

Court of King's Bench of Alberta

Citation: Yangarra Resources Ltd v Advanced Upstream Ltd, 2026 ABKB 158

Date: 20260304
Docket: 2401 17196
Registry: Calgary

Between:

Yangarra Resources Ltd.

Applicant

- and -

Advanced Upstream Ltd.

Respondent

**Reasons for Decision
of the
Honourable Justice Colin C.J. Feasby**

I. Introduction

[1] Yangarra Resources Ltd (“Yangarra”) commenced a *Mareva* injunction application against Advanced Upstream Ltd (“Advanced”) in late 2025. Yangarra feared that Advanced was involved in a major transaction that would make it impossible for Yangarra to enforce any judgment that it might obtain from this proceeding. The *Mareva* injunction application was withdrawn in early 2026 after Advanced provided information that satisfied Yangarra that after the transaction Advanced would remain a going concern and conduct its business in the normal course.

[2] Both parties seek costs of the aborted *Mareva* injunction application. Yangarra says that it was substantially successful because the *Mareva* injunction application achieved its purpose

which was to force Advanced to produce information about the transaction and Advanced's future business plans. Advanced submits that it was substantially successful because Yangarra had no right to disclosure of information about the Advanced transaction or its future business and the *Mareva* injunction application was withdrawn. Each party accuses the other of acting unreasonably and for being responsible for the significant cost of the *Mareva* injunction application.

II. The Underlying Dispute

[3] Advanced is in the business of developing and marketing technology for use in drilling oil and gas wells. The technology in issue in this case is Advanced's Limitless Frac System which is a proprietary "dart and sleeve" system for use in well completions.

[4] Yangarra contracted with Advanced to provide its Limitless Frac System for use in Yangarra's 2023 drilling program. Yangarra asserts that it contracted with Advanced on the strength of various representations about the Limitless Frac System made in Advanced's marketing materials and by Advanced employees to Yangarra representatives.

[5] The Limitless Frac System was used on five Yangarra wells drilled in the summer and early fall of 2023 before Yangarra suspended its use. Yangarra alleges that the Limitless Frac System failed on the five wells and that Yangarra was required to undertake steps to remediate or redrill the wells. Yangarra alleges that between remediation and redrilling costs and foregone profits, it lost approximately \$61 million.

[6] Yangarra commenced this proceeding in late 2024 (the "Action"). Advanced defended the Action and denies Yangarra's allegations.

III. The *Mareva* Injunction Application

[7] Sometime in late September 2025, Yangarra learned from what it describes as "reliable industry sources" that Advanced had been or was in the process of being acquired by another company. Yangarra was concerned that the transaction could prejudice its ability to enforce any judgment that might result from the Action.

[8] Yangarra's counsel wrote to Advanced's counsel on September 28, 2025 seeking confirmation that Advanced would not deal with its assets in a way that would have "the effect of frustrating enforcement or compromising the integrity of this litigation..." Yangarra's counsel added that if a satisfactory response was not received it would seek relief from the Court including perhaps a *Mareva* injunction.

[9] Advanced's counsel responded on October 3, 2025. The Advanced response declined to provide the confirmation sought by Yangarra and instead observed that Yangarra was seeking "extraordinary relief" that was a "significant departure" from industry practice. Advanced closed by inviting Yangarra to conduct a search of the corporate registry.

[10] Two days later, Yangarra's counsel wrote to advise that the company understood that Advanced was being acquired by Imperial Oil or an affiliate of Imperial Oil. Yangarra's concern was that Advanced would cease to operate and that Imperial Oil would just use Advanced's technology with the effect being that Advanced would not retain any assets capable of satisfying any potential judgment to be obtained by Yangarra in the Action.

[11] On October 8, 2025, Advanced’s counsel responded by notifying Yangarra’s counsel that the purchaser was ExxonMobil Canada Ltd and that the transaction had closed a few weeks earlier. He averred that the transaction was made in pursuit of legitimate business interests and was not driven by the Action.

[12] Later the same day, Yangarra’s counsel responded by asking if the transaction was a share deal, an asset deal, or an amalgamation. He explained that he needed “something more concrete” or the matter would go to Court. The parties exchanged correspondence over the next two weeks, but nothing was accomplished.

