commenced action against the County, including a claim for negligent misrepresentation. The County successfully applied for summary dismissal before the Master. Upon appeal, Madam Justice Hughes confirmed the Master's decision and stated the following with respect to the claim of negligent misrepresentation (at paragraphs 143-145):

[143] The representations that Neuroese submitted are actionable are twofold:

1. The first group of representations occurred before the October 2010 election. The plaintiffs submit that MVC Council made representations to them by passing the 2007 Area Structure Plan Bylaw, the 2000 MDP Bylaw, and the 2010 Area Concept Plan Bylaw respecting increasing density in certain areas and the servicing of those lots. The Plaintiffs say all of these representations induced them to purchase the lands in question.

2. The second group of representations occurred in May 2012 and are based on the email exchange between Ms. Connatty and the Plaintiffs' planning consultant, Mr. Petherick, respecting the Plaintiffs' redesignation application. The Plaintiffs allege as follows at paras 95 (a-j) and 98 of their Amended Statement of Claim:

Contrary to such mandated procedure, the redesignation applications were not processed in a clear, fast, efficient and appropriate manner. The redesignation applications were never even brought for consideration before the New Council; rather, Mountain View through its employees, leadership and agents, and in particular Munro, Good, Rusling and Connatty, orchestrated campaign to administratively render as a nullity the redesignation applications.... (a-j followed).

...

[144] The elements of the tort of negligent misrepresentation were summarized by the Supreme Court of Canada in ***Queen v Cognos Inc***., 1993 CanLII 146 (SCC), [1993] 1 SCR 87 at para 33....

> [145] Assuming, without deciding, that the first group of representations were untrue, inaccurate or misleading, a trier of fact must determine whether the representations relate to a future occurrence or whether they relate to existing facts.

[71] After referring to ***Cognos*** and ***Motkoski*** Madam Justice Hughes continued (at paragraphs 149-156):

> [149] I find the first group of representations relied upon by the Plaintiffs cannot be used to support this tort. First, the alleged representations are not respecting an existing fact. Rather, all are based upon three planning documents respecting future intentions of Mountain View County. One cannot find the documents to be promises by Mountain View County. Rather, they reflect the then, Mountain View County Council's vision for the future. As observed by the Supreme Court of Canada in *Hartel*; "[p]lans are policy documents and set out proposals for future development. They may be subject to review and amendment from time to time…"
>
> [150] In addition, there was no covenant between the parties, a factor that may change the nature of the representation. See *Pacific National Investments.*
>
> [151] Lastly, to find otherwise would run counter to the Supreme Court of Canada's decision in *Pacific National Investments* and would permit one council to fetter the discretion of subsequent councils.
>
> [152] I turn to the second group of representations. Neuroese relies upon Mr. Petherick's second affidavit and submits that had their planning consultant been advised on May 31, 2012, that the planning department's recommendation to Council was to defer the Plaintiffs' applications for redesignation, then Neuroese would have taken the steps set out in Mr. Petherick's affidavit which are reproduced at para 139.
>
> [153] First, the claim cannot succeed because the representation in question was with respect to a future event by a body that was under no obligation to accept Ms. Connatty's recommendation to defer with respect to the Plaintiffs' application for re-designation.
>
> [154] Second, there is not a scintilla of evidence to suggest that had the above occurred, Council would have done anything other than defer the applications. For example, in November 2011, Neuroese was advised by Mr. Rusling that as a result of the MDP review, one option before Council was to table the redesignation applications until such time as the MDP review was completed. The Plaintiffs were also advised of the uncertainty of their application in January 2012. See para 39 above.
>
> [155] It is also important to remember that each decision of Council involved seven councillors who voted on each issue. Mr. Munro and Mr. Good, on their own, were never able to defeat the other five should the other five have believed the matter should be dealt with differently. All of the decisions of Council, which the Plaintiffs complain, were ones they were entitled to make.

> [156] I agree with the Master's assessment at para 117 of the decision. The representations were at most a "prediction made by the planning department as to what might happen on future applications if the Concept Plan route was followed".

[72] In ***Clare's Cove Marina Ltd v Salmon Arm (City),*** 2013 BCSC 553 ("***Clare's Cove***") the plaintiff sued the City of Salmon Arm claiming that the plaintiff purchased a marina on land leased from the City based upon the representation of the City's representative Ms. Dalziel that the current lease would be extended. In considering this issue, the Court stated (at paragraphs 177-181 and 189-192):

> [177] At the June 12th meeting and again during the September 24th meeting, Ms. Dalziel represented that the City was prepared to grant leases to the plaintiffs, or one of them, over Lot 6 and the Water Lot for a term that would expire at the end of 2016.
>
> *Were the representations misrepresentations?*
>
> [178] Assuming there was a "special relationship" between the parties giving rise to a duty of care, the issues are whether the representations were misrepresentations, and if so, whether they were negligently made and whether the plaintiffs reasonably relied on them.
>
> [179] There are two aspects to the issue of whether the representations were misrepresentations capable of grounding a claim for negligent misrepresentation. The first is whether they amount to a statement about future intention or conduct as opposed to present circumstances. The former may not be actionable, while the latter may be. The second is whether they were untrue, inaccurate or misleading.
>
> [180] As to the second issue, Ms. Dalziel represented that the City was prepared to enter into leases extending to 2016. She had it in mind by June 2007, if not before, that the leases would also contain a term that they could be terminated by either party at any time for any reason on one year's notice. She did not regard that as inconsistent with a lease for a term that would expire in 2016. I accept her evidence in that regard. As such, the representation was not untruthful. It was, however, misleading because absent a reference to the termination provision, it conveyed the impression that the leases would extend to 2016 absent a breach. I accept, therefore, that this element of the tort has been established.
>
> [181] The first issue relates to the distinction between a representation and a promise. The distinction is sometimes expressed as the difference between existing facts and future intentions. The City argues that the representations that the plaintiffs rely on are, at their highest, statements as to future intention and thus not actionable.
>
> ...
>
> [189] The City says that the representations that Ms. Dalziel made were about how the City intended to act in the future; that is, it intended to negotiate a lease with a particular term, and as such they are not actionable.

