

# Court of King's Bench of Alberta

**Citation: Epcor Water Services Inc v Leducor Industries Inc, 2026 ABKB 109**

**Date:** 20260218  
**Docket:** 2403 12526  
**Registry:** Edmonton

Between:

**Epcor Water Services Inc**

Plaintiff/Applicant

- and -

**Leducor Industries Inc, Leducor Construction Limited, Leducor Developments Ltd, Leducor  
Construction Group Ltd**

Defendants/Respondents

- and -

**ABC Corporation**

Defendant

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**Reasons for Decision  
of the  
Honourable Applications Judge S. Wanke**

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[1] Epcor Water Services Inc (**EPCOR**) claims the Defendants caused a cement-based blockage of two of its downtown sewer mains in July 2022. EPCOR applies by desk application, without notice, for judgment against the Respondents for \$718,588.75 in damages, plus interest (\$97,589.27) and costs.

[2] This application is under r 3.37(1)(a) of the *Alberta Rules of Court*, Alta Reg 124/2010 (**Rules**):

### **Application for judgment against defendant noted in default**

3.37(1) The plaintiff may, without notice to any other party, on proof of the plaintiff's claim, apply to the Court for judgment in respect of a claim for which default judgment has not been entered if

(a) one or more defendants are noted in default, ...

[3] Although a defendant has been noted in default, the Court retains the discretion to direct a hearing on notice (r 3.37(3)(b) and (f) and *TLA Food Services Ltd v 1144707 Alberta Ltd*, 2011 ABQB 550 at para 24).

[4] In this case, the application needs to be made on notice. The Statement of Claim (**Claim**) alone is insufficient to establish a cause of action against each of the Respondents, the affidavit of services relied on for noting in default are deficient and the Respondents are sophisticated corporate entities, including one represented by counsel.

### **Cause of Action**

[5] The Claim defines all four Leducor defendants (Leducor Industries Inc (**LII**), Leducor Construction Limited (**LCL**), Leducor Developments Ltd. (**LDL**) and Leducor Construction Group Ltd. (**LCG**)) as the **Leducor Group**. The Claim pleads:

- (a) The Leducor Group was the owner and construction manager of 10125-108 Street NW in Edmonton and was responsible for all activities related to the site.
- (b) The Leducor Group engaged ABC Corporation (**ABC**), the details of which are not known to EPCOR, to do work at the site.
- (c) One or more of the Respondents or ABC was responsible for the cement-based work on site.
- (d) The Defendants, or those acting on their behalf, caused two EPCOR sewer mains to be filled with cement-based material, resulting in sewer backups.
- (e) The damage to the mains was caused by the Defendants' "breaches of duties and obligations, acts, omissions, and negligence" or, in the alternative, trespass and nuisance. The Defendants are vicariously liable for the acts and omissions of the parties who acted on their behalf.

[6] The Affidavit of Mr. Bulat, EPCOR Manager, affirmed in support, similarly collectively speaks of the Leducor Group and provides:

- (a) The Leducor Group was responsible for construction on the site.
- (b) EPCOR incurred \$230,370.83 in internal costs and \$488,217.92 in contractor cost to restore the two sewer mains. The method used for tracking internal costs and a detailed ledger is provided, along with invoices for the contractor costs.

[7] Even where a defendant has not defended, before granting judgment, the Court must be satisfied that the pleadings disclose a viable cause of action supporting the claim: *Spiller v Brown*, 1973 AltaSCAD 76. In *Spiller*, a seminal appeal that continues to be followed under the *Rules*, the trial judge was upheld for ordering a hearing requiring the plaintiff to prove its claim of gross negligence, even though the sole remaining defendant had not defended. The trial judge

noted his suspicion that the plaintiff had discontinued against the defending defendants to avoid needing to prove gross negligence.

[8] Here, I find the Claim's statement that the Ledcor Group is collectively responsible for the work that caused the damage, directly, indirectly or vicariously, a similarly unsupported legal conclusion not established by the facts set out in the Claim. Mr. Bulat's Affidavit does not assist as it also only speaks generically of the Ledcor Group.

### **Service**

[9] The affidavits of service swear that each of LII, LDL and LCG were served by registered mail to their registered corporate offices, with proof of delivery and signature for each attached, showing the claims were signed for on June 24, 2025.

[10] The *Rules* permit service of commencement documents as provided for in other enactments (r 11.4) and s 256 of the *Business Corporations Act*, RSA 2000, c B-9 allows service by registered mail to the corporation's registered office.

[11] What is missing from these three affidavits of service is a corporate search for each entity showing the address served was the registered corporate office.

[12] With respect to LCL, the affidavit of service indicates that counsel accepted service by email on April 7, 2025. The attached correspondence includes assurances from EPCOR's counsel that no defence was required and that reasonable notice would be provided if a defence later became necessary. No evidence of any subsequent demand for a defence was provided. In these circumstances, that affidavit is also deficient.

### **General Considerations**

[13] Although r 3.37 permits applications for judgment after default to be brought without notice, that rule cannot be read in isolation. Counsel must exercise judgment in deciding whether dispensing with notice is appropriate, consistent with their professional obligations and the foundational objectives of the *Rules*.

[14] Where no prejudice would occur, despite a rule allowing an *ex parte* application, lawyers must consider giving notice (commentary to c 5, r 1-2A, Law Society of Alberta, *Code of Conduct*). Prejudice means injury or damage (*Humphreys v Trebilcock*, 2017 ABCA 116 at para 125). The possibility that a respondent may legitimately contest an application does not constitute harm or injury resulting from the provision of notice.

[15] The foundational rules also emphasize that this Court is in the business of effective, efficient and credible remedies (r 1.2(2)(e), *Rules*). Shortcuts to judgment are none of those things. Instead, questionable without notice judgments typically result in additional wasted time and expense as parties scramble to apply to have the judgment set aside.

[16] In short, with sophisticated commercial respondents, in part represented by counsel, in the absence of prejudice, notice should have been provided.

**Conclusion**

[17] EPCOR's application for judgment is adjourned to no fixed date. If it is set back down, the Respondents are to be given notice. Under r 9.2(1), EPCOR to prepare the form of Order for my review.

**Heard** by desk application submitted February 10, 2026. Additional materials provided February 12, 2026.

**Dated** at the City of Edmonton, Alberta this 18<sup>th</sup> day of February, 2026.

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**S. Wanke**  
**A.J.C.K.B.A.**

**Appearances:**

Alex Matthews  
Kingsgate Legal  
for the Plaintiff/Applicant

Nicholas Konstantinov  
DWF Group  
for Ledcor Construction Limited, Defendant/Respondent  
(No Appearance / Without Notice)