

KING'S BENCH FOR SASKATCHEWAN

Citation: 2026 SKKB 50

Date: 2026 03 05
Docket: KBG-RG-02367-2025
Judicial Centre: Regina

BETWEEN:

ROYAL BANK OF CANADA

Applicant

- and -

KF KAMBEITZ FARMS INC.

Respondent

Counsel:

Jeffrey M. Lee, K.C., and Shay M. Brehm
Eric J. Marcotte

for the applicant
for the respondent

FIAT
March 5, 2026

GERECKE J.

A. INTRODUCTION

[1] At its heart, this is a priority dispute under *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 [PPSA]. Royal Bank of Canada [RBC] applies for two heads of relief:

- a. a declaration of priority over certain durum grain [Durum] that was sold by the respondent KF Kambeitz Farms Inc. [KF]; and

- b. an award of damages in the sum of \$1,237,698 to compensate RBC for the loss it suffered because KF failed to notify of its intent to dispose of the Durum as RBC says was required by s. 59(6)(b)(i) of the *PPSA*.

[2] RBC is the first ranking secured creditor of Purely Canada Foods Corp. [Purely], holding a security interest in all of Purely's present and future personal property.

[3] Purely had operated several grain terminals in Saskatchewan, but its elevator license was revoked in August 2024. On March 19, 2025, this Court appointed a receiver over Purely and its assets. RBC contends that those assets included the Durum. On April 24, 2025, this Court adjudged Purely to be bankrupt. Grant Thornton Limited is currently appointed both as receiver and bankruptcy trustee.

[4] RBC's stance is quite straightforward and can be summarized as follows. KF was Purely's creditor. KF sold durum, including the Durum, to Purely pursuant to a Purchase Agreement made on or about July 22, 2023 [Purchase Agreement]. As acknowledged by KF, pursuant to the Purchase Agreement it sold the Durum to Purely with a reservation of title provision. The *PPSA* treats the reservation of title made in the Purchase Agreement as the taking of a security interest. At no point did KF perfect its security interest at the Personal Property Registry [PPR]. Because RBC's security interest was perfected, it has first priority. When KF sold the Durum, it failed to serve advance notice of its intent to dispose as required by s. 59(6)(b)(i) of the *PPSA*. That failure deprived RBC of the opportunity to assert priority over the Durum. Accordingly, the Court should grant a declaration recognizing RBC's priority and order damages in its favour equal to the value of the Durum sold.

[5] KF opposes the application on several fronts. It says that RBC's application is rife with procedural irregularities that the Court should not condone. It

acknowledges that it disposed of the Durum but says that it had no obligation to notify RBC. KF says RBC's security interest in the assets never attached to the Durum because KF never delivered the Durum to Purely. From that, it would follow that the declaration should not issue. Alternatively, KF says that RBC's claim is overstated because it does not account for the costs that KF incurred (or RBC would have incurred) for storage, transport to a delivery point, and the normal costs for grading and marketing the Durum. KF further says that the grain it sold was not all of the same grade, which is unaccounted for in RBC's claim.

[6] KF also relies on an Unwind Agreement dated August 12, 2024 [Unwind Agreement], made between it and Purely. On its terms, the Unwind Agreement terminated the Purchase Agreement with immediate effect. The Unwind Agreement preceded KF's sale of the Durum to third parties. KF says that as a result of Purely's failure to pay anything under the Purchase Agreement and that agreement's later termination by the Unwind Agreement, Purely never provided KF with any consideration under the Purchase Agreement.

[7] I am persuaded that much of RBC's position is correct and that the Court should make the declaration that it seeks. The Purchase Agreement contemplated a conditional sale of the Durum within the meaning of the *PPSA*. That means that Purely granted a security interest in the Durum to KF. Because KF failed to perfect its security interest under s. 59(6)(b)(i) of the *PPSA*, RBC had priority over the Durum and proceeds from its disposition. Further, before it disposed of the Durum, Purely was required to give notice.

[8] Turning to damages, although my view is that KF had sufficient opportunity to address damages, I will reluctantly provide it with one further opportunity to provide evidence on the point but will also require it to disclose relevant documents to RBC.

