IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

Citation: *Business Development Bank of Canada v. Lewis*, 2025 NLSC 180
Date: December 18, 2025
Docket: 201801G8556

BETWEEN:

BUSINESS DEVELOPMENT BANK OF CANADA

PLAINTIFF

AND:

TERRENCE (TED) LEWIS

DEFENDANT

BETWEEN:

TERRENCE (TED) LEWIS

FIRST PLAINTIFF BY COUNTERCLAIM

AND:

HOLSON FOREST PRODUCERS LIMITED AND LEWIS LOGGING LIMITED

SECOND PLAINTIFF BY COUNTERCLAIM

AND:

HIS MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR as represented by the MINSITER OF NATURAL RESOURCES

FIRST DEFENDANT BY COUNTERCLAIM

AND:

BUSINESS DEVELOPMENT BANK OF CANADA

SECOND DEFENDANT BY COUNTERCLAIM

Before: Justice Alexander MacDonald

Place of Hearing: St. John's, Newfoundland and Labrador

Date of Hearing: November 10, 2025

Summary:

The Court dismissed Business Development Bank of Canada's Application to strike Lewis Lumber Group's counterclaim. BDC sued Terrence Lewis for $250,062.71 under a personal guarantee. Lewis counterclaimed alleging BDC and the Government of Newfoundland and Labrador negligently induced them into a failed wood pellet plant project. The Court found the counterclaim, though weak and lacking particulars, disclosed an arguable cause of action and was not false, frivolous, or abusive. Lewis Lumber Group must amend their pleadings by January 30, 2026, detailing alleged duties and breaches. The Court awarded costs to BDC on a column three basis. Each party bears its own costs for a previously dismissed Summary Judgment Application.

Appearances:

Morgan E. Chafe	Appearing on behalf of Business Development Bank of Canada
Robert R. Regular	Appearing on behalf of Terrence Lewis and Holson Forest Producers and Lewis Logging Limited
David L. Hearn	Appearing on behalf of the Government of Newfoundland and Labrador (Natural Resources)

Authorities Cited:

CASES CONSIDERED: *Fiander v. Mills*, 2015 NLCA 31; *Montreal Trust Co. of Canada v. Hickman*, 2001 NFCA 42; *Pierce v. Canada Trustco Mortgage Company* (2005), 254 D.L.R. (4th) 79, 5 B.L.R. (4th) 178 (Ont. C.A.); *Cabana v. Wells*, 2024 NLCA 4; *Fields of Athenry Resort Corporation v. Grey*, 2018 NLSC 215

RULES CONSIDERED: *Rules of the Supreme Court,* 1986, S.N.L. 1986, c. 42, Sch. D

REASONS FOR JUDGMENT

MACDONALD, J.:

INTRODUCTION

[1] This is the Business Development Bank of Canada's (BDC) application to strike a counterclaim under Rule 14.24 of the *Rules of the Supreme Court, 1986*, S.N.L. 1986, c. 42, Sch. D.

[2] BDC sued Ted Lewis because he gave a personal guarantee for the loans of Holson Forest Producers Limited (Holson) and Lewis Logging Limited (Lewis Logging). BDC says Lewis owes it $250,062.71 plus interest from November 22, 2018, at 6.05% annually to the date of judgment.

[3] Lewis filed a defence. He denied the claim. He puts BDC to strict proof of its claim. He denied that he is indebted to BDC at all. Lewis, Holson and Lewis Logging filed a counterclaim against BDC. I will call the three Lewis Lumber Group.

[4] Lewis Lumber Group alleged that the Government of Newfoundland and Labrador (GNL) induced them to develop a pellet plant on the Northern Peninsula of Newfoundland when Canada Bay Lumber Company Limited was destroyed by fire in 2002 or 2003.