[13] On October 21, 2025, Yangarra’s counsel wrote seeking information on three matters:

1. The transaction structure (e.g. Share Purchase Agreement, Asset Purchase Agreement, Merger Agreement, Plan of Reorganization).
2. The value and form of consideration for the transaction.
3. Copies of all governing agreements for the transaction.

[14] On October 24, 2025, Advanced’s counsel confirmed that the transaction was effected by way of a share purchase for cash consideration. The cash consideration was paid to Advanced’s shareholders and Advanced refused to disclose the amount on the grounds that it was irrelevant. Advanced further advised that it “will continue to be a going concern and will continue to service its customers.” Advanced expressed the opinion that in disclosing this information it had gone beyond what it was legally obliged to do and beyond what is “consistent with industry and commercial practice.”

[15] On November 12, 2025, Yangarra commenced the *Mareva* injunction application.

[16] Over the next two months, the parties pursued litigation aggressively exchanging affidavits, producing expert reports, and conducting cross-examinations. A sealing order was obtained to facilitate the exchange of confidential information and use of such information in the court application.

[17] On January 19, 2026, Advanced delivered an affidavit providing information about Advanced’s ongoing business plans. Yangarra responded to the delivery of this information by cancelling the remaining cross-examinations and withdrawing the *Mareva* injunction application.

IV. Which Party is Entitled to Costs?

[18] Costs awards are discretionary: Rule 10.31. The general rule, however, is that the successful party is entitled to costs: Rule 10.29. Neither party asserted that there is a reason to depart from the general rule in the present case because both parties assert that they were successful. Accordingly, the first question that I must decide is which party was successful.

[19] Advanced says that it was successful because it resisted the application and Yangarra withdrew the application. Yangarra submits that the application accomplished its purpose which was to prevent Advanced from dissipating assets or to produce evidence that showed that it was not dissipating assets. Yangarra asserts that it achieved its purpose by forcing Advanced to adduce evidence about the transaction and its future business plans. Yangarra submits that it withdrew its application as soon as it achieved that objective.

[20] The withdrawal of an application by an applicant is almost always a victory for the respondent. I say almost always because there may be exceptions to this general rule that I have not thought of. But the present case is not exceptional. Yangarra aggressively pursued a *Mareva* injunction that it withdrew when it realized that the apprehended harm did not exist. Yangarra was not successful and should pay costs to Advanced.

V. What is the Appropriate Quantum of Costs?

[21] Advanced seeks solicitor-client costs on the grounds of its success, the seriousness of the allegations, what it considers to be evidential deficiencies in Yangarra's application, and what it says was Advanced's good faith cooperation. In the alternative, Advanced seeks an award of enhanced costs that will provide it with a substantial indemnity.

[22] Rule 10.33(1) provides that the Court may consider various things in making a costs award and Rule 10.33(2) outlines factors that a Court may consider in imposing or denying a costs award. Rather than listing the items in Rule 10.33(1) and (2), it may be observed that a common theme for courts to consider when making costs awards is litigation conduct.

[23] Advanced's position on costs is premised on the conclusion that it had no legal obligation to disclose anything about the transaction or its business plans to Yangarra and that its cooperation, such as it was, was voluntary. Where there is no extant litigation between parties, I agree that there is no obligation to disclose information or to cooperate to alleviate another party's business concerns. But the *Mareva* injunction arose *during* the conduct of litigation.

[24] The *Rules of Court* do not override the law that governs commercial interactions or impose moral obligations on commercial parties. Except as specifically provided, the *Rules of Court* do not create a legal obligation to disclose information or cooperate with an adverse party. However, the *Rules of Court* require the Court to evaluate the reasonableness of the conduct of parties when determining the extent to which a successful party should be reimbursed for costs and disbursements incurred in a proceeding.

[25] The foundational rules must inform the Court's assessment of the parties' conduct. Parties to litigation are subject to Rule 1.2(1) which explains that the purpose of the *Rules of Court* is to facilitate the timely and cost-effective resolution of disputes. Specifically, litigants are instructed by Rule 1.2(2) to use the *Rules of Court* "to facilitate the quickest means of resolving a claim at the least expense" and "to oblige the parties to communicate honestly, openly, and in a timely way."