B. PROCEDURAL ISSUES RAISED BY KF

[9] KF's brief focuses considerably on procedural objections. It complains that RBC filed this application in Saskatoon originally, when this matter has no connection to that judicial centre other than where its counsel works. It complains that RBC sought to have a member of the Court's insolvency panel hear the application. It complains that RBC later amended its application and late-filed the expert affidavit along with an affidavit of Carmen Balzer sworn October 30, 2025. It tries to apply the "best foot forward" principle to this matter because it was commenced as an originating application, arguing that RBC was required to present all its evidence at the outset. Its "best foot forward" theory is that applicants should not be permitted to mould their positions only after seeing a respondent's evidence. As a result, it asks that I reject what it says are late-filed affidavits. KF also complains of "triple hearsay" contained in RBC's affidavits.

[10] I will address those complaints briefly. None of them detract from the validity of RBC's application.

[11] First, Civil Practice Directive #2 governs the hearing of bankruptcy and insolvency matters. The practice directive serves as recognition that insolvency is a specialized area, and that there are advantages to having judges familiar with the area hear such applications. Almost all insolvency matters in Saskatchewan are commenced in either Saskatoon or Regina. The Court has no concern about RBC having commenced this application in Saskatoon. That was not improper.

[12] Second, this is an insolvency matter. Purely is both insolvent and bankrupt, and determinations need to be made concerning whether the Durum formed part of its property and, if so, whether RBC would have priority. As I determine below, the Durum forms part of Purely's personal property, and RBC does have priority. While the occasional instance may arise where such matters are determined by judges of this

Court who are not members of the insolvency panel, it was far from improper, and indeed was appropriate and preferable, that RBC sought to have an insolvency panel judge hear this application.

[13] Third, the main effect of the amendments to RBC's application about which KF complains was to restate the amount of RBC's claim *downward* by nearly half. It is difficult to understand why KF would object to that reduction in RBC's claim. The support for that reduction is found in the expert affidavit filed by RBC on November 3, 2025 – part of the late-filed evidence to which KF objects. I am satisfied that the Court should receive that expert affidavit into evidence, even though it was filed late.

[14] KF's complaint about Ms. Balzer's affidavit approaches the absurd. That affidavit attaches the Purchase Agreement. RBC presumably filed it because by that point KF had filed no evidence at all and the Court should obviously have before it the agreement by which Purely granted a security interest to KF. There was nothing inappropriate about RBC filing it. Had neither party done so, the Court would have needed to determine whether to draw adverse inferences against KF regarding the effect of the Purchase Agreement. The Court will receive Ms. Balzer's affidavit into evidence.

[15] As well, the "best foot forward" principle relates to summary judgment applications. It has no relevance here. Judges also have discretion about what evidence to receive. While that discretion has limits, KF clearly benefits from the filing of the expert affidavit and has no basis to complain about the one from Ms. Balzer. KF may believe it was prejudiced so as to warrant exclusion of the two affidavits, but it has not satisfied me of that. I also observe that after we discussed bifurcation to deal with damages separately, I heard KF withdraw objections to that evidence.

[16] I turn now to the hearsay complaint. It arises in relation to matters discussed in the Receiver's report. The Receiver's agent had attended at KF's site and

reported that certain statements were made to him about the Durum by individuals who appeared to be KF employees. That is what KF characterizes as triple hearsay. The Receiver's report was filed in an engagement closely connected to this application, and information from that report should not be lightly disregarded by the Court. Nonetheless, it is not necessary for me to rely on the information in question because it is not relevant to the matters in issue, so I make no use of it.

[17] Accordingly, I reject KF's procedural complaints except that I will bifurcate the damages issue so the Court can receive better evidence.

C. ISSUES

[18] This application raises the following issues to be determined:

Issue #1: Is it appropriate to grant the declaration sought by RBC?

Issue #2: Should the Court award damages in the amount sought by RBC?

D. ANALYSIS

Issue #1: Is it appropriate to grant the declaration sought by RBC?

[19] To obtain the declaration that it seeks, RBC must establish that Purely granted a security interest in the Durum to KF pursuant to the Purchase Agreement, that Purely obtained an interest in the collateral, being the Durum, and that RBC had a perfected security interest in the Durum that ranked in priority to that of KF at the time that KF disposed of the Durum.

[20] For the following reasons, I am satisfied that RBC has established all of those elements and should be granted the declaration it seeks.