[5] Lewis Lumber Group says that:

(a) GNL was anxious to replace this industry. Because of this, GNL and BDC "solicited" [Lewis through Holson and Lewis Logging] to cause a business plan for the development of a wood pellet plant next to their existing sawmill (at para. 8);

(b) "after the business plan was completed at the expense of GNL and BDC, GNL and BDC put together a financing 'package' to improve and expand the sawmill and develop the pellet plant" (at para. 9);

(c) they did this despite Lewis expressing concerns about his "lack of experience in that industry, lack of opportunities for the sale of wood pellets locally, nationally or internationally, and the huge investment being made and being categorized as 'loans'" (at para. 9);

(d) BDC and GNL ignored "potential weaknesses in the plan … in their haste to respond to the economic circumstances of the region" (at para. 10);

(e) "the shortcomings of the business plan and the under-financing of the "'Project'" caused the Project to be extensively delayed, and development of the Pellet Plant to never be properly finished" (at para. 11);

(f) GNL and BDC "realized that the marketability of wood pellets locally and abroad was very weak" (at para. 11); and

(g) BDC's and GNL's involvement "in causing and supporting [Holson] and [Lewis Logging] to pursue the Project, when [they] had no experience, expertise or foreknowledge of the wood pellet industry was reckless, and negligent and the same caused [them] to lose value in time, monies, labour and other resources they would not have lost but for that negligence." (at para. 12).

[6] With respect to their liability and default, they say, "any such default is the failure of [BDC] to properly advise and inform [Holson and Lewis Logging] on getting into an enterprise they should not have gotten into." (at para. 13)

[7] They sum it up by saying, at para. 14, that the losses of Holson and Lewis Logging "were the result of the careless and negligent manner in which [GNL and BDC] involved themselves in the business plan and the funding program," in that:

(a) the availability and guarantee of raw products were not adequately assessed;

(b) costs to modernize the sawmill to integrate it with the pellet plant were not adequately determined;

(c) the demand for wood pellets locally, nationally and internationally was not properly assessed;

(d) the costs to build and get the pellet plant into operation were not properly assessed; and,

(e) the need and availability of working capital were not properly assessed and determined.

[8] BDC took an application for Summary Judgment under Rule 17. It also took an application to strike the counter claim under Rule 14.24(1).

[9] At the hearing, I dismissed BDC's Application because it filed no evidence other than its solicitor's affidavit. A litigant cannot base a Summary Judgment Application solely on its solicitor's affidavit. Such affidavits should only be used for this purpose when the facts in it are not controversial.

[10] I now must decide whether I will strike the counterclaim. To do so, I will apply Rule 14.24(1), and I will decide:

(a) Does the counterclaim disclose no reasonable cause of action?

(b) Is the counterclaim false, scandalous, frivolous, or vexatious?

(c) May the counterclaim prejudice, embarrass, or delay the fair trial of this proceeding?

(d) Is the counterclaim otherwise an abuse of the court process?

[11] I hereby dismiss the application. I order that Lewis Lumber Group file an amended counterclaim as I will describe in paragraph [44].

[12] I will now tell you why I made this decision. I will first deal with whether the counterclaim discloses no reasonable cause of action.

ISSUE 1: **Does the Counterclaim disclose no reasonable cause of action?**

[13] The Court of Appeal in *Fiander v. Mills*, 2015 NLCA 31, outlined the test I am to apply. It said, "[t]he test for striking out a pleading on the basis that it discloses

no reasonable cause of action is a stringent one: whether it is plain and obvious that the pleader cannot succeed in [their] plea." (at para. 17)

[14] I should not strike the pleading only because there is a lack of particulars of a claim if there are "bare bones" of facts. If so, I should order the party to amend their pleadings or provide further particulars. (*Montreal Trust Co. of Canada v. Hickman*, 2001 NFCA 42, at para. 15)

[15] I assume Lewis Lumber Group can prove their allegations. I will not consider evidence under Rule 14.24(1)(a). What, then, did Lewis Lumber Group plead?

[16] Although the pleading is poorly written, I find that the Lewis Lumber Group alleges that BDC and GNL:

(a) asked them to prepare a business plan;

(b) paid for the business plan;

(c) prepared Holson's and Lewis Logging's financing package despite Lewis expressing concern about his lack of experience with pellet plants; and

(d) ignored potential weaknesses in the plan because they were under pressure to solve economic issues on the Northern Peninsula.