[26] The starting point is that the *Mareva* injunction application is something that did not have to happen and would not have happened if both parties had acted reasonably. Yangarra assumed an aggressive posture threatening court proceedings almost immediately upon learning of Advanced's transaction and Advanced exacerbated the situation by asserting its strict legal rights and providing little information. The way that the parties dealt with one another reflects the reality that they are engaged in contentious litigation and there is an obvious lack of trust between them.

[27] Yangarra's concern, though expressed more aggressively than necessary, was understandable. The obvious solution to Yangarra's concern would have been for Advanced to provide the requested information to Yangarra. To the extent that the information was confidential, it could have been provided pursuant to a solicitor's undertaking or non-disclosure

agreement. Alleviating Yangarra's concerns in this way would have cost a small fraction of what the *Mareva* injunction application cost.

[28] Yangarra's dogged pursuit of the *Mareva* injunction after learning that the purchaser was ExxonMobil Canada and that it had purchased shares of Advanced was unreasonable. At that point, it should have been obvious to Yangarra that Advanced had been acquired by a solvent entity with extensive business operations in Alberta and that judgment proofing of Advanced as a subsidiary of ExxonMobil Canada was unlikely and, if it occurred, would be reviewable by the Court as a possible fraudulent preference.

[29] Slicing up blame pie is an art, not a science. I am satisfied that both parties are responsible for how the *Mareva* injunction unfolded. Advanced shares enough of the responsibility for the inefficient conduct of the *Mareva* injunction application that, in my opinion, an award of full solicitor-client costs is inappropriate.

[30] Advanced also asserts that solicitor-client costs are warranted because of the seriousness of the allegations and defects in the evidence advanced by Yangarra. Advanced relies on Justice Lema's decision in *Just Biofiber Corp v Just Biofiber Structural Solutions Corp*, 2025 ABKB 407.

[31] The idea that I should award solicitor-client costs for shortcomings in the evidence is just another way of saying that Advanced was successful because the *Mareva* application was withdrawn because Yangarra could not prove its case. Whether that was because of the intrinsic weakness of the application or because Advanced disclosed information is not known because the Court did not assess the evidence because the application was withdrawn. And it is not a good use of the Court's time on this costs application to conduct a forensic analysis of the quality of the evidence on an application that was withdrawn.

[32] I agree that sometimes where serious allegations are made in a *Mareva* injunction application and are not proven, solicitor-client costs are warranted. But solicitor-client costs are not warranted in this case. The allegations against Advanced, though ultimately unproven, were not beyond the pale. As I noted earlier, Yangarra's concern upon learning about the transaction about the enforceability of any judgment that might result from the Action was understandable. The dispute was never heard in open court and, even if it was, the narrative is dominated by the banalities of a corporate acquisition, not scurrilous events. Put differently, the allegations were not interesting enough to be stigmatizing.

[33] In my view, the appropriate measure of costs is 50% of solicitor-client costs pursuant to *McAllister v Calgary (City)*, 2021 ABCA 25 plus full reimbursement for disbursements including expert fees. This rate appropriately reflects the respective responsibility of the parties for the *Mareva* injunction. This rate of costs is also appropriate given that both parties approached the litigation in a similar fashion. Between them, the parties spent more than \$1 million on the aborted *Mareva* injunction in a little over three months. This number might be shocking to many people, but it is consistent with what this Court sees in high stakes corporate litigation. This was litigation conducted on a level playing field; it is not a case where there was a significant asymmetry between the parties.

VI. Conclusion

[34] Costs are awarded to Advanced at a rate of 50% of solicitor-client costs plus full reimbursement for disbursements.

Heard on the 24th day of February, 2026.

Dated at the City of Calgary, Alberta this 4th day of March, 2026.

Colin C.J. Feasby
J.C.K.B.A.

Appearances:

Sahil Shoor and Casey Stierner
for the Applicant

Brendan MacArthur-Stevens, Sophie Mansfield, and Gina Murray
for the Respondent