[21] First, there is no doubt that RBC had a validly perfected security interest in all of Purely's present and after-acquired personal property. KF makes no effort to

dispute that. RBC's general security agreement from Purely is in evidence, as are PPR searches showing that RBC is Purely's first ranking secured creditor. The debt owed by Purely to RBC, which is proven and not disputed, also markedly exceeds the value of the Durum.

[22] The PPR searches disclose no financing statement registered by KF against Purely. Nor does KF suggest that it registered one, instead arguing that it had no need to register at PPR because it did not have a security interest in the Durum.

[23] KF advances three main arguments:

- a. The Purchase Agreement was not a conditional sale agreement and thus is not subject to the *PPSA* and did not create a security interest.
- b. Purely never obtained possession of the Durum, so RBC's security interest did not attach to the Durum.
- c. Two factors combine to create the result that no consideration was given by Purely under the Purchase Agreement so that it is of no force and effect: that Purely made no payment to KF under that agreement, and that the Unwind Agreement then terminated the Purchase Agreement.

I will address those arguments in turn.

a. Was the Purchase Agreement a conditional sale agreement within the meaning of the PPSA?

[24] I find that the Purchase Agreement was a conditional sale agreement. Accordingly, the *PPSA* applies to it.

[25] Rather than creating a conditional sale, KF argues that the Purchase Agreement granted Purely an option to purchase durum grain and gave KF the ability

to terminate that option.

[26] KF's position is contradicted by the clear words of the Purchase Agreement and the recitals to the Unwind Agreement.

[27] First, the Purchase Agreement language is consistent with a purchase and sale of grain. After identifying the parties and setting out the date and contract number, the terms begin by stating: "We confirm PURCHASE from you as follows" Next, the agreement identifies the type and quantity of grain, the price, the delivery period (from August 1, 2023, to September 30, 2023), and the grade of durum. KF does not dispute that the Durum was intended to be sold by it to Purely pursuant to the Purchase Agreement. The Purchase Agreement then sets out declarations pursuant to the *Canada Grain Act*, RSC 1985, c G-10, which are required to be made upon the sale of grain to and from licensees. To the Court's knowledge, such declarations need not be made in other types of transactions. Payment terms are set out. The parties are described as Buyer and Seller. All of that is consistent with a purchase and sale of the Durum.

[28] Second, the Purchase Agreement contains a title retention provision in para. 3 of the Terms and Conditions, stating that title to the grain "shall remain with the Seller until such time as the Buyer has paid to the Seller the full Purchase Price." That clause creates a conditional sale that clearly brings the Purchase Agreement within s. 3(1) of the *PPSA*. Section 3(1)(a) provides that the *PPSA* applies to every transaction that "in substance creates a security interest, without regard to its form and without regard to the person who has title to the collateral". Section 3(1)(b) amplifies ss. (a) by stating that the *PPSA* applies to a "conditional sale" that secures payment or performance of an obligation.

[29] Third, I can find no provision within the Purchase Agreement that suggests the grant of an option rather than of a sale. The language relied on by KF for its option argument is the final paragraph of the Purchase Agreement (which is not

numbered). It states as follows:

Failure to take delivery of product within the specified period does not release the grower of the obligations of this contract. *Seller will be paid Storage and interest at the rate of \$1.00/mt per week until deliveries are complete.* Seller may at any time after the expiry of the specified shipment period, provide notice to the buyer that they are calling storage to an end at which time the buyer shall have 30 days from the receipt of said notice to take delivery. Failure of the buyer to take delivery within the 30 day period will result in the contract becoming null and void.

[Emphasis added]

[30] KF argues that that un-numbered paragraph has the effect of converting the conditional sale into Purely holding an option to purchase the grain, and it gives the seller the option to terminate.

[31] There are numerous problems with KF's position. First, and fundamentally, the un-numbered paragraph contains no language suggestive of an option. Nor does any other provision of the Purchase Agreement. That stands in contrast with the title retention language in para. 3 that clearly creates a conditional sale.

[32] In this context, it is appropriate that I consider the effect of the un-numbered paragraph. Its full effect may be difficult to state in the abstract, but it at least appears to do the following:

- a. Even though risk of ownership remained with the seller (KF) until delivery or attempted delivery pursuant to clause 4, the language I have italicized above made Purely responsible for storage beyond the end of the delivery period (September 30, 2023). That language is consistent with the clear language of the Purchase Agreement contemplating a present purchase of the subject durum with a future payment obligation.