> [190] Ms. Dalziel represented that the City intended to offer the plaintiffs a lease with a term that extended to the end of 2016. To the extent that is so, it was a statement of present intention. The Council had authorized staff to negotiate a lease with the prospective purchasers. Ms. Dalziel thought that was what they were going to do; she did not think the negotiation had even begun because, from her point of view, it would not begin until the draft leases were provided to the plaintiffs for their consideration. Cast in the language of *Halsbury's Laws of England*, what Ms. Dalziel's statements amounted to was a promise of an offer and nothing more. She was authorized to negotiate a lease and she intended to do that. She anticipated making an offer of a lease for a term that extended to 2016. The fact that she saw no conflict between a term of that duration and a clause that permitted either party to terminate the lease at any time and for any reason on one year's notice is of no moment.
>
> [191] Put another way, unlike *Moin* and *Nelson v. Hoops L.P.*, which involved proposed actions by the defendant that did not involve an anticipated contract with the plaintiffs or anyone else, when the representation involves an offer that if accepted will result in a contract, then as noted in *Motkoski Holdings Ltd. v. Yellowhead (County)*:
>
> > ...an action for misrepresentation generally cannot be based on a representation about how the speaker intends to act in the future, unless the representation amounts to a covenant that the speaker will act in that way...[u]nless consideration has been given, the plaintiff is generally not entitled to rely on a representation about how the defendant intends to conduct itself. That liability sounds in contract, if at all.
>
> [192] For both of these reasons, I am not persuaded that the representations made by Ms. Dalziel are actionable.

[73] The foregoing examples underscore the distinctions made by the Courts between a statement of existing fact, which may be actionable and a statement of future intention which is not actionable. With respect to representations by or on behalf of municipal bodies, the Courts are also aware of the difference between statements of an operational nature, which may be actionable and statements of policy which are not actionable.

[74] CRE argues that the August 24, 2021 Letter is a misrepresentation of an existing fact (that there was a binding contract with the City) and that same misrepresentation continued through until the fall of 2022 when: (1) Ms. MacQuarrie advised CRE on October 11, 2022 that Mr. Boyd would confirm with the newly elected City Council that a sale of the Campground would be on the same terms as the August 24, 2021 Letter; (2) the next day Mayor Stasko advised Ms. Kohler that the Campground sale did not need to go to City Council as the City had already addressed the issue in 2021 and the City had sent CRE notification of that fact by providing the August 24, 2021 Letter; and (3) Mayor Stasko affirmed the terms and validity of the August 24, 2021 Letter to Brent Byers of CRE on November 7 and November 23, 2022.

[75] I have already expressed my view that the City did not represent there was a binding contract when it issued the August 24, 2021 Letter and in fact indicated otherwise.

[76] The statement by Ms. Kohler that Mr. Boyd would confirm with the newly elected City Council that the sale of the Campground would be on the same terms as the August 24, 2021 Letter suggests that there was not a binding contract. If there were such a binding contract, why would the City Administration have to go back to City Council? That representation does not support a contention that there was a binding contract.

[77] I find that the hearsay statements attributed to Mayor Stasko in October and November of 2022 — that there was no need to go to City Council as the sale would be on the same terms as the August 24, 2021 Letter and that the August 24, 2021 Letter was binding on the City were misrepresentations of an existing fact ("Mayor Stasko Statements"). The Mayor Stasko Statements were not true.

[78] Even if the Mayor Stasko Statements were negligently made and even if CRE reasonably relied on the truth of those statements, the loss and damage suffered by CRE cannot be attributed to reliance on the Mayor Stasko Statements. That the Mayor Stasko Statements were untrue was known within days of those statements being made. What CRE did in that period of time is not how CRE suffered loss and damage. The Amended Statement of Claim alleges that CRE marketed the Campground based upon representations long before the Mayor Stasko Statements. There is no causal link between the Mayor Stasko Statements and the loss claimed by CRE.

[79] CRE's claim of negligent misrepresentation on the part of the City is not made out.

Is the record satisfactory for the Court to determine this case on a summary basis?

[80] CRE argues that this case cannot be determined because there are issues of material facts upon which the parties disagree. But I find that not to be the case. By and large there is no disagreement as to the facts of the case. The disagreement between the parties is about the legal consequences of the facts in this case. That is something that is capable of summary determination.

[81] I find that the record is such that the Court may make a fair and just determination of this case in a summary proceeding. The City's application to dismiss this action against it is granted.

[82] If the parties cannot agree as to costs, an application may be made in morning chambers in the next 45 days.

Heard on the 19th day of November, 2025.
Dated at the City of Edmonton, Alberta this 16th day of January, 2026.

B.W. Summers
A.J.C.K.B.A.

Appearances:

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