[17] More generally, they say that BDC did not properly advise and inform Holson and Lewis Logging about "getting into an enterprise they should not have gotten into."

[18] BDC says it does not owe Lewis Lumber Group a duty of care as there is no special relationship between them. It relies on *Pierce v. Canada Trustco Mortgage Company* (2005), 254 D.L.R. (4th) 79, 5 B.L.R. (4th) 178 (Ont. C.A.) at para. 27. The court said, "[g]enerally speaking, the relationship between a financial institution lender and its customer borrower is a purely commercial relationship of creditor and debtor."

[19] The court continued, "Absent any special relationship or exceptional circumstances such as would give rise to a fiduciary duty the … courts have consistently held that the lender owes no duty to the borrower in connection with the

making of the loan. In particular, the bank owes no duty to its customer to advise the customer not to undertake the loan."

[20] The Court of Appeal, at paragraph 19, reports that the trial judge said, "the circumstances pleaded might, if proved, provide in equity a defence of the debt. On the state of the existing jurisprudence … they cannot in my view give rise to a cause of action for damages."

[21] The trial judge continued and said, "there are good reasons why particular facts may provide a defence to a debt on equitable principles but not give rise to a cause of action." (at para. 19)

[22] The Court of Appeal said that "the crucial point is that [the lender] made no representations to [the borrower] relating to its decision not to follow its internal guidelines in making the loan. [It] was entirely silent about its guidelines. Nor did [the borrower] say anything to [the lender] about its internal guidelines that it might have put [it] on notice that this was the consideration for its customer that warranted a response." (at para. 32)

[23] The Court of Appeal continued, "In short, it is difficult to see how silence from both parties on a matter can give rise to the necessary meeting of minds essential to any contract, including a collateral contract, or the creation of an implied term …"

[24] In this case, Lewis Lumber Group specifically pled that the losses of Holson and Lewis Logging "were the result of the careless and negligent manner in which the [GNL and BDC] involved themselves in the business plan and the funding program." They also, for example, pled that BDC advised them poorly.

[25] This is not as simple as the conclusion in *Pierce* at paragraph 27 and referred to by BDC counsel in paragraph 29 of her brief. This is not merely a claim about whether "the bank owes a duty to its customer to advise a borrower not to undertake the loan."

[26] Thus, while Lewis Lumber's case is not strong, there are "bare bones" of facts that Lewis Lumber Group may argue will show a special relationship. Thus, I find that Lewis Lumber Group have an arguable case even if the facts pled are scant or barebone.

[27] Instead of striking the pleading, I order that Lewis Lumber Group, or Lewis personally, amend its pleading to provide better particulars. Considering *Pierce,* it may want to consider whether the pleading is a counterclaim or a set-off.

[28] I now turn to whether the counterclaim is false, scandalous, frivolous or vexatious.

ISSUE 2: Is the is the Counterclaim False, Scandalous, Frivolous or Vexatious?

[29] I find it is not. BDC claims that Lewis' discovery evidence shows that the Lewis Lumber Group's allegations in the counterclaim are false. It says that under Rule 14.14(2) I can accept evidence on this point.

[30] The Court of Appeal in *Cabana v. Wells*, 2024 NLCA 4, outlined the test I am to apply in these types of applications. It directs that I am to consider:

(a) the merits of the alleged claim based on the pleadings (and not the evidence) to the extent to which the counterclaim is founded in law and grounded in relevant factual assertions or uncontested facts;

(b) claims with low or no merit are more likely to be frivolous, vexatious, and an abuse of court process. However, Lewis Lumber Group do not need to show that the case is likely to succeed. They only need raise an arguable case;

(c) Lewis Lumber Group's purpose in bringing the claim and whether they have a sincere belief in their entitlement to the relief claimed; and

(d) Lewis Lumber Group's use of the Court and whether they are using the court procedures appropriately for legitimate vindication of legal rights, or whether they are reasonably and purposefully wasting time and resources.