- b. It permits the seller to call for an end to the storage arrangement by giving 30 days notice.
- c. If delivery does not occur within those 30 days, the Purchase Agreement is terminated.

[33] None of that suggests that the un-numbered paragraph altered the nature of the Purchase Agreement to convert it into the mere granting of an option.

[34] Fourth, the recitals to the Unwind Agreement between KF and Purely as of August 12, 2024, contradict the notion that the Purchase Agreement created an option rather than a purchase of grain by Purely. The recitals also prove that neither Purely nor KF believed that the Purchase Agreement created an option. Those recitals state as follows:

WHEREAS, on or about July 22, 2023, KF entered into an agreement for the sale of 5000 tonne Canadian Western Amber Duram [*sic*] (“Grain”) to Purely (the “Purchase Agreement”) at a purchase price of \$551.16 per tonne.

WHEREAS Pursuant to clause 4 of the Purchase Agreement, the Grain sold by KF to Purely remained the property of KF until such time as the Grain was paid for.

WHEREAS KF has not been paid any of the purchase price owed pursuant to the Purchase Agreement and is therefore owed \$2,755,800 pursuant to the Purchase Agreement.

WHEREAS 4200 Tonne of Grain is being stored in the following KF Kambeitz Farms leased bins at the Lajord Terminal:

FB5, FB6, FB7, HB7, HB8, HB9, HB10, HB11, HB12

(the “**Unsold Grain**”)

WHEREAS Purely is unable to pay for the Unsold Grain. In exchange for a release of any and all interest in the Unsold Grain by Purely, KF is prepared to unwind the transaction to accept the Unsold Grain and reducing the sum due from the

contract price in the amount of \$2,314,872 in the aggregate (the “A/R Credit”).

WHEREAS the Parties desire to unwind and rescind the Agreements such that Purely relinquishes any claim to the Unsold Grain, in exchange for the A/R Credit.

[35] In those recitals, Purely and KF acknowledge that the Purchase Agreement was for the “sale” of grain to Purely (first recital), that it was “sold” (second recital), that Purely had not paid any of the purchase price (third recital), that the grain was stored in KF’s bins (fourth recital), and that Purely had obtained an “interest” in the grain that KF stored, and that Purely needed (or was asked) to release that interest to wind up the arrangements under the Purchase Agreement (fifth recital).

[36] If Purely and KF (which were not at arm’s length to one another) had considered that the Purchase Agreement did no more than create an option that was never exercised, the Unwind Agreement would have been unnecessary. Purely could have just surrendered its option. Instead, Purely and KF acknowledged in the Unwind Agreement that a purchase occurred under the Purchase Agreement, agreed to terminate that purchase, and agreed to credit back to Purely the sum of \$2,314,872.

[37] The Unwind Agreement is therefore entirely inconsistent with KF’s argument that the Purchase Agreement merely created an option. On the contrary, the Unwind Agreement strongly suggests that both KF and Purely understood that Purely (a) purchased grain from KF under the Purchase Agreement, and (b) obtained an interest in that grain.

[38] I therefore find that the Purchase Agreement did what it said it was doing – it was an agreement by which Purely purchased grain (which included the Durum) from KF. Purely was not required to immediately pay for that grain, and KF reserved title to secure that payment obligation.

[39] Section 3(1) of the *PPSA* therefore applies here. Its effect is to treat the Purchase Agreement as a security agreement. By the Purchase Agreement, Purely granted a security interest in the Durum to KF, with the corollary that KF was required to register a financing statement in the Durum in order to maintain priority over that collateral.

[40] Jurisprudence supports and indeed mandates the foregoing interpretation of s. 3(1). See: *Calidon Financial Services Inc. – Calidon Equipment Leasing v Magnes*, 2021 SKCA 106 at paras 31-33 [*Calidon*], and *Royal Bank of Canada v Moosomin Credit Union*, 2003 SKCA 115 at paras 65-66.

[41] The Purchase Agreement did not provide for periodic payments, nor did it contemplate an indefinite arrangement. Rather, it set out a defined delivery period of two months that ended less than three months after the agreement was made, and it also required payment within 15 business days. I make that observation because the authority cited by RBC concerning what will be a conditional sale sometimes refers to “periodic payments”. I am aware of no requirement that a conditional sale is created only if a payment schedule is established. Indeed, that would contradict the Legislature’s clear intent that what matters is the substance of the transaction. Creditors should not be able to create a loophole in the concept of conditional sales by failing to provide for a specific payment schedule when, as held in *Calidon*, the Legislature intended for the *PPSA* to establish a comprehensive statutory framework to govern the creation, perfection, priority and enforcement of security interests in all types of personal property “without regard to the form of the transaction”: *Calidon* at paras 31 and 33.

[42] Even if the Purchase Agreement was terminated at some point – either by operation of the un-numbered paragraph or the Unwind Agreement – that does not detract from RBC’s security interest in the Durum. The Durum existed. Purely’s

purchase of it from KF occurred. It was stored (possibly with other grain, including grain that Purely purchased under the Purchase Agreement) in KF's bins. Purely obtained an interest in the Durum either on the date of the Purchase Agreement (July 24, 2023) or on the date it was allocated to that contract if that occurred later.

[43] The evidence establishes that the Durum formed part of the "Grain" as defined in the Unwind Agreement. The fourth recital to the Unwind Agreement confirms that the Grain was allocated to the Purchase Agreement at some point before the date of the Unwind Agreement. Whenever that occurred, the Durum became subject to RBC's security. The later termination of the Purchase Agreement cannot then remove it from being subject to RBC's security. Not having registered a financing statement, KF lost the ability to deal with the Durum without dealing with RBC's security.

[44] Before concluding this discussion, I pause to address one argument made by KF in its brief – that the interpretation I apply to s. 3(1) of the *PPSA* would lead to an absurd result because it would mean that RBC would have priority over the collateral under every conditional sale contract between KF and Purely, even for unharvested grain or grain stored thousands of miles away. That floodgates argument fails to account for two things. First, during oral submissions, KF's counsel acknowledged that the Purchase Agreement is a conditional sale agreement. Second, the *PPSA* creates clear and firm rules. Yes, it might be possible that collateral (at least collateral that has come into existence and in which Purely has obtained an interest) under all such conditional sale agreements is subject to RBC's priority. It would have been simple for KF to have registered a financing statement (in Saskatchewan and such other jurisdictions as would have been appropriate) to protect its security interests. Individual agreements need not be described in such a financing statement. The *PPSA* requires only that collateral be described. In that context, the floodgates argument makes no sense and is entirely unpersuasive.

[45] The discussion above dispenses with KF's argument that the Purchase Agreement did not create a security interest in the Durum. I find that it did create a security interest.

b. Is RBC's position defeated if Purely never obtained possession of the Durum?

[46] KF argues that Purely never obtained possession of the Durum, such that RBC's security interest never attached to it. That argument is without merit, even if KF is correct that Purely never possessed the Durum. The test is not possession, but whether Purely obtained an interest in the Durum. I will explain.

[47] KF says in its brief that the crucial consideration "is delivery to the Debtor party and possession of the collateral by the Debtor party." Further:

41) ... [I]t matters not whether the grain had been stored in a bin on a farm hundreds of miles away, or stored in the KF Farms bins on the terminal lands – it was always in KF Farms control and never delivered to Purely. ...

[48] In support of its argument, KF cites no caselaw. Instead, it refers to s. 34 of the *PPSA* and ss. 34(3)(a) and 34(3)(b)(ii), which refer to possession. Section 34 was enacted to determine priority of purchase-money security interests [PMSIs] *vis-à-vis* other security interests in the same collateral. Possession is relevant to the priority of a PMSI when the party asserting a PMSI is in competition with another secured creditor. But it also only matters where the PMSI party has perfected its security interest, i.e., registered a financing statement. Here, KF never perfected.

[49] To explain further, KF operates under the misapprehension that if Purely never obtained possession, then it cannot lose priority because it never needed to register. The *PPSA* says no such thing. Rather, a security interest "attaches" in goods, i.e., comes to exist in respect of those goods, when the conditions in s. 12(1) of the *PPSA* are met:

- a. value is given;
- b. the debtor has rights in the collateral; and
- c. the security interest becomes enforceable pursuant to s. 10.

[50] I will address those elements next.