[31] I am *not* to conduct an evidence-based examination of the strength of the case unless other evidence *not directly related to the substantive case* suggests that the proceeding is otherwise frivolous or vexatious. (*Cabana* at para. 21, referring to Justice Orsborn in *Fields of Athenry Resort Corporation v. Grey*, 2018 NLSC 215, at para. 22)

[32] I will consider if there is any such evidence. BDC filed a transcript of Lewis's discovery evidence that BDC says proves the counterclaim is false. It did not point out specific parts of the discovery it says proved this. My review of the transcript shows Lewis said:

(a) He "didn't think" BDC paid for the business plan but said, "that's something I certainly would have to go back on…";

(b) He was not forced to do the project or to borrow money from BDC. As he said, "no one held a gun to my head";

(c) No BDC staff pressured him to do the project;

(d) That he, not BDC, prepared the business plan or implied this was so;

(e) He started worrying about his lack of expertise shortly after the business plan was prepared;

(f) He never told BDC or GNL that he did not want to continue with the pellet plant; and

(g) That he always assumed GNL would support him.

[33] Lewis was vague on the nature of the pressure GNL and BDC applied, and the advice BDC provided the Lewis Lumber Group. His evidence, and his pleading, seemed to suggest the stakeholders on the Northern Peninsula, including GNL and BDC applied pressure because they were anxious to have employment replacement after the Canada Bay Lumber fire.

[34] I find that I cannot consider any of this evidence to strike the counterclaim under Rule 14.24(1)(b) because it is *directly related to the substantive case*. Although Justice Orsborn dealt with a Rule 21.01(f) application for security for costs and that rule does not include a "false" factor, I find that his comments also apply to Rule 14.24(1)(b).

[35] If I found otherwise, these applications would always descend into an examination of whether a particular factual statement is false. This then would

transform these applications into a consideration of evidence related to the substantive case.

[36] Even if I had considered this evidence, I cannot conclude that it shows that Lewis Lumber Group's allegations are false. The questions and answers are meandering. The evidence is confusing. Lewis often equivocates.

[37] The only definitive statements he made based on my review are:

(a) no one at BDC pressured or forced Lewis Lumber Group to do the project; and

(b) he did not tell BDC that Lewis Lumber Group did not want to do the project.

[38] These are only some of the allegations in the counterclaim. BDC, based on this evidence, does not meet its burden to show the counterclaim is false.

[39] I now turn to whether the counterclaim may prejudice, embarrass or delay the fair trial of this proceeding?

ISSUE 3: May the Counterclaim Prejudice, Embarrass, or Delay the Fair Trial of this Proceeding?

[40] I find it will not. A pleading is embarrassing not if it is so in the ordinary sense but is grounded in procedural fairness and clarity. The question is whether the pleading is so unclear, confusing, or deficient that it makes it impossible or unfair for BDC to respond properly.

[41] I do not find this is so, but even if it were, it is right that I order Lewis Lumber Group amend its pleading.

[42] I now turn to whether the counterclaim is otherwise an abuse of process.

ISSUE 4: Is the Counterclaim otherwise an Abuse of Process?

[43] I find it is not. There is no evidence to suggest this is so. BDC did not provide evidence to prove this ground.

DISPOSITION

[44] I dismiss BDC's Application. I order that Lewis Lumber Group, or Lewis personally, file by January 30, 2026, an amended pleading that shall include more particulars of the alleged duty of care owed by BDC, and to whom and how BDC breached that duty.

[45] GNL took no position on this application. Lewis Lumber Group may be prudent if it also amends their pleadings with respect to the alleged duty of care owed them by GNL and how it breached it.

COSTS

[46] As I have ordered Lewis Lumber Group to amend their counterclaim, they jointly and severally shall pay BDC costs on a column three basis. GNL did not ask for costs.

[47] In my oral decision on BDC's Rule 17 Summary Judgment Application, I reserved costs for that application to this decision. Lewis Lumber Group did not raise objections to the BDC evidence until the day of the hearing despite attending two earlier case management meetings. Because of this late objection, each party will bear their own costs in that matter.

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ALEXANDER MACDONALD
Justice