[51] KF argues that value was not given, so that no security interest attached. That argument cannot succeed. The leading case on the point is *Agricultural Credit Corp. of Saskatchewan v Pettyjohn*, 1991 CanLII 7979, 79 DLR (4th) 22 (SKCA) [*Pettyjohn*], which discussed the concept of value at paras. 36 to 44. In para. 37, the Court of Appeal reproduced a passage from *The Mah and Associates Inc. v First Bank of North Dakota (NA), Minot* (1983), 36 UCC Reporting Service 649 (NDSC), concerning “value” in the uniform commercial code setting:

For purposes of the uniform commercial code, a person gives value for rights if he acquires them in return for a binding commitment to extend credit, and generally for any considerations sufficient to support a simple contract.

That essentially became the test applied by the Court of Appeal in *Pettyjohn*: did the debtors and the creditor make commitments to one another sufficient to support a simple contract, generally, and more specifically was there an offer and acceptance concerning a binding commitment to extend credit?

[52] Here, there was a binding commitment by KF to extend credit, and Purely accepted that offer. That is all the consideration necessary to satisfy the requirement that value be given. Money need not exchange hands. Actual advances of credit need not be made.

[53] Other consideration was exchanged beyond the binding commitment. For KF as the grower, it locked in the price it was to receive for the grain sold under the

Purchase Agreement. Purely, in turn, contracted for a supply of grain to meet its needs. That also is an exchange of consideration. Consideration – value – is a much broader concept in commercial law than the mere exchange of currency.

[54] Thus, the first of the three elements is met – value was given by both KF and Purely to one another.

[55] With respect to the second element – rights in the collateral – Purely obtained an interest in the collateral that already existed upon entering into the Purchase Agreement. If the collateral did not yet exist, i.e., crops had not yet been planted and started to grow, upon that occurring and that crop being allocated to this contract, then the Purchase Agreement (and KF’s security interest) would begin to apply to such crops, and Purely would obtain such rights. Notably, KF does not take the position that the Durum was not contemplated to form part of the grain sold under the Purchase Agreement nor that it never came to exist.

[56] I find that Purely obtained rights (an interest) in the collateral to satisfy the second element.

[57] The third element is that the security interest becomes enforceable pursuant to s. 10. This element can be satisfied by a debtor signing a security agreement that refers to collateral. In this case, the collateral is described in the Purchase Agreement as the “Commodity”. That, in turn, is stated to be 5,000 tonnes of Canadian Western Amber Durum. That is an adequate description of the collateral for the purpose of s. 10. Indeed, it would have been sufficient to describe the collateral as “crops” or “goods”, “inventory” or “all of the debtor’s present and after-acquired personal property”. The third element is therefore satisfied.

[58] Because all three elements in s. 12(1) are present, KF’s security interest in the Durum attached, and possession would become relevant only if the Court needed

to engage in a priority analysis under s. 34. Possession is not relevant to attachment of KF's security interest.

[59] Accordingly, RBC's claim as a secured creditor is not defeated by virtue of Purely never obtaining possession of the Durum.

[60] For clarity, I have not determined that Purely never obtained possession, merely that possession is irrelevant. Because it is not relevant, I need not decide whether possession occurred. As a result, the evidence that KF characterizes as triple hearsay that I discuss above is also not relevant and thus I have not determined that issue.

c. Is KF correct that no consideration was given by Purely under the Purchase Agreement?

[61] I have already addressed this above within the preceding discussion. KF is not correct – consideration was given by both Purely and KF regarding the Purchase Agreement. This argument is of no merit.

Conclusion concerning whether the declaration sought by RBC should be granted

[62] RBC has established that it has a security interest in the Durum that ranks first in priority under the *PPSA*. It therefore is appropriate that I make the declaration sought in para. 1 of its draft order, and I will do so.

Issue #2: Should the Court award damages in the amount sought by RBC?

[63] RBC asks for damages in the amount of \$1,237,698. It is entitled to damages. The question is whether it has proven damages in that particular amount. There is no doubt that s. 65(6) governs the calculation of such damages.

[64] I reluctantly conclude that this application must be bifurcated concerning damages. My reluctance stems from my view that KF had sufficient time to adduce much more evidence than it did concerning the Durum and what it sold for. KF provided

no such information. I do not know what the Durum sold for. I do not know what the actual deductions were. I know no specifics of what KF actually sold. This application was served a full month before it was argued, ample time to have pulled together all the relevant information. As far as I can tell, it made no effort in that regard.

[65] I determine, consistent with *Snell v Farrell*, 1990 CanLII 70 at para 17, [1990] 2 SCR 311 (SCC); *Pettyjohn* at paras 9, 17 and 18; and *Glute v Agricultural Credit Corp. of Saskatchewan*, 1994 CanLII 4870 at para 42, [1994] 7 WWR 212 (SKQB), that because the subject matter of this issue is uniquely within its knowledge, KF bears the onus to establish the value of the Durum. If it fails to do so to my satisfaction, I will be prepared to determine at least that the gross value of the Durum was \$1,237,698, and perhaps even that amount should represent the damages award in favour of RBC.

[66] KF argues that not all of the grain it sold was Durum (i.e., durum grain of grade #2 or higher) and some was even feed grain, and that it was spread across nine bins. I will struggle to accept that position because it is belied by the Unwind Agreement made August 12, 2024. That agreement states in the recitals that “4200 Tonne of Grain”, being the same grain that Purely bought pursuant to the Purchase Agreement, was in those bins. I understand KF to have acknowledged that it sold about 4,200 tonnes of grain. It is difficult to understand how the grain sold by KF would be different from the grain described in the Unwind Agreement. Perhaps KF can make that make sense. That also will form part of its onus.

[67] To enable the orderly determination of damages to occur, I order that within 30 days of the date of this fiat, KF shall disclose and produce to RBC all documentation in its possession or control concerning the sale or other disposition of the Durum (whether before or after the Unwind Agreement). The Durum is what is covered by RBC’s security. With one caveat, feed grain or grain of a lower grade than

#2 is not covered by RBC's security because the Purchase Agreement specified that Purely was buying grain of #2 or higher grade. The caveat is as follows: if what KF sold was Durum that had since deteriorated (having been in storage for some time), that would be covered by RBC's security. Once it came to be subject to that security, such deterioration would not then deprive RBC of its security interest.

[68] If KF intends to contend that any of the grain it sold was not Durum, it must produce within the same 30 days all documentation in its possession or control relating to the non-Durum grain that it sold.

[69] To be clear, if the buyer of the Durum or other grain has relevant documentation in its possession that KF does not possess or otherwise control, my orders require KF to request that documentation be provided to it. My expectation is that KF will make every reasonable effort to ensure that complete documentation is provided to RBC.

[70] I further require that KF provide, in an affidavit sworn by a person authorized to bind KF, a full accounting by KF to RBC of the grain it sold, what it sold for, what deductions were applied, and what, if any, other amounts KF says are appropriate to be made by the Court to arrive at the net amount.

[71] Upon receipt of that affidavit, RBC will have 30 days to determine whether it wishes to cross-examine on the affidavit. If it does, it may write to the Court to seek leave, with an explanation of its rationale, with a copy to KF. If KF opposes the granting of such leave, it will have seven days to write to the Court to communicate its reason for that.

[72] Once cross-examination is complete, if any is to occur, the parties may contact the Local Registrar to seek a date for argument concerning damages. That said, if both parties agree, that can occur solely in writing.

[73] If either party believes that further directions are required concerning the damages phase that go beyond the orders in this fiat, or that my orders are not feasible, they may request a conference call through the Local Registrar. Permitting that is appropriate because I did not fully canvass counsel about the procedure for a damages phase.

E. CONCLUSION

[74] RBC is entitled to a declaration as follows:

1. Pursuant to section 66(1)(a) of *The Personal Property Security Act, 1993*, SS 1993, c P-6.2 (the “**PPSA**”):
 - a) by reason of its perfected security interest in the 4200 Tonnes of Canadian Western Amber Durum (the “**Subject Durum**”) which was the subject of the Unwind Agreement between KF Kambeitz Farms Inc. (“**KF Kambeitz**”) and Purely Canada Food Corp. dated August 12, 2024 (the “**Unwind Agreement**”), RBC had first priority in and to the Subject Durum; and
 - b) the perfected security interest of RBC in the Subject Durum ranked in priority to the unperfected security interest of KF Kambeitz in the Subject Durum.

[Emphasis in original]

[75] I find it appropriate to bifurcate the question of damages. The damages phase shall be governed by the orders I make in the preceding section, and any further orders I may make pursuant to the procedure contemplated by those orders.

“D.G. Gerecke” J.
D.G. GERECKE